



Decision

Matter of: Department of Health and Human Services—Application of Impoundment Control Act to Availability of Head Start Program Funds

File: B-337202

Date: July 23, 2025

DIGEST

Congress appropriated amounts to the Department of Health and Human Services (HHS) for fiscal year (FY) 2025 to carry out the Head Start Act. Between January 20, 2025, and April 15, 2025, HHS significantly reduced the rate of disbursement of funds for Head Start grant programs, as compared to amounts disbursed in the same time period in FY 2024. Current publicly available information suggests that funds have since been made available for expenditure at rates consistent with those in FY 2024.

Unless Congress has enacted a law providing otherwise, executive branch officials must take care to ensure that they prudently obligate appropriations during their period of availability. The Impoundment Control Act of 1974 (ICA) allows the President to withhold funds from obligation, but only under strictly limited circumstances and only in a manner consistent with that Act. The ICA was enacted to ensure that legislation passed by Congress and signed by the President is faithfully executed.¹ Additionally, the Head Start Act requires the Secretary to prescribe procedures to assure that “financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken.”

GAO’s institutional role is to support the Congress, including in Congress’s exercise of its constitutional power of the purse. GAO’s role is procedural—to protect

¹ See S. Rep. No. 93-688, at 75 (1974) (explaining that the objective of the ICA was “to assure that the practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress.”)

congressional prerogatives and help ensure compliance with the ICA and appropriations law—and is not to be interpreted as taking a position on the underlying policies. HHS has not provided the information we requested regarding factual information and its legal views concerning the potential impoundment of appropriated funds. Yet publicly available evidence, including data recorded by HHS on its Tracking Accountability in Government Grants System, indicates that between January 20, 2025, and April 15, 2025, HHS withheld from disbursement funds appropriated for Head Start. Based on this evidence, we conclude that HHS violated the ICA.

GAO is aware of ongoing litigation involving reported delays in Head Start recipients' ability to access Head Start funds.² GAO will continue to monitor this and any other litigation related to the delay in the disbursement of Head Start funds. If a court makes relevant findings of fact relating to Head Start funds, we will update this decision as necessary.

DECISION

Pursuant to our reporting responsibilities under the Impoundment Control Act of 1974 (ICA), we are issuing this decision.³ Congress appropriated amounts to the Department of Health and Human Services (HHS) under the “Children and Families Services Programs” for the implementation of Head Start.⁴ As explained below, we

² See, e.g., Complaint for Declaratory and Injunctive Relief, *New York et al. v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Jan. 28, 2025), ECF No. 1; Plaintiff's Opposition to Motion to Dismiss and Reply in Support of Motion for a Temporary Restraining Order, *National Council of Nonprofits v. Office of Management and Budget*, No. 1:25-cv-00239-LLA (D.D.C. Jan. 31, 2025), ECF No. 24; Complaint for Declaratory and Injunctive Relief, *Washington State Ass'n of Head Start and Early Childhood Assistance and Education Program, et al. v. Kennedy, Jr., et al.*, No. 2:25-cv-00781 (W.D. Wash. Apr. 28, 2025), ECF No. 1.

³ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, title X, 88 Stat. 297, 336 (July 12, 1974), 2 U.S.C. § 686. Additionally, on March 31, 2025, the Ranking Members of the House and Senate Budget Committees sent a request to GAO to examine several directives, including the Office of Management and Budget's (OMB) January 27, 2025, Memorandum, which in part directed agencies to “temporarily pause all activities related to obligation or disbursement of all Federal financial assistance”. Letter from Ranking Member Merkley and Ranking Member Boyle, to Comptroller General (Mar. 31, 2025).

⁴ See Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. D, title 2, 138 Stat. 460, 665–66 (Mar. 23, 2024) (for FY 2024, appropriating \$14,829,100,000 for carrying out several statutes and directing that \$12,271,820,000 of such “shall be for making payments under the Head Start Act”); Full-Year

(continued...)

conclude that HHS withheld these funds from expenditure in violation of the ICA.⁵ The Head Start Act requires the Secretary to prescribe procedures to assure that “financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken”. HHS’s actions here were inconsistent with this legal requirement.

In accordance with our regular practice, we contacted HHS to seek factual information and the agency’s legal views.⁶ At present, HHS has not transmitted the requested information.

In the past, in addition to requesting the agency’s factual assertions and legal views, we have typically analyzed apportionment schedules and obligational data from an appropriation to determine whether there is any indication of an improper withholding.⁷ However, the Office of Management and Budget has removed agency apportionment data from its public websites, which is both contrary to OMB’s duty to make such information publicly available and to GAO’s statutory authority to access such information.⁸ HHS, moreover, did not provide apportionment schedules in response to GAO’s request.⁹ Having access to such information aids in our review of ICA issues and our support of congressional oversight of programs.

Given the absence of information from HHS, we have based this letter upon publicly available evidence. Because that evidence indicates that HHS withheld appropriated funds from expenditure, and because the burden to justify such

Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title IX, § 1908(4), 139 Stat. 9, 33 (Mar. 15, 2025).

⁵ See Pub. L. No. 93-344, title X, §§ 1001–1017, 88 Stat. 297, 332–39 (July 12, 1974), codified at 2 U.S.C. §§ 681–688.

⁶ GAO, *GAO’s Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 21, 2024), available at <https://www.gao.gov/products/gao-24-107329>; Letter from General Counsel, GAO, to Acting General Counsel, HHS (May 28, 2025). We followed up with HHS on July 15, 2025, requesting an update on the status of HHS’s response. Email from Impoundments Mailbox, GAO, to Acting General Counsel, HHS (Jul. 15, 2025).

⁷ See B-335747, Apr. 22, 2024 (reviewing obligation data from three years of funding to assess whether DHS improperly withheld amounts appropriated for border barrier construction).

⁸ See Enclosure to B-337581, Apr. 8, 2025.

⁹ Letter from General Counsel, GAO, to Acting General Counsel, HHS (May 28, 2025).

withholdings rests with HHS and the executive branch¹⁰, we conclude that HHS violated the ICA by withholding funds from expenditure.

BACKGROUND

Head Start Program

Head Start is a grant program that aims to promote school readiness of low-income children by providing educational, nutritional, health, social, and other services.¹¹ HHS, through its Administration for Children & Families, administers Head Start through the Office of Head Start (OHS).¹² As of 2024, there were approximately 1,600 grant recipients across all 50 states, the District of Columbia, five territories, and Palau.¹³ Grant recipients, known as Head Start agencies, can generally receive federal funds that cover up to 80 percent of the approved costs of an agency's Head Start program.¹⁴ OHS provides funding for each grant recipient to offer a specified number of enrollment slots to eligible children.¹⁵

Each year, Congress appropriates funds under its Children and Families Services Programs appropriation for programs authorized under the Head Start Act.¹⁶ Pursuant to the Head Start Act, OHS allocates the large majority of Head Start and Early Head Start funding to existing Head Start grant recipients, according to a statutory formula.¹⁷ For FY 2025, Congress appropriated \$14,789,089,000 to the

¹⁰ B-337375, Jun. 16, 2025.

¹¹ See 42 U.S.C. § 9831 (Statement of Purpose); GAO, *Head Start: Opportunities Exist to Better Align Resources with Child Poverty*, GAO-24-106007 (Washington, D.C., Feb. 27, 2024), at 3, available at <https://www.gao.gov/products/gao-24-106077> (2024 GAO Head Start Report).

¹² See generally Administration for Children & Families, *About the Office of Head Start*, available at <https://acf.gov/ohs/about> (last visited July 1, 2025).

¹³ 2024 GAO Head Start Report, at 4.

¹⁴ 42 U.S.C. § 9835(b).

¹⁵ 2024 GAO Head Start Report, at 4.

¹⁶ See, e.g., Pub. L. No. 118-47 138 Stat. at 665–66 (for FY 2024, appropriating \$14,829,100,000 for carrying out several statutes and directing that \$12,271,820,000 of such “shall be for making payments under the Head Start Act”); see also 2024 GAO Head Start Report, at 5.

¹⁷ See 42 U.S.C. § 9835(a). See also 2024 GAO Head Start Report, at 5. Generally, a Head Start grant recipient's total award equals “the amount of funding it received
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Children and Families Services Programs account, for carrying out, in part, the Head Start Act.¹⁸

Under Head Start's "designation renewal system", Head Start grant recipients that are deemed "to be delivering high-quality and comprehensive" Head Start programs retain their status as Head Start grant recipients for a five-year period.¹⁹ The Head Start Act requires the HHS Secretary to monitor Head Start programs' compliance with applicable performance standards.²⁰ OHS staff must conduct regular performance evaluations of Head Start programs, including a "full review" of each Head Start agency at least once every three years.²¹ The Head Start Act provides the Secretary with the authority to terminate, suspend, or reduce funding to a Head Start agency in specific circumstances, such as an agency's failure to meet

in the prior year (known as its base grant) plus funds for cost-of-living adjustments and other things (e.g., quality improvement). In the following year, each grant recipient's cost-of-living adjustment becomes part of its base grant." 2024 GAO Head Start Report, at 5. See also 42 U.S.C. §§ 9835(a)(2)(B)(i), (3).

¹⁸ See Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title IX, § 1908(4), 139 Stat. 9, 33 (Mar. 15, 2025). While the full year continuing resolution adjusted the amount appropriated to the CFSP appropriation from \$14,829,100,000 to \$14,789,089,000, it did not adjust the specific amount appropriated for carrying out the Head Start Act. See Pub. L. No. 118-47, 138 Stat. at 665 (for FY 2024, directing that \$12,271,820,000 of the Children and Families Services Programs appropriation "shall be for making payments under the Head Start Act"). See B-324481, Mar. 21, 2013 ("[C]ontinuing resolutions are temporary measures that require agencies to continue operating under the *status quo* established by the previous appropriations acts until Congress completes action on appropriations acts for the remainder of the fiscal year.").

¹⁹ 42 U.S.C. § 9836(c)(7)(A)(i). OHS's Designation Renewal System allows for Head Start agencies to retain their status as such without recompeting for Head Start grants each year. See HHS, Administration for Children & Families, *Designation Renewal System*, available at <https://headstart.gov/designation-renewal-system> (last visited July 1, 2025).

²⁰ See 42 U.S.C. § 9836a(c).

²¹ 42 U.S.C. § 9836a(c)(1). Performance evaluations also include: "[a] review of each newly designated Head Start agency immediately after completion" of its first year; and follow-up reviews for agencies with specific deficiencies or broader areas of noncompliance. *Id.* The findings of these reviews are shared with Head Start agencies "in a timely, transparent, and uniform manner." 42 U.S.C. § 9836a(c)(4).

performance standards²², or when the Secretary determines that a reduction and redistribution of funds is warranted in cases of under-enrollment.²³

If OHS determines that a Head Start agency fails to meet various performance standards, the Head Start Act sets out a detailed process for corrective action.²⁴ The Head Start Act requires the Secretary to prescribe procedures to assure that “financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken”.²⁵ Under the Head Start Act, Head Start agencies must be afforded an opportunity to have a full and fair hearing, and to apply for refunding, prior to financial assistance being terminated.²⁶ According to HHS, this review process “could take years to complete allowing for ample time to adjudicate [a] case before a grantee faces loss of awarded grant funds.”²⁷

Recent Actions Regarding Head Start

On January 27, 2025, the then-acting Director of the Office of Management and Budget (OMB) issued a memorandum to all executive branch agency heads directing agencies to “temporarily pause all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities

²² See 42 U.S.C. § 9836a(e) (noting that deficient Head Start agencies and programs must develop quality improvement plans “to retain a designation as a Head Start agency” or “to continue to receive funds from [a Head Start agency]” and directing the Secretary to rescind designations for agencies that fail to correct identified deficiencies).

²³ 42 U.S.C. § 9836a(h)(5).

²⁴ This corrective action includes creation of a quality improvement plan with deadlines for correcting the deficiencies. 42 U.S.C. § 9836a(e)(1)–(2). In instances where corrective action is needed, the Head Start Act requires the Secretary to “inform the agency of the deficiencies that shall be corrected and identify the assistance to be provided.” 42 U.S.C. § 9836a(e)(1)(A).

²⁵ 42 U.S.C. § 9841(a)(2).

²⁶ See 42 U.S.C. § 9841(a)(2)–(3).

²⁷ Defendants’ Opposition to Plaintiffs’ Motion for a Preliminary Injunction at 8, *Washington State Ass’n of Head Start and Early Childhood Assistance and Education Program, et al. v. Kennedy, Jr., et al.*, No. 2:25-cv-00781-RSM (W.D. Wash. Jun. 6, 2025), ECF No. 59 (Washington State – HHS Opposition). While HHS has not provided to GAO the requested information, HHS has discussed recent events relating to Head Start in various court filings. *Id.*

that may be implicated” by several executive orders “to the extent permissible by applicable law.”²⁸ Since the memorandum’s issuance, Head Start recipients in over twenty states have reported delays in accessing funds.²⁹

Specifically, on January 28, 2025, the National Head Start Association (NHSA) issued a press release stating that Head Start grant recipients were unable to “draw down any funds.”³⁰ On February 4, 2025, NHSA conducted a survey of Head Start grant recipients.³¹ According to NHSA, the survey found that “at least 45 grant recipients[,] serving nearly 20,000 children ages zero to five and their families, are experiencing delays in accessing funds. This includes grant recipients in 23 states, D.C., and Puerto Rico.”³² In a motion before the United States District Court for the District of Rhode Island, the plaintiffs, a group of several states, argued that as of February 5, 2025, Head Start programs in Michigan and Vermont were still unable to access federal funds.³³

²⁸ OMB Memorandum, *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs*, M-25-13 (Jan. 27, 2025), available at <https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-13-Temporary-Pause-to-Review-Agency-Grant-Loan-and-Other-Financial-Assistance-Programs.pdf> (last visited July 11, 2025). This memorandum remained in effect until January 29, 2025, when the then-acting Director of OMB issued a memorandum rescinding the January 27, 2025, memorandum. OMB Memorandum, *Rescission of M-25-13*, M-25-14 (Jan. 29, 2025), available at <https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-14-Rescission-of-M-25-13.pdf> (last visited July 11, 2025).

²⁹ National Head Start Association, *Nearly 20,000 Children and Families Impacted by Delay in Accessing Federal Funds* (Feb. 4, 2025), available at https://nhsa.org/press_release/nearly-20000-children-and-families-impacted-by-delay-in-accessing-federal-funds/ (last visited July 11, 2025)

³⁰ National Head Start Association, *Federal Grant Freeze Puts Head Start Children and Families at Risk Nationwide* (Jan. 28, 2025), available at https://nhsa.org/press_release/federal-grant-freeze-puts-head-start-children-and-families-at-risk-nationwide/ (last visited July 11, 2025).

³¹ National Head Start Association, *Nearly 20,000 Children and Families Impacted by Delay in Accessing Federal Funds* (Feb. 4, 2025), available at https://nhsa.org/press_release/nearly-20000-children-and-families-impacted-by-delay-in-accessing-federal-funds/ (last visited July 11, 2025).

³² *Id.*

³³ Request for Emergency Relief to Enforce Temporary Restraining Order of January 31, 2025 Upon Evidence of Violation at 7, *New York et al. v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Feb. 7, 2025), ECF No. 66 (New York – Plaintiff’s Request (continued...))

In a Complaint submitted to the United States District Court for the Western District of Washington, local Head Start agencies and family advocacy groups alleged that as of April 2025, local Head Start agencies had continued to experience delays accessing Head Start grant funds allocated to them.³⁴ Additionally, the Complaint alleges that on April 1, 2025, HHS closed half of its regional offices and laid off associated staff, leaving local Head Start agencies in 23 states “without necessary support.”³⁵

Consistent with these court filings, data recorded by HHS on its Tracking Accountability in Government Grants System (TAGGS)³⁶ indicates that between

to Enforce TRO). See Declaration of the State Treasurer of Vermont, *New York et al. v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Feb. 7, 2025), ECF No. 68-111 (Noting that two Vermont Head Start providers reported problems accessing Head Start funding); Declaration of the Director of the Michigan Department of Lifelong Education, Advancement and Potential, *New York et al. v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Feb. 7, 2025), ECF No. 68-76 (Noting that “as of the signing of this declaration, [her organization] understands that some Head Start providers still have not received requested federal funds”). The court, in part, relied on these assertions in granting a preliminary injunction. See Memorandum and Order at 36, *New York et al. v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Mar. 6, 2025), ECF No. 161.

³⁴ Complaint for Declaratory and Injunctive Relief at 50–52, *Washington State Assoc. of Head Start and Early Childhood Assistance and Education Program et al. v. Kennedy*, No. 2:25-cv-00781 (W.D. Wash. Apr. 28, 2025), ECF No. 1 (Washington State – Complaint). The Complaint notes that a lack of communication and timeliness relating to grant funding disbursement have caused a local Head Start agency to terminate operations entirely. *Id.* at 49. Moreover, local Head Start agencies reported that the Department of Government Efficiency began responding to requests to draw down Head Start funds. *Id.* at 50-51. The Complaint alleges that previous justifications for drawing down funds were deemed insufficient, and local Head Start agencies were required to submit additional information prior to receiving funds. *Id.* According to the Complaint, this process caused further delays and put local Head Start agencies at risk of being unable to make payroll. *Id.* at 51-52.

³⁵ Washington State – Complaint, at 45. While the closure of Head Start regional offices presents no inherent violation of the ICA, we note generally that such closures may result in sums becoming available for other expenses. HHS must make any such cost savings available for prudent obligation in accordance with the relevant appropriation.

³⁶ TAGGS is HHS’s management and reporting platform that assembles financial assistance data from across HHS into one consolidated repository. TAGGS, *About* (continued...)

January 20, 2025, and April 15, 2025, HHS had disbursed for Head Start grants roughly 65 percent of what it had disbursed for Head Start grants between January 20, 2024, and April 15, 2024.³⁷ Between January 20, 2024 and April 15, 2024, TAGGS data indicates that HHS disbursed \$2,397,037,861 to Head Start grant recipients using FY 2024 funds.³⁸ In contrast, HHS reported through TAGGS that it disbursed \$1,571,620,771 to Head Start grant recipients using its FY 2025 funds between January 20, 2025, and April 15, 2025.³⁹ In sum, the data shows that HHS disbursed over \$825 million less to Head Start grant recipients between January 20, 2025, and April 15, 2025, than it had during the same time period in FY 2024.⁴⁰ TAGGS data indicates that HHS has since increased its disbursements of FY 2025

TAGGS, available at <https://taggs.hhs.gov/About> (last visited July 14, 2025). Federal law requires agencies to make complete, accurate financial assistance data publicly available. The Federal Funding Accountability Transparency Act of 2006 (FFATA) required the establishment of USA Spending.gov and required agencies to report data on federal awards equal to or greater than \$25,000. Pub. L. No. 109-282, 120 Stat. 1186 (Sept. 26, 2006) (*codified as amended at* 31 U.S.C. § 6101 note). The Digital Accountability and Transparency Act of 2014 (DATA Act) expanded the requirements of FFATA, requiring agencies to link financial information (e.g., obligations) to the related federal programs and requiring OMB and Treasury to develop government-wide data standards and elements for agencies to use when reporting spending data. Pub. L. No. 113-101, 128 Stat. 1146 (May 9, 2014). HHS uses TAGGS to meet its DATA Act reporting requirements. TAGGS, *About TAGGS*, available at <https://taggs.hhs.gov/About> (last visited July 14, 2025).

³⁷ TAGGS, *Award Search*, available at <https://taggs.hhs.gov/SearchAward> (last visited July 14, 2025). To compile these numbers, we searched TAGGS for “Issue Date FY” and “Funding Date FY” of 2024 and 2025, respectively. We then filtered by Assistance Listings by selecting “93.600 - Head Start”. This allowed us to identify the disbursements that took place in FY 2024 using FY 2024 one-year funds, and the disbursements for Head Start that took place in FY 2025 using FY 2025 one-year funds, respectively. We then downloaded the data and analyzed amounts disbursed between January 20 and April 15 for fiscal years 2024 and 2025, respectively. We downloaded the data on July 10, 2025. Given HHS’s non-responsiveness, we have not been able to independently verify these specific amounts with the agency.

³⁸ See discussion of TAGGS data extraction, *supra* note 37.

³⁹ See discussion of TAGGS data extraction, *supra* note 37.

⁴⁰ We arrived at this number by subtracting the amount HHS had disbursed between January 20, 2025, and April 15, 2025 (\$1,571,620,771) from the amount HHS has disbursed between January 20, 2024, and April 15, 2024 (\$2,397,037,861).

Head Start grant funding, and as of June 9, 2025, has disbursed amounts similar to those of FY 2024 during the same time period.⁴¹

DISCUSSION

At issue here is whether HHS complied with the requirements of the ICA. We conclude that HHS's withholding of funds for Head Start constitutes a deferral, as defined by the ICA ("“deferral of budget authority” includes withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities”).⁴² As explained below, because the ICA's fourth disclaimer does not permit the withholding from obligation or expenditure funds for programs for which there is a mandate to spend, HHS's withholding of Head Start funds from expenditure violates the ICA.⁴³

It is important to understand the constitutional and historical underpinnings of the ICA with respect to the critical role of Congress in exercising its constitutional powers. The Constitution specifically vests Congress with the power of the purse, providing that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”⁴⁴ The Constitution also gives Congress the exclusive power to legislate, and sets forth the procedures of bicameralism and presentment, through which the President may accept or veto a legislative bill passed by both houses of Congress, and Congress may subsequently override a presidential veto.⁴⁵ This process does not grant the President the authority to pass his own laws or to ignore or amend a law duly enacted by Congress.⁴⁶ Instead, the President must “faithfully execute” the law as Congress enacts it.⁴⁷

⁴¹ As of June 9, 2025, the data indicates that HHS had disbursed \$5,133,064,036 since January 20, 2025. TAGGS data indicates that HHS had disbursed \$4,811,408,527 between January 20, 2024, and June 7, 2024. See discussion of TAGGS data extraction, *supra* note 37.

⁴² 2 U.S.C. § 682(1)(A).

⁴³ 2 U.S.C. § 681(4). Section 681 sets out four disclaimers with respect to the application of the ICA, with the first three having no relevance here. See 2 U.S.C. §§ 681(1) – (3).

⁴⁴ U.S. Const. art. I, § 9, cl. 7.

⁴⁵ *Id.* at art. I, § 7, cl. 2.

⁴⁶ See B-331564, Jan. 16, 2020 (citing *Clinton v. City of New York*, 524 U.S. 417, 438 (1998)).

⁴⁷ U.S. Const., art. II, § 3.

Once enacted, an appropriation is a law like any other, and the President must implement it by ensuring that appropriated funds are obligated and expended prudently during their period of availability unless and until Congress enacts another law providing otherwise.⁴⁸ In fact, Congress was concerned about the failure to prudently obligate according to its congressional prerogatives when it enacted and later amended the ICA.⁴⁹

The Constitution grants the President no unilateral authority to withhold funds from obligation.⁵⁰ Instead, Congress has vested the President with strictly circumscribed authority to impound, or withhold, budget authority only in limited circumstances as expressly provided in the ICA.⁵¹ The ICA separates impoundments into two exclusive categories – deferrals and rescissions. First, the President may seek to temporarily withhold funds by proposing a “deferral.”⁵² Second, the President may seek the permanent cancellation of funds for fiscal policy or other reasons, including the termination of programs for which Congress has provided budget authority, by proposing a “rescission.”⁵³

In either case, the ICA requires the President to first transmit a special message to Congress outlining the amounts in question and the reasons for the proposed deferral or rescission.⁵⁴ These special messages must provide detailed and specific reasoning to justify the withholding, as set out in the ICA.⁵⁵ The burden to justify a withholding of budget authority rests with the executive branch.

⁴⁸ See B-331564, Jan. 16, 2020; B-329092, Dec. 12, 2017 (The ICA operates on the premise that the President is required to obligate funds appropriated by Congress, unless otherwise authorized to withhold.).

⁴⁹ See *generally*, H.R. Rep. No. 100-313, at 66–67 (1987); see *also* S. Rep. No. 93-688, at 75 (1974) (explaining that the objective was to assure that “the practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress”).

⁵⁰ See B-135564, July 26, 1973.

⁵¹ See 2 U.S.C. §§ 681 – 688.

⁵² *Id.* at § 684.

⁵³ *Id.* at § 683.

⁵⁴ *Id.* at §§ 683–684.

⁵⁵ See 2 U.S.C. §§ 683–684; B-237297.4, Feb. 20, 1990 (vague or general assertions are insufficient to justify the withholding of budget authority).

While the ICA does not circumscribe when funds can be proposed for rescission, it only permits deferral of budget authority in a limited range of circumstances: to provide for contingencies; to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or as specifically provided by law.⁵⁶ With respect to deferrals, the ICA specifies that the funds at issue are only temporarily withheld and must still be obligated before expiration.⁵⁷ The ICA's fourth disclaimer further clarifies that the ICA's deferral and rescission proposal mechanisms do not provide any process by which the President may withhold from obligation or expenditure funds that are "require[d]" by law to be spent; rather, such withholdings are categorically prohibited.⁵⁸

GAO's institutional role is to support the Congress, including in Congress's exercise of its constitutional power of the purse. This includes GAO's functions under the ICA, such as reviewing special messages⁵⁹ and reporting impoundments the President has not reported.⁶⁰

Application of the ICA to HHS's Administration of Head Start

In this case, the Administration has not sent a special message under the ICA related to Head Start. While HHS has not formally indicated that it intended to pause funds directed for Head Start grant recipients specifically⁶¹, current publicly

⁵⁶ 2 U.S.C. § 684(b).

⁵⁷ See 2 U.S.C. § 684; B-329092, Dec. 12, 2017 ("Any amount of budget authority deferred must be prudently obligated before the end of the period of availability."); 54 Comp. Gen. 453 (1974) (deferral provision should be used when the withholding is temporary and when prudent obligation of funds within the period of availability is not precluded by the withholding). And with respect to proposed rescissions, the funds must still be prudently obligated unless Congress acts within 45 days to pass a new law rescinding them. 2 U.S.C. § 683(b). The ICA also does not authorize the withholding of budget authority through its date of expiration. See B-330330, Dec. 10, 2018. As such, so-called "pocket rescissions" are not consistent with the ICA.

⁵⁸ 2 U.S.C. § 681(4).

⁵⁹ 2 U.S.C. §§ 685, 686(b).

⁶⁰ 2 U.S.C. § 686(a).

⁶¹ In a court filing before the United States District Court for the District of Rhode Island, counsel for HHS stated that "there is no pause on HHS funding for Head Start based on the [January 27, 2025] OMB Memo." Defendant's Opposition to Plaintiff's Motion to Enforce Temporary Restraining Order at 13, *New York et al. v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Feb. 9, 2025), ECF No. 70 (Feb. 9, 2025). Moreover, in a separate case regarding Head Start being heard in the

(continued...)

available evidence indicates that there was a delay in the expenditure of funds for Head Start programs.

As noted previously, TAGGS data indicates that between January 20, 2025, and April 15, 2025, HHS had disbursed for Head Start grants around 65 percent of what it had disbursed for Head Start grants between January 20, 2024, and April 15, 2024.⁶² In addition, plaintiffs in numerous cases before federal district courts reported Head Start agencies' inabilities to access Head Start grant funding.⁶³ While we accept that the rate of an agency's obligations or disbursements of a given appropriation may vary from year to year, we expect that an agency's obligations and expenditures, at any time throughout the fiscal year, will reflect a "reasonable attempt by the agency to carry out the purposes of the appropriation."⁶⁴ Moreover, we would not expect substantial variations in disbursement rates in this case, where disbursements are directed by the Head Start Act. As such, we find that between January 20, 2025, and April 15, 2025, HHS withheld Head Start funds from disbursement.⁶⁵

An impoundment occurs when an agency refuses to spend budget authority. By its plain terms, the ICA applies to both obligations and expenditures. However, we have said that not all delays in obligation or expenditure of budget authority constitute impoundments under the ICA. For example, when an agency is taking reasonable and necessary steps to implement a program or activity, but the obligation or expenditure of funds is unavoidably delayed, such action constitutes a

Western District of Washington, HHS stated that no Head Start grant terminations have occurred as a result of HHS's implementation of various executive directives. Washington State – HHS Opposition, at 8.

⁶² See discussion of TAGGS data extraction, *supra* note 37.

⁶³ See, e.g., New York – Plaintiff's Request to Enforce TRO, at 7 (detailing how Head Start programs in Michigan and Vermont were still unable to access federal funds); Washington State – Complaint, at 48–52 (reporting that as of April 2025, local Head Start agencies had continued to experience delays in their ability to access Head Start grant funds).

⁶⁴ B-337375, June 16, 2025 ("While there is no numeric threshold for an ICA violation", the obligation of roughly 19 percent of available budget authority did not suggest a "reasonable attempt by the agency to carry out the purposes of the appropriation.").

⁶⁵ Because OMB removed the website that made apportionments publicly available, we are unable to verify these figures against HHS apportionments. See GAO, *Enclosure to B-337581: Letter from GAO General Counsel to OMB Director on Availability of Apportionment Data* (Apr. 8, 2025), available at <https://www.gao.gov/products/e12062>.

programmatic delay and is not an impoundment, as defined by the ICA. The burden to justify a withholding rests with the agency; absent a sufficient justification, we will find that an impoundment has taken place. Here, HHS has not provided requested factual information nor its legal views on the matter. As such, HHS has not provided an adequate justification, and we cannot find that a programmatic delay has occurred.

Importantly, Head Start is a formula grant program and expenditure of funds is directed by the Head Start Act.⁶⁶ And, the only flexibilities provided to the Secretary to withhold or delay the expenditure of Head Start grant funds are those afforded through the Head Start Act. In particular, the Secretary may terminate, suspend, or reduce funding to a Head Start agency in specific circumstances, such as an agency's failure to meet performance standards⁶⁷, or when the Secretary determines that a reduction and redistribution of funds is warranted in cases of under enrollment.⁶⁸ We are not aware of attempts by the Secretary to avail himself of these flexibilities. Therefore, HHS's actions to delay the expenditure of funds for Head Start between January 20, 2025, and April 15, 2025, constitute an impermissible impoundment.

Application of the Fourth Disclaimer to Head Start

While the ICA only permits deferrals in a limited range of circumstances, we need not determine whether this delay fits within any of those circumstances. This is because under the ICA, a section referred to as the fourth disclaimer expressly precludes withholding from obligation or expenditure funds for programs for which there is a "provision of law which requires the obligation of budget authority or the making of outlays thereunder."⁶⁹ Our case law has interpreted formula grant

⁶⁶ 42 U.S.C. § 9835(a) ("[T]he Secretary shall allocate" funds in accordance with the statutory formula.). See *also* 2024 GAO Head Start Report, at 5 ("OHS allocates the large majority of Head Start . . . funding directly to existing Head Start grant recipients, according to a statutory formula").

⁶⁷ See 42 U.S.C. § 9836a(e) (noting that deficient Head Start agencies and programs must develop quality improvement plans "to retain a designation as a Head Start agency" or "to continue to receive funds from [a Head Start agency]" and directing the Secretary to rescind designations for agencies that fail to correct identified deficiencies).

⁶⁸ 42 U.S.C. § 9836a(h)(5). Moreover, under the Head Start Act, Head Start agencies must be afforded an opportunity to have a full and fair hearing, and to apply for refunding, prior to financial assistance being terminated. See 42 U.S.C. § 9841(a)(2)–(3).

⁶⁹ 2 U.S.C. § 681(4).

programs as falling under the fourth disclaimer. Head Start is one such program. Therefore, Head Start funds cannot be deferred under the ICA.

For example, in B-205053, Feb. 5, 1982, we held that OMB could not use the ICA to withhold funds appropriated for a formula grant program authorized by the Library Services and Construction Act (LSCA) because such action was prohibited by the ICA's fourth disclaimer.⁷⁰

We reached this conclusion in our prior decisions by analyzing the framework of the underlying statute, looking at the formula by which funds are to be allocated, and the requirements prescribed regarding the agency discretion in withdrawing or withholding funds, and the language mandating the allocation of funds to states or territories.⁷¹ These factors, taken together, constitute a mandatory statutory scheme.⁷²

Similarly, Head Start is governed by the Head Start Act, which prescribes a formula by which funds are to be allocated and uses language mandating the allocation of funds to states.⁷³ The Head Start Act dictates that "financial assistance . . . shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken."⁷⁴ In addition, under the Head Start Act, Head Start agencies are afforded an opportunity to have a full and fair hearing, and to apply for refunding, prior to financial assistance being terminated.⁷⁵ Based on these factors, we conclude that the Head Start Act constitutes a mandate to spend funds appropriated for Head Start. Because we conclude that the Head Start Act constitutes a mandate to provide amounts appropriated for Head Start to Head Start grant recipients, the amounts currently available for the program are subject to the ICA's fourth disclaimer and may not be withheld from expenditure under the ICA.

⁷⁰ See also B-337137, May 22, 2025 (Department of Transportation could not use the ICA to withhold funds appropriated for the National Electric Vehicle Infrastructure (NEVI) Formula Grant Program authorized by the 2021 Infrastructure Investments and Jobs Act (IIJA) because such actions were prohibited by the ICA's fourth disclaimer.)

⁷¹ *Id.*

⁷² *Id.*

⁷³ 42 U.S.C. § 9835(a) ("[T]he Secretary shall allocate" funds in accordance with the statutory formula.).

⁷⁴ 42 U.S.C. § 9841(a)(2).

⁷⁵ 42 U.S.C. § 9841(a)(3).

CONCLUSION

GAO's institutional role is to support Congress, including in Congress's exercise of its constitutional power of the purse. This includes GAO's responsibilities under the ICA, such as reviewing special messages and informing Congress of impoundments that the President has not reported. Our analysis and conclusions regarding Head Start help ensure compliance with the ICA and appropriations law. GAO does not take a position on the policy goals of HHS, and this decision is not to be interpreted as taking a position on the underlying policies entailed. Changes to Head Start can be addressed through the legislative process with Congress and the Administration.

Current publicly available information indicates that between January 20, 2025, and April 15, 2025, HHS withheld from disbursement funds that Congress had appropriated for Head Start.⁷⁶ HHS violated the ICA when it withheld appropriated funds that were not eligible for ICA-based withholdings due to the ICA's fourth disclaimer. The burden to justify withholdings rests with the executive branch. If the Administration wishes to make changes to the appropriation provided for Head Start, it must propose legislation for consideration by Congress.



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⁷⁶ As noted previously, litigation involving Head Start is ongoing. See, e.g., Complaint for Declaratory and Injunctive Relief, *New York et al. v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Jan. 28, 2025), ECF No. 1; Plaintiff's Opposition to Motion to Dismiss and Reply in Support of Motion for a Temporary Restraining Order, *National Council of Nonprofits v. Office of Management. & Budget*, No. 1:25-cv-00239-LLA (D.D.C. Jan. 31, 2025), ECF No. 24; Complaint for Declaratory and Injunctive Relief, *Washington State Assoc. of Head Start and Early Childhood Assistance and Education Program et al. v. Kennedy*, No. 2:25-cv-00781 (W.D. Wash. Apr. 28, 2025), ECF No. 1. GAO will continue to monitor this and any other litigation related to the delay in the disbursement of Head Start funds. If a court makes relevant findings of fact relating to Head Start funds, we will update this decision as necessary.