



Decision

Matter of: Department of Energy—Application of the Impoundment Control Act to Renew America’s Schools Program Appropriations

File: B-337208

Date: July 31, 2025

DIGEST

Congress appropriated amounts to the Department of Energy (DOE) for fiscal year (FY) 2022 through FY 2025 to carry out the Renew America’s Schools program (Schools Program). DOE conducted two rounds of funding opportunities and obligated the majority of FY 2022, 2023, and 2024 Schools Program funds. DOE announced a third round of funding opportunity in FY 2025, but subsequently delayed awards to conduct a review for alignment with the Administration’s policies.

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.

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

We find that DOE violated the ICA. Considering that the funds were withheld for policy reasons and the uncertainty of whether DOE has or will resume obligating FY 2025 funds for the Schools Program, we conclude DOE violated the ICA when it delayed the obligation of FY 2025 Schools Program funds.

DECISION

Through the Infrastructure Investment and Jobs Act (IIJA), Congress created and appropriated funds for a grants program at the Department of Energy (DOE) for energy efficiency improvements at public school facilities, which DOE established as the Renew America's Schools program (Schools Program).¹ On January 20, 2025, the President issued executive orders that directed executive branch agencies to pause the disbursement of funds appropriated through IIJA and to end spending on diversity, equity, and inclusion (DEI) activities. Exec. Order No. 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Energy Order); Exec. Order No. 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, 90 Fed. Reg. 8339 (DEI Order). The Office of Management and Budget (OMB) issued memorandums providing guidance on implementing the orders, and DOE issued a memorandum delaying financial assistance activities pending a review. OMB, *Guidance Regarding Section 7 of the Executive Order Unleashing American Energy*, OMB Memorandum M-25-11 (Jan. 21, 2025); OMB, *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs*, OMB Memorandum M-25-13 (Jan. 27, 2025), *rescinded by* OMB, *Rescission of M-25-13*, OMB Memorandum M-25-14 (Jan. 29, 2025);² Memorandum from Acting Secretary, DOE, to Heads of Departmental Elements, *Agency-Wide Review of Program and Administrative Activities* (Jan. 20, 2025) (DOE Memorandum) (submitted as exhibit F to First Amended Complaint, *The Sustainability Institute v. Trump*, No. 2:25-cv-02152 (D.S.C. 2025)).

In accordance with our regular practice, we contacted DOE to seek factual information and the agency's legal views on a potential impoundment with respect to the obligation and expenditure of funds appropriated for the Schools Program.³ DOE responded with facts and its legal position by email.⁴

¹ Pub. L. No. 117-58, div. D, title V, § 40541, 135 Stat. 429, 1071–74 (Nov. 15, 2021), 42 U.S.C. § 18831.

² Although this memorandum was rescinded, DOE included it—with OMB Memorandum M-25-11—in their response to us as a basis for their actions regarding the Schools Program and without acknowledgment of the rescission. Email from Assistant General Counsel for Finance and Information Law, DOE, to Managing Associate General Counsel, GAO (May 2, 2025) (with attachments) (DOE Response).

³ GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>; Letter from General Counsel, GAO, to Acting General Counsel, DOE (Apr. 2, 2025).

⁴ DOE Response.

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.⁵ However, OMB has removed agency apportionment data from its public websites, which in our view is contrary to OMB’s duty to make such information publicly available.⁶ Having access to such information aids in our review of Impoundment Control Act (ICA) issues and our support of congressional oversight of programs. In this case, while we did not have access to apportionment data, we did receive sufficient information from DOE and publicly available information to make a determination on the legal issue.

Pursuant to our reporting responsibilities under the ICA, we are issuing this decision.⁷ As explained below, we conclude that DOE violated the ICA when it delayed the obligation of fiscal year (FY) 2025 funds appropriated by IIJA for policy reasons.

BACKGROUND

Congress in IIJA created a grants program at DOE for energy efficiency improvements at public school facilities.⁸ The grants program requires DOE to “award competitive grants to eligible entities to make energy improvements.”⁹ To be considered for a grant, eligible entities must submit “an application at such time, in such manner, and containing such information as [DOE] may require.”¹⁰ IIJA enumerates items that applicants must include in their applications, several

⁵ *E.g.*, B-335747, Apr. 22, 2024 (reviewing obligational data from four years of funding to assess whether the Department of Homeland Security improperly withheld amounts appropriated for border barrier construction).

⁶ See Enclosure to B-337581, Apr. 8, 2025.

⁷ 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 Energy Order and OMB Memorandum M-25-13, which are relevant to this decision. Letter from Ranking Member Merkley and Ranking Member Boyle to Comptroller General (Mar. 31, 2025) (*citing* Energy Order; OMB Memorandum M-25-13).

⁸ Pub. L. No. 117-58, 135 Stat. at 1071–74.

⁹ 42 U.S.C. § 18831(b).

¹⁰ *Id.* § 18831(c)(1).

competitive criteria that DOE must consider, and a requirement that DOE give priority to certain eligible entities.¹¹

IIJA appropriated an additional \$500 million to DOE's Energy Efficiency and Renewable Energy (EERE) account to fund the grants program, with \$100 million made available in each FY from 2022 to 2026, to remain available until expended.¹² Pursuant to IIJA, DOE established the Schools Program at issue here.¹³

DOE conducted two rounds of awards for the Schools Program. For the first round, DOE awarded grants to 24 selectees.¹⁴ For the second round, DOE utilized a three-phase prize and cooperative agreement model, with 21 winners earning prizes, 16 of which were invited to enter into cooperative agreements.¹⁵ DOE has obligated the majority of the funding it received for FY 2022, FY 2023, and FY 2024—97 percent, 96 percent, and 91 percent, respectively—through the first and second round awards.¹⁶ DOE has expended 22 percent of its FY 2022 funding, 2 percent of its FY 2023 funding, and 0.44 percent of its FY 2024 funding.¹⁷ DOE launched a third-round funding opportunity on December 17, 2024.¹⁸ Submissions

¹¹ *Id.* § 18831(c)(2), (d), (e).

¹² Pub. L. No. 117-58, div. J, title III, 135 Stat. at 1366–67.

¹³ See DOE, *Renew America's Schools*, available at <https://www.energy.gov/scep/renew-americas-schools> (last visited July 30, 2025).

¹⁴ See DOE, *Renew America's Schools Grant 2022–23*, available at <https://www.energy.gov/scep/renew-americas-schools-grant-2022-23> (last visited July 30, 2025).

¹⁵ See DOE, *2024 Renew America's Schools Prize and Grant (2024 Announcement)*, available at <https://www.energy.gov/scep/2024-renew-americas-schools-prize-and-grant> (last visited July 30, 2025). The first phase awarded \$300,000 cash prizes to 21 winners. DOE then invited 16 of those winners to advance to the second and third phases, in which they were invited to enter into cooperative agreements with DOE.

¹⁶ DOE Response; GAO, *Diesel School Bus Alternatives: Opportunities to Better Assess Progress of Federal Programs*, GAO-25-106887 (Washington, D.C.: July 28, 2025), at 23.

¹⁷ DOE Response.

¹⁸ DOE, *Biden-Harris Administration Announces \$90 Million to Improve Health, Safety, and Lower Energy Costs in K-12 Public Schools Across America* (Dec. 17, 2024) (DOE Press Release), available at <https://www.energy.gov/articles/biden-harris-administration-announces-90-million-improve-health-safety-and-lower-energy> (last visited July 30, 2025); DOE, *2025 Renew America's Schools Prize Cooperative* (continued...)

were due on April 3, 2025.¹⁹ DOE has obligated 17 percent of its FY 2025 funding and expended 0 percent.²⁰

On January 20, 2025, the President issued the Energy Order and the DEI Order. The Energy Order directed all agencies to “immediately pause the disbursement of funds appropriated through” IIJA.²¹ It also directed agencies to “review their processes, policies, and programs for issuing grants, loans, contracts, or any other financial disbursements of such appropriated funds for consistency with the law and the policy outlined in” the Energy Order.²² The DEI Order ordered agencies to “terminate, to the maximum extent allowed by law, all” offices and positions related to diversity, equity, and inclusion (DEI), diversity, equity, inclusion, and accessibility (DEIA), and environmental justice; “all ‘equity action plans,’ ‘equity’ actions, initiatives, or programs, ‘equity-related’ grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees.”²³

OMB issued two memorandums with guidance on implementing the Energy Order and DEI Order. One memorandum stated that, under the Energy Order, agencies must “immediately pause disbursements” of appropriations made by IIJA “for objectives that contravene the policies established in” the order.²⁴ The second memorandum stated that, under the Energy Order and DEI Order, among other executive orders, agencies “must complete a comprehensive analysis of all of their Federal financial assistance programs to identify programs, projects, and activities that may be implicated by any of the President’s executive orders.”²⁵ While conducting the analysis, agencies, to the extent allowed by law, “must temporarily pause all activities related to obligation or disbursement of all Federal financial

Agreement Requirements Financial Assistance Notice of Funding Opportunity; DOE, “DE-FOA-0003525: 2025 Renew America’s Schools Prize to Cooperative Agreement,” EERE eXCHANGE: Funding Opportunities (EERE Funding Opportunities) (archived on Mar. 5, 2025).

¹⁹ DOE Press Release; EERE Funding Opportunities.

²⁰ DOE Response.

²¹ Energy Order, § 7, 90 Fed. Reg. at 8357.

²² *Id.*

²³ DEI Order, § 2, 90 Fed. Reg. at 8339.

²⁴ OMB Memorandum M-25-11.

²⁵ OMB Memorandum M-25-13, at 2.

assistance . . . that may be implicated by the executive orders, including . . . financial assistance for . . . DEI . . . and the green new deal.”²⁶

On January 20, 2025, DOE issued the DOE Memorandum requiring a review of a “broad spectrum of actions” for “consisten[cy] with Administration policies and priorities.”²⁷ In particular, the DOE Memorandum prohibited DOE from “announc[ing], approv[ing], finaliz[ing], modif[ying], or provid[ing]” “[a]ll funding and financial assistance activities” until the review was completed and the DOE Secretary (or Secretary-approved program head) approved in writing that the activity complied “with Congressional authorization and Administration policy.”²⁸ The review and approval requirement applied to “financial transactions and new awards” of IJJA funds.²⁹ Additionally, the Office of EERE issued a memorandum to “all stakeholders” advising DOE fund recipients and subrecipients to stop any activities proscribed by the DEI Order and warning them that DOE would not reimburse such costs incurred after the date of the memorandum.³⁰

Subsequently, DOE delayed obligating FY 2025 Schools Program funds when it delayed awards under its third-round funding opportunity.³¹ DOE stated the reason for the delay was to review “application documents . . . to ensure they are in alignment with the Administration’s priorities and policies.”³² In its response, DOE stated that delays in the obligation and expenditure of Schools Program funds constitute programmatic delays.³³ DOE stated that it “has no intention of withholding

²⁶ *Id.* (emphasis omitted).

²⁷ DOE Memorandum, at 1.

²⁸ *Id.* at 2.

²⁹ Declaration of Acting Chief Financial Officer, DOE, *Woonasquatucket River Watershed Council v. Department of Agriculture*, No. 1:25-cv-00097 (D.R.I. 2025), at 1–2 (DOE Declaration). According to DOE, on February 24, 2025, DOE restored “signing authority for obligations for ongoing work” that had been suspended by the DOE Memorandum and, “since February 24, 2025, for obligations with ongoing work, DOE is proceeding with payments in the normal course.” *Id.* at 2.

³⁰ Memorandum from Acquisition Director & Acting Head of Contracting Activity, EERE, DOE, for All DOE Funding Agreements or Awards, *Cease all activities associated with DEI and [Community Benefits Plans]* (Jan. 27, 2025) (EERE Memorandum).

³¹ See DOE Response.

³² *Id.* DOE noted that “new administrations commonly undertake a review of current programs to ensure that they meet the Administration’s priorities and policies.” *Id.*

³³ *Id.*

obligations.”³⁴ DOE attributed the lower rate of obligation of FY 2025 funding to the review of Schools Program application documents.³⁵ DOE also informed us that seven “selectees have awards pending,” and “[a]ll other awards are active, though some may be pending programmatic action to proceed with their award.”³⁶ DOE explained that the low rates of expenditure are normal programmatic delays caused by the grants lifecycle, which can span three to five years.³⁷ Schools Program “projects have been able to invoice and receive reimbursements,” and DOE noted that it approved an invoice for payment in February 2025.³⁸

It is unclear whether DOE resumed obligating FY 2025 funds for the Schools Program.³⁹ For FY 2026, OMB proposed canceling nearly \$196 million “from unobligated balances made available for fiscal years 2022 through 2026 in the ‘Energy Efficiency and Renewable Energy’ account provided for Grants for Energy Efficiency Improvements and Renewable Improvements at Public School Facilities, as authorized under section 40541 of division D of” IIJA. OMB, *Technical Supplement to the 2026 Budget, Appendix*, at 323 (2025), available at https://www.whitehouse.gov/wp-content/uploads/2025/05/appendix_fy2026.pdf (last

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ We are aware of three lawsuits in which DOE is a defendant that were filed against DOE’s implementation of the Energy Order, DEI Order, and OMB memorandums, namely the failure to obligate and expend appropriated funds on financial assistance and other programs. *The Sustainability Institute; Woonasquatucket River Watershed Council; New York v. Trump*, No. 1:25-cv-00039 (D.R.I. 2025). None of the cases specifically mention the Schools Program. But in two of the cases, the district court issued preliminary injunctions enjoining DOE from withholding “awarded” funds to financial assistance recipients, which would include Schools Program stakeholders. Memorandum and Order Granting Preliminary Injunction, *New York* (Mar. 6, 2025), at 44, *under appeal*, Docket No. 25-1413 (1st Cir. 2025) (applicable to plaintiff states); Memorandum and Order Granting Preliminary Injunction, *Woonasquatucket River Watershed Council* (Apr. 15, 2025), at 61, *under appeal*, Docket No. 25-1428 (1st Cir. 2025) (applicable nationwide). In *The Sustainability Institute*, the court is considering a motion for preliminary injunction for specific programs. See Motion for Preliminary Injunction, exhibit 21, *The Sustainability Institute* (listing affected programs).

visited July 30, 2025). This amount corresponds approximately to the total unobligated balances remaining for the Schools Program that DOE reported to us.⁴⁰

DISCUSSION

At issue here is whether DOE's actions to implement the Energy Order, DEI Order, OMB memorandums, and DOE Memorandum violated the ICA. As explained below, we conclude that DOE violated the ICA by delaying the obligation of FY 2025 funds appropriated by IIJA for the Schools Program.

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."⁴¹ 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.⁴² 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.⁴³ Instead, the President must "faithfully execute" the law as Congress enacts it.⁴⁴

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.⁴⁵ In fact, Congress was concerned about the failure to prudently obligate according to its congressional prerogatives when it enacted and later amended the ICA.⁴⁶

⁴⁰ See DOE Response.

⁴¹ U.S. Const. art. I, § 9, cl. 7.

⁴² *Id.* art. I, § 7, cl. 2.

⁴³ See B-331564, Jan. 16, 2020 (*citing Clinton v. City of New York*, 524 U.S. 417, 438 (1998)).

⁴⁴ U.S. Const. art. II, § 3.

⁴⁵ B-331564, Jan. 16, 2020; see also B-329092, Dec. 12, 2017 (holding that the ICA operates on the premise that the President is required to obligate funds appropriated by Congress unless otherwise authorized to withhold them).

⁴⁶ 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 ensure that "the

(continued...)

The Constitution grants the President no unilateral authority to withhold funds from obligation.⁴⁷ 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.⁴⁸ The ICA separates impoundments into two exclusive categories—deferrals and rescissions. First, the President may seek to temporarily withhold funds by proposing a deferral.⁴⁹ 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.⁵⁰

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.⁵¹ The special message must provide detailed and specific reasoning to justify the withholding, as set out in the ICA.⁵² The burden to justify a withholding of budget authority rests with the executive branch.⁵³

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.”⁵⁴ With respect to deferrals, the ICA specifies that the funds at issue are only

practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress”).

⁴⁷ See B-135564, July 26, 1973.

⁴⁸ See 2 U.S.C. §§ 681–688.

⁴⁹ *Id.* § 684. The ICA defines a deferral as “withholding or delaying the obligation or expenditure of budget authority . . . provided for projects or activities; or any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority.” *Id.* § 682(1).

⁵⁰ *Id.* § 683.

⁵¹ *Id.* §§ 683–684; see B-337137, May 22, 2025; B-331564, Jan. 16, 2020; B-329739, Dec. 19, 2018.

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

⁵³ B-337137, May 22, 2025.

⁵⁴ 2 U.S.C. § 684(b); see B-337137, May 22, 2025.

temporarily withheld and must still be obligated before expiration.⁵⁵ And with respect to proposed rescissions, the funds must still be obligated unless Congress acts within 45 days to pass a new law rescinding them.⁵⁶

Importantly, GAO has recognized that not all delays in obligating or expending budget authority constitute impoundments under the ICA. We have recognized, for example, that “delays in the obligation or expenditure of budget authority that result from agency compliance with statutory requirements” are “programmatic” in nature and therefore permissible.⁵⁷ Similarly, we have said that “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,” that delay is a “programmatic” one, not an impoundment.⁵⁸

GAO’s institutional role is to support 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 DOE’s Actions on the Schools Program

We conclude that DOE’s actions with respect to the obligation and expenditure of FY 2022 through FY 2024 Schools Program funds did not violate the ICA because those amounts are almost fully obligated, and the low expenditure rate is the result of a permissible programmatic delay. We conclude that DOE violated the ICA with respect to the obligation of FY 2025 Schools Program funds when it delayed the obligation of those funds for policy reasons.

⁵⁵ 2 U.S.C. § 684; B-337233, July 23, 2025; B-329092, Dec. 12, 2017; 54 Comp. Gen. 453 (1974).

⁵⁶ 2 U.S.C. § 684; B-337233, July 23, 2025. 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.

⁵⁷ B-337233, July 23, 2025; see B-337137, May 22, 2025, at 15 (*citing* B-333110, June 15, 2021).

⁵⁸ B-337137, May 22, 2025 (*citing* B-331564.1, Feb. 10, 2022).

⁵⁹ 2 U.S.C. §§ 685, 686(b).

⁶⁰ *Id.* § 686(a).

FY 2022–FY 2024 Funds

DOE has obligated nearly all the funds appropriated for FY 2022, FY 2023, and FY 2024. We have recognized that an agency need not obligate all its appropriated funds; prudent funds control may result in small amounts of unobligated funds.⁶¹ The small amounts of the School Program’s appropriations for FY 2022, FY 2023, and FY 2024 remaining (three, four, and nine percent, respectively) are consistent with prudent obligation under the ICA, particularly as the funds continue to remain available for obligation until expended.⁶²

DOE’s expenditure of these funds is very low, which raises initial concerns of improper impoundment.⁶³ However, DOE has reasonably explained that it is experiencing programmatic delays that are consistent with past grant agreements.⁶⁴ Specifically, DOE explained that work under the grants can span three to five years, leading to delays in expenditures.⁶⁵ In addition, DOE informed us that awardees may submit invoices and receive payments, which is consistent with the DOE Declaration that “DOE is proceeding with payments in the normal course” for already-obligated funds.⁶⁶ Thus, we find no impoundment with respect to the obligation or expenditure of these amounts. We will, however, continue to monitor the expenditure of these funds in light of our initial concerns.

⁶¹ B-331298, Dec. 23, 2020.

⁶² *Cf. id.* (finding that sound funds control practices may result in unobligated balances, which do not necessarily indicate an impoundment). Because Schools Program funding is no-year, DOE can continue to obligate beyond the FY in which it conducts a funding opportunity. For example, DOE made an award in the second-round funding opportunity in December 2024. USASpending.gov, *Grant Summary, DOE to the School Board of the City of Richmond*, available at https://www.usaspending.gov/award/ASST_NON_DESE0001446_8900 (last visited July 30, 2025).

⁶³ *E.g.*, B-337137, May 22, 2025 (stating that the ICA applies to expenditures as well as obligations and finding an impoundment where an agency withheld funds from expenditure).

⁶⁴ DOE Response.

⁶⁵ *Id.*

⁶⁶ DOE Declaration, at 2; DOE Response.

FY 2025 Funds

Distinguishing an impoundment from a programmatic delay can be difficult and requires us to carefully examine the facts and circumstances.⁶⁷ Here, considering DOE's acknowledgment that it delayed obligations to conduct a policy review and the uncertainty of whether DOE has resumed or will resume obligating FY 2025 funds for the Schools Program, we conclude DOE violated the ICA by delaying the obligation of FY 2025 funds.

We recognize that DOE was afforded a level of discretion in executing the Schools Program.⁶⁸ We have previously stated in our precedents that the level of discretion informs the reasonableness of a delay in obligating funds.⁶⁹ For example, our decision in 61 Comp. Gen. 482 (June 16, 1982) illustrates our analysis of agency discretion. In that case, the new Reagan Administration sought to terminate DOE fossil energy research and development activities that conflicted with its policy priorities.⁷⁰ The activities were one part of a larger fossil energy research and development program authorized by the Nonnuclear Energy Act and funded by a lump-sum appropriation.⁷¹ Neither the authorization act nor the appropriation mandated the activities.⁷² The Nonnuclear Energy Act conferred on DOE "considerable discretion in formulating and executing" the fossil energy research and development program.⁷³ We recognized that DOE could use the activities' funding for any other permitted activities under the Nonnuclear Energy Act.⁷⁴ Consequently, we concluded that DOE's significant discretion under a lump-sum appropriation and a broad authorizing statute allowed DOE to terminate activities "no longer considered to be consistent" with the new Administration's policies.⁷⁵

⁶⁷ B-331564.1, Feb. 10, 2022.

⁶⁸ See 42 U.S.C. § 18831.

⁶⁹ B-337137, May 22, 2025; B-331564.2, Mar. 17, 2022; B-331564.1, Feb. 10, 2022; see B-337233, July 23, 2025, at 8 ("When analyzing whether an agency has complied with the ICA, we look for actions that are required by law or instances where an agency's discretion is limited with respect to the obligation of funds.")

⁷⁰ 61 Comp. Gen. 482 (June 16, 1982).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

But DOE’s discretion in conducting the Schools Program under IIJA is not unfettered.⁷⁶ An agency “has less discretion in executing” a line-item appropriation than a lump-sum appropriation because a line-item appropriation reflects Congress’s intent to limit agency discretion.⁷⁷ “[T]o determine how much or little discretion the executive branch has in executing a line-item appropriation, we must consider the purpose of the appropriation.”⁷⁸ Here, Congress, through IIJA, specifically established the Schools Program and appropriated funding exclusively for that purpose. Unlike in 61 Comp. Gen. 482, DOE cannot use the \$500 million Schools Program earmark for any other purpose. Accordingly, DOE’s delay of the third round of funding is less reasonable and conflicts with the constraints on its discretion.

We turn next to DOE’s stated reason for the delay. In prior decisions, we have found that the substitution of policy priorities is an improper reason for withholdings in violation of the ICA, and we have consistently held that reviews for policy purposes rather than compliance with statutory conditions constitute improper impoundments.⁷⁹ Here, DOE acknowledged that the basis for the pause was to conduct a review to ensure that the Schools Program was aligned with the new Administration’s priorities and policies, not to consider application of the criteria set out in IIJA.⁸⁰ DOE has not pointed to IIJA or adduced any change to the Schools Program’s legal framework that necessitates the policy review or distinguishes the third round of funding from the prior two.⁸¹ Indeed, DOE had already taken significant steps to execute FY 2025 Schools Program funding in a manner similar to the first and second rounds. DOE launched the third round of funding by publishing the Prize Rules and soliciting applications.⁸² It delayed obligations only for policy reasons.

⁷⁶ Cf. B-337233, July 23, 2025 (finding no impoundment where agency’s deferral of funds was within the discretion provided by IIJA’s authorization of grant program).

⁷⁷ B-331564.2, Mar. 17, 2022, at 4; see B-332393, May 5, 2021.

⁷⁸ B-331564.2, Mar. 17, 2022, at 4.

⁷⁹ See B-335747, Apr. 22, 2024; B-237297.3, Mar. 6, 1990; B-224882, Apr. 1, 1987.

⁸⁰ DOE Response.

⁸¹ *Id.* We have found a permissible programmatic delay where an agency “delayed the obligation of funds while reviewing whether an agency could legally obligate funds in light of existing statutory conditions.” B-329739, Dec. 19, 2018, at 7.

⁸² DOE Press Release; EERE Funding Opportunities.

It is axiomatic that a new Administration may pursue new policies and priorities.⁸³ “[T]he ICA does not forbid executive branch officials from having policy preferences.”⁸⁴ But it does prevent those officials from impounding funds in furtherance of their policy preferences contrary to the policies that Congress enacted into law.⁸⁵ DOE has not advanced any reasons for the delay in obligating FY 2025 funds by making awards under the third round other than a policy review, and we have long held that a withholding of funds solely for policy reasons is impermissible under the ICA.

The Administration’s request to cancel the balance of the Schools Program’s unobligated appropriations, as well as DOE’s stated policy basis for the delay and the uncertainty whether DOE resumed obligating FY 2025 funds for the Schools Program, supports our conclusion of an impoundment. While a proposed cancellation through the budget request does not violate the ICA, a proposed cancellation coupled with an impermissible delay does.⁸⁶ In a prior decision involving DOE, we concluded that DOE withheld funds in anticipation of future cancellation in violation of the ICA.⁸⁷ DOE must prudently obligate Schools Program funding until such time as Congress passes a law canceling the Schools Program’s unobligated balances. If the Administration wants to impound funds before that, it must comply with the ICA and submit a special message proposing a rescission of the funding.

The circumstances here are distinguishable from those in our recent ICA decision in B-337233, July 23, 2025, where we found a programmatic delay. The two decisions are superficially comparable. In B-337233, we reviewed whether the Department of the Interior (DOI) impounded funds appropriated by IIJA for a program created in IIJA in consequence of the Energy Order.⁸⁸ DOI’s discretion was “the key to our

⁸³ See Memorandum and Order, *Woonasquatucket*, at 5 (“[E]lections have consequences and the President is entitled to enact his agenda.”); see also DOE Response (asserting that “new administrations commonly undertake a review of current programs to ensure that they meet the Administration’s priorities and policies”).

⁸⁴ B-335747, Apr. 22, 2024, at 5.

⁸⁵ B-337233, July 23, 2025; B-335747, Apr. 22, 2024.

⁸⁶ B-333110, June 15, 2021.

⁸⁷ B-329092, Dec. 12, 2017. A budget proposal to cancel funds does not substitute for a special message, and agencies may not impound funds proposed for cancellation without following the ICA’s procedures. *Id.*

⁸⁸ B-337233, July 23, 2025.

decision” finding a programmatic delay rather than an impoundment.⁸⁹ But three important facts in B-337233 distinguish DOI’s pause from DOE’s and establish that DOI’s pause was reasonable, unlike DOE’s here. First, the timeframes of DOI’s and DOE’s pauses are significant. DOI only paused funding for 30 days and released the funds immediately upon completing its review.⁹⁰ Here, in contrast, it is not clear whether DOE has resumed obligations of FY 2025 funds, DOE has not articulated specific plans for obligating the funds in the future, and, in fact, the Administration has proposed cancelling the unobligated balances. Second, the purposes of the pauses in each decision are different. DOI paused funds to conduct “a broad programmatic review of [DOI] operations, to ensure compliance with applicable law and priorities as set forth in the” Energy Order.⁹¹ Here, in DOE’s case, the sole rationale for the funding delay was a policy review, which is not permitted by the ICA as a basis for deferring obligations. Third, the patterns of DOI’s and DOE’s obligations are dissimilar. Despite the DOI program’s creation in IIJA in November 2021, DOI first obligated funds only in January 2025 and only for two grants, the first of which was awarded on January 10, 2025, 10 days before the pause began.⁹² Here, the Schools Program was likewise created by IIJA in FY 2022; however, prior to the pause, DOE had already conducted and obligated funds for two rounds of funding opportunities. The first round of funding was obligated in FY 2023.⁹³ DOE announced the recipients of the second round of funding on August 5, 2024.⁹⁴

⁸⁹ *Id.* at 10.

⁹⁰ *Id.*

⁹¹ *Id.* at 5.

⁹² *Id.*

⁹³ DOE, *DOE Announces 24 Selectees of the Renew America's Schools Grant* (June 29, 2023), available at <https://content.govdelivery.com/accounts/USDOESCEP/bulletins/362c111> (last visited July 30, 2025); see also DOE, *Biden-Harris Administration Announces \$178 Million to Improve Health, Safety, and Lower Energy Costs at K-12 Public Schools* (June 30, 2023), available at <https://globalrenewablenews.com/article/energy/category/climate-change/82/1030841/biden-harris-administration-announces-178-million-to-improve-health-safety-and-lower-energy-costs-at-k-12-public-schools.html> (last visited July 30, 2025); USASpending.gov, *Grant Summary, Cooperative Agreement to Winnett K-12 School District*, available at https://www.usaspending.gov/award/ASST_NON_DESE0000705_089 (indicating performance start for Schools Program grant of July 1, 2023) (last visited July 30, 2025).

⁹⁴ 2024 Announcement; see DOE, *Congratulations to the Teams Earning Funding through the 2024 Renew America’s Schools Prize and Grant!* (Aug. 5, 2024),
(continued...)

Consequently, we find that DOE violated the ICA. If DOE wishes to make changes to the obligation of Schools Program funding, it must propose for Congress's consideration the rescission of those funds in accordance with the ICA.

CONCLUSION

DOE violated the ICA by delaying the obligation of FY 2025 funds appropriated by IIJA for the Schools Program. Considering DOE's acknowledgment that the pause was undertaken for a policy review and the uncertainty of whether DOE has or will resume obligating FY 2025 funds for the Schools Program, we find DOE improperly impounded funds.

Our analysis and conclusions here help ensure compliance with the ICA and advance congressional oversight including in Congress's exercise of its constitutional power of the purse. We do not take a position on the policy goals of the directives and programs at issue. Changes to these policies and priorities can be addressed through the legislative process with Congress and the Administration.



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available at <https://content.govdelivery.com/accounts/USDOESCEP/bulletins/3acf42d> (last visited July 30, 2025).