



Decision

Matter of: Department of Health and Human Services—National Institutes of Health—Application of Impoundment Control Act to Availability of Funds for Grants

File: B-337203

Date: August 5, 2025

DIGEST

Congress appropriated amounts to the National Institutes of Health (NIH) to carry out various research objectives for fiscal year 2025. In accordance with several executive orders, the Department of Health and Human Services (HHS) and its agencies, including NIH, began canceling existing grants. HHS also issued a memorandum directing its agencies to cease the publication of grant review meeting notices in the *Federal Register*, a key step in NIH's grant review process. As a result, NIH reduced its awarding of new grants. NIH's actions to carry out these executive directives, coupled with publicly available data showing a decline in NIH's obligations and expenditures, establishes that NIH intended to withhold budget authority from obligation and expenditure without regard to the process provided for by the Impoundment Control Act of 1974 (ICA).

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 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

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

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").

appropriations law—and is not to be interpreted as taking a position on the underlying policies. Based on publicly available evidence and the lack of any special message pertaining to NIH funds, GAO concludes that NIH violated the ICA by withholding funds from obligation and expenditure.

In its response to GAO, HHS indicated that it had lifted the pause relating to the publication of *Federal Register* notice submissions and resumed scheduling meetings. However, HHS's response did not include information regarding current obligations of NIH funds for FY 2025. Furthermore, HHS showed no sufficient justification for the pause that it instituted.

GAO is aware of ongoing litigation involving the termination of NIH grants in which HHS has taken the position that it was authorized to terminate the grants. GAO will continue to monitor this and any other litigation related to the delay in the obligation and disbursement of NIH funds. If a court makes relevant findings of fact relating to NIH funds, we will update this decision as necessary.

DECISION

Beginning on January 20, 2025, President Trump began issuing executive orders directing the termination of equity-related grants, contracts, and other assistance. Following these directives, the National Institutes of Health (NIH) terminated over 1,800 grants between February 2025 and June 2025. On January 21, 2025, the Department of Health and Human Services (HHS) also issued a memorandum directing its agencies to cease the publication of grant review meeting notices in the *Federal Register*. Following this directive, NIH did not publish any grant review meeting notices between January 22, 2025, and March 3, 2025.

Pursuant to our reporting responsibilities under the Impoundment Control Act of 1974 (ICA), we are issuing this decision.² Congress appropriated amounts to NIH to carry out various research objectives for fiscal year 2025. As explained below, we conclude that HHS violated the ICA when it withheld funds from obligation and expenditure.

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

² 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).

withholding. However, the Office of Management and Budget (OMB) has removed agency apportionment data from its public websites, which is contrary to OMB's duty to make such information publicly available.³ Having access to such information aids in our review of issues under the ICA and our support of congressional oversight of programs.

We note that there is ongoing litigation related to NIH's cancellation of grants.⁴ For example, on July 2, 2025, the United States District Court for the District of Massachusetts held that NIH's cancellation of grants to comply with various executive orders violated the Administrative Procedure Act.⁵ Specifically, the District Court found that the NIH's "rollout" of "grant-termination action[s]" was arbitrary and capricious.⁶ Moreover, the District Court found that the administration's actions to terminate grants were not in accordance with law.⁷ The administration has appealed this ruling to the Supreme Court.⁸

Our decision here does not address NIH's authority to terminate grant agreements nor the process by which it terminated them. Instead, our decision focuses on whether a withholding of funds in violation of the ICA occurred.

³ See Enclosure to B-337581, Apr. 8, 2025.

⁴ See, e.g., Findings of Fact, Rulings of Law, and Order for Partial Separate and Final Judgment, *American Public Health Assoc., et al., v. National Institutes of Health*, 1:25-cv-10787-WGY (D. Mass. July 2, 2025), ECF No. 151 (APHA July Court Order); *PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405 (D. Md. Mar. 4, 2025); *National Assn. of Diversity Officers in Higher Education v. Trump*, 767 F. Supp. 3d 243 (D. Md. Feb. 21, 2025).

⁵ APHA July Court Order, at 3-4, 96, 100. The District Court ordered for the relevant grant terminations to be vacated. *Id.* at 96.

⁶ *Id.* at 86–87 (citing *Department of Education v. California*, 145 S. Ct. 966, 975–76 (Jackson, J. dissenting)); *id.* at 96.

⁷ *Id.* at 96-100.

⁸ *National Institutes of Health v. American Public Health Assoc.*, Application to Stay the Judgments of the United States District Court for the District of Massachusetts and Request for an Immediate Administrative Stay, No. 25A103 (July 24, 2025).

In accordance with our regular practice, we contacted HHS to seek factual information and the agency's legal views.⁹ HHS responded and provided some factual information.¹⁰

BACKGROUND

NIH Grant Review

The National Institutes of Health (NIH) is an agency of the Department of Health and Human Services (HHS).¹¹ As the largest public funder of biomedical research in the United States, NIH "seeks to enhance health, lengthen life, and reduce illness and disability by conducting and supporting research on a broad range of health-related topics, such as cancer, aging, mental health, and health disparities."¹² NIH is composed of 27 different components, called Institutes and Centers, that each has its own specific research agenda.¹³

The Public Health Service Act requires that the HHS Secretary "render assistance to . . . public authorities, scientific institutions, and scientists in the conduct of . . . research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments."¹⁴ In carrying out these objectives, the Secretary is authorized to award grants to universities, hospitals, laboratories, and other public or

⁹ 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, HHS (June 5, 2025).

¹⁰ Letter from Senior Counsel, HHS to Managing Associate General Counsel, GAO (July 29, 2025) (Response Letter). We requested follow up information from HHS on July 1, 2025, and July 30, 2025. See Email from Impoundments Inbox, GAO to Acting General Counsel, HHS (July 1, 2025); Email from Managing Associate General Counsel, GAO, to Senior Counsel, HHS (July 30, 2025) (requesting information on apportionment schedules). HHS did not provide the apportionment schedules or other documentation in response to our requests.

¹¹ 42 U.S.C. § 281(a). See GAO, *National Institutes of Health: Monitoring of External Research Can Be Improved*, GAO-25-107362 (Washington, D.C.; Apr. 2025) at 1, available at <https://www.gao.gov/products/gao-25-107362> (2025 GAO NIH Report).

¹² 2025 GAO NIH Report at 1. See also NIH, *Grants & Funding*, available at <https://www.nih.gov/grants-funding> (last visited July 23, 2025).

¹³ NIH, *NIH Organization*, available at <https://www.nih.gov/about-nih/organization> (last visited July 23, 2025).

¹⁴ Public Health Service Act, Pub. L. 78-410, title III, § 301, 58 Stat. 691-692, as amended, 42 U.S.C. § 241(a).

private institutions, and to individuals for research projects.¹⁵ Pursuant to these authorities, NIH awards “over 60,000 grants that directly support more than 300,000 researchers at more than 2,500 different institutions” annually.¹⁶

To achieve its research objectives, NIH engages in a detailed grant review process. NIH grant review is governed by federal law and regulation. The Public Health Service Act requires that grant applications undergo two levels of peer review prior to a grant award being made.¹⁷ The first level of peer review is conducted by a Scientific Review Group, often referred to as a study section.¹⁸ The second level of peer review is conducted by each NIH Institute or Center’s National Advisory Council.¹⁹ For NIH to conduct study sections and advisory councils necessary for grant review, the Federal Advisory Committee Act requires that NIH post such meeting plans in the *Federal Register* in advance of their scheduled date.²⁰

For fiscal year (FY) 2024, Congress appropriated to NIH over \$46 billion to carry out various missions and functions.²¹ Congress appropriated the same amounts to NIH

¹⁵ 42 U.S.C. § 241(a)(3).

¹⁶ NIH, *Congressional Justification for the FY 2025 President’s Budget Request, The Overview* (2025), at 34, available at <https://officeofbudget.od.nih.gov/br2025.html> (last visited July 23, 2025).

¹⁷ 42 U.S.C. §§ 282(b)(9), 289a(a). See NIH, *Peer Review Policies*, available at <https://grants.nih.gov/policy-and-compliance/policy-topics/peer-review> (last visited July 23, 2025).

¹⁸ Study sections convene groups of reviewers to evaluate grant proposals. See NIH, *First Level: Peer Review*, available at <https://www.grants.nih.gov/grants-process/review/first-level> (last visited July 23, 2025).

¹⁹ The Advisory Councils make funding recommendations to each Institute or Center’s Director. See NIH, *Second Level: Advisory Council Review*, available at <https://www.grants.nih.gov/grants-process/review/second-level> (last visited July 23, 2025).

²⁰ 5 U.S.C. §§ 1001(2), 1009(a)(2). A notice in the *Federal Register* must be published at least 15 calendar days prior to an advisory committee meeting. 41 C.F.R. § 102-3.150 (Apr. 18, 2024).

²¹ See Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. D, title II, 138 Stat. 460, 656-658 (Mar. 23, 2024) (appropriating funds to 24 separate NIH Centers and Institutes); NIH, *Congressional Justification for the FY 2026 President’s Budget Request, The Overview* (2026), at 22, available at <https://officeofbudget.od.nih.gov/pdfs/FY26/NIH%20FY%202026%20CJ%20Overview.pdf> (last visited July 23, 2025). The majority of these appropriations are annual appropriations.

for FY 2025.²² According to NIH, it uses the vast majority of its annual appropriations to fund grants and other research opportunities.²³

NIH's Actions

Cancellation of Existing Grants

On January 20, 2025, President Trump issued Executive Order No. 14151, which directed each federal agency to “terminate, to the maximum extent allowed by law, all... ‘equity-related’ grants or contracts” within 60 days.²⁴ On the same day, the President also issued Executive Order No. 14168, which directed that “[f]ederal funds shall not be used to promote gender ideology,” and instructed federal agencies to revise grant conditions accordingly.²⁵ On January 21, 2025, the President issued Executive Order No. 14173, which required the Director of OMB to “[t]erminate all ‘diversity,’ ‘equity,’ ‘equitable decision-making,’ ‘equitable deployment of financial and technical assistance,’ ‘advancing equity,’ and like mandates, requirements, programs, or activities, as appropriate.”²⁶

²² See Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title I, § 1101(a)(8), 139 Stat. 9, 10-11 (Mar. 15, 2025) (appropriating funds to federal agencies, including HHS, “at the level” specified in agencies’ FY 2024 appropriations, and “under the authority and conditions” specified in such prior appropriations).

²³ See, e.g., *Congressional Justification for the FY 2025 President’s Budget Request, The Overview*, at 40, 75-77, available at <https://officeofbudget.od.nih.gov/pdfs/FY25/br/Overview%20of%20FY%202025%20Presidents%20Budget.pdf> (last visited July 23, 2025) (discussing budget levels for various NIH programs and measures). NIH provides grants and other research opportunities through different programs, including: “Research Project Grants,” “Research Centers,” “Other Research,” “Training,” and “Research & Development Contracts.” *Id.* at 75-77. See also NIH, *Budget*, available at <https://www.nih.gov/about-nih/organization/budget> (last visited July 23, 2025) (noting that “nearly 82 percent” of NIH’s annual budget is awarded for “extramural research” largely through competitive grants).

²⁴ Exec. Order No. 14151, § 2(b)(i), *Ending Radical and Wasteful Government DEI Programs and Preferencing*, 90 Fed. Reg. 8339 (Jan. 29, 2025).

²⁵ Exec. Order No. 14168, § 3(g), *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615, 8616 (Jan. 30, 2025).

²⁶ Exec. Order No. 14173, § 3(c)(iii), *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8633, 8634 (Jan. 31, 2025).

On January 27, 2025, OMB issued a memorandum directing all federal agencies—including NIH—to “temporarily pause all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by,” among others, “[the Executive Orders above], including, but not limited to, financial assistance for... DEI, woke gender ideology, and the green new deal.”²⁷

In February, NIH began issuing guidance to carry out these objectives.²⁸ In accordance with a February 28, 2025, Presidential Memorandum²⁹, HHS began posting information regarding terminated grants on its Tracking Accountability in Government Grants System (TAGGS) homepage.³⁰ According to HHS, over 1,800 NIH grants were terminated between February 2025 and June 2025.³¹

Pause of Grant Review and Awarding of New Grants

Additionally, on January 21, 2025, the Acting Secretary issued a memorandum titled “*Immediate Pause on Issuing Documents and Public Communications*.”³² The

²⁷ OMB Memorandum, *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs*, M-25-13 (Jan. 27, 2025). The Memorandum was subsequently rescinded by OMB. OMB Memorandum, *Rescission of M-25-13*, M-25-14 (Jan. 29, 2025).

²⁸ See, e.g., NIH, Office of the Director, *Restoring Scientific Integrity and Protecting the Public Investment in NIH Awards* (Feb. 21, 2025) (“[T]he Director of NIH hereby directs: NIH personnel shall conduct an internal review of all . . . existing awards; cooperative agreements; and other transactions. Such review shall be aimed at ensuring NIH grants . . . do not fund or support low-value and off-mission research activities or projects – including DEI and gender identity research activities and programs.”).

²⁹ See The White House, Presidential Actions, *Radical Transparency About Wasteful Spending* (Feb. 18, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/02/radical-transparency-about-wasteful-spending/> (last visited July 23, 2025).

³⁰ TAGGS is HHS’s management and reporting platform that “assembles financial assistance data from across [HHS] into one consolidated repository.” TAGGS, *About TAGGS*, available at <https://taggs.hhs.gov/About> (last visited July 23, 2025).

³¹ HHS, *HHS Grants Terminated* (July 3, 2025), 16-71, available at https://taggs.hhs.gov/Content/Data/HHS_Grants_Terminated.pdf. We downloaded the data on July 7, 2025.

³² HHS Memorandum, *Immediate Pause on Issuing Documents and Public Communications* (Jan. 21, 2025) (HHS Pause on Communications Memorandum). The Memorandum was stated to be in effect through February 1, 2025.

memorandum directed Heads of Operating and Staff Divisions to “[r]efrain from sending any document intended for publication to the Office of the Federal Register until it has been reviewed and approved by a Presidential appointee.”³³ The memorandum also noted that the Office of the Executive Secretary had withdrawn existing documents pending publication in the *Federal Register*.³⁴ Additionally, the memorandum directed HHS agencies to “[r]efrain from publicly issuing any document (e.g., regulation, guidance, notice, grant announcement).”³⁵ According to HHS, this pause went into effect “to provide the Administration with time to “consider[] its plan for managing the federal policy and public communications processes.”³⁶

According to the *Federal Register*’s online database, NIH did not publish any grant review notices between January 22, 2025, and March 3, 2025.³⁷ And according to HHS, NIH resumed holding advisory council meetings on March 18, 2025, and “[r]e-scheduled and newly scheduled peer review groups resumed on March 24, 2025.” This data, taken with HHS’s response, indicates that NIH limited its grant review for a period of time; specifically, the only grant review meetings able to take place during this time were those for which notice was published in the *Federal Register* prior to January 21, 2025.³⁸ Because of NIH’s requirements under the Public Health Service Act and the Federal Advisory Committee Act, HHS’s pause in the submission of *Federal Register* notices halted NIH’s ability to review and subsequently award grants. As such, for a period of time, NIH was largely unable to obligate funds for new grants or other research opportunities. According to HHS,

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Response Letter, at 1.

³⁷ National Archives, *Federal Register*, Document Search, available at <https://www.federalregister.gov/documents/search> (last visited July 23, 2025). Searched by “National Institutes of Health” under “Agency”. Filtered publication date by a range of 01/22/2025 to 03/03/2025. The search results determined that 0 “Notices” were published by NIH during this time period. It is important to note that because of the final rule requiring that notice of grant review meetings be published at least 15 calendar days prior to the meetings, this means that the first day that grant review meetings could take place is March 19, 2025 (for which notice would be published in the *Federal Register* on March 4, 2025). See 41 CFR § 102-3.150.

³⁸ See Response Letter, at 1. According to HHS, “[p]eer review group meetings that had been previously scheduled ran from February 7 through February 18, 2025.” Response Letter, at 1.

NIH has since “caught up from the pause when compared to prior years,” as “has been on pace with its reviewing grant applications and holding meetings.”³⁹

Financial Impacts of NIH Actions

As noted previously, between February 2025 and June 2025, over 1,800 NIH grants were terminated.⁴⁰ During this same time period, agency data on USAspending.gov⁴¹ indicates that NIH obligated a lower amount toward awards, as compared to previous fiscal years.⁴² Between February and June of FY 2025, NIH obligated almost \$8 billion less than it had in the same time period in FY 2024.⁴³ Between February and June of FY 2025, NIH obligated 62 percent of what it had

³⁹ Response Letter, at 2.

⁴⁰ HHS, *HHS Grants Terminated*, at 16-71.

⁴¹ 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 USAspending.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), 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).

⁴² HHS uses TAGGS to meet its DATA Act reporting requirements. TAGGS, *About TAGGS*, available at <https://taggs.hhs.gov/About> (last visited July 23, 2025). We analyzed data between February 1, 2024, and June 30, 2024, as these dates best matched the period during which the grants were terminated. To compile these numbers, GAO staff searched USAspending.gov for all award types and “National Institutes of Health” as the granting agency and the funding agency, to ensure that we were capturing the funds obligated by NIH specifically from NIH’s appropriations. We selected FYs 2023, 2024, and 2025 from the “Time Period” filter. We did not select the “Show New Awards Only” filter, as we intended to capture all awards for new and existing grants. We then downloaded the data at the transaction level. We downloaded the data on July 21, 2025. Given HHS’s non-responsiveness, we have not been able to independently verify these specific amounts with the agency or recipients.

⁴³ We arrived at this number by subtracting the amount HHS had obligated between February 1, 2025, and June 30, 2025 (\$12,836,553,450.32) from the amount HHS had obligated between February 1, 2024, and June 30, 2024 (\$20,579,011,491.88). See discussion of USAspending.gov data extraction, *supra* note 42.

obligated between February and June of FY 2024⁴⁴, and 64 percent of what it had obligated between February and June of FY 2023.⁴⁵

As previously discussed, NIH was largely unable to obligate funds for new grants or other research opportunities for a period of time. During the second quarter of FY 2025, the period of time during which the pause in *Federal Register* notice submissions was in place, agency data on USAspending.gov indicates that NIH obligated a lower amount toward new awards as compared to previous fiscal years.⁴⁶ In the second quarter of FY 2025, NIH obligated 60 percent of what it had obligated in the second quarter of FY 2024,⁴⁷ and 53 percent of what it had obligated

⁴⁴ We arrived at this number by dividing the amount HHS had obligated between February 1, 2025, and June 30, 2025 (\$12,836,553,450.32) from the amount HHS had obligated between February 1, 2024, and June 30, 2024 (\$20,579,011,491.88). See discussion of USAspending.gov data extraction, *supra* note 42.

⁴⁵ We arrived at this number by dividing the amount HHS had obligated between February 1, 2025, and June 30, 2025 (\$12,836,553,450.32) from the amount HHS had obligated between February 1, 2023, and June 30, 2023 (\$20,012,586,678.31). See discussion of USAspending.gov data extraction, *supra* note 42. Moreover, the total obligations between February and June in FY 2025 were the lowest they had been during that five-month period in the fiscal year since FY 2018. To compile these numbers, GAO staff searched USAspending.gov for all award types and “National Institutes of Health” as the granting agency and the funding agency, to ensure that we were capturing the funds obligated by NIH specifically from NIH’s appropriations. We selected FY2018-FY2025 from the “Time Period” filter. We then downloaded the data at the transaction level. We downloaded the data on July 21, 2025. Given HHS’s non-responsiveness, we have not been able to independently verify these specific amounts with the agency or recipients.

⁴⁶ See discussion of reporting federal government spending data, *supra* note 41. We analyzed data from the second quarter of the fiscal year (January 1-March 31), as these dates best matched the dates that the memorandum was in effect. To compile these numbers, we searched USAspending.gov for all award types and “National Institutes of Health” as the granting agency and the funding agency, to ensure that we were capturing the funds obligated by NIH specifically from NIH’s appropriations. We selected FYs 2023, 2024, and 2025 from the “Time Period” filter, and selected “Show New Awards Only” to filter by awards whose base transaction date (the date of the first transaction of the prime awards) falls within the selected period to filter for grants newly awarded. We then downloaded the data at the transaction level. We downloaded the data on July 21, 2025. Given HHS’s non-responsiveness, we have not been able to independently verify these specific amounts with the agency or recipients.

⁴⁷ We arrived at this number by dividing the amount HHS had obligated between January 1, 2025, and March 31, 2025 (\$1,084,820,720.57) from the amount HHS

in the second quarter of FY 2023.⁴⁸ Moreover, USAspending.gov data shows that in each month between February 2025 and June 2025, NIH has continued to obligate a lower amount toward new awards, as compared to previous fiscal years.⁴⁹

DISCUSSION

At issue here is whether NIH's actions to pause *Federal Register* notice submissions of grant review meetings and its cancelation of over 1,800 existing grants violated the ICA. For the reasons explained below, and based on available information, we conclude that NIH violated the ICA by improperly withholding appropriated funds from obligation and expenditure.

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.”⁵⁰ 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.⁵¹ This process does not grant the President the authority to pass his own laws or to

had obligated between January 1, 2024, and March 31, 2024 (\$1,806,007,318.81). See discussion of USAspending.gov data extraction for new awards, *supra* note 46.

⁴⁸ We arrived at this number by dividing the amount HHS had obligated between January 1, 2025, and March 31, 2025 (\$1,084,820,720.57) from the amount HHS had obligated between January 1, 2023, and March 31, 2023 (\$2,054,515,464.46). See discussion of USAspending.gov data extraction for new awards, *supra* note 46.

⁴⁹ In each of the months between February and June, NIH obligated (toward new awards) between \$179 million and \$549 million less in FY 2025 than it had in FY 2024. We arrived at this number by subtracting the amounts HHS had obligated for the months of February, March, April, May, and June, individually, in 2025, from the amounts HHS had obligated for the months of February, March, April, May, and June, individually, in 2024. See discussion of USAspending.gov data extraction, *supra* note 46.

⁵⁰ U.S. Const. art. I, § 9, cl. 7.

⁵¹ *Id.* at art. I, § 7, cl. 2.

ignore or amend a law duly enacted by Congress.⁵² Instead, the President must “faithfully execute” the law as Congress enacts it.⁵³

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.⁵⁴ In fact, Congress was concerned about the failure to prudently obligate according to its congressional prerogatives when it enacted and later amended the ICA.⁵⁵

The Constitution grants the President no unilateral authority to withhold funds from obligation.⁵⁶ 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.⁵⁷ The ICA separates impoundments into two exclusive categories – deferrals and rescissions. First, the President may seek to temporarily withhold funds by proposing a “deferral.”⁵⁸ 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.”⁵⁹

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.⁶⁰ These special messages must provide detailed and specific

⁵² See B-331564, Jan. 16, 2020 (citing *Clinton v. City of New York*, 524 U.S. 417, 438 (1998)).

⁵³ U.S. Const., art. II, § 3.

⁵⁴ See B-331564; 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.).

⁵⁵ 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”).

⁵⁶ See B-135564, July 26, 1973.

⁵⁷ See 2 U.S.C. §§ 681 – 688.

⁵⁸ *Id.* at § 684.

⁵⁹ *Id.* at § 683.

⁶⁰ *Id.* at §§ 683–684.

reasoning to justify the withholding, as set out in the ICA.⁶¹ The burden to justify a withholding of budget authority rests with the executive branch.

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.⁶² With respect to deferrals, the ICA specifies that the funds at issue are only temporarily withheld and must still be obligated before expiration.⁶³

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 messages and reporting impoundments the President has not reported.⁶⁴

Application of the ICA to HHS & NIH

In this case, the Administration has not sent a special message under the ICA related to NIH. Nevertheless, publicly available evidence shows that NIH withheld funds from obligation and expenditure in its efforts to implement various executive orders and the HHS Pause on Communications Memorandum.

In its efforts to implement various executive actions, NIH was largely unable to obligate funds toward existing grants. NIH's decision to terminate over 1,800 existing grants coincides with a decline in the obligation of awards from February 2025 to June 2025, as compared to previous fiscal years. In addition, the evidence shows that as a result of the HHS Pause on Communications Memorandum, NIH limited its grant review and grant award functions. NIH's pause in the publication of grant review meeting notices, documented in the *Federal*

⁶¹ See *id.*; B-237297.4, Feb. 20, 1990 (vague or general assertions are insufficient to justify the withholding of budget authority).

⁶² 2 U.S.C. § 684(b).

⁶³ 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). 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.

⁶⁴ 2 U.S.C. §§ 685-686.

Register's online database, coincides with a decline in the obligation of new awards during the second quarter of the fiscal year, as compared to previous fiscal years.

While the majority of NIH's appropriations do not specifically require that NIH award grants and other research contracts, NIH uses the vast majority of its appropriation for these purposes each year.⁶⁵ Moreover, it is important to note that we do not have any indication from HHS officials that they intend or have begun using NIH funds for another purpose within the respective appropriations.⁶⁶ To the contrary, between February and June of FY 2025, publicly available data confirms that NIH obligated \$8 billion less toward new and existing awards, as compared to amounts obligated in the same time period in FY 2024.⁶⁷ Accordingly, the data indicates that NIH's actions to carry out various executive directives delayed the obligation and expenditure of NIH's appropriations.

An impoundment occurs when an agency refuses to spend budget authority. By its plain terms, the ICA extends to both obligations and expenditures. However, we have concluded 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

⁶⁵ See discussion of various programs listed in NIH's Congressional Budget Justification. *Congressional Justification for the FY 2026 President's Budget Request*, *supra* note 21. Congress relies on agency budget justification documents to understand how an agency intends to use the budget they request. See Report of the House Committee on Appropriations on the 1974 Defense Department appropriation bill, H.R. Rep. No. 93-662, at 16 (1973) ("In a strictly legal sense, [an agency] could utilize the funds appropriated for whatever programs were included under the individual appropriation accounts, but the relationship with the Congress demands that the detailed justifications which are presented in support of budget requests be followed. To do otherwise would cause Congress to lose confidence in the requests made.").

⁶⁶ Reprogramming is the shifting of funds within an appropriation to purposes other than those contemplated at the time of appropriation. GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 85. More specifically, it is the application of appropriations within a particular account to purposes, or in amounts, other than those justified in the budget submissions or otherwise considered or indicated by congressional committees in connection with the enactment of appropriation legislation. B-323792, Jan. 23, 2013; B-164912-O.M., Dec. 21, 1977.

⁶⁷ We arrived at this number by subtracting the amount HHS had obligated between February 1, 2025, and June 30, 2025 (\$12,836,553,450.32) from the amount HHS had obligated between February 1, 2024, and June 30, 2024 (\$20,579,011,491.88). See discussion of USAspending.gov data extraction, *supra* note 42.

obligation or expenditure of funds is unavoidably delayed, such action constitutes a programmatic delay and is not an impoundment, as defined by the ICA.⁶⁸

Under certain facts or circumstances, a limited delay in the obligation of funds caused by an agency's review to ensure that its financial assistance aligned with the priorities of an incoming administration may also be considered a programmatic delay. In a 2018 report, we considered this issue with respect to the Department of Energy's (DOE) Advanced Research Projects Agency-Energy (ARPA-E) funds.⁶⁹ Beginning in May 2017, DOE's Chief of Staff initiated a review of ARPA-E financial assistance to determine whether such assistance aligned with the new administration's priorities.⁷⁰ New awards were delayed until the review of the underlying financial assistance opportunity was completed.⁷¹ DOE reviewed and approved ARPA-E's financial assistance on a rolling basis from May through September 2017 and nearly all ARPA-E financial assistance was approved.⁷² There, we concluded that the delay in the obligation of ARPA-E funds for such review did not violate the ICA.⁷³

Important to our analysis in the 2018 report were the procedural steps taken by the agency to achieve its stated intent. To ensure that DOE's financial assistance aligned with the priorities of the new administration, DOE delayed the obligation of funds toward new awards. But according to DOE officials interviewed by GAO, DOE worked to complete the review as quickly as possible to minimize the effects on DOE programs, and by the end of its review, nearly all of the funds had been released.⁷⁴ DOE's actions reflected an intent to obligate funds for ARPA-E assistance once its stated review was complete, a hallmark of any programmatic delay.

With respect to NIH's termination of over 1,800 grants, the facts do not support the finding of a programmatic delay. While it can be argued that NIH reviewed grants to

⁶⁸ See B-331564.1, Feb. 10, 2022. "Programmatic delays include delays in the obligation or expenditure of budget authority that result from agency compliance with statutory requirements." B-337137, May 22, 2025; see also B-333110, June 15, 2021.

⁶⁹ GAO, *Department of Energy: New Process to Review Financial Assistance for Research Projects Created Uncertainty*, GAO-18-278 (Washington, D.C.: Feb. 2018) at 10-11, available at <https://www.gao.gov/products/gao-18-278>.

⁷⁰ *Id.* at 1, 6.

⁷¹ *Id.* at 2.

⁷² *Id.* at 6.

⁷³ *Id.* at 10-11.

⁷⁴ *Id.* at 6, 9.

ensure that funds were spent in alignment with the priorities of the new administration, NIH did not simply delay the planned obligations of the funds. Rather, NIH eliminated obligations entirely by terminating grants it had already awarded.

Moreover, the ARPA-E example involved a targeted and efficient review. DOE noted that it reviewed ARPA-E awards on a rolling basis, and by the end of its review, had released nearly all of the funds. In other words, ARPA-E awards were approved, and funds were obligated, just at a later time in the fiscal year than originally planned. Here, in contrast, the data indicates that between February and June of FY 2025, NIH's obligations for awards have decreased by almost \$8 billion, as compared to amounts obligated in the same time period in FY 2024.⁷⁵ The burden to justify a withholding of budget authority rests with HHS and HHS did not do so in its response to us. Because of this, the termination of over 1,800 grants cannot be considered a programmatic delay.

Similarly, with respect to NIH's grant review pause and the awarding of new grants, the facts do not support the finding of a programmatic delay. As noted above, DOE's review of ARPA-E awards was targeted and efficient. In contrast, while the HHS Pause on Communications Memorandum was stated to be in effect until February 1, 2025, and HHS has said that "the pause has since been lifted"⁷⁶, the data shows that in each month between February 2025 and June 2025, NIH has continued to obligate a lower amount toward new awards, as compared to previous fiscal years.⁷⁷ The burden to justify a withholding of budget authority rests with HHS and HHS did not do so in its response to us. Because of this, NIH's grant review pause cannot be considered a programmatic delay.

The ICA provisions regarding deferrals apply not only to the President and the Director of OMB but also to the head of any department or agency of the United States and any officer or employee.⁷⁸ Therefore, if funds are apportioned but

⁷⁵ We arrived at this number by subtracting the amount HHS had obligated between February 1, 2025, and June 30, 2025 (\$12,836,553,450.32) from the amount HHS had obligated between February 1, 2024, and June 30, 2024 (\$20,579,011,491.88). See discussion of USAspending.gov data extraction, *supra* note 42.

⁷⁶ Response Letter, at 1.

⁷⁷ In each of the months between February and June, NIH obligated (toward new awards) between \$179 million and \$549 million less in FY 2025 than it had in FY 2024. We arrived at this number by subtracting the amounts HHS had obligated for the months of February, March, April, May, and June, individually, in 2025, from the amounts HHS had obligated for the months of February, March, April, May, and June, individually, in 2024. See discussion of USAspending.gov data extraction, *supra* note 46.

⁷⁸ 2 U.S.C. § 684(a)

inaction by the head of a department effectively precludes the obligation or expenditure of budget authority, such inaction may constitute an impoundment. Administrative inaction coupled with an intent not to obligate falls squarely within the provisions of the ICA.⁷⁹

The ICA does not impose any specific requirements on the executive branch as to the rate at which budget authority must be obligated or expended.⁸⁰ For there to be a violation, there must be sufficient evidence of an intent to refrain from obligating or expending available budget authority, based on the facts and circumstances present.⁸¹ Here, we find evidence of such intent.

In a 2010 decision, we discussed the import of agency intent when we considered whether delays in the transfer of funds under an Economy Act transaction constituted a deferral of budget authority.⁸² We found that while there were delays in transferring the funds, the delays appeared to have resulted from administrative issues and questions about effectuating the transfer of funds, not any intent to delay the obligation of the funds.⁸³ In contrast, in the present case, we have specific agency actions taken to effectively preclude the obligation or expenditure of budget authority. By making efforts to carry out various executive directives, NIH has actively delayed two of the mechanisms through which NIH obligates funds for grant and other research assistance: awarding new grants and carrying out existing grants. As such, we find sufficient evidence that NIH refrained from obligating or expending available budget authority.

In its response to us, HHS stated that there was a previous pause on *Federal Register* notice submissions announcing NIH study section and advisory council meetings, but that the pause has since been lifted.⁸⁴ HHS states that NIH has “moved rapidly to reschedule and hold meetings impacted by the short pause, and to

⁷⁹ 2 U.S.C. § 682(1)(B). See B-241514, Feb. 5, 1991.

⁸⁰ B-200685, Dec. 23, 1980. 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.” B-337375, June 16, 2025 (finding that “[w]hile there is no numeric threshold for an ICA violation,” the obligation of roughly 19 percent did not suggest a “reasonable attempt by the agency to carry out the purposes of the appropriation”).

⁸¹ B-319189, Nov. 12, 2010.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Response Letter, at 1.

process grant applications.”⁸⁵ According to HHS, “[f]rom March 24 through June 30, NIH scheduled or held 837 peer review meetings. This is 186 more peer review meetings than NIH held for this same time period last year.”⁸⁶ HHS states that “NIH has been on pace with its reviewing grant applications and holding meetings and has caught up from the pause when compared to prior years.”⁸⁷

Though we acknowledge that HHS states it is resuming necessary meetings and grant reviews, HHS showed no sufficient justification for the “short pause” that it instituted. Moreover, our decision focuses on whether a withholding of funds in violation of the ICA has occurred or is actively occurring. While conducting grant review meetings is a necessary step in the obligation of funds for grant awards,⁸⁸ the reinstatement of grant review meetings alone does not ensure that funds are not being withheld in violation of the ICA.⁸⁹ As noted previously, publicly available data indicates that in each month between February 2025 and June 2025, NIH has continued to obligate a lower amount toward new awards, as compared to previous fiscal years.⁹⁰ In its response, HHS did not provide any information as to its obligation or expenditure of funds appropriated to NIH for FY 2025.⁹¹ In short, HHS

⁸⁵ *Id.* at 2.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See 42 U.S.C. §§ 282(b)(9), 289a(a).

⁸⁹ It is important to note that while grant review meetings are required to take place before grants are issued, an increase in the number of grant review meetings held will not necessarily guarantee an increase in the number of grants issued. In its response, HHS notes that “[f]rom the date of the temporary pause through July 28, 2025, NIH issued 5,252 new competitive grants.” Response Letter, at 2. HHS has not provided context as to how the number of grants issued during this period compares to that of the same time period in previous years. Also, HHS has not provided a rationale as to why this information is relevant to NIH compliance with the ICA.

⁹⁰ In each of the months between February and June, NIH obligated (toward new awards) between \$179 million and \$549 million less in FY 2025 than it had in FY 2024. We arrived at this number by subtracting the amounts HHS had obligated for the months of February, March, April, May, and June, individually, in 2025, from the amounts HHS had obligated for the months of February, March, April, May, and June, individually, in 2024. See discussion of USAspending.gov data extraction, *supra* note 46.

⁹¹ In our request for factual information and HHS’s legal views, we asked HHS, to provide specific accounts and amounts affected by budget authority being withheld. Letter from General Counsel, GAO, to Acting General Counsel, HHS (June 5, 2025).

has offered no evidence that it did not withhold amounts from obligation or expenditure, and it has not shown that the delay was a permissible programmatic one. Therefore, we conclude that NIH withheld budget authority from obligation or expenditure in violation of the ICA.

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 reporting impoundments the President has not reported. Our analysis and conclusions regarding NIH help ensure compliance with the ICA and appropriations law. GAO does not take a position on the policy goals of HHS or NIH, and this decision is not to be interpreted as taking a position on the underlying policies entailed. Changes to NIH's grant administration function can be addressed through the legislative process with Congress and the Administration.

Publicly available information indicates that NIH's execution of various executive directives limited its ability to obligate funds for new and existing grants. NIH's actions show sufficient evidence that it withheld budget authority from obligation or expenditure.⁹² This withholding is inconsistent with the requirements of the ICA.

In its July 29, 2025 response to us, HHS indicated that the pause relating to the publication of *Federal Register* notice submissions has been lifted.⁹³ However, HHS's response does not include information regarding current obligations of NIH funds for FY 2025.⁹⁴ We have become aware of public statements that on or around

⁹² As noted previously, litigation involving the termination of NIH grants is ongoing. See, e.g., Findings of Fact, Rulings of Law, and Order for Partial Separate and Final Judgment, *American Public Health Assoc., et al., v. National Institutes of Health*, 1:25-cv-10787-WGY (D. Mass. July 2, 2025), ECF No. 151; *PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405 (D. Md. Mar. 4, 2025); *National Assn. of Diversity Officers in Higher Education v. Trump*, 767 F. Supp. 3d 243 (D. Md. Feb. 21, 2025). GAO will continue to monitor this and any other litigation related to the delay in the obligation and disbursement of NIH funds. If a court makes relevant findings of fact relating to NIH funds, we will update this decision as necessary.

⁹³ Response Letter, at 1.

⁹⁴ See *id.* On July 24, 2025, 14 Senators sent a letter to the OMB Director, asking OMB to "fully implement the Fiscal Year (FFY) 2025 *Full-Year Continuing Appropriations and Extensions Act*, including funds appropriated for the National Institutes of Health (NIH)". Letter from Senators Katie Boyd Britt, John Boozman, Shelly Moore Capito, Bill Cassidy, M.D., Susan Collins, Lindsey O. Graham, David H. McCormick, Mitch McConnell, Jerry Moran, Lisa Murkowski, Thom Tillis, Todd Young, Dan Sullivan, and Tim Scott, to Director, OMB (July 24, 2025). The letter states that the Senators "are concerned by the slow disbursement of FY25 NIH

July 29, 2025, OMB directed NIH officials to pause the issuing of grants, research contracts, and training.⁹⁵ We have also become aware of public statements that OMB later reversed this pause.⁹⁶ We have asked HHS for information to confirm the Administration's actions related to the pause and the lifting of the pause, including requesting the apportionment schedules or any related documentation.⁹⁷ HHS did not provide us with the requested information or documents noting the apportionments were in OMB's possession.⁹⁸

The burden to justify a withholding of budget authority rests with the executive branch, and GAO has a statutory duty to report impoundments to Congress. Despite our requests for information and documentation, HHS has not provided the information nor justified its actions. Thus, we are left with the evidence of the pause

funds, as it risks undermining critical research and the thousands of American jobs it supports." *Id.* Moreover, the letter requests that OMB "ensure the timely release of all FY25 NIH appropriations in accordance with congressional intent." *Id.*

⁹⁵ According to various reporting, OMB placed a footnote on HHS's apportionment for NIH funding. See, e.g., Wall Street Journal, *Trump Administration Scraps Effort to Pause Health-Research Funding* (July 30, 2025), available at https://www.wsj.com/politics/policy/trump-administration-puts-new-chokehold-on-billions-in-health-research-funding-19660215?mod=hp_lead_pos10 (last visited Aug. 1, 2025). The reporting also notes that "[t]he footnote stipulated that the agency's funding for the remainder of the fiscal year could only go to staff salaries and expenses, not to new grants to certain grants that are up for renewal". *Id.*

⁹⁶ According to a social media post by the OMB Communications Director, the funds were "undergoing a programmatic review" but "[are] being released". @rachelsemmel, X (July 29, 2025), available at <https://x.com/rachelsemmel/status/1950353526913142812> (last visited Aug. 1, 2025).

⁹⁷ Email from Managing Associate General Counsel, GAO, to Senior Counsel, HHS (July 30, 2025).

⁹⁸ We also reached out to OMB for these documents, but OMB has not provided them to us. As we have previously noted, OMB has removed agency apportionment data from its public websites and has not provided these documents to GAO. See Enclosure to B-337581, Apr. 8, 2025.

and lower rates of obligation without justification as is required by the ICA. If the executive branch wishes to make changes to the appropriation provided to NIH, it must propose funds for rescission or otherwise propose legislation to make changes to the law for consideration by Congress.

A handwritten signature in black ink, reading "Edda Emmanuelli Perez". The signature is written in a cursive, flowing style.

Edda Emmanuelli Perez
General Counsel