U.S. GOVERNMENT ACCOUNTABILITY OFFICE

2026

APPROPRIATIONS LAW FORUM

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

United States Government Accountability Office

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Table of Contents

Cover image: A Grove of Yoshino Cherries southwest of the Capitol
Source: Architect of the Capitol

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

AGENDA

9:00 a.m. **Opening Remarks**

Edda Emmanuelli Perez, General Counsel
Government Accountability Office

9:05 a.m. **Remarks on GAO's Impoundment Control Act Work**

Shirley A. Jones, Managing Associate General Counsel
Government Accountability Office

9:25 a.m. **Recent Decisions on the Impoundment Control Act**

Omari Norman, Assistant General Counsel for Appropriations Law
Government Accountability Office

Holly Firlein, Senior Attorney
Government Accountability Office

Karly Newcomb, Senior Attorney
Government Accountability Office

Heather Stryder, Senior Attorney
Government Accountability Office

Cree Townsend, Staff Attorney
Government Accountability Office

10:40 a.m. **Break**

11:00 a.m. Availability of Appropriations as to Purpose

Laura Wait, Senior Attorney
Government Accountability Office

Juan Garay, Senior Attorney
Government Accountability Office

Doug Sahmel, Senior Attorney
Government Accountability Office

Nicole Willems, Senior Attorney
Government Accountability Office

11:45 a.m. Availability of Appropriations as to Time

Shari Brewster, Assistant General Counsel for Appropriations Law
Government Accountability Office

Aimee Aceto, Senior Attorney
Government Accountability Office

Andrew Howard, Senior Attorney
Government Accountability Office

Will Shakely, Senior Attorney
Government Accountability Office

Daniella Royer, Senior Staff Attorney
Government Accountability Office

12:40 p.m. Closing Remarks

Kristine Hassinger, Assistant General Counsel for Appropriations Law
Government Accountability Office

List of GAO's Appropriations Law Decisions

August 2024 — April 2026

1. **<u>Department of Energy—Obligation of Appropriations for Indirect Costs of a Management and Operating Contract</u>**

B-333911, Aug. 15, 2024

The National Nuclear Security Administration, a separately organized agency within the Department of Energy (DOE), has a management and operating contract with Lawrence Livermore National Security, LLC (LLNS) through which LLNS manages the Lawrence Livermore National Laboratory (Livermore) in support of DOE's statutory missions. The amount that DOE obligates for this contract includes both the direct and indirect costs of the contract. At issue here are the indirect costs of the contract, which LLNS used, in part, to renovate and construct laboratory space at Livermore Warehouse Building 490, in support of DOE and Department of Defense (DOD) programs.

Under the purpose statute, appropriations are only available for the purposes for which Congress made them. Incurring costs properly chargeable to another agency for the value of services received may result in a violation of the purpose statute. The renovation costs attributable to DOD were funded by DOD appropriations pursuant to an interagency agreement. Because DOE did not obligate its appropriations to cover the portion of the renovation that would benefit DOD, DOE did not violate the purpose statute.

In addition, the *bona fide* needs statute provides that a fixed-year appropriation is only available to fulfill a genuine or *bona fide* need of the time period of availability of the appropriation. The indirect costs at issue here are held in the contractor's indirect cost pool for its estimated current year expenses to enable the performance of its "direct charged" work. When DOE incurs obligations reflecting the amount of its indirect costs under the contract, it obligates currently available appropriations for current year needs. Therefore, DOE complied with the *bona fide* needs statute when it obligated appropriations for its indirect costs under the contract.

2. **<u>Appraisal Subcommittee of the Federal Financial Institutions Examination Council—Application of Purpose Statute and Antideficiency Act to Cooperative Agreement</u>**

B-335871, Aug. 28, 2024

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council violated the purpose statute when it awarded a cooperative agreement to a nonprofit entity. ASC's appropriation permitted it to award grants to states and to a particular nonprofit corporation. The cooperator in this case was neither, so it was not eligible to receive funding under the appropriation. Because ASC's appropriation is not legally available for such an assistance arrangement, ASC also violated the Antideficiency Act by entering into and expending funds toward the cooperative agreement.

In a separate transaction, ASC's appropriation was available to obtain the development of a census survey and a review of appraisal standards and appraiser qualification criteria. These expenditures logically relate both to ASC's statutory authority to temporarily waive requirements in a state with a scarcity of qualified appraisers and its responsibility to maintain a national registry of qualified and eligible appraisers.

3. Department of the Treasury—Observations Regarding the Purpose Availability of Amounts Appropriated for Payments to State and Local Governments

B-336106, Dec. 2, 2024

Amounts appropriated for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) remain available both for "costs incurred" and "obligations" made by recipients before December 31, 2024. Members of Congress requested our decision on the Department of the Treasury's (Treasury) interpretation of these terms and implementation of this approaching deadline.

We are unable to issue a legal decision on this matter at this time. However, in light of the approaching December 31, 2024, statutory deadline, we have identified several issues that Congress could consider for oversight. Among these issues, we note that although some aspects of Treasury's interpretation of this deadline may fall within Treasury's range of reasonable discretion, other aspects of this implementation may fall beyond this permissible range of discretion. We also question Treasury's conflation of the terms "costs incurred" and "obligations" and share our thoughts on the meaning of each term.

4. U.S. Postal Service Office of the Inspector General—Receipt of Department of Justice Forfeiture Funds

B-334906, Dec. 5, 2024

The Office of the Inspector General (OIG) of the U.S. Postal Service receives an annual appropriation in a definite amount from the Postal Service Fund (Fund). OIG's expenses are paid from the Fund, subject to the availability of appropriated amounts. Although OIG participates in joint criminal investigations with Department of Justice (DOJ) law enforcement agencies pursuant to its independent law enforcement authority, there is no statutory authority for DOJ to transfer forfeiture funds resulting from those investigations to OIG. In accordance with OIG's statutory funding framework, OIG's funding is limited to the particular dollar amount appropriated by Congress unless statutory authority provides otherwise. Without such authority, the transfer of forfeiture funds would augment OIG's appropriation.

5. **United States Department of Agriculture, Commodity Credit Corporation—Obligations for the Conservation Reserve Program and the Emergency Forestry Conservation Reserve Program**

B-330628, Dec. 9, 2024

The Commodity Credit Corporation (CCC) initially recorded obligations for the Conservation Reserve Program (CRP) and the Emergency Forestry Conservation Reserve Program (EFCRP) based on annual rental payments due each year—rather than recording the total liability it incurred when it executed program contracts with 10- to 15-year terms. CCC later changed its obligational practices for CRP and EFCRP in 2017 and 2018, respectively, and recorded the total liability it had incurred under program contracts. The Office of Management and Budget (OMB) had been apportioning funds for CRP and EFCRP in accordance with CCC's initial obligational practices.

An obligation arises at the time the debt is incurred, and the Antideficiency Act prohibits an officer or employee of the United States government from obligating funds in excess of the amount made available under apportionment. Additionally, the recording statute provides that the full amount of a contractual obligation must be promptly recorded when a contract is executed. Because CCC incurred obligations that exceeded its apportionments from OMB for CRP and EFCRP, it violated the Antideficiency Act. CCC also violated the recording statute when it recorded less than the total liability it incurred when it executed CRP and EFCRP contracts.

6. **U.S. Department of Agriculture—Application of Recording Statute, *Bona Fide* Needs Statute, and Antideficiency Act to Supplemental Nutrition Assistance Program Benefits**

B-336036, Feb. 12, 2025

The U.S. Department of Agriculture (USDA) administers the Supplemental Nutrition Assistance Program (SNAP), which provides monthly benefits to low-income households to purchase food. SNAP is an appropriated entitlement, with benefits generally funded by a one-year appropriation provided by annual appropriations acts. Prior to September 19, 2023, USDA recorded daily obligations for SNAP in an amount equal to household benefits issued. On September 19, 2023, USDA changed this practice. On that date, USDA obligated its fiscal year (FY) 2023 one-year appropriation for FY 2024 SNAP benefits that would be issued to households during the month of October 2023. Here, we consider whether USDA's recording practices for SNAP in FY 2023 were consistent with the recording statute, the *bona fide* needs statute, and the Antideficiency Act.

We conclude that both practices violated the recording statute. The point of obligation for SNAP benefits is when appropriations for such payments have been enacted and are available for obligation, not when USDA takes action as part of the process to pay benefits. In addition, the proper amount to record was USDA's best estimate of the SNAP benefits due in FY 2023, not the amount of benefits issued each day or benefits due in FY 2024. We also conclude that USDA's change in practice violated the *bona fide* needs statute when it used its FY 2023 one-year SNAP appropriation to pay for FY 2024 SNAP benefits. However, USDA complied with the *bona fide* needs statute with respect to its previous practice of recording obligations for SNAP benefits on a daily basis because the agency properly used its FY 2023 appropriation to pay for FY 2023 benefits. Finally, because USDA's FY 2023 one-year SNAP appropriation was not available to pay for FY 2024 benefits, USDA should adjust its accounts and charge those benefit amounts to appropriations available for obligation in FY 2024. If USDA lacks sufficient funds in the relevant appropriations, it must report an Antideficiency Act violation.

7. **U.S. Department of Transportation, Federal Highway Administration—Application of the Impoundment Control Act to Memorandum Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans**

B-337137, May 22, 2025

The National Electric Vehicle Infrastructure (NEVI) Formula Program is a formula grant program authorized by the 2021 Infrastructure Investment and Jobs Act (IIJA). The NEVI Formula Program is funded by no-year appropriations, which become available in each of fiscal years (FYs) 2022 through 2026. As of February 5, 2025, all 50 states, Washington, D.C., and Puerto Rico had submitted required plans to the Secretary of the U.S. Department of Transportation (DOT) for FYs 2022 through 2025. On February 6, 2025, the Federal Highway Administration (FHWA) issued a memorandum, which announced the cancellation of all previously issued guidance for the NEVI Formula Program and the suspension of all state plans previously submitted under the program. The memorandum also directed that until new guidance is issued and new state plans are submitted and approved, no new obligations for the program could be incurred; however, expenditures pursuant to existing project agreements would continue.

The recording statute, 31 U.S.C. § 1501, requires that an agency record an obligation when there is sufficient documentary evidence of the government's liability. Because obligations for the NEVI Formula Program arise by operation of law, the point of obligation for the program is when IIJA makes funds available for obligation for the program. We conclude that DOT violated the recording statute, in each of FYs 2022 through 2025, when it treated signed project agreements as the point of obligation for the NEVI Formula Program, rather than at the time IIJA made appropriations available for the program.

In addition, FHWA's February 6, 2025, memorandum has resulted in DOT withholding appropriations for the NEVI Formula Program from expenditure, and this withholding is a deferral under the Impoundment Control Act (ICA). While some deferrals are permissible if reported under the ICA, another provision renders that a moot point here.

Under the ICA, a section referred to as the fourth disclaimer prohibits withholding from obligation or expenditure funds appropriated for programs where there is a mandate to spend therefor. We conclude that the NEVI Formula Program is covered by the fourth disclaimer. Therefore, DOT is not authorized to withhold these funds from expenditure and DOT must continue to carry out the statutory requirements of the program. While DOT cannot withhold these funds under the ICA, DOT could propose funds for rescission or otherwise propose legislation to make changes to the NEVI Formula Program for consideration by Congress.

The ICA was enacted to ensure that legislation passed by Congress and signed by the President is faithfully executed. It includes vesting the President with strictly circumscribed authority to impound, or withhold, budget authority only in limited circumstances as expressly provided by the ICA. 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. GAO's role is procedural—to help ensure compliance with the ICA and appropriations law—and is not to be interpreted as taking a position on the underlying policies entailed.

8. <u>Department of Energy—Application of the Impoundment Control Act to Agency Actions in Response to Presidential Memorandum on Wind Energy</u>

B-337142.1, June 16, 2025

On January 20, 2025, a Presidential Memorandum directed the Secretary of Energy and Secretary of the Interior to limit various agency activities related to wind energy development and undertake certain reviews of federal practices related to wind energy.

The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy receives a line-item appropriation specific to wind energy technologies. Because DOE has explained that this funding is not being withheld and DOE does not interpret the Presidential Memorandum to prevent it from "obligating or expending funds for current programs, projects or activities under current Departmental authorities," we find no violation by DOE of the Impoundment Control Act with respect to this funding.

9. Institute of Museum and Library Services—Applicability of the Impoundment Control Act to Reduction of Agency Functions

B-337375, June 16, 2025

Congress appropriated amounts to the Institute of Museum and Library Services (IMLS) to carry out authorized mission activities for fiscal year 2025. An executive order then directed IMLS to reduce operations. IMLS ceased performing agency functions and withheld from obligation and expenditure funds that Congress appropriated for such functions.

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. This includes GAO's responsibilities under the ICA, such as reviewing special messages and reporting impoundments the President has not reported. 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. IMLS has not responded to GAO's requests for information regarding the potential impoundment of appropriated funds. Yet publicly available evidence, including sworn testimony, federal court cases, data on USAspending.gov, and information on IMLS's website, indicates that IMLS withheld grant and other appropriated funds. Based on the available evidence and the lack of any special message pertaining to IMLS funds, GAO concludes that IMLS has violated the ICA by withholding funds from obligation and expenditure. GAO also concludes that IMLS violated the ICA by withholding funds that cannot be withheld under the ICA's fourth disclaimer.

10. Impoundment Control Act of 1974: Review of the President's Special Message of June 3, 2025

B-337581, June 17, 2025

Under section 1012 of the Impoundment Control Act of 1974 (ICA), the President may transmit to Congress a special message proposing that Congress rescind budget authority. On June 3, 2025, President Trump transmitted to Congress a special message proposing rescissions from 22 appropriation accounts. We are submitting this letter pursuant to our statutory duty to assist Congress by reviewing the special message. Section 1001(4) of the ICA provides that the Act does not supersede any provision of law requiring the obligation of budget authority or the making of outlays thereunder. We concluded that none of the 22 proposed rescissions were inconsistent with Section 1001(4). We also concluded that each proposal was properly classified as a rescission under the ICA.

GAO contacted the Office of Management and Budget (OMB), along with officials at the seven agencies affected by the proposed rescissions, to request information that would assist us in conducting our review. However, OMB declined to provide GAO with updated apportionment data by which GAO could have confirmed that it was withholding amounts that were consistent with the amounts stated in the President's special message. OMB stated to GAO that amounts would be withheld from obligation on the apportionment for each account consistent with the special message.

GAO also did not receive responses from the Department of State, the United States Agency for International Development, or the Department of Treasury in time for us to consider them in our report. Of the four agencies that responded to us, the Corporation for Public Broadcasting, the U.S. Institute of Peace, and the Inter-American Foundation indicated that they were not withholding amounts that exceeded those indicated in the special message; the United States African Development Foundation (USADF) indicated that it was unable to confirm if OMB had sent a revised apportionment because the responsible budget staff at USADF had been placed on administrative leave.

Our analysis and conclusions here help ensure compliance with the ICA and advance congressional oversight. 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.

11. Department of the Interior—Applicability of the Impoundment Control Act to Pause of Large-Scale Water Recycling and Reuse Program

B-337233, July 23, 2025

Congress appropriated amounts for the Department of the Interior, Bureau of Reclamation (DOI), to carry out its Large-Scale Water Recycling and Reuse Program over a period of five years as specified in the Infrastructure Investment and Jobs Act (IIJA). An executive order then directed DOI to pause disbursements under this program, which DOI did for a period of 30 days.

Unless Congress enacts 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. However, GAO has recognized that ordinary programmatic delays are not impoundments under the ICA.

Considering the circumstances, including DOI's discretion under relevant IIJA provisions, the purpose of the pause, the short length of the pause, its timing, and DOI's representation that it has now released and plans to use all program funds during their period of availability, we find that DOI's 30-day pause was not an impoundment but a permissible programmatic delay. We therefore find no violation by DOI of the ICA.

12. Department of Health and Human Services—Application of the Impoundment Control Act to Availability of Head Start Program Funds

B-337202, July 23, 2025

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. 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 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. 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. 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.

13. <u>Department of Homeland Security—Application of the Impoundment Control Act to Reductions in Force for the Office for Civil Rights and Civil Liberties, the Office of the Immigration Detention Ombudsman, and the Office of the Citizenship and Immigration Services Ombudsman</u>

B-337366, July 31, 2025

On March 21, 2025, the Department of Homeland Security (DHS) delivered Reduction in Force (RIF) notices to the majority of the workforce in three of its offices: the Office for Civil Rights and Civil Liberties, the Office of the Citizenship and Immigration Services Ombudsman, and the Office of the Immigration Detention Ombudsman (collectively, the Offices). These DHS offices are funded through its operations and support appropriation account for the Office of the Secretary and Executive Management. This account received a lump-sum appropriation for fiscal year (FY) 2025.

Unless Congress enacts 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. However, GAO has recognized that ordinary programmatic delays are not impoundments under the ICA.

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. DHS 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 indicates that DHS is continuing to obligate and expend the funding provided to the Offices. Considering the circumstances, including DHS's discretion as to how to allocate its operation and support appropriation, and its representations that it is continuing to obligate and expend the funding provided to the Offices, we conclude that amounts have not been unlawfully withheld. Therefore, we find no violation by DHS under the ICA with respect to the RIFs to the Offices.

GAO is aware of ongoing litigation involving the RIFs to the Offices. GAO will continue to monitor this, and any other litigation related to this issue. If a court makes relevant findings of fact relating to the RIFs to the Offices, we will update this decision as necessary.

14. Department of Energy—Application of the Impoundment Control Act to Renew America's Schools Program Appropriations

B-337208, July 31, 2025

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.

15. U.S. Department of Agriculture—Application of the Impoundment Control Act to Environmental Quality Incentives Program Inflation Reduction Act Appropriations

B-337209, Aug. 5, 2025

Congress appropriated amounts to the U.S. Department of Agriculture, Natural Resources Conservation Service (USDA) to carry out the Environmental Quality Incentives Program (EQIP) for fiscal year (FY) 2023 through FY 2031 as specified in the Inflation Reduction Act of 2022 (IRA). Executive orders issued on January 20, 2025, directed USDA to pause disbursements, undertake certain reviews, and, to the extent allowed by law, terminate equity-related grants and contracts. USDA memoranda issued in March 2025 subsequently directed staff to review all awards still in their period of performance and awards selected for funding but not yet obligated for diversity, equity, and inclusion (DEI) and to ensure that USDA does not fund DEI. USDA briefly paused obligations and expenditures for EQIP.

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. However, GAO has recognized that ordinary programmatic delays are not impoundments under the ICA.

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. Considering USDA's discretion under the relevant provisions of the IRA and EQIP authorization and the purposes of the pause; the short length of the pause in light of the time availability of the funds; and USDA's actual obligations and expenditures data, USDA's pause was a permissible programmatic delay, not a violation of the ICA.

16. <u>Department of Health and Human Services—National Institutes of Health—Application of the Impoundment Control Act to Availability of Funds for Grants</u>

B-337203, Aug. 5, 2025

Congress appropriated amounts to the National Institutes of Health (NIH) to carry out various research objectives for fiscal year (FY) 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.

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. 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.

17. U.S. Capitol Police—Availability of Appropriations for Local Lodging of Employees

B-335808, Aug. 14, 2025

The Capitol Police Board seeks to use its appropriation to pay for local lodging for Dignitary Protection Division Agents working certain overtime shifts. Generally, lodging within an employee's duty station is a personal expense of the employee for which appropriated funds are not available, but section 1973 of title 2 of the United States Code authorizes the Capitol Police Board to find that an emergency exists that permits the U.S. Capitol Police to provide local lodging to these agents. The U.S. Capitol Police and the Board may use this authority to provide local lodging to agents working certain overtime shifts with less than 8 hours of rest between shifts, as that constitutes an emergency that involves the safety of human life and protection of property.

18. Impoundment Control Act of 1974: Review of the President's Special Message of August 28, 2025

B-337805, Sept. 12, 2025

Under section 1012 of the Impoundment Control Act of 1974 (ICA), the President may transmit to Congress a special message proposing that Congress rescind budget authority. On August 28, 2025, the President transmitted to the House of Representatives a special message proposing rescissions from 15 appropriation accounts. The President transmitted this special message to the Senate 11 days later on September 8, 2025. We are submitting this letter pursuant to our statutory duty to assist Congress by reviewing the special message. Section 1001(4) of the ICA provides that the Act does not supersede any provision of law requiring the obligation of budget authority or the making of outlays thereunder. We concluded that none of the 15 proposed rescissions were inconsistent with Section 1001(4). We also concluded that each proposal was properly classified as a rescission under the ICA.

On August 29, 2025, OMB approved a letter apportionment indicating that amounts will be withheld from obligation on the apportionment for each account consistent with the special message. GAO contacted officials at the two agencies affected by the proposed rescissions to request information that would assist us in conducting our review, but did not receive a response prior to September 11, 2025.

Based on GAO's review, all 15 accounts implicated by the special message have an assigned treasury appropriation fund symbol indicating expiration at the end of fiscal year (FY) 2025. The 45-day period for congressional consideration is scheduled to run until October 23, 2025, after the end of FY 2025. GAO has previously concluded that the ICA does not permit the withholding of funds past their date of expiration, even if the 45-day period for congressional consideration has not passed.

Our analysis and conclusions here help ensure compliance with the ICA and advance congressional oversight. 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.

19. Department of Homeland Security–Application of the Impoundment Control Act to Federal Emergency Management Agency Fiscal Year 2025 Federal Assistance Appropriations

B-337204.1, Sept. 15, 2025

Congress appropriates various line-item amounts to the Federal Emergency Management Agency (FEMA), a component in the Department of Homeland Security (DHS), to provide federal assistance. Various executive branch directives issued in recent months impacted how FEMA administered these appropriations by placing restrictions on the obligation or expenditure of federal assistance funds. This decision addresses amounts appropriated in fiscal year (FY) 2025. We will issue other decisions addressing amounts appropriated in prior FYs, as well as amounts appropriated and set aside for the Building Resilient Infrastructure and Communities program.

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. This includes GAO's responsibilities under the ICA, such as reviewing special messages and reporting impoundments the President has not reported. 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 addressed in its decisions. DHS has not responded to GAO's requests for information regarding the potential impoundment of appropriated funds. When reviewing an agency's actions for compliance with the ICA, we look at the discretion afforded to the agency under relevant statutes, the purpose, length, and timing of a funding pause, and the agency's actions to make funds available for obligation and expenditure. Based on publicly available evidence, including sworn testimony, federal court cases, data on USAspending.gov, apportionment data, agency websites, and other information, we have sufficient information to reach conclusions about compliance with the ICA for the appropriations within our scope of inquiry.

For some appropriations at issue, currently available evidence indicates that FEMA has violated the ICA by improperly withholding or delaying the obligation or expenditure of budget authority. Specifically, we find that FEMA violated the ICA with regard to the Emergency Food and Shelter Program (EFSP) and Shelter and Services Program (SSP).

However, for other not-yet-obligated funding, currently available evidence indicates that FEMA has not violated the ICA at this time. We find no violation for the following programs: State Homeland Security Grant Program, Urban Area Security Initiative, Nonprofit Security Grant Program, Public Transportation Security Assistance Programs, Port Security Grant Program, Assistance to Firefighter Grants, Staffing for Adequate Fire and Emergency Response Grants, Emergency Management Performance Grant Program, Regional Catastrophic Preparedness Grant Program, and Flood Hazard Mapping and Risk Analysis.

GAO is not taking a position on the policy implications of the underlying programs and funding at issue in this decision. This decision addresses compliance with the ICA. Because some of these appropriations are set to expire by the end of the FY, it is crucial that the agency prudently obligates these funds prior to their expiration.

20. Defense Health Agency—Payment of Conference Costs under a Continuing Resolution

B-336934, Sept. 22, 2025

A certifying officer asks whether the Defense Health Agency (DHA) could use amounts appropriated to its Operations and Maintenance (O&M) appropriations account under a continuing resolution to cover the registration costs of a training event held after the continuing resolution's end date. The continuing resolution contained standard provisions that meant the funds appropriated by the continuing resolution to DHA's O&M appropriations account were available for fiscal year (FY) 2025.

The *bona fide* needs statute provides that a fixed-period appropriation is only available to fulfill a genuine need of the appropriation's period of availability. The training at issue was a legitimate agency need of FY 2025. During the pendency of the continuing resolution, DHA's O&M appropriations were available for all of its FY 2025 needs, not only the needs of the time period of the continuing resolution. Therefore, DHA would comply with the *bona fide* needs statute for incurring obligations for the costs of this training during the continuing resolution, even though the training took place after the continuing resolution ended.

21. Department of Homeland Security–Application of the Impoundment Control Act to Federal Emergency Management Agency Prior Year Federal Assistance Appropriations

B-337204.2, Sept. 29, 2025

Congress appropriates various line-item amounts to the Federal Emergency Management Agency (FEMA), a component in the Department of Homeland Security (DHS), to provide federal assistance. Various executive branch directives issued in recent months impacted these appropriations from fiscal years (FYs) 2024 and prior FYs by placing funds under review, deobligating awarded funds, or otherwise withholding funds from obligation or expenditure. This decision addresses amounts appropriated in prior FYs, including FYs 2021–2024.

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.

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. 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 addressed in its decisions. DHS has not responded to GAO's multiple requests for information regarding the potential impoundment of appropriated funds. When reviewing an agency's actions for compliance with the ICA, we look at the discretion afforded to the agency under relevant statutes, the purpose, length, and timing of a funding pause, and the actions taken to make funds available for obligation and expenditure. Based on publicly available evidence, including sworn testimony, federal court cases, data on USAspending.gov, agency websites, and other information, we have sufficient information to reach conclusions about compliance with the ICA for the programs within our scope of inquiry.

Currently available evidence indicates that FEMA has violated the ICA by improperly withholding, delaying, or effectively precluding the obligation or expenditure of budget authority for the following programs: Emergency Food and Shelter Program (EFSP), Shelter and Services Program (SSP), and Next Generation Warning System Grants Program (NGWS).

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

GAO is not taking a position on the policy implications of the underlying programs and funding at issue in this decision. This decision addresses compliance with the ICA.

22. General Services Administration—Application of *Bona Fide* Needs Rule to Severable Services Task Order

B-336079, Nov. 20, 2025

The General Services Administration (GSA), Office of Financial Management, within the Office of the Chief Financial Officer (OCFO) requested our decision regarding whether GSA may obligate excess fiscal year (FY) 2023 funds from one task order to fund a portion of a separate, severable services task order for which the period of performance begins in FY 2023 and crosses into FY 2024. Specifically, a GSA contracting officer questions whether GSA can retain expired FY 2023 funds and use them to provide additional funding for a separate task order that had not been funded up to its overall potential award price.

In the context of both severable and nonseverable services, we have determined that a modification to increase the ceiling of a cost-reimbursement contract is chargeable to the appropriation current at the time that the modification is approved by the contracting officer. Because the task order contains contractual clauses limiting GSA's obligation, GSA is not required to add additional funds above the contractually stipulated ceilings, including to cover the difference between the potential award price and the actual funded/ceiling amount. If GSA, in its discretion, chooses to cover this difference in whole or in part, GSA must obligate appropriated funds current to the time of that decision. The expired FY 2023 funds cannot now be obligated to fund any part of the separate task order and should be deobligated and returned to the requesting agency.

23. Department of the Treasury Office of Inspector General—Availability of Appropriations for Pandemic Emergency Rental Assistance Program Oversight and Recoupment

B-336626, Jan. 15, 2026

Congress makes an annual appropriation to the Inspector General, Department of the Treasury (TIG) for the agency's salaries and expenses. In 2020, Congress also made an appropriation to TIG specifically for oversight and recoupment activities related to funds provided to eligible recipients under the Emergency Rental Assistance (ERA1) program. TIG has requested a decision as to whether TIG may use funds from both its annual salaries and expenses (S&E) appropriation and its ERA1 appropriation for ERA1 oversight and recoupment. We find that there is a reasonable and logical relationship between the purpose of TIG's S&E appropriation and its ERA1 oversight activities. Additionally, there is a provision in the ERA1 appropriation that permits TIG to obligate its annual S&E appropriation for oversight of the ERA1 program in addition to the funds appropriated for ERA1 oversight.

However, we find that there is not a reasonable and logical relationship between the purpose of TIG's S&E appropriation and TIG's ERA1 recoupment activities nor is there a provision specifically permitting the use of TIG's S&E appropriation for recoupment. Accordingly, TIG may not use its annual S&E appropriation for ERA1 recoupment expenses.

24. Architect of the Capitol—Permissibility of Contract Payments

B-334219, Feb. 26, 2026

Congress established a trust fund for the revitalization of major historical buildings and assets of the House of Representatives. The Architect of the Capitol (AOC) obligated amounts from the trust fund for a design and construction contract to renovate the Cannon House Office Building. The purpose of the contract was consistent with the purpose availability of the trust fund amounts, and the contract both contained and incorporated provisions to help ensure that AOC would pay only those invoiced amounts that bore a sufficient nexus to the contract. Accordingly, AOC satisfied the purpose statute when it obligated and expended amounts for the contract. Further determinations on the allowability of costs reimbursed under the contract should be carried out through the contract administration process.

25. Architect of the Capitol—*Bona Fide* Need for End-of-Year Purchase of Supplies

B-336373, Apr. 8, 2026

The Architect of the Capitol (AOC) obligated its fiscal year (FY) 2023 funds for a contract modification near the end of the FY to purchase supplies in support of continuity of operations (COOP) planning for the legislative branch. We conclude that AOC properly recorded an obligation for the modification on September 27, 2023, in light of having a binding agreement on that date and having ordered the specific supplies in question on that date. We also conclude that AOC did not violate the *bona fide* needs rule when it obligated its FY 2023 funds to purchase the COOP supplies to be delivered in FY 2024. The quantity of supplies purchased and the delivery time was reasonable under the circumstances of creating stock in support of COOP planning. Although we have questioned the propriety of stocking supplies for more than one year prior to use when the supplies have a shelf life, we do not raise similar questions here in the context of COOP planning because AOC identified a need for the supplies at the time of obligation. The fact that an emergency does not materialize or that the supplies to respond to the emergency expire before use does not mean that the COOP supplies are not a *bona fide* need of FY 2023.

WatchBlog on GAO's Impoundment Control Act Work

What is the Impoundment Control Act and What is GAO's Role?

Posted on March 05, 2025

The Impoundment Control Act of 1974 is the main legal mechanism for the President to seek to delay or permanently cancel federal funding once it has been enacted by Congress.

Today's WatchBlog post looks at what an impoundment is and GAO's role under the Impoundment Control Act (ICA).

Source: Orhan Çam/stock.adobe.com

What is impoundment?

When the President (or any officer or employee of the executive branch), through action or inaction, delays or withholds enacted funding, that is an impoundment.

Congress holds the power of the purse—approving a budget and appropriating funds. The President and executive branch agencies are responsible for administering those funds.

Occasionally, the President may wish to delay or avoid spending some of the funds appropriated by Congress. This may be for a variety of reasons—for cost savings, policy disagreements between the President and Congress, and changes in relevant circumstances, to name a few.

Is impoundment legal?

It depends on how funds are impounded, the reason for that action, and the types of funds being withheld.

The ICA provides the only legal mechanism for the President to delay or withhold funding, not cancel it. This law requires that the President notify Congress before delaying or withholding funds. That notification is called a "special message" and must contain information such as the reason for the impoundment along with the estimated fiscal, economic, and budgetary effects.

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WEDNESDAY, AUGUST 6, 2025

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GAO-21-538T
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ABOUT THE WATCHBLOG

GAO's mission is to provide Congress with fact-based, nonpartisan information that can help improve federal government performance and

For some types of impoundments, there are only a few permissible reasons to delay or withhold funds. There are also limits on what types of funding may be impounded. For instance, the President may not withhold Social Security and Medicare funding.

Impoundment is only legal when the President adheres to the procedures and limitations in the ICA.

Has impoundment been used before?

Yes. Special messages have been sent from the President to Congress many times. The ICA was enacted by Congress in 1974 in response to President Nixon's refusal to spend certain federal funds. Since then, there have been 243 special messages from presidents of both parties to impound funds.

- From 1975 until 1985, there were 156 special messages
- From 1985 until 2002, there were 83
- From 2002 through 2017, there were no special messages
- In 2018, President Trump sent three special messages
- President Biden sent one special message, withdrawing a previous special message sent by President Trump.

How could impoundment affect federal agencies' spending?

In general, when Congress approves funds, federal agencies are required to spend it. The President cannot legally withhold funds unless he follows ICA procedures. For example, the President may not simply refuse to spend funds because he disagrees with Congress's policy choices without sending a special message.

However, the ICA does not prevent the President from pursuing cost savings. For example, we recently concluded that the Department of Homeland Security did not impound funds when a contract came in under budget. In fact, we routinely recommend cost saving measures to federal agencies and maintain a database of these recommendations.

What's GAO's role?

GAO has several responsibilities under the ICA. First, we review all special messages to ensure that they comply with legal requirements. We also investigate and report to Congress when the President withholds funds without sending a special message. And we provide informal assistance and formal legal decisions on impoundment issues at the request of members of Congress and agency officials.

The ICA authorizes the head of GAO, known as the Comptroller General, to file a lawsuit if the President illegally impounds funds.

Where can I learn more?

For additional information, see our Impoundment Control Act Resources webpage. We have issued many legal decisions interpreting the Impoundment Control Act. See our 2021 testimony on this issue. Our *Principles of Federal Appropriations Law* *(chapter 2)* summarizes some of these decisions.

- GAO's fact-based, nonpartisan information helps Congress and federal agencies improve government. The WatchBlog lets us contextualize GAO's work a little more for the public. Check out more of our posts at GAO.gov/blog.
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The blog format allows GAO to provide a little more context about its work than it can offer on its other social media platforms. Posts will tie GAO work to current events and the news; show how GAO's work is affecting agencies or legislation; highlight reports, testimonies, and issue areas where GAO does work; and provide information about GAO itself, among other things.

Please send any feedback on GAO's WatchBlog to blog@gao.gov.

Recent Decisions on the Impoundment Control Act

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Decision

Matter of: U.S. Department of Transportation, Federal Highway Administration—Application of the Impoundment Control Act to Memorandum Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans

File: B-337137

Date: May 22, 2025

DIGEST

The National Electric Vehicle Infrastructure (NEVI) Formula Program is a formula grant program authorized by the 2021 Infrastructure Investment and Jobs Act (IIJA).[1] The NEVI Formula Program is funded by no-year appropriations, which become available in each of fiscal years (FYs) 2022 through 2026. As of February 5, 2025, all 50 states, Washington, D.C., and Puerto Rico had submitted required plans to the Secretary of the U.S. Department of Transportation (DOT) for FYs 2022 through 2025. On February 6, 2025, the Federal Highway Administration (FHWA) issued a memorandum, which announced the cancellation of all previously issued guidance for the NEVI Formula Program and the suspension of all state plans previously submitted under the program. The memorandum also directed that until new guidance is issued and new state plans are submitted and approved, no new obligations for the program could be incurred; however, expenditures pursuant to existing project agreements would continue.[2]

The recording statute, 31 U.S.C. § 1501, requires that an agency record an obligation when there is sufficient documentary evidence of the government's liability. Because obligations for the NEVI Formula Program arise by operation of law, the point of obligation for the program is when IIJA makes funds available for obligation for the program. We conclude that DOT violated the recording statute, in each of FYs 2022 through 2025, when it treated signed project agreements as the

[1] Pub. L. No. 117-58, div. J, title VIII, 135 Stat. 429, 1421 (Nov. 15, 2021).

[2] The memorandum did not identify the number of or amounts of existing obligations that would be reimbursed.

point of obligation for the NEVI Formula Program, rather than at the time IIJA made appropriations available for the program.

In addition, FHWA's February 6, 2025 memorandum has resulted in DOT withholding appropriations for the NEVI Formula Program from expenditure, and this withholding is a deferral under the Impoundment Control Act (ICA).[3] While some deferrals are permissible if reported under the ICA, another provision renders that a moot point here.

Under the ICA, a section referred to as the fourth disclaimer prohibits withholding from obligation or expenditure funds appropriated for programs where there is a mandate to spend therefor.[4] We conclude that the NEVI Formula Program is covered by the fourth disclaimer. Therefore, DOT is not authorized to withhold these funds from expenditure and DOT must continue to carry out the statutory requirements of the program. While DOT cannot withhold these funds under the ICA, DOT could propose funds for rescission or otherwise propose legislation to make changes to the NEVI Formula Program for consideration by Congress.

The ICA was enacted to ensure that legislation passed by Congress and signed by the President is faithfully executed.[5] It includes vesting the President with strictly circumscribed authority to impound, or withhold, budget authority only in limited circumstances as expressly provided by the ICA.[6] GAO's institutional role is to support the Congress, including in Congress's exercise of its constitutional power of

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[3] The purpose of reporting a deferral under the ICA is to notify Congress when the President wants to temporarily withhold obligation or expenditure of funds 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, but not for policy reasons. *See* 2 U.S.C. § 684. Congress may enact legislation disapproving a deferral and requiring that the deferred funds be made available for obligation. In any event, any amount of budget authority deferred must be prudently obligated before the end of the period of availability.

[4] *See* 2 U.S.C. § 681(4). The ICA has a section that sets out four disclaimers with respect to its application. The first three disclaimers provide that nothing in the ICA shall be construed as (1) asserting or conceding the constitutional powers or limitations of the Congress or the President; (2) ratifying or approving any impoundment except as pursuant to statutory authority; or (3) affecting the claims or defense of any party to litigation concerning any impoundment. *See* 2 U.S.C. §§ 681(1)–(3).

[5] *See* S. Rep. No. 93-688, at 75 (1974) (explaining that the objective of 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").

[6] Pub. L. No. 93-344, title X, 88 Stat. 297, 332–339 (July 12, 1974), 2 U.S.C. §§ 681–688.

the purse. This includes GAO's functions under the ICA, such as reviewing special messages and reporting impoundments the President has not reported. GAO's role is procedural—to help ensure compliance with the ICA and appropriations law—and is not to be interpreted as taking a position on the underlying policies entailed.

DECISION

Congress created the National Electric Vehicle Infrastructure (NEVI) Formula Program in the 2021 Infrastructure Investment and Jobs Act (IIJA), and appropriated no-year funds for the program, to become available in each of fiscal years (FYs) 2022 through 2026.[7] IIJA requires that the Secretary of the U.S. Department of Transportation (DOT) allocate appropriations for the program pursuant to a statutory formula, and requires that states[8] submit plans to DOT to receive funds.[9] For each of FYs 2022 through 2025, DOT, through the Federal Highway Administration (FHWA), an operating administration within DOT, had allocated funds to the states pursuant to apportionments, and all plans were submitted and approved for each such FY.

Then, on February 6, 2025, FHWA issued a memorandum, which cancelled all previously issued guidance implementing the NEVI Formula Program and "immediately suspend[ed] the approval of all State Electric Vehicle Infrastructure Deployment plans for all fiscal years."[10] The memorandum also announced that no new obligations were to be incurred under the program until new guidance was issued, states submitted new plans, and the Secretary approved such plans.[11] However, according to DOT, expenditures would continue to be made under existing project agreements.[12]

[7] Pub. L. No. 117-58, div. J, title VIII, 135 Stat. 429, 1421 (Nov. 15, 2021).

[8] For purposes of the NEVI Formula Program, the term "state" also includes Washington, D.C. and Puerto Rico. *See id.*, 135 Stat at. 1426; 23 U.S.C. § 101(a)(28).

[9] Pub. L. No. 117-58, 135 Stat. at 1422.

[10] FHWA, *Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans* (Feb. 6, 2025) (FHWA Memorandum), *available at* https://www.fhwa.dot.gov/environment/nevi/resources/state-plan-approval-suspension.pdf (last visited May 8, 2025).

[11] *Id.*

[12] *See id.* The memorandum did not identify the number of or amounts of existing obligations that would be reimbursed.

Pursuant to our reporting responsibilities under the Impoundment Control Act (ICA), we are issuing this decision.[13] As explained below, we conclude that DOT violated the recording statute, in each of FYs 2022 through 2025, when it treated signed project agreements as the point of obligation for the NEVI Formula Program, rather than the point at which IIJA made funds for the program available for obligation. In addition, DOT's withholding of funds from expenditure pursuant to FHWA's memorandum constitutes a deferral, as defined by the ICA. However, the ICA's fourth disclaimer prohibits withholding from obligation or expenditure funds appropriated for programs for which there is a mandate to spend therefor.[14] Consequently, DOT is not authorized under the ICA to withhold these funds from expenditure and must continue to carry out the statutory requirements of the program. If DOT wishes to make changes to the obligation and expenditure of funds appropriated under the NEVI Formula Program, it must propose funds for rescission or otherwise propose legislation to make changes to the law for consideration by Congress.[15]

In accordance with our regular practice, we contacted DOT to seek factual information and their legal views.[16] DOT responded to our letter on March 12, 2025.[17] DOT also provided supplemental information in April in response to a request from our office.[18]

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[13] 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 Executive Order 14154, "Unleashing American Energy," which in part directed agencies to pause the disbursement of funds for the NEVI Formula Program. Letter from Ranking Member Merkley and Ranking Member Boyle, to Comptroller General (Mar. 31, 2025).

[14] 2 U.S.C. § 681(4).

[15] *See* B-307122, March 2. 2006*;* B-200685, July 30, 1981.

[16] 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 Principal Deputy General Counsel, DOT (Feb. 25, 2025).

[17] Letter from Acting General Counsel, DOT, to General Counsel, GAO (Mar. 12, 2025) (Response Letter).

[18] Email from General Counsel, GAO, to Senior Counsel for Oversight, DOT, *Subject: USDOT Response (GAO Matter No. B-337137)* (Mar. 27, 2025); Email from Senior Counsel for Oversight, DOT, to General Counsel, GAO, *Subject: USDOT Response (GAO Matter No. B-337137)* (Apr. 1, 2025) (Supplemental Response).

BACKGROUND

National Electric Vehicle Infrastructure (NEVI) Formula Program

The NEVI Formula Program is a formula grant program authorized in IIJA to "provide funding to States to strategically deploy electric vehicle charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability."[19] Amounts appropriated for the program are to be used by states to acquire and install electric vehicle (EV) charging infrastructure, operate and maintain that infrastructure, and share data relating to EV infrastructure.[20]

To carry out the NEVI Formula Program, Congress appropriated $5,000,000,000 in IIJA to DOT, FHWA, $1,000,000,000 of which is to become available in each of FYs 2022 through 2026 and remain available until expended.[21] Of this amount, IIJA requires DOT to annually set aside 10 percent for grants to states or localities that require additional assistance to strategically deploy EV charging infrastructure,[22] and up to 1.5 percent for FHWA operations and administration.[23] In addition, of the amount made available in FY 2022, IIJA required DOT to set aside not more than $300,000,000 for the creation of a Joint Office of Energy and Transportation and for the Joint Office to carry out its specified duties, such as providing technical assistance and developing training and certification programs.[24] As a result, the total amount made available for the NEVI Formula Program for FY 2022 is $615,000,000, and for each of FYs 2023 through 2026 is $885,000,000.

IIJA requires that the Secretary distribute appropriations for the NEVI Formula Program pursuant to a statutory formula.[25] In each of FYs 2022 through 2025,

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[19] Pub. L. No. 117-58, 135 Stat. at 1421.

[20] *Id.*, 135 Stat. at 1421–1422.

[21] *See id.*, 135 Stat. at 1421. As explained further below, while most FHWA-administered grant programs are funded by contract authority, for which liquidating appropriations are provided in annual appropriations acts, the appropriation for NEVI is a general fund appropriation provided by IIJA.

[22] *Id.*, 135 Stat. at 1425.

[23] *Id.*, 135 Stat. at 1420.

[24] *Id.*, 135 Stat. at 1425. This $300,000,000 must be set aside from the amount made available for FY 2022 before DOT sets aside the 10 percent for grants to states or localities that require additional assistance for that FY. *Id.*

[25] *Id.*, 135 Stat. at 1422 ("[T]he Secretary shall distribute among the States the funds made available under this paragraph in this Act so that each State receives an amount equal to the proportion that the total base apportionment or allocation

(continued...)

FHWA issued a notice of apportionment, which reflected the amounts owed to states.[26]

IIJA also requires that each FY, each state submit a plan to the Secretary describing how the state intends to use the funds made available for that FY.[27] IIJA prescribes that the Secretary shall establish a deadline for states to submit plans, and that the plans shall, "in such form and such manner that the Secretary requires[,] . . . describ[e] how such State intends to use funds distributed to the State under this paragraph in this Act . . . ."[28] In addition, IIJA authorizes the Secretary to withhold or withdraw, as applicable, program funds made available to a state for a given FY if the state fails to submit a plan by the deadline the Secretary establishes, or if the Secretary determines that a state has not taken action to carry out its plan.[29] Prior

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determined for the State under subsection (c) of section 104 or under section 165 of title 23, United States Code, bears to the total base apportionments or allocations for all States under subsection (c) of section 104 and section 165 of title 23, United States Code"). 23 U.S.C. § 104(c) provides the apportionment formula for states and D.C., while 23 U.S.C. § 165 provides the allocation formula for Puerto Rico.

[26] *See* FHWA, *Notice N-4510.863, Apportionment of Fiscal Year (FY) 2022 Highway Infrastructure Program Funds for the National Electric Vehicle Infrastructure Formula Program Pursuant to the Infrastructure Investment and Jobs Act* (Feb. 10, 2022) (FY 2022 Apportionment), *available at* https://www.fhwa.dot.gov/legsregs/directives/notices/n4510863.cfm (last visited May 8, 2025); FHWA, *Notice N-4510.873, Apportionment of Fiscal Year (FY) 2023 Highway Infrastructure Program Funds for the National Electric Vehicle Infrastructure Formula Program Pursuant to the Infrastructure Investment and Jobs Act* (Oct. 6, 2022) (FY 2023 Apportionment), *available at* https://www.fhwa.dot.gov/legsregs/directives/notices/n4510873.cfm (last visited May 8, 2025); FHWA, *Notice N-4510.883, Apportionment of Fiscal Year 2024 Highway Infrastructure Program Funds for the National Electric Vehicle Infrastructure Formula Program Pursuant to the Infrastructure Investment and Jobs Act* (Oct. 2, 2023) (FY 2024 Apportionment), *available at* https://www.fhwa.dot.gov/legsregs/directives/notices/n4510883.cfm (last visited May 8, 2025); and FHWA, *Notice N-4510.895, Apportionment of Fiscal Year 2025 Highway Infrastructure Program Funds for the National Electric Vehicle Infrastructure Formula Program Pursuant to the Infrastructure Investment and Jobs Act* (Oct. 1, 2024) (FY 2025 Apportionment), *available at* https://www.fhwa.dot.gov/legsregs/directives/notices/n4510895.cfm (last visited May 8, 2025). The apportionment for FY 2022 was certified on February 10, 2022, rather than at the beginning of the FY, because IIJA was not signed into law until November 15, 2021. *See* FY 2022 Apportionment.

[27] Pub. L. No. 117-58, 135 Stat. at 1422.

[28] *Id.*

[29] *Id.*

to making a determination that a state has not taken action to carry out its plan, IIJA requires that the Secretary provide notice, consult with the state, and identify actions that can be taken to rectify any concerns.[30] The Secretary must give a state at least 90 days to take action to address these concerns.[31] In addition, DOT must notify the state not less than 60 days in advance of withholding or withdrawing any funds pursuant to this provision, during which time the state may appeal the decision.[32]

DOT's Implementation of the NEVI Formula Program

DOT announced the submission of all state plans for FYs 2022 and 2023 on September 27, 2022, and the submission of all FY 2024 plans in November 2023.[33]

According to DOT, once a state has submitted a plan and all legal requirements have been met, the state enters into a project agreement with FHWA pursuant to 23 U.S.C. § 106.[34] When the project agreement is signed, DOT records an obligation.[35] This is consistent with how DOT records obligations for federal-aid highway formula programs authorized under chapter 1 of Title 23, United States Code.[36] DOT reported that as of February 6, 2025, it had obligated $526,608,042.75 of the $3,270,000,000 that is currently available for obligation for the NEVI Formula Program.[37]

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[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *See* Department of Energy, *National Electric Vehicle Infrastructure (NEVI) Formula Program*, *available at* https://afdc.energy.gov/laws/12744 (last visited May 8, 2025). DOT has not formally announced the submission of FY 2025 state plans, but the EV States Clearinghouse, which collects data on NEVI Formula Program implementation, indicates that all states submitted FY 2025 plans. *See* EV States Clearinghouse, *National Electric Vehicle Infrastructure (NEVI) Awards Dashboard*, *available at* https://evstates.org/awards-dashboard/#FAQ (last visited May 8, 2025).

[34] Supplemental Response.

[35] *Id.*

[36] *See* 23 U.S.C. § 106.

[37] FHWA, *National Electric Vehicle Infrastructure (NEVI) Formula Program Status of Funds as of February 6, 2025* (Apr. 17, 2025), *available at* https://www.fhwa.dot.gov/environment/nevi/ (last visited May 1, 2025).

Recent Actions Regarding the NEVI Formula Program

On January 20, 2025, the President signed an executive order entitled, "Unleashing American Energy."[38] Section 7(a) of the Executive Order directs all agencies to "immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58)," including "funds for electric vehicle charging stations made available through the National Electric Vehicle Infrastructure Formula Program . . . ."[39]

On February 6, 2025, FHWA issued a memorandum stating that its "new leadership . . . has decided to review the policies underlying the implementation of the NEVI Formula Program."[40] As a result, FHWA announced that it was rescinding all previously issued NEVI Formula Program guidance and "immediately suspending the approval of all State Electric Vehicle Infrastructure Deployment plans for all fiscal years."[41] The memorandum also announced that no new obligations were to be incurred under the program until new guidance was issued and new state plans were approved, and that FHWA hoped to have new guidance available for public comment by Spring 2025.[42] According to DOT, the memorandum would not disrupt reimbursement of obligations incurred prior to February 6, 2025.[43]

DISCUSSION

At issue here is whether DOT violated appropriations law requirements under the recording statute and whether it complied with the requirements of the ICA. We begin with consideration of the requirements of the recording statute when DOT treated signed project agreements as the point of obligation for the NEVI Formula Program. For the reasons explained below, we conclude DOT violated the recording statute and should have recorded a liability equal to the amounts made available for the program for each of FYs 2022 through 2025, when IIJA made appropriations for such FYs available for obligation. Also at issue is whether DOT's withholding of NEVI Formula Program funds violates the ICA. We conclude that DOT's withholding of funds pursuant to FHWA's February 6 memorandum constitutes a deferral, as defined by the ICA. As explained below, because the ICA's fourth disclaimer does not permit the withholding from obligation or expenditure funds for programs for

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[38] Exec. Order No. 14154, 90 Fed. Reg. 8353 (Jan. 29, 2025).

[39] *Id.* at 8357.

[40] FHWA Memorandum, at 1.

[41] *Id.*

[42] *Id.* As of May 5, 2025, no new guidance implementing the NEVI Formula Program has been issued.

[43] *Id.*

which there is a mandate to spend, DOT's withholding of NEVI Formula Program funds violates the ICA.

The Recording Statute and Obligations for the NEVI Formula Program

An obligation arises when an agency incurs a legal liability for payment, or a legal duty that could mature into a legal liability for payment by virtue of actions beyond the control of the agency.[44] The recording statute requires that an agency record an obligation when supported by documentary evidence of a grant or subsidy payable from appropriations that is "required to be paid in specific amounts fixed by law or under formulas prescribed by law."[45] We have determined that this provision applies when a statute requires the government to provide federal assistance and prescribes a formula to calculate the payments.[46]

For example, in B-316915, we addressed the point of obligation for funds appropriated to the Election Assistance Commission (EAC) to carry out the Help America Vote Act of 2002 (HAVA).[47] Title III of HAVA required EAC to make payments, known as "requirements payments," to each state in accordance with a statutory formula, so long as the state first certified that it met statutory preconditions outlined in the Act.[48] In the decision, we analyzed whether the requirements payments were an amount "required to be paid" under the meaning of 31 U.S.C. § 1501(a)(5)(A) and should be recorded as such, even though HAVA required that each state certify it met the preconditions prior to receiving the payments.

We concluded that the requirements payments were "required to be paid" within the meaning of 31 U.S.C. § 1501(a)(5)(A) and were obligated by operation of law.[49] We explained that even though there was a possibility that a state may not comply with the prerequisites for the payments, noncompliance was an action within the state's control, rather than the government's.[50] As a result, "[t]he preconditions d[id] not render uncertain the entitlement."[51] Therefore, EAC was required to record the full amount of its liability for the program when funds became available for obligation.

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[44] B-333150, Apr. 8, 2024; B-300480, Apr. 9, 2003; *see also* GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 70 (defining obligation).

[45] 31 U.S.C. § 1501(a)(5)(A).

[46] *See* B-336036, Feb. 12, 2025; B-316915, Sept. 25, 2008.

[47] B-316915, Sept. 25, 2008.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

The NEVI Formula Program operates similarly to the EAC program. For example, IIJA requires the Secretary to "distribute" funds made available under the Act for the NEVI Formula Program in accordance with a statutory formula.[52] Additionally, while IIJA requires that states submit plans for the program to DOT, there is no statutory requirement that the Secretary approve them. We note that, according to DOT, because IIJA requires that state plans must be "in such form and such manner that the Secretary requires,"[53] it is their view that plans must be approved by the Secretary.[54] We disagree. While IIJA clearly authorizes the Secretary to dictate the information included in the plan and the deadline for submission, it is silent as to whether the Secretary has discretion to reject timely state submissions. IIJA does not include a discretionary approval provision, which has been included in statutes authorizing other programs.[55]

In fact, a state's compliance with the submission of a state plan for the NEVI Formula Program is within that state's control, rather than DOT's. Therefore, DOT's legal liability to distribute the funds to states pursuant to the statutory formula arises when funds for the program become available for obligation each fiscal year. Consistent with other programs we have considered, it is at that point that a legal duty could mature into a legal liability by virtue of actions wholly under the states' control.[56]

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[52] Pub. L. No. 117-58, 135 Stat. at 1422.

[53] *Id.*

[54] Response Letter, at 2; *see also* FHWA, *INFORMATION: National Electric Vehicle Infrastructure Formula Program Guidance (Updated)* (June 11, 2024), at 1 (previously issued NEVI Formula Program guidance stating the same approval requirement).

[55] For example, in order for states to receive funding under the Highway Safety Improvement Program, the state must have a State Strategic Highway Safety Plan in place that it reevaluates regularly, among other requirements. *See* 23 U.S.C. §§ 148(c)(1)(A), 148(c)(1)(C). In addition to laying out the required elements of a State Strategic Highway Safety Plan, section 148 also provides specific requirements for approval of the plans by the Secretary. 23 U.S.C. § 148(d)(2). Section 148 imposes a penalty on states that do not have a plan submitted and approved, stating that such states "shall not be eligible to receive any additional limitation pursuant to the redistribution of the limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for each succeeding fiscal year until the fiscal year during which the plan is approved." 23 U.S.C. § 148(d)(3).

[56] *See* B-333150, Apr. 8, 2024; B-300480, Apr. 9, 2003; *see also* B-212145, Sept. 27, 1983 (concluding that obligations for a formula grant program should be

(continued...)

We note that the Secretary's authority in IIJA to withhold or withdraw, as appropriate, funds from a state if it does not submit a plan or does not take action to carry out its plan during a given FY,[57] also supports this conclusion. The terms "withhold" and "withdraw" present some ambiguity with respect to the Secretary's authority. To help provide clarity, we give words used in a statute their plain meaning.[58] To withhold is defined as: "To refrain from giving, granting, or allowing."[59] Similarly, to withdraw is defined as: "To take back or away."[60] Were DOT in control of its liability for the program until state plans were approved, there would be no need to provide the Secretary with the authority to take back funds from states that fail to submit plans altogether. The inclusion of this provision supports the conclusion that states' entitlement to the funds for each FY precedes submission of their plan for such FY. If DOT wants to make changes to the Secretary's authority, it must seek legislative authority to amend the IIJA.

DOT therefore violated the recording statute when it failed to record its obligation for the NEVI Formula Program at the time appropriations for FYs 2022 through 2025 became available. The recording statute requires an agency to record the full amount of its obligation against funds available at the time it incurs the obligation.[61] Therefore, DOT should have recorded the full amount appropriated for the NEVI Formula Program for each of FYs 2022 through 2025 when the funds became available, which would amount to $615,000,000 for FY 2022 and $885,000,000 for each of FYs 2023, 2024, and 2025.[62] DOT should adjust its accounts for FYs 2022 through 2025 to properly recognize these liabilities.

DOT's Position on Incurring Obligations for the NEVI Formula Program

According to DOT, it records obligations for the NEVI Formula Program when project agreements are signed.[63] This is consistent with how DOT records obligations for

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recorded when appropriated funds are made available for the program, "even though the specific recipients and the exact amounts payable for each are not yet known").

[57] Pub. L. No. 117-58, 135 Stat. at 1422.

[58] *See, e.g.,* B-336106, Dec. 2, 2024.

[59] Merriam-Webster, *Withhold*, *available at* https://www.merriam-webster.com/dictionary/withhold (last visited May 1, 2025).

[60] Merriam-Webster, *Withdraw*, *available at* https://www.merriam-webster.com/dictionary/withdraw (last visited May 1, 2025).

[61] *See* B-327242, Feb. 4, 2016.

[62] DOT has not yet incurred an obligation for FY 2026 because the funds are not yet available for obligation.

[63] Supplemental Response.

federal-aid highway formula programs,[64] and we note that IIJA states that the NEVI Formula Program funds "shall be administered as if apportioned under chapter 1 of Title 23, United States Code."[65]

However, we disagree that this proviso dictates the point of obligation for the NEVI Formula program. First, as explained above, IIJA requires the Secretary to "distribute" funds made available under the Act in accordance with a statutory formula, and does not provide express authority to the Secretary, or DOT, to control when funds are obligated to states. Therefore, liability for the program arises when IIJA makes funds for the program available for obligation each fiscal year. Additionally, IIJA creates a process specific to the NEVI Formula Program through which the Secretary may "withhold or withdraw" funds made available for a FY from a state that has either failed to submit a plan or that the Secretary finds has not taken actions to carry out its plan.[66] This process presupposes that DOT's liability for the program precedes submission of the state plans, which are a necessary precursor to the project agreements. Finally, according to DOT, this proviso is often used to apply the contract authority in 23 U.S.C. § 118 to a particular program. However, the NEVI Formula Program is funded by a general fund appropriation, and DOT does not rely on contract authority to incur liabilities for the program.

Impoundment Control Act

Having addressed when DOT must record obligations for the NEVI Formula Program, we now consider whether DOT has violated the ICA by delaying expenditures for the program.[67] We conclude that it has.

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."[68] The Constitution also vests all legislative powers in Congress and sets forth the procedures of bicameralism and presentment, through which the President may accept or veto a bill passed by both houses of Congress,

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[64] *See* 23 U.S.C. § 106.

[65] Pub. L. No. 117-58, 135 Stat. at 1425.

[66] *Id.*, 135 Stat. at 1422.

[67] In this decision, we focus our analysis on DOT's delay of expenditures for the NEVI Formula Program. As explained below, the ICA applies to both obligations and expenditures. However, given that NEVI Formula Program funds for FYs 2022 through 2025 are already obligated by law, delay of obligations is not at issue here.

[68] U.S. Const. art. I, § 9, cl. 7.

and Congress may subsequently override a presidential veto.[69] The President is not vested with the power to ignore or amend any such duly enacted law.[70] Instead, the President must "faithfully execute[]" the law as Congress enacts it.[71]

An appropriations act is a law like any other; therefore, unless Congress has enacted a law providing otherwise, the President must take care to ensure that appropriations are prudently obligated during their period of availability.[72] In fact, Congress was concerned about the failure to prudently obligate according to its congressional prerogatives when it enacted and later amended the ICA.[73]

The Constitution grants the President no unilateral authority to withhold funds from obligation.[74] 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.[75] The ICA separates impoundments into two exclusive categories—deferrals and rescissions. The President may temporarily withhold funds from obligation—but not beyond the end of the fiscal year in which the President transmits the special message—by proposing a "deferral."[76] The President may also 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."[77]

In either case, the ICA requires that the President transmit a special message to Congress that includes the amount of budget authority proposed for deferral or rescission and the reason for the proposal.[78] These special messages must provide

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69 *Id.*, art. I, § 7, cl. 2, 3.

70 *See Clinton v. City of New York,* 524 U.S. 417, 438 (1998) (the Constitution does not authorize the President "to enact, to amend, or to repeal statutes").

71 *See* U.S. Const., art. II, § 3.

72 *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).

73 *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").

74 *See* B-135564, July 26, 1973.

75 *See* 2 U.S.C. §§ 681–688.

76 2 U.S.C. § 684.

77 2 U.S.C. § 683.

78 2 U.S.C. §§ 683–684.

detailed and specific reasoning to justify the withholding, as set out in the ICA.[79] The burden to justify a withholding of budget authority rests with the executive branch.

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 messages[80] and reporting impoundments the President has not reported.[81]

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.[82] As ICA's fourth disclaimer makes clear, the ICA does not permit the President to withhold from obligation or expenditure budget authority that is required by law to be spent.[83]

Application of the ICA to the NEVI Formula Program

In this case, the Administration has not sent a special message under the ICA related to the NEVI Formula Program. DOT asserts that the "temporary delay in the ability to obligate new NEVI Formula Program funds resulting from the issuance of new program guidance does not constitute a withholding that falls within the scope of [the ICA]" because the delay is programmatic.[84] According to DOT, the agency needs to issue new guidance for state plans and states need to resubmit the plans for approval "to address the underutilization of [NEVI Formula Program] funding and implement the program at the funding level Congress intended."[85] In DOT's view, both actions it plans to take—issuing new guidance and requiring new state plans

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[79] *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).

[80] 2 U.S.C. § 685.

[81] 2 U.S.C. § 686.

[82] 2 U.S.C. § 684(b).

[83] 2 U.S.C. § 681(4). Section 681 sets out four disclaimers with respect to the application of the ICA. The first three disclaimers, none of which are relevant here, provide that nothing in the ICA shall be construed as (1) asserting or conceding the constitutional powers or limitations of the Congress or the President; (2) ratifying or approving any impoundment except as pursuant to statutory authority; or (3) affecting the claims or defense of any party to litigation concerning any impoundment. *See* 2 U.S.C. §§ 681(1)–(3).

[84] Response Letter, at 2.

[85] *Id.*, at 3.

which must be approved by the Secretary—are within the statutory authority provided by Congress to the Secretary to administer the NEVI Formula Program.[86] We disagree.

An impoundment occurs when an agency refuses to spend budget authority.[87] By its plain terms, the ICA extends to both obligations and expenditures.[88] 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 programmatic delay and is not an impoundment, as defined by the ICA.[89]

We have previously concluded that programmatic delays include delays in the obligation or expenditure of budget authority that result from agency compliance with statutory requirements.[90] The delay at issue here is different. The delay did not result from DOT's attempt to comply with the statutory requirements for the program, but rather from DOT imposing requirements on the program that are not contemplated by IIJA. For example, IIJA requires states to submit plans to DOT, but does not provide authority for the Secretary to approve or disapprove such plans. All states submitted their plans for FYs 2022 through 2025 in satisfaction of their statutory requirement. Nonetheless, on February 6, 2025, DOT asserted that it was disapproving all state plans that had previously been submitted, which resulted in much of the NEVI Formula Program funds becoming unavailable for expenditure until FHWA issues new guidance and states develop and submit new plans.

We note again that this conclusion is supported by the Secretary's authority in IIJA to withhold or withdraw, as appropriate, funds from a state if it does not submit a plan or does not take action to carry out its plan during a given FY.[91] IIJA provides DOT with the ability to oversee the program to ensure states are implementing the program "at the funding level Congress intended."[92] Therefore, DOT's withholding of these funds from expenditure through the imposition of new requirements on the

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[86] *Id.*

[87] *See* B-217722, Mar. 18, 1985.

[88] 2 U.S.C. § 682(1); *see also* B-200685, Dec. 23, 1980 (explaining that even where funds had been obligated for an interagency agreement between the Department of Energy and the Defense Fuel Supply Center to procure petroleum for the Strategic Petroleum Reserve (SPR), if the administration took action that would amount to an impoundment with respect to SPR expenditures, it would violate the ICA).

[89] B-331564.1, Feb. 10, 2022.

[90] *See* B-333110, June 15, 2021.

[91] *See* Pub. L. No. 117-58, 135 Stat. at 1422.

[92] Response Letter, at 3.

states is outside of the parameters set by IIJA for withholding or withdrawing funds, and cannot be a programmatic delay.

An agency's failure to prudently and expeditiously discharge its liabilities in accordance with law constitutes an impoundment. For example, in B-207186, May 5, 1982, we considered what actions the Department of Housing and Urban Development (HUD) was required to take to avoid an unlawful impoundment of funds appropriated for the Solar Energy and Energy Conservation Bank, when previous actions by the President and the Office of Management and Budget (OMB) to defer funds meant the bank was not operational.[93] We concluded that to comply with the ICA, HUD was required to "prudent[ly] and expeditious[ly] discharge" the preparatory steps required to make the bank operational, such as appointing bank officers and issuing regulations, and following completion of these steps, to provide financial assistance required by provisions of the Energy Security Act.[94]

Obligations for the NEVI Formula Program arise by operation of law, and unless the Secretary invokes the authority in IIJA to withhold or withdraw funds therefor, such funds are directed by IIJA to the states. To date, the Secretary has not invoked such authority, and instead, has taken steps that prevent funds being expended for the program. Therefore, DOT's actions to delay the expenditure of funds for the NEVI Formula Program constitute an impoundment.

<u>Application of the Fourth Disclaimer to the NEVI Formula Program</u>

While the ICA only permits deferral in a limited range of circumstances, we need not determine whether this delay fits within any of those circumstances. This is because the ICA expressly precludes withholding from obligation or expenditure funds for programs for which there is a mandate to spend. Therefore, NEVI Formula Program funds cannot be deferred under the ICA.

ICA's fourth disclaimer states that nothing in the ICA shall be construed as "superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder."[95] We have explained that the consideration for whether something is covered by the ICA's fourth disclaimer is "whether the relevant statutory scheme constitute[s] a mandate to spend the full amounts available or confer[s] spending discretion."[96] For example, in B-205053, Feb. 5, 1982, we concluded that OMB could not use the ICA to withhold funds appropriated for a

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[93] B-207186, May 5, 1982.

[94] *Id.*

[95] 2 U.S.C. § 681(4).

[96] B-205053, Mar. 10, 1982.

formula grant program authorized by the Library Services and Construction Act (LSCA) because such action was prohibited by the ICA's fourth disclaimer.[97]

We reached this conclusion by examining several factors: LSCA required that funds be allotted to states by a specific formula in the Act; states had to submit plans for approval before receiving the funds; states were entitled to notice and opportunity for a hearing before a plan was approved; states were entitled to judicial review of any final agency action disapproving the plan; and LSCA specifically mandated the Commissioner of Education pay amounts to states.[98]

Four of the factors outlined in B-205053, Mar. 10, 1982, apply to the NEVI Formula Program. For example, IIJA prescribes a formula by which NEVI Formula Program funds are to be allocated, requires that the Secretary give notice before they withdraw or withhold funds, prescribes an opportunity for states or territories to appeal the decision, and uses language mandating the allocation of funds to states or territories.[99] Because IIJA constitutes a mandate to provide amounts appropriated for the NEVI Formula Program to the states, 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.

CONCLUSION

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 messages and reporting impoundments the President has not reported. Our analysis and conclusions regarding the NEVI Formula Program help ensure compliance with the ICA and appropriations law; we do not take a position on the policy goals of the program and this is not to be interpreted as taking a position on the underlying policies entailed. Changes to these policies and priorities can be addressed through the legislative process with Congress and the Administration.

DOT violated the recording statute when it failed to record obligations for the NEVI Formula Program for FYs 2022 through 2025, when IIJA made appropriations for such FYs available for obligation. In addition, DOT's withholding of funds from

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[97] B-205053, Feb. 5, 1982.

[98] *See* B-205053, Mar. 10, 1982.

[99] While the NEVI Formula Program also differs from the LSCA program discussed in B-205053, Mar. 10, 1982, such as by not requiring the Secretary to approve NEVI Formula Program state plans, this distinction does not affect our conclusion. Rather, it further emphasizes that even if NEVI Formula Program state plans were required to be approved by the Secretary, the program would still be covered by the ICA's fourth disclaimer.

expenditure pursuant to FHWA’s memorandum constituted a deferral, as defined by the ICA, and not a programmatic delay, and because the ICA’s fourth disclaimer applies to the NEVI Formula Program, DOT is not authorized under the ICA to withhold these funds from expenditure. If DOT wishes to make changes to the obligation and expenditure of funds appropriated under the NEVI Formula Program, it must propose funds for rescission or otherwise propose legislation to make changes to the law for consideration by Congress.

Edda Emmanuelli Perez
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U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Decision

Matter of: Institute of Museum and Library Services—Applicability of the Impoundment Control Act to Reduction of Agency Functions

File: B-337375

Date: June 16, 2025

DIGEST

Congress appropriated amounts to the Institute of Museum and Library Services (IMLS) to carry out authorized mission activities for fiscal year 2025. An executive order then directed IMLS to reduce operations. IMLS ceased performing agency functions and withheld from obligation and expenditure funds that Congress appropriated for such functions.

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]

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 responsibilities under the ICA, such as reviewing special messages and reporting impoundments the President has not reported. 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. IMLS has not responded to GAO's requests for information regarding the potential impoundment of appropriated funds. Yet publicly available evidence, including sworn testimony,

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[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").

federal court cases, data on USAspending.gov, and information on IMLS's website, indicates that IMLS withheld grant and other appropriated funds. Based on the available evidence and the lack of any special message pertaining to IMLS funds, GAO concludes that IMLS has violated the ICA by withholding funds from obligation and expenditure. GAO also concludes that IMLS violated the ICA by withholding funds that cannot be withheld under the ICA's fourth disclaimer.[2]

DECISION

President Trump issued Executive Order (EO) 14238, March 14, 2025, which directed that "the non-statutory components and functions of the [Institute of Museum and Library Services (IMLS)] . . . shall be eliminated to the maximum extent consistent with applicable law . . . ." *See* Exec. Order No. 14238 § 2(a), Continuing the Reduction of the Federal Bureaucracy, 90 Fed. Reg. 13043 (Mar. 20, 2025). The President further directed that IMLS "shall reduce the performance of [its] statutory functions and associated personnel to the minimum presence and function required by law." *Id.* Following EO 14238, public evidence indicates that IMLS ceased performing agency functions and withheld funds that Congress appropriated for these functions.

Pursuant to our reporting responsibilities under the Impoundment Control Act of 1974 (ICA), we are issuing this decision.[3] As explained below, we conclude that IMLS violated the ICA when it withheld funds from obligation and expenditure. We also conclude that IMLS violated the ICA by withholding funds that were not eligible for withholding under any circumstance pursuant to the ICA's fourth disclaimer.

In accordance with our regular practice, we contacted IMLS to seek factual information and the agency's legal views.[4] Having requested IMLS's response by May 5, 2025, and having received no communication from the agency, we renewed

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[2] 2 U.S.C. § 681(4). Section 681 sets our four disclaimers with respect to the application of the ICA. The first three disclaimers, none of which are relevant here, provide that nothing in the ICA shall be construed as (1) asserting or conceding the constitutional powers or limitations of the Congress or the President; (2) ratifying or approving any impoundment except as pursuant to statutory authority; or (3) affecting the claims or defense of any party to litigation concerning any impoundment. *See* 2 U.S.C. §§ 681(1) – (3).

[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.

[4] 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 Director, IMLS (Apr. 21, 2025).

our request for information on May 12, 2025.[5] At present, we have received no response or other communication from IMLS.

Given our statutory duty to report impoundments to Congress and the absence of a response from IMLS, we have based this decision upon publicly available evidence. Because that evidence indicates that IMLS withheld appropriated funds from obligation and expenditure, and because the burden to justify such withholdings rests with IMLS and the executive branch, we conclude that IMLS violated the ICA by withholding funds from obligation and expenditure, as well as by withholding funds that could not be withheld for any reason under the ICA's fourth disclaimer.

BACKGROUND

IMLS is a component agency within the National Foundation of the Arts and the Humanities. *See* 20 U.S.C. § 9102. By law, IMLS is headed by a Director, whose primary responsibility is "to ensure the [adequate] availability of museum, library, and information services" to meet the "needs of the people of the United States." *Id.* § 9103(a)(1), (c)(1). To accomplish this mission, IMLS's authorizing legislation instructs it to conduct research and analysis "to extend and improve the Nation's museum, library, and information services." *Id.* § 9108(a). Additionally, IMLS's authorizing legislation contemplates that the agency will enter into contracts, grants, cooperative agreements, and other forms of assistance with museums, libraries, State and local governments, and other entities. *See, e.g.*, *id.* §§ 9108(c), 9123, 9141, 9165, 9173.

On an annual basis, consistent with this legislation, IMLS administers multiple grant programs aimed at assisting specific categories of libraries and museums. *See* IMLS, *Grant Programs*, *available at*: https://www.imls.gov/find-funding/funding-opportunities/grant-programs (last visited June 12, 2025) (providing an overview of all IMLS grant programs). The largest of these programs is "Grants to States," a formula grant program by which IMLS must transfer specified sums to each state library administrative agency with an approved state plan. *See* 20 U.S.C. §§ 9131–34; *see also* IMLS, *Grants to States*, *available at*: https://www.imls.gov/find-funding/funding-opportunities/grants-to-states-overview (last visited June 12, 2025). For most states, the minimum annual Grants to States allotment is $680,000, but Congress has provided specific metrics for IMLS to increase or decrease this amount as needed in view of IMLS's appropriation in any given fiscal year. 20 U.S.C. § 9131(b)(3)(A)–(C).[6] Additionally, Congress has specified that IMLS

[5] Email from Assistant General Counsel, GAO to Acting Director, IMLS (May 12, 2025).

[6] If IMLS's annual appropriation is "insufficient" to provide this amount, then the amounts distributed to state library administrative agencies "shall be reduced ratably." 20 U.S.C. § 9131(b)(3)(B). And if IMLS's appropriation "exceeds" what is necessary to provide this amount, then the allotment "shall be increased to $1,000,000," or as close to that figure as is possible. *See id.* § 9131(b)(3)(C).

shall pay a "federal share" representing 66 percent of the activities outlined in an approved state plan, and that the Director of IMLS "shall approve" any state plan that includes the statutorily required components.[7] *See id.* §§ 9133–34.

For fiscal year (FY) 2024, Congress appropriated to IMLS $294,800,000 to carry out the above-referenced functions, to remain available for obligation until September 30, 2024.[8] *See* Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. D, title IV, 138 Stat. 460, 697 (Mar. 23, 2024). In a spending table accompanying this appropriation, Congress directed that, of the $294,800,000 total, $180,000,000 was for "Grants to States," $5,763,000 was for "Native American Library Services"; $15,287,000 was for "National Leadership: Libraries"; $10,000,000 was for the "Laura Bush 21st Century Librarian [Program]"; $30,330,000 was for "Museums for America"; $3,772,000 was for "Native American/Hawaiian Museum Services"; $9,348,000 was for "National Leadership: Museums"; $6,000,000 was for "Museum Grants for African American History & Culture"; $6,000,000 was for "Museum Grants for American Latino History & Culture"; $5,650,000 was for "Research, Analysis, and Data Collection"; and $22,650,000 was for "Program Administration." *See* House of Representatives Comm. on Appropriations, 118th Cong., *H.R. 2882/Public Law 118-47*, div. D Explanatory Statement, title IV, IMLS, at 809 (Comm. Print 2024) ("Spending Table").[9]

For FY 2025, Congress appropriated to IMLS the same amounts referenced above. *See* Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title I, § 1101(a), 139 Stat. 9, 10 (Mar. 15, 2025) (appropriating funds to federal agencies, including IMLS, "at the level" specified in agencies' FY 2024 appropriations, and "under the authority and conditions" specified in such prior appropriations).

President Trump issued EO 14238 on March 14, 2025, which directed that "the non-statutory components and functions of [IMLS] . . . shall be eliminated to the maximum extent consistent with applicable law . . . ." EO 14238, § 2. The President further directed that IMLS "shall reduce the performance of [its] statutory functions and associated personnel to the minimum presence and function required by law."

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[7] These required components include a description of activities the state will carry out using grant funds and a discussion of the consistency of such activities with IMLS's statutory mission, evaluating the effectiveness of such activities, and assurances regarding reporting the effective use of funds, among other things. *See id.*, at § 9134. Approved state plans are effective for five years. *See id.*

[8] Pursuant to 20 U.S.C. § 9108(g)(2), a small portion of IMLS's appropriated funds remain available until expended.

[9] *See also* Pub. L. No. 118-47, § 4, 138 Stat. 461 (specifying that the explanatory statement which included the Spending Table "shall have the same effect with respect to the allocation of funds and implementation of . . . this Act as if it were a joint explanatory statement of a committee of conference.").

Id. Deputy Secretary of Labor Keith E. Sonderling was sworn in as Acting Director of IMLS a few days later, after being appointed to that role by the President. *See* IMLS, Keith E. Sonderling Sworn in as Acting Director of Institute of Museum and Library Services (Mar. 20, 2025), *available at*: https://www.imls.gov/news/keith-e-sonderling-sworn-acting-director-institute-museum-and-library-services (last visited Jun. 12, 2025).

Following his appointment, according to court filings, IMLS Acting Director Sonderling implemented the President's directives in EO 14238 by drastically reducing IMLS operations. About two weeks later, a group of 21 state attorneys general brought suit in the United States District Court of the District of Rhode Island seeking relief from IMLS's alleged actions in "plac[ing] 85% of its staff on administrative leave, dramatically curtail[ing] … hundreds of grants and grant applications, and terminat[ing] statutorily mandated grant awards to several States." *See* Complaint, *State of Rhode Island, et al. v. Trump et al.*, ¶ 3. No. 1:25-cv-00128 (D.R.I. Apr. 4, 2025).[10] A few days after that, the American Library Association and the American Federation of State, County, & Municipal Employees brought suit in the United States District Court for the District of Columbia seeking relief from IMLS's actions to "dismantle" agency operations, including by "cancell[ing] statutorily required grants to several state libraries." *See* Complaint, *American Library. Ass'n v. Sonderling et al.*, No. 1:25-cv-01050, at 2–3 (D.D.C. Apr. 7, 2025).

Consistent with these court filings, agency data on USAspending.gov indicates that IMLS reduced its spending by more than half in this period. Federal law holds agencies accountable for the completeness and accuracy of the data submitted.[11] As of June 3, 2025, the data indicates that IMLS obligated $89,866,698.12 toward eight grant programs in the first five months of calendar year 2025, whereas IMLS obligated $191,012,877.27 toward these same programs in the first five months of calendar year 2024 and $189,852,949.83 toward these same programs in the first

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[10] The Rhode Island lawsuit also concerns several other executive agencies, but this decision is concerned exclusively with IMLS.

[11] USAspending.gov is the official source of federal government spending data. Various laws and regulations, as well as OMB and Treasury guidance, require agencies to report spending information to USAspending.gov, generally on a monthly or quarterly basis. The Federal Funding Accountability Transparency Act of 2006 (FFATA) was responsible for the initial establishment of USAspending.gov and required agencies to publish 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 by* 31 U.S.C. § 6101 note). The Digital Accountability and Transparency Act of 2014 expanded the requirements of FFATA, requiring agencies to link financial information (e.g., obligations) to the related federal awards 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).

five months of calendar year 2023.[12] Additionally, IMLS's online "events" calendar shows the agency had no scheduled public activity since December 10, 2024, in contrast to regular activity before then. *See* IMLS, *IMLS Events*, *available at*: https://www.imls.gov/events-archive (last visited June 12, 2025). IMLS's online "newsroom" page also shows no activity since the March 20 announcement that Mr. Sonderling had become Acting Director. *See* IMLS, *News & Announcements*, *available at*: https://www.imls.gov/newsroom/news-and-announcements (last visited June 12, 2025).

The D.C. District Court issued a temporary restraining order (TRO) in May providing that IMLS "shall not take any further actions to dissolve IMLS or its operations . . . [to terminate or] place any additional IMLS staff on administrative leave . . . [or to] pause, cancel, or otherwise terminate IMLS grants or contracts . . . ." *See* Memorandum Order, *American Library. Ass'n v. Sonderling et al.*, No. 1:25-cv-01050 (May 1, 2025) (opining that "defendants' conduct contravene[d] Congress's appropriation of almost $300 million to IMLS . . . .).[13] Later that same month, the District Court for the District of Rhode Island issued a preliminary injunction directing IMLS to reinstate anyone "placed on leave or involuntarily terminated" due to EO 14238, to refrain from "further paus[ing], cancel[ing], or otherwise terminat[ing]" grants or contracts, to "resume the processing, disbursement, and payment of already-awarded funding" and to "release awarded funds previously withheld or rendered inaccessible." *See* Preliminary Injunction, *State of Rhode Island et al. v. Trump et al.*, No. 1:25-cv-00128 (D.R.I., May. 13, 2025). Additionally, the preliminary injunction ordered the defendants to file a report within 7 days to "confirm [their] full compliance" with the preliminary injunction. *Id.* at 4.

In a sworn statement filed in *State of Rhode Island*, Acting Director Sonderling

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[12] The eight referenced programs are Grants to States, National Leadership Grants, Laura Bush 21st Century Librarian Program, Museum Grants for African American History and Culture, Museums for America, Native American and Native Hawaiian Library Services, Native American/Native Hawaiian Museum Services Program, and Save America's Treasures. Notably, the final five programs in this list all had either $0 or negative obligation amounts indicated for the first five months of 2025. To compile these numbers, GAO staff searched USAspending.gov for "grant" award types and "Institute of Museum and Library Services" as the granting agency. We then downloaded the data at the transaction level. Given IMLS's non-responsiveness, we have not been able to independently verify these specific amounts with the agency or recipients.

[13] This TRO expired on May 29, 2025. On June 6, 2025, the judge denied plaintiffs' motion for a preliminary injunction because he found that the Tucker Act, 28 U.S.C. §§ 1346(a) and 1491 (which grants the Court of Federal Claims exclusive jurisdiction over certain monetary claims against the federal government) may require plaintiffs to file suit elsewhere. *See* Memorandum Opinion, *American Library. Ass'n v. Sonderling et al.*, No. 1:25-cv-01050 (Jun. 6, 2025). The judge did not address the applicability of the ICA. *Id.*

described the actions that IMLS had taken to carry out EO 14238, as well as to comply with the May 13 preliminary injunction. *See* Declaration of Keith E. Sonderling, *State of Rhode Island et al. v. Trump et al.*, No. 1:25-cv-00128 (May 19, 2025). First, Acting Director Sonderling explained that "as part of IMLS's initial compliance with EO 14238 . . . three Grants to States FY24 awards were terminated on April 1, 2025," but that he "authorized back payments" to these three grants on May 1, 2025, and then "fully reinstated them" on May 5, 2025. *Id.* at ¶ 9. Also, with respect to Grants to States, Acting Director Sonderling said that he had "authorized partial FY25 grant payments to all state grantees," but that they remained incomplete "because IMLS ha[d] not yet received its FY25 apportionment from the Office of Management and Budget." *Id.* With respect to IMLS's other grants, Acting Director Sonderling said "approximately 1,200 [competitive] grants were terminated pursuant to EO 14238," which left "approximately 100" in place. *Id.* at ¶ 10.

Acting Director Sonderling's sworn statement further explained that IMLS's FY 2025 apportionment request "was based on compliance with EO 14238 and a minimal staffing posture," whereas the preliminary injunction would require OMB to apportion (and IMLS to spend) more funds. Declaration of Keith E. Sonderling, at ¶ 14. Specifically, Acting Director Sonderling said that to comply with the preliminary injunction, IMLS must bring back "57 staff," which will increase staff-related costs by "approximately $900,000 per month"; that it must reinstate "at least 755 competitive grants" costing "approximately $78.5 million [for purposes] counter to the administration's priorities"; and that it must spend "$4 to $5 million" to "reinstate contracts that were in the process of being terminated for convenience." *Id.* at ¶¶ 14, 17–18.

DISCUSSION

At issue here is whether IMLS's actions to implement EO 14238 violated the ICA. For the reasons explained below, and based on available information, we conclude that IMLS violated the ICA by improperly withholding appropriated funds from obligation and expenditure. We also conclude that IMLS improperly withheld funds that are not eligible for withholding under the ICA's fourth disclaimer.

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."[14] 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.[15] This process does not grant the President the authority to pass his own laws or to

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[14] U.S. Const. art. I, § 9, cl. 7.

[15] *Id.* at art. I, § 7, cl. 2, 3.

ignore or amend a law duly enacted by Congress.[16] Instead, the President must "faithfully execute" the law as Congress enacts it.[17] It follows from this that Executive Orders cannot function to repeal or undo legislation.

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

The Constitution grants the President no unilateral authority to withhold funds from obligation.[19] 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.[20] The ICA separates impoundments into two exclusive categories – deferrals and rescissions. First, the President may seek to temporarily withhold funds by proposing a "deferral."[21] 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."[22]

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.[23] These special messages must provide detailed and specific reasoning to justify the withholding, as set out in the ICA.[24] 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

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

[17] U.S. Const., art. II, § 3.

[18] *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).

[19] *See* B-135564, July 26, 1973.

[20] *See* 2 U.S.C. §§ 681 – 688.

[21] *Id.* at § 684.

[22] *Id.* at § 683.

[23] *Id.* at §§ 683–684.

[24] *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).

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.[25] With respect to deferrals, the ICA specifies that the funds at issue are only temporarily withheld and must still be obligated before expiration.[26] 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.[27] The ICA's fourth disclaimer further clarifies that the ICA's deferral and proposed recission 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.

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 responsibilities under the ICA, such as reviewing special messages[28] and reporting impoundments the President has not reported.[29]

<u>Application of the ICA to IMLS</u>

In this case, the Administration has not sent a special message under the ICA related to the IMLS nor has IMLS provided any information or its legal views to GAO. Nevertheless, publicly available evidence shows that the agency withheld funds from obligation and expenditure in its efforts to implement EO 14238.

Outside the context of Grants to States, which we discuss separately below, the evidence shows multiple withholdings for which IMLS should have followed—but did not follow—the ICA's procedures for deferring or proposing the rescission of appropriated funds. According to Acting Director Sonderling, IMLS terminated "approximately 1,200 [competitive] grants" in or around March 2025, leaving only about "100" in place. *See* Declaration of Keith E. Sonderling, at ¶ 10. By Acting Director Sonderling's estimation, the costs associated with these terminated grants were "approximately $78.5 million." *See id.* at ¶¶ 14–18. The data on USAspending.gov appears to corroborate Acting Director Sonderling's testimony by indicating a reduction of roughly $100,000,000 in IMLS's grant obligations during the

[25] 2 U.S.C. § 684(b).

[26] 2 U.S.C. §§ 683–684; B-329092, Dec. 12, 2017; 54 Comp. Gen. 453 (1974).

[27] 2 U.S.C. § 683. The ICA also does not authorize the withholding of budget authority through its date of expiration. *See* B-330330, December 10, 2018. As such, so-called "pocket rescissions" are not consistent with the ICA.

[28] 2 U.S.C. § 685.

[29] 2 U.S.C. § 686.

first five month of this year as compared with that period during the last two years.[30] Additionally, Acting Director Sonderling said that IMLS terminated contracts in this period worth “$4 to $5 million,” as well as reduced IMLS’s staff to a degree that Acting Director Sonderling suggested had lowered IMLS’s monthly costs by about $900,000. *See id.* Using Acting Director Sonderling’s figures, this would represent a decrease of roughly $93,300,000 in annual spending for activities other than Grants to States, which leaves $21,500,000, or about 19% of the $114,800,000 that Congress directed for such activities in FY 2025.[31] While there is no numeric threshold for an ICA violation, the obligation of roughly 19% does not suggest a reasonable attempt by the agency to carry out the purposes of the appropriation.[32]

As Acting Director Sonderling has explained, he was not seeking to repurpose these funds for IMLS’s obligation toward other mission activities—he was planning to not use them, contrary to the amounts directed in the FY 2024 and FY 2025 appropriations. *See* Declaration of Keith E. Sonderling, at ¶¶ 14–18 (discussing how he had requested a reduced FY 2025 apportionment from OMB and how the Preliminary Injunction will require IMLS to spend millions more in available budget authority than he had planned to spend); *see also* discussion *supra* at p. 4 (outlining the specific amounts directed for IMLS activities in FY24 and FY25). Thus, the only way that IMLS could have sought to effectuate these budget cuts is by following the procedures outlined in the ICA and sending a special message to Congress.[33] *See* discussion *supra* pp. 7–8; *cf.* B-115398.32, Nov. 20, 1974 (explaining how “savings realized as a result of” an agency downsizing would “clearly” represent proposed rescissions and require a special message, even if the downsizing itself was conducted through lawful means). The ICA was specifically designed to prevent

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[30] See discussion *supra*, p. 5. The USAspending.gov data includes Grants to States amounts, which may explain the roughly $20 million disparity between that data and Acting Director Sonderling’s estimate.

[31] GAO calculated this figure as follows: IMLS’s full FY 2025 appropriation was for $294,800,000, of which $180,000,000 was designated in the Spending Table for Grants to States. *See* discussion *supra* at p. 4. That leaves $114,800,000 (i.e., $294,800,000 - $180,000,000) for other IMLS activities. Mr. Sonderling describes approximately $93,300,000 in cuts to these activities (i.e. $78,500,000 associated with competitive grants, $4,000,000 associated with contracts, and $10,800,000 ($900,000 x 12 months) associated with staffing costs. $114,800,000 - $93,300,000 = $21,500,000.

[32] Compare B-333110, Jun. 15, 2021 (finding a permissible programmatic delay considering, among other things, that the agency had obligated 95% or more of its relevant appropriated funds).

[33] The ICA does not allow deferrals for policy-based reasons, so to the extent a special message had proposed the deferral (rather than the rescission) of IMLS funds solely for compliance with the policies outlined in EO 14238, that likely would have been impermissible. *See* B-331564, Jan. 16, 2020 (policy-based deferments are impermissible); B-237297.3, Mar. 6, 1990; B-224882, Apr. 1, 1987.

unilateral withdrawals by the executive branch; by failing to send a special message and by taking action to cut its own budget authority without Congress's input, IMLS violated the ICA's requirements.

There is no evidence to suggest that IMLS's multiple withholdings constituted an ordinary programmatic delay of the sort that GAO has recognized does not implicate the ICA. "Programmatic delays occur 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." 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. There was nothing unavoidable about IMLS's withholdings in this instance, nor was IMLS withholding funds to comply with statutory requirements. The purpose of IMLS's withholdings, as explained by Acting Director Sonderling, was to comply with EO 14238 and prevent spending for purposes "counter to the administration's priorities." Declaration of Keith E. Sonderling Declaration at ¶¶ 14–18.

<u>Application of the Fourth Disclaimer to IMLS</u>

Acting Director Sonderling's sworn statement also shows that IMLS withheld Grants to States funds that cannot be withheld consistent with the ICA's fourth disclaimer prohibition for funds "require[d]" to be spent. 2 U.S.C. § 681(4). Specifically, Acting Director Sonderling said that he "terminated" three Grants to States FY 2024 awards for approximately one month beginning on April 1, 2025, and that only "partial" Grants to States payments had been made for FY 2025 because IMLS requested a reduced apportionment from OMB "based on [its planned] compliance with EO 14238." *See* Declaration of Keith E. Sonderling at ¶¶ 9, 14.

The consideration for whether something is covered by the ICA's fourth disclaimer is "whether the relevant statutory scheme constitute[s] a mandate to spend the full amounts available or confer[s] spending discretion."[34] In B-205053, Mar. 10, 1982, which concerned a then-applicable version of the Grants to States statute, we said the grants contemplated in this statute were subject to the ICA's fourth disclaimer because funds were "allotted" to states by a specific "formula," which at least two federal courts had found sufficient to trigger the fourth disclaimer. B-205053, Mar. 10, 1982.

The current Grants to States program retains the relevant characteristics that GAO described in B-205053, Mar. 10, 1982. It includes an allotment formula. *See* 20 U.S.C. §§ 9131-32 (prescribing minimum allotments and the procedures to increase or decrease such allotments, along with federal share requirements). It includes elements of notice. *See id.* at §§ 9133–34 (IMLS "shall approve" compliant state plans, which remain in place for five years thus giving states notice of future cutoffs).

[34] B-205053, Mar. 10, 1982; *see also* B-337137, Mar 22, 2025.

And it includes a clear spending mandate. *See id.* § 9131 (directing that IMLS "shall award" grants in the formula-specified amounts). Accordingly, Grants to States funds are covered by the ICA's fourth disclaimer—as we have said with regard to the predecessor statute—and are not eligible for deferral or rescission consistent with ICA procedures. Since the amounts currently available for the program are subject to the ICA's fourth disclaimer, they may not be withheld from obligation and expenditure under the ICA.

CONCLUSION

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 responsibilities under the ICA, such as reviewing special messages and reporting impoundments the President has not reported. Our analysis and conclusions regarding IMLS help ensure compliance with the ICA and appropriations law. GAO does not take a position on the policy goals of IMLS, and this decision is not to be interpreted as taking a position on the underlying policies entailed. Changes to IMLS can be addressed through the legislative process with Congress and the Administration.

The publicly available information, as presented by Acting Director Sonderling's sworn testimony, by federal court cases, by the data on USAspending.gov, and by the information on IMLS's website indicates that following EO 14238, IMLS stopped obligating and expending the funds that Congress had appropriated without regard to the process provided for in the ICA.

IMLS violated the ICA when it withheld appropriated funds, some of which were not eligible for ICA-based withholdings due to the ICA's fourth disclaimer. The burden to justify withholdings rests with the executive branch and GAO has a statutory duty to report impoundments to Congress. If IMLS wishes to make changes to the appropriation provided to IMLS, it must propose funds for rescission or otherwise propose legislation to make changes to the law for consideration by Congress.

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Decision

Matter of: Department of the Interior—Applicability of the Impoundment Control Act to Pause of Large-Scale Water Recycling and Reuse Program

File: B-337233

Date: July 23, 2025

DIGEST

Congress appropriated amounts for the Department of the Interior, Bureau of Reclamation (DOI), to carry out its Large-Scale Water Recycling and Reuse Program over a period of five years as specified in the Infrastructure Investment and Jobs Act (IIJA). An executive order then directed DOI to pause disbursements under this program, which DOI did for a period of thirty days.

Unless Congress enacts 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. However, GAO has recognized that ordinary programmatic delays are not impoundments under the ICA.

Considering the circumstances, including DOI's discretion under relevant IIJA provisions, the purpose of the pause, the short length of the pause, its timing, and DOI's representation that it has now released and plans to use all program funds during their period of availability, we find that DOI's thirty-day pause was not an impoundment but a permissible programmatic delay. We therefore find no violation by DOI of the ICA.

DECISION

On January 20, 2025, President Trump issued Executive Order No. (EO) 14154, § 7(a), which directed that "all agencies shall immediately pause the disbursement of funds appropriated through the . . . Infrastructure Investment and Jobs Act (Public Law 117-58) . . . and shall review their processes, policies and programs . . . for consistency with the law and the policy outlined in [the EO]." *See* Exec. Order No. 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025). Following this directive, the Department of the Interior, Bureau of Reclamation (DOI) paused obligations and expenditures for its Large-Scale Water Recycling and Reuse Program for a period of thirty days. Letter from Acting Associate Solicitor, DOI, to Managing Associate General Counsel, GAO, May 2, 2025 (Response Letter).

Our practice when rendering decisions is to contact the relevant agencies to obtain their legal views on the subject of the request. 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. Accordingly, we reached out to DOI to obtain the agency's legal views. Letter from General Counsel, GAO, to Advisor to the Secretary, DOI (Mar. 11, 2025); *see also* E-mail from Managing Associate General Counsel, GAO, to Acting Assistant Solicitor, DOI (May 8, 2025). DOI responded to GAO's first inquiry on May 2, 2025, *see* Response Letter, and it responded to follow-up questions from GAO on May 22, 2025, *see* Letter from Acting Associate Solicitor, DOI, to Managing Associate General Counsel, GAO (May 22, 2025) (Supplemental 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.[1] However, the Office of Management and Budget (OMB) has removed agency apportionment data from its public websites, which in GAO's view is both contrary to OMB's duty to make such information publicly available and to GAO's statutory right to access such information. *See* Enclosure to B-337581, Apr. 8, 2025. DOI, moreover, did not provide apportionment schedules in response to GAO's request. *See* Supplemental Response, at 2. Having access to such information aids in our review of issues under the Impoundment Control Act of 1974 (ICA) 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 DOI to make a determination on the legal issue at hand.

Pursuant to our reporting responsibilities under the ICA, we are issuing this decision.[2] As explained below, based on the information and response we received from DOI, we were able to determine that no improper withholding has occurred, and that DOI did not violate the ICA by pausing obligations and expenditures for the Large-Scale Water Recycling and Reuse Program for a period of thirty days. Under the circumstances, including DOI's discretion under relevant provisions of the

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[1] *See* B-335747, Apr. 22, 2024 (reviewing obligation data from three years of funding to assess whether the Department of Homeland Security (DHS) improperly withheld amounts appropriated for border barrier construction).

[2] 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 Executive Order 14154. Letter from Ranking Member Merkley and Ranking Member Boyle, to Comptroller General (Mar. 31, 2025).

Infrastructure Investment and Jobs Act (IIJA),[3] the purpose of the pause, the short length of the pause, its timing, and DOI's representation that it has now released and plans to use all program funds during their period of availability, this was a permissible programmatic delay, not an unlawful impoundment.

BACKGROUND

Congress created the Large-Scale Water Recycling and Reuse Program through the IIJA. *See* Pub. L. No. 117-58, div. D, title IX, § 40905, 135 Stat. 1122. That Act directed DOI to "establish a program to provide grants to eligible entities on a competitive basis for the planning, design, and construction of large-scale water recycling and reuse projects that [would] provide substantial water supply and other benefits to the Reclamation States . . . ." *See id.*[4] The IIJA further indicated that these grants were for projects that would reclaim and reuse wastewater or "impaired groundwater or surface water"; that would have a total estimated cost of $500,000,000 or more; that would be located in Reclamation States; and that would "provid[e] a Federal benefit in accordance with [relevant] laws." *Id.* § 40905(c). In order to evaluate proposed projects, the IIJA directed DOI to assess, pursuant to a feasibility "or equivalent" study prepared by the eligible entity, whether such projects were "technically and financially feasible"; whether they provided a "Federal benefit" and were consistent with applicable laws; and whether the eligible entity had "sufficient non-Federal funding" and was "financially solvent" *See id.* § 40905(d).[5] Additionally, the IIJA directed DOI to "give priority to eligible projects" that would do "1 or more" of the following five things: (1) provide "multiple benefits," including "water supply reliability benefits", "fish and wildlife benefits," or "water quality improvements"; (2) be "likely to reduce impacts on environmental resources from water projects owned or operated by Federal and State agencies"; (3) "advance water management plans across a multi-State area" (4) be "regional in nature"; and/or (5) be "collaboratively developed or supported by multiple stakeholders." *See id.* § 40905(e). And for any grant issued under this program, the IIJA stipulated that

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[3] *See* Pub. L. No. 117-58, div. D, title IX, § 40905, 135 Stat. 429, 1122 (Nov. 15, 2021)

[4] The IIJA defines an "eligible entity" to include: (1) "State[s], Indian Tribe[s], municipalit[ies], irrigation district[s] . . . or other organization[s] with water or power delivery authority . . ."; (2) "State regional or local authorit[ies]] [including] 1 or more organizations with water or power delivery authority . . ."; or (3) "agenc[ies] established under State law for the joint exercise of [water or power deliver authority]." *See* IIJA § 40905(a)(1)(A)-(C).

The IIJA defines "Reclamation States" by reference to 43 U.S.C. § 391, which lists seventeen states and four U.S. territories. *See* IIJA § 40905(a)(4); *see also* 43 U.S.C. § 391.

[5] Additionally, DOI must provide written notice to Congress "not later than 30 days after" it determines that a proposed project is eligible to receive grant funds. *See id.* § 40905 (d)(1)-(4).

"the Federal share . . . shall not exceed 25 percent of the total cost of the eligible project." *Id.* § 40905(f)(1).

Congress directed DOI to issue guidance on the Large-Scale Water Recycling and Reuse Program within one year of the IIJA's enactment. *See* IIJA § 40905(h). Pursuant to this directive, DOI provided what it deemed "temporary" guidance on November 3, 2022 (with updates indicated on October 26, 2023, and October 31, 2024). *See* DOI Reclamation Manual Directives and Standards, WTR TRMR-128, *available at*: https://www.usbr.gov/recman/temporary_releases/wtrtrmr-128.pdf (last visited July 15, 2025).

The IIJA also appropriated funds to DOI for the Large-Scale Water Recycling and Reuse Program. Specifically, Congress provided that $1,660,000,000 would become available to DOI for "Water and Related Resources" in fiscal years 2022, 2023, 2024, 2025, and 2026, respectively, with each amount available "until expended." *See* IIJA, 135 Stat. at 1364−65.[6] Of the total amount appropriated by this provision, Congress specified that "$450,000,000 shall be for large-scale water recycling and reuse projects in accordance with [the Large-Scale Water Recycling and Reuse Program]." *Id.*

Since the inception of the Large-Scale Water Recycling and Reuse Program in November 2021, DOI states that it has conducted two rounds of grant application reviews. Supplemental Response, at 2. In the first round of reviews, DOI states that it selected four projects to receive $179,738,736. *See id.* In the second, DOI states that it selected five projects to receive $128,250,000. *See id.* Although these figures combine to make $307,988,736, which would be about sixty-eight percent of the total IIJA appropriated amount (*i.e.*, $450,000,000), DOI states that it has only finalized two grant award documents obligating a total of $215,951,212. *See id.* DOI issued these two awards to the Metropolitan Water District of Southern California (MWDSC), which received a grant of $125,472,855, and the City of San Buenaventura, which received a grant of $90,478,357. *See id.*; *see also* Enclosure to Supplemental Response (providing grant award documents). DOI finalized its award to MWDSC on January 10, 2025, and its award to the City of San Buenaventura on January 14, 2025. *See* Supplemental Response at 2.[7] According to DOI, several other awards remain under review pursuant to agency policy requiring "financial assistance agreements above [these awards'] dollar amount [to]

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[6] Although providing amounts "until expended," Congress also stipulated that DOI's "authority to carry out [the Large-Scale Water Recycling and Reuse Program] terminates on the date that is 5 years after the date of enactment of this Act." IIJA, § 40905(k). The IIJA's date of enactment was November 15, 2021, *see* IIJA, which means that DOI's authority to carry out the Large-Scale Water Recycling and Reuse Program will expire on November 15, 2026.

[7] According to DOI, MWDSC has drawn down $17,397,350.17 of its grant funding, and the City of San Buenaventura has yet not drawn down any of its grant funding. Supplemental Response at 2.

undergo leadership review." *See id.* at 3. "[A]ccounting for administrative costs," DOI says that it has $132,750,000 (out of the total IIJA amount of $450,000,000) remaining for Large-Scale Water Recycling and Reuse Program grants. *See id.* at 2. DOI states that it "intends to make [this] funding available in a future third round of awards." *See id.*

On January 20, 2025, President Trump issued the EO, which directed that "[a]ll agencies shall immediately pause the disbursement of funds appropriated through the . . . [IIJA] . . . and shall review their processes, policies and programs . . . for consistency with the law and the policy outlined in section 2 of [the EO]." *See* Exec. Order No. 14154, § 7(a). Section 2 of the EO declared that "it is the policy of the United States" to "ensur[e] that an abundant supply of reliable energy is readily accessible in every State and territory", to "ensure that all regulatory requirements related to energy are grounded in clearly applicable law", to "guarantee that all executive departments and agencies provide opportunity for public comment and rigorous, peer-reviewed scientific analysis", to "ensure that the global effects of a[n] . . . action shall, whenever evaluated, . . . be reported separately from its domestic costs and benefits", and to "ensure that no Federal funding be employed in a manner contrary to the principles outlined [in section 2] unless required by law", among other things. *Id.* § 2.

Following this directive, DOI paused obligations and expenditures for its Large-Scale Water Recycling Program for a period of thirty days. *See* Response Letter. Specifically, DOI says that it paused obligations and expenditures on January 20, 2025, and that it resumed making disbursements on February 19, 2025. *Id.* at 1. DOI states that the purpose of the review "included an assessment of the current funding plans for the program, including the need for any revisions to such plans." *Id.* DOI further states that this funding pause "allowed time for a broad programmatic review of [DOI] operations, to ensure compliance with applicable law and priorities as set forth in the EO." *See* Supplemental Response, at 3. Ultimately, however, DOI says that "[n]o funding plan revisions or adjustments were made during the review period." *See id.* DOI says that it continues to review award documents for the entities with approved projects other than MWDSC and City of San Buenaventura, and that it intends to obligate the remainder of its IIJA appropriation for Large-Scale Water Recycling and Reuse Projects. *See id.* at 2-3.

In its response to us, DOI stated that the thirty-day pause was not an unlawful impoundment but a permissible "programmatic delay[]." Response Letter at 2. Specifically, DOI cited B-335747, Apr. 22, 2024, as support for the proposition that a "temporary pause during [a] review of program plans pursuant to [a] Presidential directive" do not violate the ICA. *See id.*

DISCUSSION

At issue here is whether DOI's actions in pausing obligations and expenditures under the Large-Scale Water Recycling and Reuse Program for a period of thirty days violated the ICA. For the reasons explained, we find that the thirty-day pause was a permissible programmatic delay, not a violation of the ICA.

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."[8] The Constitution also gives Congress the exclusive power to legislate, and it 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.[9] 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.[10] Instead, the President must "faithfully execute[]" the law as Congress enacts it.[11] It follows from this that Executive Orders cannot function to repeal or undo legislation.

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

The Constitution grants the President no unilateral authority to withhold funds from obligation.[13] 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.[14] The ICA separates impoundments into two exclusive categories – deferrals and rescissions. First, the President may seek to

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[8] U.S. Const. art. I, § 9, cl. 7.

[9] *Id.* at art. I, § 7, cls. 2, 3.

[10] *See* B-331564, Jan. 16, 2020, at 5 (citing *Clinton v. City of New York*, 524 U.S. 417, 438 (1998)).

[11] U.S. Const., art. II, § 3.

[12] *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).

[13] *See* B-135564, July 26, 1973.

[14] *See* 2 U.S.C. §§ 681−688.

temporarily withhold funds by proposing a “deferral.”[15] 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.”[16]

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.[17] These special messages must provide detailed and specific reasoning to justify the withholding, as set out in the ICA.[18] 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.[19] With respect to deferrals, the ICA specifies that the funds at issue are only temporarily withheld and must still be obligated before expiration.[20] 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.[21] The ICA’s fourth disclaimer further clarifies that the ICA’s deferral and proposed recission 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.[22]

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[15] *Id.* § 684. However, agencies may not withhold amounts from obligation or expenditure for policy reasons. B-335747, Apr. 22, 2024. “Faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law. B-331564, Jan. 16, 2020, at 5.

[16] *Id.* § 683.

[17] 2 U.S.C. §§ 683–684.

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

[19] 2 U.S.C. § 684(b).

[20] *Id.* §§ 683–684; B-329092, Dec. 12, 2017; 54 Comp. Gen. 453 (1974).

[21] 2 U.S.C. § 683. 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.

[22] 2 U.S.C. § 681(4). Section 681 sets our four disclaimers with respect to the application of the ICA. The first three disclaimers, none of which are relevant here, provide that nothing in the ICA shall be construed as (1) asserting or conceding the constitutional powers or limitations of the Congress or the President; (2) ratifying or approving any impoundment except as pursuant to statutory authority; or (3)

(continued...)

Importantly, however, GAO has recognized that not all delays in obligation or expenditure of 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. *See* B-337137, May 22, 2025, at 15 (citing B-333110, June 15, 2021). 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. *Id.* (citing B-331564.1, Feb. 10, 2022).

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 messages[23] and reporting impoundments the President has not reported.[24]

Application of the ICA to DOI's Pause on Obligations and Expenditures Under the Large-Scale Water Recycling and Reuse Program

In this case, considering DOI's discretion under relevant IIJA provisions, the purpose of the funding pause, the short length of the pause, its timing, and DOI's representation that it has now released and plans to use all program funds during their period of availability, DOI's thirty-day pause was a permissible programmatic delay, not a violation of the ICA.

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.[25] The level of agency discretion over program funding has bearing, from an ICA standpoint, on the reasonableness of a potential delay in obligations or expenditures. Thus, we have said that while executive branch officials must take care to ensure that they prudently obligate and expend appropriations during their period of availability, the amount of time required for prudent obligation and expenditure will vary from one program to another. B-335747, Apr. 22, 2024; B-330330, Dec. 10, 2018. The ICA imposes no specific requirements on the executive branch as to the rate at which it must obligate or expend budget authority. B-335747, Apr. 22, 2024; B-319189, Nov. 12, 2010. Where an agency shows its actions are within its statutory authority, we will not find an improper impoundment. *Id.*

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affecting the claims or defense of any party to litigation concerning any impoundment. *See Id.* § 681(1)−(3).

[23] 2 U.S.C. § 685.

[24] 2 U.S.C. § 686.

[25] B-337142, June 16, 2025; *see also* B-335747, Apr. 22, 2024.

We also look at the reason for any delay in agency obligations or expenditures. In general, as explained above, the ICA requires the President to transmit a special message to Congress before withholding funds for any reason. *See* discussion, supra, p. 6. However, ordinary programmatic delays attendant to program administration do not rise to the level of a withholding triggering the ICA and its requirements. Thus, for example, in B-333110, Jun. 15, 2021, President Biden issued a Proclamation on the first day of his presidency directing a pause in the Department of Homeland Security's (DHS) construction of a border wall, as well as a pause in DHS's obligation of funds for this wall. *See id.* This Proclamation further directed DHS to develop a plan within 60 days that would "redirect" funds where allowable, but also provide for continued use of funding for the border wall where Congress had "expressly appropriated" funds for that purpose. *See id.* at 8. DHS explained that it would use this pause to "engage in more substantive consultation with stakeholders, such as property owners and border community residents, as required under [a DHS] statutory consultation provision." *See id.* at 10-11. DHS also explained that it would consider "rescinding or revising previously issued waivers of environmental and other laws." *Id.* at 10. As a result of anticipated increased stakeholder engagement and potential revisions to previously issued environmental waivers, among other things, DHS said it would "rescope" its construction plans as necessary following the pause. *See id.* at 11. Under these circumstances, GAO found a "programmatic delay," explaining that "delays associated with the review of whether statutory prerequisites [are] satisfied are programmatic delays outside the reach of the ICA." *See id.* at 11-12 (citing B-290659, July 24, 2002; B-291241, Oct. 8, 2002; and B-221412, Feb. 12, 1986). More specifically, GAO found that "a delay in obligation of funds while DHS determine[d] project needs in light of changed circumstances"—which we defined to include DHS's decision to follow "standard environmental planning" and to aim for more "robust stakeholder consultation"—was permissible and programmatic in nature. *See id.* at 14.

The facts of DOI's current situation line up closely with the facts from B-333110, June 15, 2021. Here, as in that case, the President issued a directive on the first day of his term ordering a pause in relevant activities so that affected agencies could reassess and, as necessary, adjust their funding plans in view of the discretion granted by the applicable law. *Compare* EO *with* B-333110, June 15, 2021 (Proclamation issued on January 20, 2021). Specifically, the EO directed agencies to "ensur[e] that an abundant supply of reliable energy is readily accessible in every State and territory", to "ensure that all regulatory requirements related to energy are grounded in clearly applicable law", to "guarantee that all executive departments and agencies . . . provide opportunity for public comment and rigorous, peer-reviewed scientific analysis", to "ensure that the global effects of a[n] . . . action shall, whenever evaluated, be reported separately from its domestic costs and benefits", and to "ensure that no Federal funding be employed in a manner contrary to the principles outlined [in section 2] unless required by law", among other things. Exec. Order No. 14154 § 2.

The EO's directives had potentially complex implications for DOI's administration of the Large-Scale Water Recycling and Reuse Program considering the responsibilities the IIJA assigned to DOI in connection with this program. For example, the IIJA directed DOI to evaluate, pursuant to a feasibility "or equivalent" study, whether proposed projects were "technically and financially feasible"; whether they provided a "Federal benefit" and were consistent with applicable laws; and whether the eligible entity had "sufficient non-Federal funding" and was "financially solvent." *See* IIJA, § 40905(d). The IIJA also directed DOI to "give priority" to projects that would provide "multiple benefits" from a list provided in the Act. *See id.* § 40905(e). Just as we found that DHS had the legal discretion to pursue increased stakeholder engagement and revisit environmental and other legal waivers associated with border wall construction based on the Presidential Proclamation at issue in B-333110, June 15, 2021, it would also be within DOI's legal discretion to revisit its funding determinations under the Large-Scale Water Recycling and Reuse Program to ensure that its "Federal benefit" findings, its determinations regarding particular applicants' "financial solvency," and its prioritization of projects comported with the IIJA's provisions governing those things.[26]

This legal discretion afforded to DOI under the IIJA, along with the EO's clear invocation of this discretion by directing agencies to ensure "consistency with the law," *see* Exec. Order No. 14154, § 7(a), is the key to our decision today. As we recognized in B-333110, June 15, 2021, because of the legal discretion afforded to DHS under applicable laws, its decision to increase stakeholder engagement and revisit legal waivers attendant to border wall construction did not constitute an impoundment. *Id.*

Timing considerations also support our conclusion that DOI's thirty-day pause was a permissible programmatic delay. Other than specifying that DOI's overall program authority would expire in November 2026, the IIJA did not dictate a specific timeframe for DOI to carry out obligations and expenditures under the Large-Scale Water Recycling and Reuse Program. *See* IIJA § 40905(k); *see also* B-335747, Apr. 22, 2024 (amount of time required for prudent obligation and expenditure will vary from one program to another); B-330330, Dec. 10, 2018 (ICA imposes no specific requirements on the executive branch as to the rate at which it must obligate or expend budget authority). Indeed, DOI had just finalized the first two grant awards under this program on January 10 and 14, 2025. Supplemental Response, at 2. This was mere days before the beginning of the Trump Administration and the accompanying EO-directed pause on January 20, 2025. Considering that DOI had

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[26] Put differently, this was not an instance where DOI's "discretion" was clearly "limited with respect to the obligation of funds." *See* B-337137, May 22, 2025. Rather, the IIJA assigned DOI considerable discretion to evaluate and prioritize grant proposals before deciding which ones to fund, as outlined above. While DOI did not specify in its responses to GAO the particular considerations involved in its review, during the at-issue pause to ensure compliance with law, the IIJA specifies requirements and findings DOI must make and allows it such latitude.

taken more than three years to complete these first two obligating instruments, and that grant expenditures had only just begun, *see id.*, at 2, a thirty-day delay cannot be understood to have meaningfully slowed DOI's existing pace of program administration. By February 19, 2025, funds were once again available for obligation and expenditure. *See id.* Here, as DHS did in B-333110, Jun. 15, 2021, DOI has represented to us that they plan to obligate their full appropriation during its period of availability. *Id.*

The circumstances here are distinguishable from those in our recent decision in B-337375, June 16, 2025, where we found that the Institute of Museum and Library Services (IMLS) had unlawfully impounded funds. *Id.* In that decision, the agency's Acting Director was not seeking to ensure compliance with legal requirements but only to prevent spending for purposes "counter to the administration's priorities." *Id.* at 11 (citation omitted). And in that decision, unlike in the current situation, IMLS's Acting Director made clear that he was not seeking to repurpose or re-obligate withheld funds for other mission activities, he was simply planning not to use them at all, contrary to the enacted appropriations. *See id*. Thus, no evidence supported the finding of a programmatic delay. Given this contrast, and the similarities between DOI's situation and that considered in B-333110, June 15, 2021, we find that DOI's actions in pausing obligations and expenditures under the Large-Scale Water Recycling and Reuse Program for thirty days was a permissible programmatic delay.

CONCLUSION

DOI did not violate the ICA by pausing obligations and expenditures for the Large-Scale Water Recycling and Reuse Program for a period of thirty days consistent with EO 14154. Considering DOI's discretion under relevant IIJA provisions, the purpose of the pause, the short length of the pause, its timing, and DOI's representation that it has now released and plans to use all program funds during their period of availability, this pause was a permissible programmatic delay, not an improper impoundment.

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.

Edda Emmanuelli Perez

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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, 2015);[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]

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[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

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[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

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[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

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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 IIJA 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

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[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]

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[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

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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 messages[59] 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.

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[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.

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[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]

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[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.

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[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

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[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]

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[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.

Edda Emmanuelli Perez

Edda Emmanuelli Perez
General Counsel

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

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Department of Homeland Security—Application of the Impoundment Control Act to Reductions in Force for the Office for Civil Rights and Civil Liberties, the Office of the Immigration Detention Ombudsman, and the Office of the Citizenship and Immigration Services Ombudsman

File: B-337366

Date: July 31, 2025

DIGEST

On March 21, 2025, the Department of Homeland Security (DHS) delivered Reduction in Force (RIF) notices to the majority of the workforce in three of its offices: the Office for Civil Rights and Civil Liberties, the Office of the Citizenship and Immigration Services Ombudsman, and the Office of the Immigration Detention Ombudsman (collectively, the Offices). These DHS offices are funded through its operations and support appropriation account for the Office of the Secretary and Executive Management. This account received a lump-sum appropriation for fiscal year (FY) 2025.

Unless Congress enacts 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. However, GAO has recognized that ordinary programmatic delays are not impoundments under the ICA.

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 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. DHS 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 indicates that DHS is continuing to obligate and expend the funding provided to the Offices. Considering the circumstances, including DHS's discretion as to how to allocate its operation and support appropriation, and its representations that it is continuing to obligate and expend the funding provided to the Offices, we conclude that amounts have not been unlawfully withheld. Therefore, we find no violation by DHS under the ICA with respect to the RIFs to the Offices.

GAO is aware of ongoing litigation involving the RIFs to the Offices.[1] GAO will continue to monitor this, and any other litigation related to this issue. If a court makes relevant findings of fact relating to the RIFs to the Offices, we will update this decision as necessary.

DECISION

On February 11, 2025, the President issued Executive Order No. 14210, "*Implementing the President's 'Department of Government Efficiency' Workforce Optimization Initiative*,*"* instructing agency heads to "promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law." Exec. Order No. 14210, 90 Fed. Reg. 9669 (Feb. 11, 2025). The Order directed that "[a]ll offices that perform functions not mandated by statute or other law shall be prioritized in the RIFs, including all agency diversity, equity, and inclusion initiatives [and] all agency initiatives, components, or operations that [the] Administration suspends or closes," and specified that its instructions on the RIFs "shall not apply to functions related to public safety, immigration enforcement, or law enforcement." *Id*. On March 21, 2025, the Department of Homeland Security (DHS) delivered RIF notices to the majority of the workforce in three of its offices: the Office for Civil Rights and Civil Liberties (CRCL), the Office of the Citizenship and Immigration Services Ombudsman (CISOMB), and the Office of the Immigration Detention Ombudsman (OIDO) (collectively, the Offices).[2]

Our practice when rendering decisions is to contact the relevant agencies to obtain their legal views on the subject of the request. 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. Accordingly, we reached out to DHS to seek factual information and its legal views on this matter.[3] We requested that DHS provide their response by May 6, 2025. DHS has not responded to date.

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[1] There is ongoing litigation challenging the legality of RIFs in DHS, including the Offices that are the subject of our decision. Complaint for Declaratory and Injunctive Relief, *Robert F. Kennedy Human Rights et al., v. U.S. Department of Homeland Security et al.*, No. 1:25-cv-1270 (D.D.C. April 24, 2025).

[2] Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction, *Robert F. Kennedy Human Rights et al.,* at 6 (D.D.C. May 14, 2025).

[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-

(continued...)

In the past, in addition to the agency's factual assertions and legal views, we have typically analyzed apportionment schedules and data from an appropriation to determine whether there is any indication of an improper withholding. However, the Office of Management and Budget (OMB) has removed agency apportionment data from its public websites, which in GAO's view is contrary to OMB's duty to make such information publicly available.[4] Having access to such information aids in our review of issues under the Impoundment Control Act (ICA) and our support of congressional oversight of programs. We requested apportionment data from DHS, but DHS has not responded.[5]

Pursuant to our reporting responsibilities under the ICA, we are issuing this decision.[6] As explained below, based on publicly available information, and considering DHS's discretion in allocating its operation and support appropriation, we conclude that amounts have not been unlawfully withheld. Therefore, we find no violation by DHS under the ICA with respect to the RIFs to the Offices.

BACKGROUND

Congress has statutorily established several offices and positions in DHS to carry out functions that are relevant to this decision.[7] The Homeland Security Act of 2002,[8] established the Officer for Civil Rights and Civil Liberties (CRCL Officer) and required that the CRCL Officer shall "review and assess information concerning abuses of civil rights [and] civil liberties" committed by "employees or officials" of DHS and shall report annually to Congress on those allegations.[9] The Homeland Security Act of 2002 also established the Citizenship and Immigration Services

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107329; Letter from General Counsel, GAO, to Acting General Counsel, DHS (April 22, 2025).

[4] *See* Enclosure to B-337581, Apr. 8, 2025.

[5] Letter from General Counsel, GAO, to Acting General Counsel, DHS (April 22, 2025).

[6] Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, title X, § 1015, 88 Stat. 297, 336 (July 12, 1974), 2 U.S.C. § 686.

[7] Various matters related to the Offices are under litigation. Complaint for Declaratory and Injunctive Relief, *Robert F. Kennedy Human Rights et al.,* (D.D.C. April 24, 2025). Our decision here is limited to the application of the ICA.

[8] Pub. L. No. 107-296, 116 Stat. 2135 (*classified at* 6 U.S.C. §§ 101–681g).

[9] Pub. L. No. 107-296, title VII, § 705, 116 Stat. at 2219–2220 (*classified at* 6 U.S.C. § 345(a)(1), (b)).

Ombudsman (CIS Ombudsman), and gave the CIS Ombudsman the responsibility of assisting individuals and employers to resolve problems with the Bureau of Citizenship and Immigration Services.[10] Lastly, in the Consolidated Appropriations Act, 2020, Congress established the Ombudsman for Immigration Detention within DHS and provided that the Ombudsman for Immigration Detention shall be independent of DHS agencies and officers, and shall report directly to the DHS Secretary.[11] Congress charged the Immigration Detention Ombudsman with such responsibilities as investigating and resolving cases where DHS officers are found to have engaged in misconduct or have violated the rights of individuals in immigration detention, providing assistance to such individuals, conducting unannounced inspections of detention facilities, and ensuring that its functions "are complementary to existing functions within [DHS]."[12] CRCL, CISOMB, and OIDO respectively support the CRCL Officer, CIS Ombudsman, and Immigration Detention Ombudsman in fulfilling their statutory responsibilities.[13]

DHS budget documents show that the Offices are funded through the lump-sum operations and support account for the Office of the Secretary and Executive Management (OSEM).[14] In Fiscal Year (FY) 2024, Congress appropriated $363,582,000 to OSEM's operations and support account.[15] This account continues

[10] Pub. L. No. 107-296, title IV, subtitle E, § 452, 116 Stat. at 2197 (*classified at* 6 U.S.C. § 272).

[11] Pub. L. No. 116-93, div. D, title I, § 106 (a), 133 Stat. 2317, 2504-2505 (Dec. 20, 2019) (*classified at* 6 U.S.C. § 205).

[12] *Id*. § 106 (a), 133 Stat. at 2505.

[13] *See* DHS, *Legal Authorities for the Office for Civil Rights and Civil Liberties*, *available at* https://www.dhs.gov/legal-authorities-office-civil-rights-and-civil-liberties (last visited Jul. 23, 2025); DHS, *The Office of the Immigration Detention Ombudsman*, *available at* https://www.dhs.gov/office-immigration-detention-ombudsman (last visited Jul. 23, 2025); DHS, *Office of the Citizenship and Immigration Services Ombudsman*, *available at* https://www.dhs.gov/about-citizenship-and-immigration-services-ombudsman (last visited Jul. 23, 2025).

[14] *See, e.g.,* DHS, *DHS Budget, Congressional Budget Justification Fiscal Year (FY) 2025*, *Office of the Secretary and Executive Management*, at OSEM – O&S – 3, *available at* https://www.dhs.gov/publication/congressional-budget-justification-fiscal-year-fy-2025 (last visited Jul. 23, 2025).

[15] Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. C, title I, 138 Stat. 460, 593 (Mar. 23, 2024).

to be funded in FY 2025, subject to a $550,000 rescission.[16] The Joint Explanatory Statement for the DHS Appropriations Act, 2024, designated amounts for each of the three offices, but this explanatory statement was not incorporated by reference into the FY 2024 or FY 2025 appropriations acts as law.[17] According to the Director of the Budget Division within the Office of the Chief Financial Officer at DHS, DHS treats each Office as a separate program, project, or activity (PPA) within the larger appropriation.[18] The Director stated that as individual PPAs, DHS assigned each Office a certain funding level for execution in FY 2025 through an expenditure plan that DHS submitted to Congress, which established funding levels of $10,383,000 for CISOMB, $42,964,000 for CRCL, and $27,341,000 for OIDO.[19]

According to DHS, the agency began preparing for large-scale RIFs to the Offices in order to be consistent with the February 11, 2025, Executive Order, "*Implementing the President's 'Department of Government Efficiency' Workforce Optimization Initiative*," which instructed agency heads to prepare to initiate RIFs.[20] Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction, at 4. DHS determined that the Offices could fulfill their statutory duties using "leaner staffs and more streamlined processes" and stated that it considered the statutory requirements for each Office, duplicative and inefficient workflows, and new means of increasing efficiency when determining how much staff to reduce. *Id*. at 5, 7. According to DHS, after the RIFs, the CRCL Officer, CIS Ombudsman, and Immigration Detention Ombudsman would still be responsible for performing the duties required of them by statute. *Id*. at 7.

On March 7, 2025, DHS sent a memorandum to the Office of Personnel Management (OPM) seeking approval of competitive areas that would be subject to

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[16] Full Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title I, § 1101(a)(6), and title VII, § 1706(1), 139 Stat. 9, 11, 28 (Mar. 15, 2025).

[17] *See* Pub. L. No. 118-47, § 4, 138 Stat. at 461. While joint explanatory statements have some value in determining congressional intent, they do not have "the force of law." *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 237 (D.C. Cir. 2003).

[18] Declaration of Ann M. Tipton, *Robert F. Kennedy Human Rights et al.,* at ¶ 2 (D.D.C. June 16, 2025).

[19] *Id*.

[20] Exec. Order No. 14210, 90 Fed. Reg. 9669 (Feb. 14, 2025). Subpart c of section 3 "Reductions in Force"—instructs "Agency Heads [to] promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law, and to separate from Federal service temporary employees and reemployed annuitants working in areas that will likely be subject to the RIFs." *Id.* § 3(c) (emphasis omitted).

the RIFs, in line with OPM regulations concerning RIF procedures. Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction, at 5. In the memorandum, DHS requested OPM to approve RIFs for competitive areas consisting of CRCL, CISOMB, and OIDO; more specifically, DHS proposed eliminating 147 positions in CRCL, 118 positions in CISOMB, and 46 positions in OIDO. *Id*. at 6. These figures represented the entire staff of the Offices, excluding employees in the Senior Executive Service. *Id*. OPM granted approval for these competitive areas on March 7, 2025, and on March 20, 2025, the DHS Secretary provided final approval for the RIFs. *Id*.

On March 21, 2025, DHS delivered RIF notices to the majority of the workforce in CRCL, CISOMB, and OIDO. Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction, at 6. According to DHS, those employees have largely been on administrative leave since receiving their RIF notices. *Id*. On April 7, 2025, DHS announced that qualifying employees from CRCL, CISOMB, and OIDO would be allowed to participate in a Workforce Transition Program (WTP), which offered employees financial incentives in exchange for a release of claims and a commitment to resign from the agency. *Id*. As of May 2025, DHS stated that 47 employees have signed WTP agreements and agreed to resign; DHS noted that the RIF notices for these employees will be rescinded. *Id*. In June 2025, the Director of the Budget Division, in a sworn statement, affirmed that each of the Offices "continues to obligate and execute the funding they were provided for fiscal year 2025." Declaration of Ann M. Tipton, at ¶ 3. The Director declared that "[a]ll of the Offices are funded through the remainder of fiscal year 2025, and [DHS] will execute that funding." *Id*.

DISCUSSION

At issue here is whether DHS's actions to implement Executive Order No. 14210, particularly, the RIFs to the Offices, violated the ICA. For the reasons explained below, and based on available information, we conclude that DHS did not violate the ICA.

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."[21] 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.[22] This process does not grant the President the authority to pass his own laws or to

[21] U.S. Const. art. I, § 9, cl. 7.

[22] *Id.* at art. I, § 7, cl. 2, 3.

ignore or amend a law duly enacted by Congress.[23] Instead, the President must "faithfully execute" the law as Congress enacts it.[24] It follows from this that Executive Orders cannot function to repeal or undo legislation.

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

The Constitution grants the President no unilateral authority to withhold funds from obligation.[26] 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.[27] The ICA separates impoundments into two exclusive categories – deferrals and rescissions. First, the President may seek to temporarily withhold funds by proposing a "deferral."[28] 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."[29]

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.[30] These special messages must provide detailed and specific reasoning to justify the withholding, as set out in the ICA.[31] The burden to justify a

[23] *See* B-331564, Jan. 16, 2020, at 5 (citing *Clinton v. City of New York*, 524 U.S. 417, 438 (1998)).

[24] U.S. Const., art. II, § 3.

[25] *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).

[26] *See* B-135564, July 26, 1973.

[27] *See* 2 U.S.C. §§ 681–688.

[28] *Id.* at § 684.

[29] *Id.* at § 683.

[30] 2 U.S.C. §§ 683–684.

[31] *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).

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.[32] With respect to deferrals, the ICA specifies that the funds at issue are only temporarily withheld and must still be obligated before expiration.[33] 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.[34]

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 messages[35] and reporting impoundments the President has not reported.[36]

Application of the ICA to DHS's RIFs to the Offices

The test for whether there has been an impoundment starts with the question of whether there has been a withholding or delay in the obligation or expenditure of budget authority. 2 U.S.C. § 682(1). Where there is no withholding or delay of budget authority, there is no improper impoundment. B-335747, Apr. 22, 2024; B-331298, Dec. 23, 2020. In the past, we have opined that a reduction to federal positions for the purpose of reducing federal personnel costs was not automatically a withholding or delay that required the transmittal of a special message under the ICA, unless net savings were realized as a result of position reductions. B-115398.32, Nov. 20, 1974. *See* B-331298, Dec. 23, 2020. We explained that if such savings realized by position reductions were offset by the costs of pay increases, precluding a potential rescission or reserve for savings, the ICA would not apply. *Id*. 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. B-337142.1, Jun. 16, 2025.

[32] 2 U.S.C. § 684(b).

[33] 2 U.S.C. §§ 683–684; B-329092, Dec. 12, 2017; 54 Comp. Gen. 453 (1974).

[34] *Id*. § 683. 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.

[35] 2 U.S.C. § 685.

[36] *Id*. § 686.

Congress has established certain functions and officials in this case but has not established a minimum number of employees or more specific requirements for carrying out the functions.[37] In line with our precedent, a RIF to achieve savings does not run afoul of the ICA as long as any net savings generated from the RIF are offset by other allowable expenses. An agency can demonstrate that it is offsetting net savings by showing that it is continuing to obligate and expend all funds provided to the affected account(s).[38] In the pending litigation involving the RIFs to the Offices, the DHS Director of the Budget Division provided sworn statements affirming that each of the Offices "continues to obligate and execute the funding they were provided for fiscal year 2025." Declaration of Ann M. Tipton, at ¶ 3. The Director also asserted that "[a]ll of the Offices are funded through the remainder of fiscal year 2025, and [DHS] will execute that funding." *Id*. From these sworn statements, DHS has represented that it is continuing to obligate and execute FY 2025 funds for the Offices. The SF 133 Report on Budget Execution and Budgetary Resources for DHS, which was last updated on June 20, 2025, shows that DHS incurred direct obligations against its OSEM operations and support account past March 2025, when the RIFs occurred. This account is a lump-sum appropriation, so it is available to fund programs and activities outside of the Offices, but the data provided in the SF 133 report are generally consistent with the DHS Director's statements that FY 2025 funds under this account are continuing to be obligated.

Additionally, the FY 2024 and FY 2025 DHS OSEM operations and support appropriations that fund the Offices are lump-sum appropriations[39] available for "necessary expenses" for "operations and support," and they do not mandate specific funding levels for any of the Offices.[40] We were not able to confirm whether

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[37] As noted previously, there is ongoing litigation challenging the legality of the RIFs in the Offices. Complaint for Declaratory and Injunctive Relief, *Robert F. Kennedy Human Rights et al.,* (D.D.C. April 24, 2025). Our decision does not address this issue; it is limited to the application of the ICA.

[38] We note that the ICA permits the deferral of budget authority "to achieve savings made possible by or through changes in requirements or greater efficiency of operations." 2 U.S.C. § 684(b)(2). It would be permissible for an agency to withhold or delay budget authority for this reason as a deferral, but such deferral requires a special message to be submitted. *See id*. §§ 682(1), 684(b).

[39] A lump-sum appropriation provides funds for several programs or activities, without specifying how much of it is to be spent for each one. B-207697, Oct. 4, 1982. It gives a department or agency discretion in allocating appropriated funds. *Id*.

[40] We have said that when Congress enacts a lump-sum appropriation accompanied by committee reports detailing how it wants funds to be allocated, the agency has no legal obligation to follow such report statements, even if expressed as "directives," unless they can be related to the statutory language itself. B-207697 (Oct. 4, 1982).
(continued...)

the RIFs produced net savings and do not know the status of the employees who received RIF notices, whether they remain on administrative leave or have left the Offices, nor whether additional RIF notices were rescinded. However, DHS has confirmed that it continues to obligate and expend its FY 2025 lump-sum OSEM operations and support appropriation. In addition, we recognize that the agency has broad discretion in allocating its OSEM operations and support appropriation. These factors lead us to conclude that amounts have not been unlawfully withheld under the ICA.

CONCLUSION

Based on the information available to us, we find that DHS's actions to implement Executive Order No. 14210 by conducting RIFs to the Offices have not resulted in the unlawful withholding or delay of FY 2025 funds. As supported by sworn statements from a DHS budget official, DHS is continuing to obligate the remaining FY 2025 funds provided to the Offices. Additionally, the broad grant of discretion provided to DHS through its OSEM operations and support appropriation to choose at what level to fund the Offices weighs against finding an improper impoundment in this case. Therefore, we find that DHS did not violate the ICA.

Our analysis and conclusions here apply to the issues raised under the ICA to 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 legality of the RIFs; that is an issue under current litigation.[41] Neither do we take a position on the policy goals of the directives and programs at issue.

The explanatory statement to the FY 2024 appropriations act does designate funding for each of the three Offices, but this explanatory statement was not incorporated by reference into either the FY 2024 or FY 2025 appropriations acts. *See* 170 Cong. Rec. H1839 (daily ed. Mar. 22, 2024); Pub. L. No. 118-47, 138 Stat. 460 (Mar. 23, 2024); Pub. L. No. 119-4, 139 Stat. 9. Given that the SF 133 report for DHS shows that the OSEM operations and support appropriation account continues to incur direct obligations after the RIF notices were sent out, and given the testimony provided by DHS that it continues to obligate the funding for the Offices, it remains possible that DHS could meet Congress' spending targets in the explanatory statement. Additionally, we note that that these explanatory statement funding targets are not binding themselves.

[41] Complaint, *Robert F. Kennedy Human Rights et al.,* (D.D.C. Apr. 24, 2025).

Changes to these policies and priorities can be addressed through the legislative process with Congress and the Administration.

Edda Emmanuelli Perez
General Counsel

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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

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[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 cancelation 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.

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[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

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[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

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[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]

<u>NIH's Actions</u>

Cancelation 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]

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[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 Memorandum[29], 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

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[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,

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[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.gov[41] 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 2024[44], 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

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[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

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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

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[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]

<u>Application of the ICA to HHS & NIH</u>

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*

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[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

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[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

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[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

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[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

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[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

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[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

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[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 39, 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.

Edda Emmanuelli Perez

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Decision

Matter of: Department of Homeland Security–Application of the Impoundment Control Act to Federal Emergency Management Agency Fiscal Year 2025 Federal Assistance Appropriations

File: B-337204.1

Date: September 15, 2025

DIGEST

Congress appropriates various line-item amounts to the Federal Emergency Management Agency (FEMA), a component in the Department of Homeland Security (DHS), to provide federal assistance. Various executive branch directives issued in recent months impacted how FEMA administered these appropriations by placing restrictions on the obligation or expenditure of federal assistance funds. This decision addresses amounts appropriated in fiscal year 2025. We will issue other decisions addressing amounts appropriated in prior fiscal years, as well as amounts appropriated and set aside for the Building Resilient Infrastructure and Communities program.

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. This includes GAO's responsibilities under the ICA, such as reviewing special messages and reporting impoundments the President has not reported. 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 addressed in its decisions. DHS has not responded to GAO's requests for information regarding the potential impoundment of appropriated funds. When reviewing an agency's actions for compliance with the ICA, we look at the discretion afforded to the agency under relevant statutes, the purpose, length, and timing of a funding pause, and the agency's actions to make funds available for obligation and expenditure. Based on publicly available evidence, including sworn testimony, federal court cases, data on USAspending.gov, apportionment data, agency websites, and other information, we have sufficient information to reach conclusions about compliance with the ICA for the appropriations within our scope of inquiry.

For some appropriations at issue, currently available evidence indicates that FEMA has violated the ICA by improperly withholding or delaying the obligation or expenditure of budget authority. Specifically, we find that FEMA violated the ICA with regard to the Emergency Food and Shelter Program (EFSP) and Shelter and Services Program (SSP).

However, for other not-yet-obligated funding, currently available evidence indicates that FEMA has not violated the ICA at this time. We find no violation for the following programs: State Homeland Security Grant Program, Urban Area Security Initiative, Nonprofit Security Grant Program, Public Transportation Security Assistance Programs, Port Security Grant Program, Assistance to Firefighter Grants, Staffing for Adequate Fire and Emergency Response Grants, Emergency Management Performance Grant Program, Regional Catastrophic Preparedness Grant Program, and Flood Hazard Mapping and Risk Analysis.

GAO is not taking a position on the policy implications of the underlying programs and funding at issue in this decision. This decision addresses compliance with the ICA. Because some of these appropriations are set to expire by the end of the fiscal year, it is crucial that the agency prudently obligates these funds prior to their expiration.

DECISION

Beginning on January 20, 2025, several executive branch orders and agency directives related to federal assistance funding were issued.[1] As a result, the

[1] *See*, Exec. Order No. 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443, 8447 (Jan. 29, 2025); Office of Management and Budget (OMB) Memorandum, *Subject: Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs,* M-25-13, at 2 (Jan. 27, 2025) (M-25-13), *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 Aug. 19, 2025), *available at* https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-14-Rescission-of-M-25-13.pdf (last visited Sept. 8, 2025) (ordering agencies 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" executive orders related to nongovernmental organizations), *rescinded by* OMB Memorandum, *Subject: Rescission of M-25-13*,
(continued...)

Federal Emergency Management Agency (FEMA) delayed obligations of current-year appropriations for certain programs as outlined in this decision.

Pursuant to our reporting responsibilities under the Congressional Budget and Impoundment Control Act of 1974 (ICA), we are issuing this decision addressing whether FEMA complied with the ICA as it delayed the availability of current year funding or implemented various executive branch directives and instructions related to federal assistance programs.[2] The Administration has not sent a special message under the ICA related to FEMA. As explained below, we conclude that FEMA violated the ICA when it withheld certain funds from obligation and expenditure, including funds that were not eligible for withholding under any circumstance pursuant to the ICA's fourth disclaimer, where an agency is precluded from using its procedures to withhold from obligation or expenditure funds that are "require[d]" by law to be spent.[3] For other funds, we conclude that there remains time for FEMA to obligate and expend funds, and FEMA has not violated the ICA at this time.

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 Sept. 8, 2025); Defendants' Status Report Regarding FEMA's Compliance with Preliminary Injunction, *State of New York v. Trump*, 1:25-cv-00039-JJM-PAS, ECF No. 166-2 (D.R.I. Mar. 14, 2025) (Direction on Grants to Non-Governmental Organizations); ECF No. 166-7 (Grant Processing Guidance).

[2] *See* Pub. L. No. 93-344, title X, § 1015, 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 OMB's 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).

[3] 2 U.S.C. § 681(4). Section 681 sets out four disclaimers with respect to the application of the ICA. The first three disclaimers, not relevant to this decision, provide that nothing in the ICA shall be construed as (1) asserting or conceding the constitutional powers or limitations of the Congress or the President; (2) ratifying or approving any impoundment except as pursuant to statutory authority; or (3) affecting the claims or defense of any party to litigation concerning any impoundment. *See* 2 U.S.C. § 681(1)–(3); *see also* B-337375, June 16, 2025.

Our practice when rendering decisions is to contact the relevant agencies to obtain factual information and their legal views on the subject of the request.[4] Accordingly, we contacted the Department of Homeland Security (DHS) to seek additional factual information and its legal views.[5]

DHS has not yet responded to our request for additional factual information and legal views related to this ICA inquiry,[6] but an agency's failure to respond does not preclude our issuance of an opinion.[7] In this case, we have gathered sufficient publicly available evidence from spending data, agency statements, and court filings to draw conclusions about the agency's compliance with the ICA as it carried out the programs within the scope of our inquiry.[8]

When reviewing an agency's actions for compliance with the ICA, we examine the discretion afforded to the agency under relevant statutes to determine actions that are required by law or instances where an agency's discretion is limited with respect to the obligation of funds. The level of agency discretion over program funding has bearing, from an ICA standpoint, on the reasonableness of a potential delay in obligations or expenditures. Thus, we have said that while executive branch officials must take care to ensure that they prudently obligate and expend appropriations during their period of availability, the amount of time required for prudent obligation and expenditure will vary from one program to another.[9] The ICA imposes no specific requirements on the executive branch as to the rate at which it must obligate or expend budget authority.[10] Where an agency shows its actions are within the

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[4] 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.

[5] Letter from General Counsel, GAO, to Acting General Counsel, DHS (June 6, 2025).

[6] We reached out several times to DHS and offered flexibility on extended response deadlines. However, DHS did not provide a response and did not confirm that it would provide one in a timeframe that would allow for our sufficient review and oversight of funds expiring at the close of fiscal year (FY) 2025.

[7] GAO-24-107329, at 10; *see also* B-330107, Oct. 3, 2019.

[8] We are aware that FEMA appears to be taking actions with respect to various programs at issue in this decision. We will monitor such actions and update this decision as necessary.

[9] B-335747, Apr. 22, 2024; B-330330, Dec. 10, 2018.

[10] B-335747, Apr. 22, 2024; B-319189, Nov. 12, 2010.

statutory authority provided for program administration, we will not find an improper impoundment.[11] We also examine the circumstances regarding the purpose of the pause, the length and timing of the pause, and the agency's actions to make funds available for obligation and expenditure.

In the programs involved in this case, we reviewed the underlying program statutes and appropriations to determine what discretion is afforded to the agency with respect to obligations and expenditures, including whether the agency was statutorily mandated to obligate and expend the funds. We examined the purpose of delays, including the actions taken and whether a rationale was provided for such actions. We also considered the length and timing of the delay, the agency's subsequent actions, and historical obligation patterns for the programs to assess the impact of delays on program administration. We also reviewed relevant apportionment documents that OMB, as required by law, posted on a public website.[12]

BACKGROUND

FEMA's primary mission is to "reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation."[13]

In furtherance of that mission, FEMA administers a broad variety of federal assistance programs. In FY 2025, FEMA's Federal Assistance account received line-item appropriations to provide federal assistance "through grants, contracts, cooperative agreements, and other activities," as well as a transfer to this account from U.S. Customs and Border Protection (CBP) "to support sheltering and related

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[11] *See* B-335747, Apr. 22, 2024.

[12] *See* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. E, title II, § 204, 136 Stat. 4459, 4667 (Dec. 29, 2022) (requiring public posting of apportionments). In March 2025, OMB took down the public website containing such statutorily required information, asserting that apportionments are predecisional and deliberative information. We disagreed with OMB's assertion on the grounds that apportionments are legally binding decisions on agencies under the Antideficiency Act and, as such, cannot be predecisional or deliberative. In August 2025, the United States Court of Appeals for the District of Columbia Circuit upheld a lower court decision ordering OMB to restore the website and to disclose the information withheld since its removal. *See* Order, *Citizens for Resp. & Ethics in Wash. v. OMB*, Docket No. 25-5266 (D.C. Cir. Aug. 9, 2025).

[13] 6 U.S.C. § 313(b)(1).

activities provided by non-Federal entities, in support of relieving overcrowding in short-term [CBP] holding facilities."[14] The list of programs funded by this account and discussed within this decision includes: the State Homeland Security Grant Program (SHSGP), Operation Stonegarden (OPSG), Tribal Homeland Security Grant Program (THSGP), Urban Area Security Initiative (UASI), Nonprofit Security Grant Program (NSGP), Public Transportation Security Assistance Programs,[15] Port Security Grant Program (PSGP), Assistance to Firefighter Grants, Staffing for Adequate Fire and Emergency Response Grants (SAFER), Emergency Management Performance Grant Program (EMPG), Flood Hazard Mapping and Risk Analysis (Risk MAP), Regional Catastrophic Preparedness Grant Program (RCPGP), Emergency Food and Shelter Program (EFSP), Next Generation Warning System Grants Program (NGWS), and the Shelter and Services Program (SSP).[16]

Applications for federal assistance are typically made available via notices of funding opportunities (NOFOs). Delays, as compared to past agency practice, in the publication of NOFOs for several of FEMA's grant programs were brought to our attention during the course of ongoing GAO audit work.[17] Our request for the agency's factual information and legal views therefore included inquiries as to anticipated NOFO publication timeframes for programs within the scope of this decision.[18] FEMA typically publishes NOFOs for each of the programs listed above.

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[14] *See* Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. C, title III, 138 Stat. 460, 598, 607–09 (Mar. 23, 2024); *see also* Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title VII, § 1701, 139 Stat. 9, 27 (Mar. 15, 2025) (appropriating to FEMA for FY 2025); Pub. L. No. 118-47, 138 Stat. at 598 (directing CBP to transfer $650 million to FEMA's Federal Assistance account for sheltering activities); Pub. L. No. 119-4, § 1101, 139 Stat. at 10–11 (appropriating to CBP for FY 2025).

[15] The Public Transportation Security Assistance appropriation paragraph also lists Railroad Security Assistance and Over-the-Road Bus Security Assistance Programs, and certain line items within the paragraph are listed under different names in Grants.gov. For the purposes of this decision, we will use "Public Transportation Security Assistance Programs" to generally refer to all programs listed/funded in this paragraph unless a document refers to a more specific program name.

[16] *See* Pub. L. No. 118-47, 138 Stat. at 597–98, 607–08; Pub. L. No. 119-4, 139 Stat. at 10–11, 27.

[17] *See, e.g.*, FEMA's PSGP, GAO 107587 Response to GAO Request for Information from FEMA Grant Programs Directorate (Mar. 31, 2025).

[18] *See* Letter from General Counsel, GAO, to Acting General Counsel, DHS (June 6, 2025).

NOFOs are governed by statutory and regulatory requirements. Title 2 of the Code of Federal Regulations establishes OMB Guidance for Federal Financial Assistance.[19] This guidance is incorporated into DHS regulations at 2 CFR Part 3002.10. In part, this title requires all agencies to "announce specific funding opportunities" that are "not directed to one or more specifically identified applicants."[20] Further, agencies "should make all funding opportunities available for application for at least 60 calendar days," and while the agency may determine that a shorter availability period is sufficient for a particular funding opportunity, none should be available for "less than 30 calendar days unless the Federal agency determines that exigent circumstances justify this."[21]

Additionally, applications for grants funded by five paragraphs of FEMA's Federal Assistance appropriation are subject to a more specific provision as provided in section 303 of that appropriation:

> Applications for grants under the heading ''Federal Emergency Management Agency—Federal Assistance'', for paragraphs (1) through (5), shall be made available to eligible applicants not later than 60 days after the date of enactment of this Act, eligible applicants shall submit applications not later than 80 days after the grant announcement, and the Administrator of the Federal Emergency Management Agency shall act within 65 days after the receipt of an application.[22]

Paragraphs 1 through 5 of the appropriation contain the SHSGP, OPSG, THSGP, UASI, NSGP, Public Transportation Security Assistance Programs, and PSGP.[23]

Beyond the requirements governing NOFOs discussed above, FEMA receives an annual appropriation for the "emergency food and shelter program under title III of the McKinney-Vento Homeless Assistance Act" (EFSP) that contains additional

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[19] *See generally*, 2 C.F.R. § 200.

[20] *Id.* § 200.204.

[21] *Id.* § 200.204(b).

[22] Pub. L. No. 118-47, § 303, 138 Stat. at 610; *see also* Pub. L. No. 119-4, §§ 1101(a)(6), 1105, 139 Stat. at 10–12 (full year continuing resolution incorporating appropriated amounts and all "requirements, authorities, conditions, limitations, and other provisions of the appropriations").

[23] Pub. L. No. 118-47, 138 Stat. at 607.

requirements.[24] The Act establishes an Emergency Food and Shelter Program National Board.[25] Each year, FEMA is required by statute to "award a grant for the full amount that the Congress appropriates for the program . . . to the National Board for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and local governments" within 30 days after the appropriations are made available.[26] The National Board must then disburse "[a]ny amount made available by appropriations acts . . . before the expiration of the 3-month period beginning on the date on which such amount becomes available."[27] The National Board is not permitted to carry out the EFSP program directly, and may only provide appropriated funds for "programs undertaken by private nonprofit organizations and local governments" that are "consistent with the purposes" of the Act.[28]

In FY 2024, several of these programs (SHSGP, UASI, NSGP, Public Transportation Security Assistance Programs, PSGP, and EMPG) published NOFOs on April 16, 2024, less than one month after full year appropriations were enacted.[29] In FY 2021, the most recent Presidential transition year, the majority of these NOFOs were published by February 25, 2021, less than two months after full year appropriations were enacted.[30] In FY 2017, the current President's first term transition year, NOFOs for these programs were published by June 2, 2017, less than one month

[24] *See, e.g.*, Pub. L. No. 118-47, 138 Stat. at 607–08 (directing $117 million to the program in FY 2024); Pub. L. No. 119-4, 139 Stat. at 10–11, 27 (appropriating levels for FY 2025).

[25] 42 U.S.C. § 11331. The National Board is chaired by a Director (by statute, the FEMA Administrator) and composed of members nominated by six private nonprofit organizations. *Id.* §§ 11331, 11351.

[26] *Id.* § 11341.

[27] *Id.* § 11345.

[28] *Id.* § 11343(b)(1)(A)–(B).

[29] *See generally*, Grants.gov search, keyword "2024," DHS/FEMA closed/archive filters; *see also* Pub. L. No. 118-47, 138 Stat. at 607–08 (enacted Mar. 23, 2024).

[30] *See generally*, Grants.gov search, keyword "2021," DHS/FEMA closed/archive filters; *see also* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. F, title III, 134 Stat. 1182, 1461–62 (Dec. 27, 2020).

after full year appropriations were enacted.[31] FY 2025 appropriations were enacted March 15, 2025,[32] and NOFOs for the programs receiving appropriations in FEMA's federal assistance account were published between July 28, 2025, and August 6, 2025, or have yet to be published, as discussed in more detail below.

Executive Branch Actions Impacting FEMA Federal Assistance

On January 20, 2025, Executive Order No. 14159 directed the Secretary of Homeland Security to:

1) "Immediately review and, if appropriate, audit all contracts, grants, or other agreements providing Federal funding to non-governmental organizations supporting or providing services, either directly or indirectly, to removable or illegal aliens, to ensure that such agreements conform to applicable law and are free of waste, fraud, and abuse, and that they do not promote or facilitate violations of our immigration laws;

2) Pause distribution of all further funds pursuant to such agreements pending the results of the review in subsection (a) of this section;

3) Terminate all such agreements determined to be in violation of law or to be sources of waste, fraud, or abuse and prohibit any such future agreements; . . .

4) Initiate claw-back or recoupment procedures, if appropriate, for any [such] agreements."[33]

On January 28, 2025, the Secretary of Homeland Security issued a "Direction on Grants to Non-Governmental Organizations," which required that "[e]ffective immediately, all Department grant disbursements and assessments of grant applications that: (a) go to non-profit organizations or for which non-profit organizations are eligible, and (b) touch in any way on immigration, are on hold pending review, except to the extent required by the controlling legal authority."[34]

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[31] *See generally*, Grants.gov search, keyword "2017," DHS/FEMA closed/archive filters; *see also* Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, div. F, title III, 131 Stat. 135, 416–17 (May 5, 2017).

[32] *See* Pub. L. No. 119-4, §§ 1101(a)(6), 1701, 139 Stat. at 11, 27.

[33] Exec. Order No. 14159, § 19(a)–(c), (e) (numbering added).

[34] Defendants' Status Report Regarding FEMA's Compliance with Preliminary Injunction, *State of New York v. Trump*, 1:25-cv-00039-JJM-PAS, ECF No. 166-2

(continued...)

This directive explicitly applied to the “Shelter and Services Program, and any similar program.”[35]

On February 14, 2025, the former Senior Official Performing the Duties of the FEMA Administrator, Cameron Hamilton, issued “Grant Processing Guidance”.[36] stating that “[g]rants under the Shelter and Services Program (SSP) . . . and Emergency Food and Shelter Program-Humanitarian (EFSP-H) are on hold,” and that “[n]o new obligation, disbursement, or payment of funds previously obligated may be issued pending additional guidance from Secretary Noem.”[37]

On March 31, 2025, after the enactment of the full year continuing resolution, FEMA Grant Programs Directorate (GPD) conveyed its view that under a continuing resolution the DHS Secretary “may exercise discretion to fund programs or return funds to the Treasury.”[38] With respect to PSGP, GPD indicated that “[i]f [the Secretary of Homeland Security] chooses to include funding for PSGP,” GPD had an anticipated timeline for publishing the FY 2025 NOFO and a recommended application deadline to “ensure sufficient time is available for the application review process.”[39] By July 9, 2025, those recommended deadlines had passed without NOFOs being published,[40] and GPD indicated that it did not have an established timeline for administering FY 2025 PSGP funds and that “if FEMA administers the program in FY 2025,” the agency would consider using a previously used award

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(D.R.I. Mar. 14, 2025) (Direction on Grants to Non-Governmental Organizations). This directive closely mirrored the language of a preliminarily enjoined and now-rescinded OMB memo issued January 27, 2025, which required all “Federal agencies to identify and review all Federal financial assistance[] programs and supporting activities consistent with the President’s policies and requirements.” *See* M-25-13, *rescinded by* M-25-14. The memo also ordered agencies 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” executive orders related to nongovernmental organizations. M-25-13.

[35] *State of N.Y.*, ECF No. 166-2.

[36] *State of N.Y.*, ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 11); ECF No. 166-7 (Grant Processing Guidance).

[37] *State of N.Y.*, ECF No. 166-7 (Grant Processing Guidance).

[38] FEMA’s PSGP, GAO 107587 – Response to GAO Request for Information from FEMA Grant Programs Directorate (Mar. 31, 2025).

[39] *Id.*

[40] *See id.*

process to conduct the application review in an abbreviated timeframe "ahead of the September 30 deadline."[41]

Publication of NOFOs

FEMA published FY 2025 NOFOs for the SHSGP, NSGP, and EMPG program on July 28, 2025.[42] FEMA published NOFOs for the EFSP, THSGP, UASI, OPSG, Public Transportation Security Assistance Programs, PSGP, and RCPGP on August 1, 2025.[43] FEMA published the NOFO for the NGWS on August 6, 2025.[44] All NOFOs indicate the agency's intent to award funds on or before September 30, 2025.[45]

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[41] FEMA's PSGP, GAO 107587 – Response to GAO Request for Information from FEMA Grant Programs Directorate (July 9, 2025).

[42] *See* DHS, *Fiscal Year 2025 Homeland Security Grant Program,* No. DHS-25-GPD-067-00-98 (July 28, 2025) (FY 2025 SHSGP NOFO); DHS, *Fiscal Year 2025 Nonprofit Security Grant Program*, No. DHS-25-GPD-008-00-99 (July 28, 2025) (FY 2025 NSGP NOFO); DHS, *Fiscal Year 2025 Emergency Management Performance Grant Program*, No. DHS-25-GPD-042-01-99 (July 28, 2025) (FY 2025 EMPG NOFO).

[43] *See* DHS, *Fiscal Year 2025 Emergency Food and Shelter National Board Program,* No. DHS-25-DAD-024-00-99 (Aug. 1, 2025) (FY 2025 EFSP NOFO); DHS, *Fiscal Year 2025 Tribal Homeland Security Grant Program,* No. DHS-25-GPD-150-00-99 (Aug. 1, 2025) (FY 2025 THSGP NOFO); DHS, *Fiscal Year 2025 Homeland Security Grant Program,* No. DHS-25-GPD-067-00-98 (updated Aug. 1, 2025 to include UASI/OPSG funding) (FY 2025 UASI/OPSG NOFO); DHS, *Fiscal Year 2025 Transit Security Grant Program,* No. DHS-25-GPD-075-00-99 (Aug. 1, 2025) (FY 2025 TSGP NOFO); DHS, *Fiscal Year 2025 Intercity Bus Security Grant Program,* No. DHS-25-GPD-057-00-97 (Aug. 1, 2025) (FY 2025 IBSGP NOFO); DHS, *Fiscal Year 2025 Intercity Passenger Rail Program,* No. DHS-25-GPD-157-00-98 (Aug. 1, 2025) (FY 2025 IPRP NOFO); DHS, *Fiscal Year 2025 Port Security Grant Program,* No. DHS-25-GPD-056-00-99 (Aug. 1, 2025) (FY 2025 PSGP NOFO); DHS, *Fiscal Year 2025 Regional Catastrophic Preparedness Grant Program,* No. DHS-25-GPD-111-01-99 (Aug. 1, 2025) (FY 2025 RCPGP NOFO).

[44] *See* DHS, *Fiscal Year 2025 Next Generation Warning System Grant Program,* No. DHS-25-IPAWS-138-00-99 (Aug. 6, 2025) (FY 2025 NGWS NOFO).

[45] *See* notes 42–44, *supra*.

FY 2025 NOFOs for the SSP,[46] Assistance to Firefighter Grants, SAFER grants, and Risk MAP grants are not yet published.[47]

DISCUSSION

At issue here is whether FEMA violated the ICA by delaying obligations or expenditures for FY 2025 federal assistance appropriations. In the case of some funds, currently available evidence indicates that FEMA violated the ICA because under the fourth disclaimer, an agency is precluded from using its procedures to withhold from obligation or expenditure funds that are "require[d]" by law to be spent.[48] In the case of other funds, we find that FEMA improperly withheld funds by delaying the obligation or expenditure of budget authority. In other cases, currently available evidence indicates that FEMA did not violate the ICA.

Impoundment Control Act

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."[49] 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

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[46] An apportionment schedule recently made public indicates that FEMA transferred $32.5 million of the amount provided for SSP to "Immigration & Customs Enforcement [ICE] . . . for Custody Operations from DHS's first Reprogramming and Transfer Notification." *See* OMB, *Approved Apportionment FY 2025 DHS FEMA TAFS 070-2025-2025-0413 Iteration 2*, OMB Footnote B5 (June 27, 2025) (discussing the transfer of funds between FEMA and ICE accounts); *see also* Pub. L. No. 118-47, § 503(c), 138 Stat. at 615 (allowing DHS to transfer up to 5 percent of an appropriation to another DHS appropriation in FY 2024); Pub. L. No. 119-4, § 1105, 139 Stat. at 12 (extending DHS's transfer authority into FY 2025). *But see* Pub. L. No. 118-47, § 503(d)(2), 138 Stat. at 615 (prohibiting the transfer of funds that will "decrease funding for grant programs"). We have not analyzed whether the transfer carried out here was consistent with this prohibition.

[47] Searches of funding opportunities for these programs were last conducted on September 2, 2025.

[48] 2 U.S.C. § 681(4).

[49] U.S. Const. art. I, § 9, cl. 7.

houses of Congress and Congress may subsequently override a presidential veto.[50] 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.[51] Instead, the President must "faithfully execute" the law as Congress enacts it.[52] It follows from this that Executive Orders cannot function to repeal or undo legislation.

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

The Constitution grants the President no unilateral authority to withhold funds from obligation.[55] 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.[56] The ICA separates impoundments into two exclusive categories – deferrals and rescissions. First, the President may seek to temporarily withhold funds by proposing a "deferral."[57] 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."[58]

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[50] *Id.* § 7, cls. 2, 3.

[51] *Clinton v. City of New York*, 524 U.S. 417, 438 (1998).

[52] U.S. Const., art. II, § 3.

[53] *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.).

[54] *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").

[55] *See* B-135564, July 26, 1973.

[56] *See* 2 U.S.C. §§ 681–688.

[57] *Id.* § 684.

[58] *Id.* § 683.

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.[59] These special messages must provide detailed and specific reasoning to justify the withholding, as set out in the ICA.[60] The burden to justify a withholding of budget authority rests with the executive branch.

While the ICA does not circumscribe why 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.[61] With respect to deferrals, the ICA specifies that the funds at issue are only temporarily withheld and must still be obligated before expiration.[62] 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.[63] The ICA's fourth disclaimer further clarifies that the ICA's proposed deferral and recission 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.[64]

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[59] 2 U.S.C. §§ 683–684.

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

[61] 2 U.S.C. § 684(b).

[62] *Id.* § 684(a) ("A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message . . . is transmitted."); B-329092, Dec. 12, 2017, at 3 ("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).

[63] 2 U.S.C. § 683(b).

[64] *Id.* § 681(4). Section 681 sets out four disclaimers with respect to the application of the ICA. The first three disclaimers, not relevant to the analysis here, provide that nothing in the ICA shall be construed as (1) asserting or conceding the constitutional powers or limitations of the Congress or the President; (2) ratifying or approving any impoundment except as pursuant to statutory authority; or (3) affecting the claims or defense of any party to litigation concerning any impoundment. *See id.* § 681(1)–(3); *see also* B-337375, June 16, 2025.

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.[65]

Application of the ICA to FY 2025 FEMA Federal Assistance Appropriations

The dates of NOFO publication for certain programs within this decision were delayed beyond what past agency practice, OMB regulations, and in some cases statutory provisions would require. These delays prompted our initial inquiry to the agency and guided our review of past obligation and spending practices to inform whether evidence of a withholding existed for each program.

However, between July 28, 2025, and August 6, 2025, FEMA published NOFOs for each of the programs within the scope of this decision with the exception of SSP, Assistance to Firefighter Grants, SAFER, and Risk MAP. And while the agency has in several cases disregarded statutory and regulatory timelines that outline (1) by when a NOFO should be published for certain programs and (2) for how long an application should be open to applicants,[66] NOFOs are now published for certain programs, and the agency has indicated its intent to award and obligate those funds prior to their expiration. As such, our ICA analysis must turn to whether the delayed NOFO publication itself caused a delay in the obligation or expenditure of funds.

In a recent decision, we found that the National Institutes of Health (NIH) paused its publication of grant review meeting notices, which caused a corresponding withholding of grant funding.[67] Our determination considered the amount and timing of the agency's obligations for grant funding during the period of the meeting notice

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[65] 2 U.S.C. §§ 685–686.

[66] *See* Pub. L. No. 118-47, § 303, 138 Stat. at 610 (requiring that applications for certain programs be made available within 60 days of the enactment of appropriations); Pub. L. No. 119-4, §§ 1101(a)(6), 1105, 139 Stat. at 11–12 (carrying forward section 303 requirements under the FY 2025 continuing resolution, which would require that the NOFOs for programs within paragraphs 1-5 of FEMA's Federal Assistance appropriation should have been published no later than May 14, 2025, 60 days after the enactment of the FY 2025 continuing resolution). *See also*, 2 C.F.R. § 200.204 (providing guidance on how long NOFOs should be available to applicants). While GAO looks to other statutory and regulatory authorities to inform its conclusions as to whether the ICA has been violated, this opinion addresses only compliance with the ICA.

[67] B-337203, Aug. 5, 2025.

pause as compared to the same period in previous fiscal years.[68] In the relevant fiscal quarter, the meeting notice pause caused NIH obligations to drop by 40 percent compared to FY 2024 and by 47 percent compared to FY 2023.[69] NIH did not offer any evidence that it did not withhold funds and did not show that the delay was a permissible programmatic one.[70] We therefore concluded that even after NIH had resumed publishing its grant review meeting notices and incurring grant obligations, the period of pause and reduced obligations constituted an improper withholding of appropriated funds from obligation or expenditure.[71]

As with NIH, FEMA has delayed obligations compared to historical data as a result of delayed or unpublished NOFOs for two grant programs: the Emergency Food and Shelter Program (EFSP) and Shelter and Services Program (SSP).

FEMA published a NOFO for the EFSP on August 1, 2025, indicating the agency's intent to award funds by September 15, 2025.[72] The EFSP is subject to the ICA's fourth disclaimer because the program's authorizing statute requires FEMA to award the full appropriated amount for the program to the National Board within 30 days after appropriations are made available and requires the National Board to disburse those funds to localities by three months after appropriations are made available.[73] Both of these respective statutory deadlines, April 14, 2025, and June 15, 2025, have passed without the award to the National Board being made.[74] Under the

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[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *See* FY 2025 EFSP NOFO at 4.

[73] 42 U.S.C. §§ 11341, 11345.

[74] Appropriations for EFSP were enacted on March 15, 2025. Pub. L. No. 119-4, § 1701, 139 Stat. at 27. Based on this date, the statutory deadline for award to the National Board was April 14, 2025, and the statutory deadline for disbursement to localities was June 15, 2025. *See* 42 U.S.C. §§ 11341, 11345. In contrast, in FY 2024, the full year appropriation providing $117 million in EFSP funds was enacted March 23, 2024. *See* Pub. L. No. 118-47, 138 Stat. at 608. FEMA published the NOFO on April 9, 2024, and this obligation was documented in USAspending.gov on April 22, 2024. *See* DHS, *Fiscal Year 2024 Emergency Food and Shelter National Board Program,* No. DHS-24-DAD-024-00-99 (Apr. 9, 2024); USASpending.gov, *Grant Summary: FAIN EMW-2024-FS-05000, available at*

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fourth disclaimer, the ICA's temporary withholding authority is not available because the agency retains no discretion as to whether or when the funds will be obligated or disbursed to the designated recipient.[75] While the NOFO establishes the agency's intent to award funds prior to their expiration, we nevertheless conclude that the delay in award and disbursement of funds,[76] which are subject to a statutory timeline, constitutes an impermissible withholding and a violation of the ICA under the fourth disclaimer.

For SSP funds, a NOFO is not yet published. This program was first appropriated in FY 2023, and since then has recorded positive obligation rates on USAspending.gov in months ranging from May to September.[77] While larger obligation rates tend to be recorded in fiscal quarter four, spending data shows that deobligations exceeded obligations by $887,448,614 for SSP funds in FY 2025, as compared to obligations exceeding deobligations by $363,800,000 in FY 2023 and $640,900,000 in FY 2024.[78] This program has also experienced interruptions based on specific executive branch orders and directives that disallowed new obligations of SSP

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https://www.usaspending.gov/award/ASST_NON_EMW-2024-FS-05000_7022 (last visited Sept. 8, 2025).

[75] *See* 2 U.S.C. § 681(4).

[76] *See* FY 2025 EFSP NOFO at 16 (stating that the obligation of program funds occurs upon award).

[77] To compile this data, GAO staff searched USAspending.gov for grants under the Assistance Listings associated with the SSP Program (97.141 and 97.149). We then downloaded obligation data results over time by month and year. This data was last downloaded on August 20, 2025.

[78] *Id.* *See* USASpending.gov, *Analyst's Guide to Federal Spending Data*, at 2, *available at* www.usaspending.gov/data/analyst-guide-download.pdf (last visited Sept. 8, 2025); National Finance Center, *Deleting Records from USAspending.gov*, *available at* https://www.nfc.usda.gov/FSS/ClientServices/FMS/DATA_Act/documents/USDA_Reporting_Instructions/DeletingRecords_USAspending.pdf (last visited Sept. 8, 2025) (explaining that "revisions recording negative obligations are to be used when (1) "[a]n award was made but later cancelled in full" or (2) "[a]n award was established, and funds were disbursed, but the project was later rescinded/terminated; that "deobligated dollar amount[s]" will be reported as "negative number[s];" and that USAspending will use all reported positive and negative amounts to calculate the obligation amounts displayed in the results over time data view).

funds,[79] and it has been omitted from the President's FY 2026 Budget Request.[80] Further, the Administration has not submitted a special message alerting Congress to its intent to withhold these funds, nor has it otherwise justified the withholding of obligations for this program. The totality of the facts and circumstances here therefore establish the intent to impermissibly defer or preclude the obligation of budget authority for the SSP program.

However, for the grants at issue aside from the EFSP and SSP, delayed NOFO publication does not necessarily indicate an improper withholding of funds at this time. Most of these grants, including those subject to a statutory NOFO publication deadline, are regularly awarded and obligated in fiscal quarter four, including as late as August and September of each year.[81] While earlier NOFO publication typically affords applicants more time to submit and the agency more time to review applications and obligate funds, the agency has now condensed the application and review periods for each program to account for the delayed publication.[82] Agency officials have also articulated potential plans for how they can prudently obligate appropriated funds even within shortened review periods.[83] As such, for the following programs, the atypically late NOFO publication combined with the totality of the circumstances does not indicate an impermissible delay in the obligation or expenditure of budget authority under the ICA: State Homeland Security Grant Program (SHSGP), Operation Stonegarden (OPSG), Tribal Homeland Security Grant Program (THSGP), Urban Area Security Initiative (UASI), Nonprofit Security Grant Program (NSGP), Public Transportation Security Assistance Programs, Port

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[79] The application of the ICA to the interruption of prior year FEMA federal assistance appropriations will be addressed by a separate GAO decision.

[80] *See* OMB, *Technical Supplement to the 2026 Budget: Appendix*, at 408, 436, *available at* https://www.whitehouse.gov/wp-content/uploads/2025/05/appendix_fy2026.pdf (last visited Sept. 8, 2025).

[81] To compile this data, GAO staff searched USAspending.gov for each program's Assistance Listing and reviewed obligation data over time by fiscal quarter and month to review historical trends. Relevant Assistance Listings are 97.067 (SHSGP, THSGP, UASI, OPSG), 97.008 (NSGP), 97.075 and 97.057 (Public Transportation Security Assistance Programs), 97.056 (PSGP), 97.042 (EMPG), 97.111 (RCPGP), and 97.138 (NGWS). This data was last downloaded on August 20, 2025.

[82] *See generally*, notes 42–44, *supra* (outlining publication details for FY 2025 NOFOs, which contain periods of application and expected review and award dates for each program).

[83] *See, e.g.*, note 38, *supra* (explaining that for the PSGP the agency would consider using a previously used award process to conduct the application review in an abbreviated timeframe "ahead of the September 30 deadline").

Security Grant Program (PSGP), Emergency Management Performance Grant Program (EMPG), Regional Catastrophic Preparedness Grant Program (RCPGP), and Next Generation Warning System Grants Program (NGWS).[84] Additionally, each of these programs, with the exception of RCPGP, remains in the President's FY 2026 Budget Request.[85]

There are similarly three programs for which we conclude the agency has not impermissibly delayed the obligation of budget authority even though NOFOs are not yet published: Assistance to Firefighter Grants, Staffing for Adequate Fire and Emergency Response Grants (SAFER), and Flood Hazard Mapping and Risk Analysis (Risk MAP).

Assistance to Firefighter Grants and SAFER Grants each receive two-year appropriations, meaning that the FY 2025 appropriations do not expire until the end of FY 2026.[86] NOFOs for FY 2024 funds were published November 6, 2024, and May 20, 2025, respectively.[87] Based on the information available to us, there is no reported impact to prior year funding for these programs, and the programs remain

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[84] Like the EFSP, two additional programs within this decision are also subject to the ICA's fourth disclaimer: the EMPG program and SHSGP. The EMPG program is authorized by the Post-Katrina Emergency Management Reform Act of 2006 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the SHSGP is authorized by the Homeland Security Act of 2002. See Pub. L. No. 118-47, 138 Stat. at 607–08 (providing appropriations for these programs in accordance with the authorizing statutes). These authorizing acts provide a mandatory minimum allocation or statutory formula for distributing federal funds to states or their subdivisions. See GAO, A Glossary of Terms Used in the Federal Budget Process, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 60, available at https://www.gao.gov/products/gao-05-734sp; 6 U.S.C. § 762(d); 6 U.S.C. § 605(e). However, unlike the EFSP, these statutory mandates do not dictate specific timelines by which the agency must award and disburse funds.

[85] As we discuss in more detail below, a proposed discontinuation of a program through the budget request alone does not constitute a withholding. *See* note 94, *infra*.

[86] *See* Pub. L. No. 118-47, 138 Stat. at 608 (appropriating two-year funds for FY 2024); Pub. L. No. 119-4, § 1701, 139 Stat. at 27 (appropriating funds for FY 2025).

[87] *See* DHS, *Assistance to Firefighters Grant Program (AFG)*, DHS-24-GPD-044-00-98 (Nov. 6, 2024); DHS, *Fiscal Year 2024 Staffing for Adequate Fire and Emergency Response (SAFER)*, DHS-24-GPD-083-00-99 (May 20, 2025).

in the President's FY 2026 Budget Request.[88] The facts and circumstances therefore do not at this time indicate the intent to withhold or delay the obligation or expenditure of FY 2025 budget authority for the Assistance to Firefighter and SAFER Grants.

Risk MAP funds remain available until expended and remain in the President's FY 2026 Budget Request.[89] Historically, FEMA has published NOFOs for this funding at varying points during the fiscal year, ranging from January to August.[90] USAspending.gov data for this program reflects negative obligations in recent FY 2025 quarters, but low and/or negative obligations rates also occurred in early fiscal quarters of FYs 2021-2024,[91] and positive obligations for the program are regularly not shown until quarter four of each year.[92] The facts and circumstances therefore do not at this time indicate the intent to withhold or delay the obligation or expenditure of FY 2025 budget authority for Risk MAP.

President Trump's FY 2026 Budget Request omits funding for the EFSP, NGWS, RCPGP, and SSP.[93] While we acknowledge that a proposed discontinuation of a

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[88] OMB, *Technical Supplement to the 2026 Budget: Appendix*, at 436, *available at* https://www.whitehouse.gov/wp-content/uploads/2025/05/appendix_fy2026.pdf (last visited Sept. 8, 2025).

[89] *Id.;* Pub. L. No. 118-47, 138 Stat. at 608 (appropriating no-year funds for FY 2024); Pub. L. No. 119-4, § 1701, 139 Stat. at 27 (appropriating funds for FY 2025).

[90] NOFOs for this funding are typically published with the title "Cooperating Technical Partners (CTP) Program" on Grants.gov. *See, e.g.*, DHS, *HQ Fiscal Year 2024 Cooperating Technical Partners (CTP) Program*, DHS-24-MT-045-00-99 (June 12, 2024) ("The objectives of the CTP program are primarily to support the mission and objectives of the NFIP's Flood Hazard Mapping Program through FEMA's flood hazard identification and risk assessment programs, including the Risk MAP program.") To compile this data, GAO staff searched Grants.gov for this program, and reviewed publication dates for fiscal years dating back to 2008 in archived and closed documents. This data was last searched on August 20, 2025.

[91] To compile this data, GAO staff searched USAspending.gov for the program's Assistance Listing (97.045) and reviewed obligation data over time by fiscal quarter and year. This data was last downloaded on August 21, 2025.

[92] *Id.*

[93] *Compare* OMB, *Technical Supplement to the 2026 Budget: Appendix* at 408, 436, *available at* https://www.whitehouse.gov/wp-content/uploads/2025/05/appendix_fy2026.pdf (last visited Sept. 8, 2025) *with* Pub. L. No. 118-47, 138 Stat. at 597–98, 607–08.

program through the budget request alone does not constitute a withholding, prior decisions make clear that cancellation of funding can only be accomplished through a duly enacted law,[94] and withholding unobligated funding based on a future budget request would violate the ICA.[95] Our prior decisions also articulate that the 45-day review period for proposed rescissions under the ICA may not be used to, in a manner of speaking, "run out the clock" on appropriations and effect so-called "pocket rescissions," whereby funds expire before Congress has the full statutory period to consider the proposal.[96] We emphasize that funds appropriated in FY 2025 must be prudently obligated during their period of availability, regardless of whether the administration seeks to cancel these funds in future fiscal years.

CONCLUSION

Our assessment of publicly available information, including statements by DHS and FEMA officials, historical timing of NOFO publication and obligations, data on USAspending.gov, apportionment data, and information on FEMA's website, indicates that FEMA violated the ICA when it withheld or delayed the obligation of current year funds appropriated for the EFSP and SSP. The burden to justify withholdings rests with the executive branch, and GAO has a statutory duty to report to Congress impoundments the President has not reported.

The agency recently published NOFOs for current year funds for the SHSGP, OPSG, THSGP, UASI, NSGP, Public Transportation Security Assistance Programs, PSGP, EMPG, RCPGP, and NGWS. These NOFOs indicate the agency's intent to obligate funds prior to their expiration, and the timing of these publications has not yet impacted the agency's typical rate and timing of awards and obligations for the programs. We therefore find no ICA violation with respect to these funds at this time.

Other funds appropriated in FY 2025 remain available for obligation beyond the end of this fiscal year, and the facts and circumstances available do not indicate the agency's intent to withhold that budget authority from obligation even though NOFOs remain unpublished–specifically, this includes funds for the Assistance for Firefighter

[94] B-333110, June 15, 2021 (no impoundment occurred where obligations of program funds continued despite proposed cancellation in future year budget proposals).

[95] *See* B-329092, Dec. 12, 2017 (impoundment occurred where an agency was withholding program funds in anticipation of congressional enactment of proposed cancellation in future year budget proposals).

[96] B-330330, Dec. 10, 2018, at 5 ("[T]he ICA does not permit budget authority proposed for rescission to be withheld until its expiration simply because the 45-day period has not yet elapsed.").

Grants, SAFER, and Risk MAP programs. We therefore find no present ICA violation with respect to these funds.

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 FEMA help ensure compliance with the ICA and appropriations law. GAO does not take a position on the policy goals of DHS or FEMA, and this decision is not to be interpreted as taking a position on the underlying policies entailed. Changes to FEMA's grant administration functions can be addressed through the legislative process with Congress and the Administration.

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Decision

Matter of: Department of Homeland Security–Application of the Impoundment Control Act to Federal Emergency Management Agency Prior Year Federal Assistance Appropriations

File: B-337204.2

Date: September 29, 2025

DIGEST

Congress appropriates various line-item amounts to the Federal Emergency Management Agency (FEMA), a component in the Department of Homeland Security (DHS), to provide federal assistance. Various executive branch directives issued in recent months impacted these appropriations from fiscal years (FYs) 2024 and prior fiscal years by placing funds under review, deobligating awarded funds, or otherwise withholding funds from obligation or expenditure. This decision addresses amounts appropriated in prior fiscal years, including FYs 2021-2024.

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.

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. 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 addressed in its decisions. DHS has not responded to GAO's multiple requests for information regarding the potential impoundment of appropriated funds. When reviewing an agency's actions for compliance with the ICA, we look at the discretion afforded to the agency under relevant statutes, the purpose, length, and timing of a funding pause, and the actions taken to make funds available for obligation and expenditure.

Based on publicly available evidence, including sworn testimony, federal court cases, data on USAspending.gov, agency websites, and other information, we have sufficient information to reach conclusions about compliance with the ICA for the programs within our scope of inquiry.

Currently available evidence indicates that FEMA has violated the ICA by improperly withholding, delaying, or effectively precluding the obligation or expenditure of budget authority for the following programs: Emergency Food and Shelter Program (EFSP), Shelter and Services Program (SSP), and Next Generation Warning System Grants Program (NGWS).

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

GAO is not taking a position on the policy implications of the underlying programs and funding at issue in this decision. This decision addresses compliance with the ICA.

DECISION

Pursuant to our reporting responsibilities under the Impoundment Control Act of 1974 (ICA), we are issuing this decision[1] addressing whether the Federal Emergency Management Agency (FEMA) complied with the ICA as it implemented various executive branch directives and instructions related to federal assistance programs.[2] The Administration has not sent a special message under the ICA related to FEMA. As explained below, we conclude that FEMA violated the ICA when it withheld certain funds from obligation and expenditure, including funds that were not eligible for withholding under any circumstance pursuant to the ICA's fourth

[1] We issued a decision addressing amounts appropriated in fiscal year 2025. B-337204.1, Sept. 15, 2025. We will also be issuing a decision on the funds appropriated and set aside for the Building Resilient Infrastructure and Communities Program.

[2] *See* Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, title X, § 1015, 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 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).

disclaimer, where an agency is precluded from using its procedures to withhold from obligation or expenditure funds that are "require[d]" by law to be spent.[3]

Our practice when rendering decisions is to contact the relevant agencies to obtain factual information and their legal views on the subject of the request.[4] Accordingly, we contacted the Department of Homeland Security (DHS) to seek factual information and its legal views.[5]

DHS has not yet responded to our request for factual information and legal views,[6] but an agency's failure to respond does not preclude our issuance of an opinion.[7] In this case, we have gathered sufficient publicly available evidence from spending data and apportionments, agency statements, and federal court cases to draw conclusions about the programs within our scope of inquiry. Thus, we have sufficient evidence to reach conclusions about the agency's compliance with the ICA.

When reviewing an agency's actions for compliance with the ICA, we examine the discretion afforded to the agency under relevant statutes to determine actions that are required by law or instances where an agency's discretion is limited with respect to the obligation of funds.[8] The level of agency discretion over program funding has bearing, from an ICA standpoint, on the reasonableness of a potential delay in obligations or expenditures. Thus, we have said that while executive branch officials

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[3] 2 U.S.C. § 681(4). Section 681 sets out four disclaimers with respect to the application of the ICA. The first three disclaimers, not relevant to this decision, provide that nothing in the ICA shall be construed as (1) asserting or conceding the constitutional powers or limitations of the Congress or the President; (2) ratifying or approving any impoundment except as pursuant to statutory authority; or (3) affecting the claims or defense of any party to litigation concerning any impoundment. *See* 2 U.S.C. § 681(1)–(3); *see also* B-337375, June 16, 2025.

[4] 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.

[5] Letter from General Counsel, GAO, to Acting General Counsel, DHS (June 6, 2025).

[6] We reached out several times to DHS and offered flexibility on extended response deadlines. However, DHS did not provide a response and did not confirm that it would provide one in a timeframe that would allow for our sufficient review and oversight of funds.

[7] GAO-24-107329, at 10; *see also* B-330107, Oct. 3, 2019.

[8] B-337142, June 16, 2025; *see also* B-335747, Apr. 22, 2024.

must take care to ensure that they prudently obligate and expend appropriations during their period of availability, the amount of time required for prudent obligation and expenditure will vary from one program to another.[9] The ICA imposes no specific requirements on the executive branch as to the rate at which it must obligate or expend budget authority.[10] Where an agency shows its actions are within the statutory authority provided for program administration, we will not find an improper impoundment.[11] We also consider the circumstances regarding the purpose of the pause, the length and timing of the pause, and the actions taken to make funds available for obligation and expenditure.[12]

In the programs involved in this case, we reviewed the underlying program statutes and appropriations to determine what discretion is afforded to the agency with respect to obligations and expenditures, including whether the agency was statutorily mandated to obligate and expend the funds. We examined the purpose of the pauses, including the actions taken and the rationale provided for such actions. We also considered evidence of the length and timing of the pause and the agency's subsequent actions. In addition, we reviewed historical obligational patterns for the programs to assess the timing of such obligations in carrying out the programs. We also reviewed relevant apportionment documents that the Office of Management and Budget (OMB), as required by law, posted on a public website.[13]

We note that there is ongoing litigation related to FEMA's cancellation of grants, which we discuss throughout this decision where relevant. Our decision here does not address FEMA's authority to terminate grant agreements nor the processes by

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[9] B-335747, Apr. 22, 2024; B-330330, Dec. 10, 2018.

[10] B-335747, Apr. 22, 2024; B-319189, Nov. 12, 2010.

[11] B-335747, Apr. 22, 2024.

[12] *See generally*, B-337233, July 23, 2025, at 8–9.

[13] *See* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. E, title II, § 204, 136 Stat. 4459, 4667 (Dec. 29, 2022) (requiring public posting of apportionments). In March 2025, OMB took down the public website containing such statutorily required information, asserting that apportionments are predecisional and deliberative information. We disagreed with OMB's assertion on the grounds that apportionments are legally binding decisions on agencies under the Antideficiency Act and, as such, cannot be predecisional or deliberative. In August 2025, the United States Court of Appeals for the District of Columbia Circuit upheld a lower court decision ordering OMB to restore the website and to disclose the information withheld since its removal. *See* Order, *Citizens for Resp. & Ethics in Wash. v. OMB*, Docket No. 25-5266 (D.C. Cir. Aug. 9, 2025).

which it terminated them. Instead, our decision focuses on whether a withholding of budget authority in violation of the ICA occurred.

BACKGROUND

FEMA's primary mission is to "reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation."[14]

In furtherance of that mission, FEMA administers a broad variety of federal assistance programs. Relevant to this decision, FEMA receives line-item appropriations for programs that provide federal assistance "through grants, contracts, cooperative agreements, and other activities."[15] Congress also directs U.S. Customs and Border Protection (CBP) to transfer a portion of one of its appropriations to FEMA "to support sheltering and related activities provided by non-Federal entities, in support of relieving overcrowding in short-term [CBP] holding facilities."[16]

Beginning on January 20, 2025, the President and other executive-branch officials issued several orders and directives related to federal assistance funding:[17]

- Executive Order No. 14159, *Protecting the American People Against Invasion* (Jan. 20, 2025);
- OMB Memorandum, *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs,* M-25-13 (Jan. 27, 2025) (M-25-13), *rescinded by* OMB Memorandum, *Rescission of M-25-13*, M-25-14 (Jan. 29, 2025);

[14] 6 U.S.C. § 313.

[15] *See, e.g.*, Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. C, title III, 138 Stat. 460, 607–09 (Mar. 23, 2024); *see also* Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title VII, § 1701, 139 Stat. 9, 27 (Mar. 15, 2025) (appropriating for FY 2025).

[16] *See, e.g.*, Pub. L. No. 118-47, 138 Stat. at 598 (directing CBP to transfer $650 million to FEMA's Federal Assistance account for sheltering activities).

[17] Several of these directives appear as exhibits in court filings across multiple federal district court cases reviewed for this decision. Citations to these cases and exhibits are provided throughout this decision where directives relate to each program at issue.

- DHS, *Direction on Grants to Non-Governmental Organizations* (Jan. 28, 2025);
- FEMA Office of Grants Administration Emails (Feb. 10–11, 2025);
- FEMA Memorandum, *Grant Processing Guidance* (Feb. 14, 2025);
- DHS Memorandum for All Agencies and Offices, *Restricting Grant Funding for Sanctuary Jurisdictions* (Feb. 19, 2025);
- Executive Order No. 14290, *Ending Taxpayer Subsidization of Biased Media* (May 1, 2025).

In implementing these orders and directives, FEMA placed federal assistance funds appropriated in fiscal year (FY) 2024 and prior fiscal years under review, deobligated awarded funds, and otherwise withheld appropriated funds from obligation or expenditure. The discussion below includes an overview of the actions relevant to each of the programs addressed in this decision.

DISCUSSION

At issue here is whether FEMA violated the ICA while implementing various executive branch orders and directives related to federal funding. Currently available evidence indicates that FEMA violated the ICA by improperly withholding, delaying or effectively precluding the obligation or expenditure of budget authority for the Emergency Food and Shelter Program (EFSP), Shelter and Services Program (SSP), and Next Generation Warning System Grants Program (NGWS).

Impoundment Control Act

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."[18] 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.[19] 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.[20] Instead, the President must

[18] U.S. Const. art. I, § 9, cl. 7.

[19] *Id.* at art. I, § 7, cl. 2, 3.

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

"faithfully execute" the law as Congress enacts it.[21] It follows from this that Executive Orders cannot function to repeal or undo legislation.

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.[22] In fact, Congress was concerned about the failure to prudently obligate according to its congressional prerogatives when it enacted and later amended the ICA.[23]

The Constitution grants the President no unilateral authority to withhold funds from obligation.[24] 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.[25] The ICA separates impoundments into two exclusive categories—deferrals and rescissions. First, the President may seek to temporarily withhold funds by proposing a "deferral."[26] 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."[27]

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.[28] These special messages must provide detailed and specific

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[21] U.S. Const., art. II, § 3.

[22] *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).

[23] *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").

[24] *See* B-135564, July 26, 1973.

[25] *See* 2 U.S.C. §§ 681–688.

[26] *Id.* § 684.

[27] *Id.* § 683.

[28] 2 U.S.C. §§ 683–684.

reasoning to justify the withholding, as set out in the ICA.[29] The burden to justify a withholding of budget authority rests with the executive branch.

While the ICA does not circumscribe why 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.[30] With respect to deferrals, the ICA specifies that the funds at issue are only temporarily withheld and must still be obligated before expiration.[31] 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.[32] The ICA's fourth disclaimer further clarifies that the ICA's proposed deferral and recission 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.[33]

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.[34]

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

[30] 2 U.S.C. § 684(b).

[31] *Id.* § 684 ("A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message . . . is transmitted."); 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).

[32] 2 U.S.C. § 683(b).

[33] *Id.* § 681(4). Section 681 sets out four disclaimers with respect to the application of the ICA. The first three disclaimers, not relevant to the analysis here, provide that nothing in the ICA shall be construed as (1) asserting or conceding the constitutional powers or limitations of Congress or the President; (2) ratifying or approving any impoundment except as pursuant to statutory authority; or (3) affecting the claims or defense of any party to litigation concerning any impoundment. *See* 2 U.S.C. § 681(1)–(3).

[34] 2 U.S.C. §§ 685–686.

Application of the ICA to Interruptions to Prior Year FEMA Appropriations

An impoundment occurs when an agency refuses to obligate or expend budget authority. However, we have acknowledged 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 programmatic delay and is not an impoundment as defined by the ICA.[35]

Under certain facts or circumstances, a delay in the obligation of funds caused by an agency's review to ensure that its financial assistance aligns 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.[36] 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.[37] New awards were delayed until the review of the underlying financial assistance opportunity was completed.[38] 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.[39] We found that the delay in the obligation of ARPA-E funds for such review did not violate the ICA.[40]

Important to our analysis 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

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[35] 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.

[36] 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 (GAO-18-278).

[37] *Id.* at 1, 6.

[38] *Id.* at 2.

[39] *Id.* at 6.

[40] *Id.* at 10–11.

review as quickly as possible to minimize the effects on DOE programs.[41] By the end of its review, nearly all of the funds had been released.[42] DOE's actions reflected an intent to obligate funds for ARPA-E assistance once its stated review was complete, which is typical for programmatic delays.

With respect to the interruptions to prior year appropriations for FEMA's EFSP, SSP, and NGWS grants, the facts do not support the finding of a programmatic delay. While it can be argued that FEMA imposed grant reviews to ensure that funds were spent in alignment with the priorities of the new administration, FEMA did not simply delay planned obligations of the funds. Here, FEMA deobligated planned awards entirely and withdrew previously disbursed funding, and its actions do not indicate that it is taking reasonable and necessary steps to implement these programs moving forward. Rather, as discussed below, agency actions and Administration policy statements indicate that the agency is taking steps to prevent the implementation of these programs and activities.

Moreover, DOE reviewed ARPA-E awards on an efficient and rolling basis, and by the end of its review had released nearly all of the funds. In contrast, we have no indication that FEMA is making progress on reviewing awards or implementing the new administration's priorities. In fact, for each of the programs discussed below, the data shows drastically lowered obligation rates since February 2025 as compared to previous fiscal years, with few to no obligations or outlays recorded since. The burden to justify withholdings rests with FEMA. Because FEMA has deobligated and delayed the obligation or expenditure of funds without providing any justification or indicating a plan to implement these programs and move forward with the obligation and expenditure of funds, the withdrawals, holds, and reviews discussed below cannot be considered programmatic delays. Therefore, we conclude that the withholdings of budget authority for the following programs constitute violations of the ICA.

Emergency Food and Shelter Program

FEMA receives an annual appropriation for the "emergency food and shelter program under title III of the McKinney-Vento Homeless Assistance Act" (EFSP).[43] The McKinney-Vento Homeless Assistance Act establishes an EFSP National

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[41] GAO-18-278 at 8–9.

[42] *Id.* at 9.

[43] *See, e.g.*, Pub. L. No. 118-47, 138 Stat. at 607–08 (directing $117 million to the program in FY 2024); Pub. L. No. 119-4, 139 Stat. at 10–11, 27 (appropriating levels for FY 2025). EFSP funds may have a one-year, two-year, or no-year period of availability, depending on when they were appropriated.

Board.[44] Each year, FEMA is required by statute to "award a grant for the full amount that the Congress appropriates for the program . . . to the National Board for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and local governments" within 30 days after the appropriations are made available.[45] The National Board must then disburse "[a]ny amount made available by appropriations acts . . . before the expiration of the 3-month period beginning on the date on which such amount becomes available."[46] The National Board is not permitted to carry out the EFSP directly, and may only provide appropriated funds for "programs undertaken by private nonprofit organizations and local governments" that are "consistent with the purposes" of the Act.[47]

In FY 2024, the full year appropriation providing $117 million in EFSP funds was enacted March 23, 2024.[48] FEMA published the notice of funding opportunities (NOFOs) awarding the full appropriation amount to the National Board on April 9, 2024,[49] and this obligation was documented in USAspending.gov on April 22, 2024.[50]

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[44] 42 U.S.C. § 11331. The National Board is chaired by a Director (by statute, the FEMA Administrator) and composed of members nominated by six private nonprofit organizations. *Id.* §§ 11331, 11351.

[45] *Id.* § 11341.

[46] *Id.* § 11345.

[47] *Id.* § 11343.

[48] *See* Pub. L. No. 118-47, 138 Stat. at 608.

[49] *See* DHS, *Fiscal Year 2024 Emergency Food and Shelter National Board Program,* No. DHS-24-DAD-024-00-99 (Apr. 9, 2024).

[50] USAspending.gov, *Grant Summary: FAIN EMW-2024-FS-05000, available at* https://www.usaspending.gov/award/ASST_NON_EMW-2024-FS-05000_7022 (last visited Sept. 24, 2025). USAspending.gov is the official source of federal government spending data. USAspending.gov, *Mission, available at* https://www.usaspending.gov/about (last visited Sept. 24, 2025). Federal law holds agencies accountable for the completeness and accuracy of the data submitted to USAspending.gov. Various laws and regulations, as well as OMB and Treasury guidance, require agencies to report spending information to USAspending.gov, generally on a monthly or quarterly basis. The Federal Funding Accountability Transparency Act of 2006 (FFATA) established USAspending.gov and required agencies to report data on federal programs 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
(continued...)

On January 20, 2025, Executive Order No. 14159 directed the Secretary of Homeland Security to:

1) "Immediately review and, if appropriate, audit all contracts, grants, or other agreements providing Federal funding to non-governmental organizations supporting or providing services, either directly or indirectly, to removable or illegal aliens, to ensure that such agreements conform to applicable law and are free of waste, fraud, and abuse, and that they do not promote or facilitate violations of our immigration laws;

2) Pause distribution of all further funds pursuant to such agreements pending the results of the review in subsection (a) of this section;

3) Terminate all such agreements determined to be in violation of law or to be sources of waste, fraud, or abuse and prohibit any such future agreements; . . .

4) Initiate claw-back or recoupment procedures, if appropriate, for any [such] agreements."[51]

On January 28, 2025, the Secretary of Homeland Security issued a "Direction on Grants to Non-Governmental Organizations," which required that "[e]ffective immediately, all Department grant disbursements and assessments of grant applications that: (a) go to non-profit organizations or for which non-profit organizations are eligible, and (b) touch in any way on immigration, are on hold pending review, except to the extent required by the controlling legal authority."[52]

Accountability and Transparency Act of 2014 expanded the requirements of FFATA, requiring agencies to link financial information (*e.g.*, obligations) to the related federal awards 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).

[51] Exec. Order No. 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443, 8447 (Jan. 29, 2025) (numbering added).

[52] Defendants' Status Report Regarding FEMA's Compliance with Preliminary Injunction, *State of New York v. Trump*, 1:25-cv-00039-JJM-PAS, ECF No. 166-2 (D.R.I. Mar. 14, 2025) (Direction on Grants to Non-Governmental Organizations). This directive closely mirrored the language of a preliminarily enjoined and now-rescinded OMB memo issued January 27, 2025, which required all "Federal agencies to identify and review all Federal financial assistance[] programs and supporting activities consistent with the President's policies and requirements." *See*

(continued...)

This directive explicitly applied to the "Shelter and Services Program, and any similar program."[53]

On February 10, 2025, FEMA's Office of Grants Administration instructed staff to "put financial holds" on "all open awards" for FYs 2021–2024.[54] The same day, the entire amount of the FY 2024 award to the National Board was deobligated,[55] along

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OMB Memorandum, *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs,* M-25-13 (Jan. 27, 2025) (M-25-13), *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 Sept. 24, 2025), *rescinded by* OMB Memorandum, *Rescission of M-25-13*, M-25-14 (Aug. 22, 2025), *available at* https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-14-Rescission-of-M-25-13.pdf (last visited Sept. 24, 2025). The memo also ordered agencies 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" executive orders related to nongovernmental organizations. M-25-13.

[53] *State of N.Y.*, ECF No. 166-2.

[54] *State of N.Y.*, ECF No. 166-4 (Feb. 10 Office of Grants Administration Email); ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 4).

[55] *See* note 50, *supra*. According to National Finance Center guidance documents, Action Type C revisions recording negative obligations are to be used when (1) "[a]n award was made but later cancelled in full" or (2) "[a]n award was established, and funds were disbursed, but the project was later rescinded/terminated." National Finance Center, *Deleting Records from USAspending.gov*, *available at* https://www.nfc.usda.gov/FSS/ClientServices/FMS/DATA_Act/documents/USDA_Reporting_Instructions/DeletingRecords_USAspending.pdf (last visited Sept. 24, 2025); National Finance Center, *Reporting a Change in Award Funding*, *available at* https://www.nfc.usda.gov/FSS/ClientServices/FMS/DATA_Act/documents/USDA_Reporting_Instructions/ReportingChange_AwardFunding.pdf (last visited Sept. 24, 2025).

with portions of several prior year awards.[56] For February 2025, USAspending.gov shows that EFSP deobligations exceeded obligations by $251,590,333.[57]

On February 11, 2025, the agency paused funding and instituted a new manual review process for a number of grant programs, citing its "inherent authority to monitor awards; review its grant records and expenditures; and ensure payments to recipients are used only for allowable, allocable, and reasonable costs under the

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[56] *See, e.g.*, USAspending.gov, *Grant Summary: FAIN* EMW-2021-FS-00008, *available at* https://www.usaspending.gov/award/ASST_NON_EMW-2021-FS-00008_7022 (last visited Sept. 24, 2025) (2021 EFSP Award 1); USAspending.gov, *Grant Summary: FAIN* EMW-2021-FS-00010, *available at* https://www.usaspending.gov/award/ASST_NON_EMW-2021-FS-00010_7022 (last visited Sept. 24, 2025) (2021 EFSP Award 2); USAspending.gov, *Grant Summary: FAIN* EMW-2022-FS-00001, *available at* https://www.usaspending.gov/award/ASST_NON_EMW-2022-FS-00001_7022 (last visited Sept. 24, 2025) (2022 EFSP Award 1); USAspending.gov, *Grant Summary: FAIN* EMW-2022-FS-00002, *available at* https://www.usaspending.gov/award/ASST_NON_EMW-2022-FS-00002_7022 (last visited Sept. 24, 2025) (2022 EFSP Award 2); USAspending.gov, *Grant Summary: FAIN* EMW-2023-FS-00001, *available at* https://www.usaspending.gov/award/ASST_NON_EMW-2023-FS-00001_7022 (last visited Sept. 24, 2025) (2023 EFSP Award 1); USAspending.gov, *Grant Summary: FAIN* EMW-2023-FS-00007, *available at* https://www.usaspending.gov/award/ASST_NON_EMW-2023-FS-00007_7022 (last visited Sept. 24, 2025) (2023 EFSP Award 2); USAspending.gov, *Grant Summary: FAIN* EMW-2023-FS-00013, *available at* https://www.usaspending.gov/award/ASST_NON_EMW-2023-FS-00013_7022 (last visited Sept. 24, 2025) (2023 EFSP Award 3).

[57] To compile this data, GAO staff searched USAspending.gov for grants under the Assistance Listing associated with the EFSP Program (97.024). We then downloaded obligation data results over time by year. This data was last downloaded on September 17, 2025. *See* USAspending.gov, *Analyst's Guide to Federal Spending Data*, at 2, available at www.usaspending.gov/data/analyst-guide-download.pdf (last visited Sept. 24, 2025) (explaining that "[n]egative obligations, or de-obligations, occur when agencies decrease previous obligations"); National Finance Center, *Deleting Records from USAspending.gov*, note 55, *supra* (explaining that "revisions recording negative obligations are to be used when (1) "[a]n award was made but later cancelled in full" or (2) "[a]n award was established, and funds were disbursed, but the project was later rescinded/terminated; that "deobligated dollar amount[s]" will be reported as "negative number[s];" and that USAspending.gov will use all reported positive and negative amounts to calculate the obligation amounts displayed in the results over time data view).

terms and conditions of the grant award before making payment to the grant recipient."[58] A follow up email from the Office of Grants Administration on February 11, 2025, affirmed that internal controls would be placed on all awards and that permitted payments "will be made within the allotted 30-day maximum timeline noted by 2 CFR Part 200."[59]

On February 14, 2025, the former Senior Official Performing the Duties of the FEMA Administrator formalized the manual review process initiated by the Office of Grant Administration when he issued a "Grant Processing Guidance" document.[60] In addition to implementing manual review for certain programs, the guidance document also stated that "[g]rants under the Shelter and Services Program (SSP) . . . and Emergency Food and Shelter Program-Humanitarian (EFSP-H) are on hold," and that for these programs "[n]o new obligation, disbursement, or payment of funds previously obligated may be issued pending additional guidance from Secretary Noem."[61]

On February 28, 2025, FEMA sent grant recipients notice of this review process, stating that "[t]hese actions will ensure that funding is obligated and disbursed in line with the Secretary's direction."[62]

In a March 14, 2025, court filing, FEMA acknowledged that at least 114 grants were "undergoing the manual review."[63]

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[58] Declaration of Thomas Breslin at ¶ 6, *CPB v. FEMA*, 1:25-cv-00740-TJK, ECF No. 33-1 (D.D.C. June 24, 2025). Correspondence to FEMA staff and grantees sought to distinguish the payment system "hold" and "manual review" processes from the types of "holds" ordered by OMB memo M-25-13 and prohibited by temporary restraining orders during litigation. Second Motion to Enforce the Court's January 31, 2025, Temporary Restraining Order, *State of N.Y.*, ECF No. 160-1 at 18–34 (D.R.I. Feb. 28, 2025) (exhibits D–E).

[59] *State of N.Y.*, ECF No. 166-5 (Feb. 11 Office of Grants Administration Email).

[60] *State of N.Y.*, ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 11); ECF No. 166-7 (Grant Processing Guidance).

[61] *State of N.Y.*, ECF No. 166-7 (Grant Processing Guidance).

[62] *State of N.Y.*, ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 20); ECF No. 166-9 (FEMA Grant Programs Directorate Message and FEMA Recovery Directorate Email).

[63] *State of N.Y.*, ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 29).

As noted above, spending data confirms a reduction in obligations for the EFSP following the January and February 2025 DHS and FEMA policy guidance, including deobligation of the entire FY 2024 appropriation and portions of prior year awards.[64] No reobligations for these awards have been recorded since February, and in FY 2025 the agency is deobligating EFSP funds at a rate that exceeds the positive obligations recorded for 11 out of the previous 15 fiscal years for which there is program data in USAspending.gov.[65]

By statute, these appropriated amounts are required to be awarded to the EFSP National Board in full and disbursed to localities by specific deadlines.[66] As such, these funds are subject to the ICA's fourth disclaimer, which disallows the withholding of funds where a provision of law requires the obligation or expenditure thereof.[67] Under the fourth disclaimer, the ICA's temporary withholding authority is not available for these funds.[68] We therefore conclude that FEMA's directive to prevent "new obligation[s], disbursement[s], or payment[s] of funds previously obligated" and the agency's actions taken to deobligate and withhold previously awarded funds from obligation and expenditure constitute an impermissible withholding in violation of the ICA.[69] Because FEMA retains no discretion as to whether EFSP funds will be obligated or disbursed to the designated recipients, the agency should correct its accounts to reverse impermissible deobligations of awards to the National Board and make all future awards and disbursements of funds as required by statute.

<u>*Shelter and Services Program*</u>

FEMA's Federal Assistance account receives a transfer of one-year funds from CBP "to support sheltering and related activities provided by non-Federal entities, in support of relieving overcrowding in short-term holding facilities of [CBP]."[70] This

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[64] *See* notes 55, 56, *supra*.

[65] *See* note 57, *supra* (explaining negative obligation recording and overall obligation rate calculations on USAspending.gov).

[66] 42 U.S.C. §§ 11341, 11345.

[67] *See* 2 U.S.C. § 681(4).

[68] *Id.*

[69] *State of N.Y.*, ECF No. 166-7 (Grant Processing Guidance).

[70] *See, e.g.,* Pub. L. No. 118-47, 138 Stat. at 597–98 (directing CBP to transfer $650 million to FEMA's Federal Assistance account for sheltering activities).

program is referred to as the Shelter and Services Program (SSP).[71] FEMA has historically divided the available funding into an "allocated" portion and "competitive" portion.[72] The allocated portion is made available to designated recipients based on "release and destination data received from CBP" over certain time periods "along with operational information available to CBP."[73]

Each of the following actions detailed in the previous section also apply to SSP funds:

1) Executive Order No. 14159, issued January 20, 2025;[74]

2) Secretary of Homeland Security "Direction on Grants to Non-Governmental Organizations," issued January 28, 2025;[75]

3) February 10 and 11, 2025, emails from FEMA Office of Grants Administration directing staff to place financial holds and internal controls on awards for grant programs;[76]

4) February 14, 2025, "Grant Processing Guidance" document issued by former Senior Official Performing the Duties of the FEMA Administrator, Cameron Hamilton;[77] and

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[71] *See, e.g.*, *DHS, Fiscal Year 2024 2024 Shelter and Services Program – Competitive (SSP-C)*, DHS-24-GPD-141-00-99, *available at* https://www.grants.gov/search-results-detail/353514 (last visited Sept. 24, 2025) ("As stated in the FY 2024 appropriation, the primary purpose of SSP is to "reliev[e] overcrowding in short-term holding facilities of [CBP].").

[72] FEMA, *Shelter and Services Program*, *available at* https://web.archive.org/web/20250510172813/https://www.fema.gov/grants/shelter-services-program (archived May 10, 2025).

[73] *See* DHS, *Fiscal Year 2024 Shelter and Services Program – Allocated,* No. DHS-24-GPD-141-00-98, at 7 (Apr. 12, 2024) (FY2024 SSP-A NOFO).

[74] *See* Exec. Order No. 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443, 8447 (Jan. 29, 2025).

[75] *State of N.Y.*, ECF No. 166-2 (Direction on Grants to Non-Governmental Organizations).

[76] *See State of N.Y.*, ECF No. 166-4 (Office of Grants Administration Email); ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 4).

[77] *State of N.Y.*, ECF No. 166-7 (Grant Processing Guidance).

5) February 28, 2025, notifications to grant recipients.[78]

The January 28, 2025, DHS directive explicitly placed SSP "grant disbursements and assessments of grant applications" on hold.[79]

The February 14, 2025, FEMA Grant Processing Guidance, in addition to constraining EFSP funds, also put a "hold" on SSP funds and prohibited "new obligation, disbursement, or payment of funds previously obligated" pending "compliance review" and "additional guidance from Secretary Noem."[80]

In addition, a February 19, 2025, DHS memorandum instructed all agencies and offices to "review all federal financial assistance awards to determine if Department funds, directly or indirectly, are going to sanctuary jurisdictions," and, to the extent consistent with law, "cease providing federal funding to sanctuary jurisdictions."[81] A March 20, 2025, memorandum from Cameron Hamilton to the Secretary of Homeland Security then recommended additional "conditions or restrictions be placed on all open and future awards" for several grant programs, including SSP, "to align with Administration and Secretary priorities on non-governmental organizations, immigration, and sanctuary jurisdictions."[82]

At various points since January 2025, SSP recipients experienced interruptions to funding. On February 11, 2025, FEMA removed from New York City's central treasury account approximately $80 million in previously approved and disbursed SSP funding that reimbursed the city for costs incurred providing shelter and

[78] *See State of N.Y.*, ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 20); ECF No. 166-9 (FEMA Grant Programs Directorate Message and FEMA Recovery Directorate Email).

[79] *State of N.Y.*, ECF No. 166-2 (Direction on Grants to Non-Governmental Organizations).

[80] *State of N.Y.*, ECF No. 166-7 (Grant Processing Guidance).

[81] DHS, Memorandum for All Agencies and Offices, *Restricting Grant Funding for Sanctuary Jurisdictions*, at 5 (Feb. 19, 2025). While "sanctuary jurisdiction" does not have a single legal definition, the memorandum generally defines the term to include jurisdictions that fail to comply with various federal immigration enforcement information sharing, cooperation, detention, and access requests, or jurisdictions that violate or facilitate the violation of other enumerated federal immigration statutes. *Id.* at 4–5.

[82] FEMA, Memorandum for the Secretary of the Department of Homeland Security, *Approval of FEMA-Administered Grant Disbursements* (Mar. 20, 2025), at 1–2.

services to individuals released from DHS custody.[83] FEMA later notified SSP grant recipients, including New York City, Colorado, and Wisconsin, that funding would be withheld pending a response to federal inquiries, a review of services provided, and the satisfaction of specific conditions on their awards.[84]

A March 14, 2025, declaration from the former Senior Official Performing the Duties of the FEMA Administrator indicated that the agency continued to "pause[] funding to the Shelter and Services Program based on significant concerns that the funding is going to entities engaged in or facilitating illegal activities," and that the allegations are under investigation.[85]

USAspending.gov data confirms that deobligations exceed obligations by $887,448,613.94 for SSP funds in FY 2025, as compared to obligations exceeding deobligations by $363,800,000 in FY 2023 and $640,900,000 in FY 2024.[86] Approximately 99 percent of that FY 2025 deobligation data is recorded as occurring

[83] Complaint at 1, *City of New York v. Trump*, 1:25-cv-01510-JHR, ECF No. 1 (S.D.N.Y. Feb. 21, 2025); Declaration of Jacques Jiha at ¶ 41–45, ECF No. 9 (Feb. 21, 2025); Memorandum of Law in Opposition to Plaintiffs' Motion For Preliminary Injunction and Temporary Restraining Order at 5–7, ECF No. 17 (Feb. 28, 2025).

[84] *See*, *e.g.*, *State of N.Y.*, ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 30–31); *City of New York*, ECF No. 9-20 (Remedy for Noncompliance Letter to New York City Office of Management and Budget); Letter from Senior Official Performing the Duties of the Administrator to City & County of Denver, *Re: Remedy for Noncompliance Letter, Shelter and Services Program (SSP)* (Mar. 11, 2025), *available at* https://wp-denverite.s3.amazonaws.com/wp-content/uploads/sites/4/2025/03/FINAL-Noncompliance-Letter-SSP-City-County-of-Denver_SIGNED.pdf (last visited Sept. 24, 2025).

[85] *State of N.Y.*, ECF No. 166-3 (Declaration of Cameron Hamilton at ¶ 5–12). New York City notes in sworn declarations and litigation exhibits that these concerns were not identified in the results of a 2024 financial and programmatic site visit conducted by FEMA to review New York City's SSP awards and shelter locations. *See City of N.Y.*, ECF No. 9 (Declaration of Jacques Jiha at ¶ 21–23); ECF No. 9-8 (Exhibit, Notice and Results of SSP Financial and Programmatic Monitoring Results).

[86] To compile this data, GAO staff searched USAspending.gov for grants under the Assistance Listings associated with the SSP (97.141 and 97.149). We then downloaded obligation data results over time by month and year. This data was last downloaded on September 17, 2025. SSP has been active as a stand-alone program since FY 2023; similar services were previously provided under the EFSP appropriation. *See* GAO, *Southwest Border: DHS Coordinates with and Funds Nonprofits Serving Noncitizens*, GAO-23-106147 (Apr. 2023).

in February 2025, with the most recent monthly data recording deobligations of $1,824,027 in July 2025. No new awards are recorded for SSP since the agency's February 10, 2025, direction to place financial holds on awards.[87]

We have rejected the assertion that reviews undertaken "to ensure compliance with presidential policy prerogatives" constitute a permissible programmatic delay.[88] The ICA does not permit deferrals for policy reasons, and FEMA has made clear that SSP funds were placed on hold and prohibited from "obligation, disbursement, or payment" pending a review for compliance with the DHS "Direction on Grants to Non-governmental Organizations," which explicitly applied to the SSP and stated that "grant disbursements and assessment of grant applications that . . . go to non-profit organizations or for which non-profit organizations are eligible, and [] touch in any way on immigration, are on hold pending review."[89]

Spending data confirms a corresponding reduction in obligations for the SSP, specifically indicating that deobligations exceed obligations by $887,448,613.94 for SSP funds in FY 2025, as compared to obligations exceeding deobligations by $363,800,000 in FY 2023 and $640,900,000 in FY 2024.[90]

DHS has not responded to GAO's requests for information, and there is no evidence indicating whether FEMA deobligated SSP funds with the intent to recompete or allocate these funds to new recipients based on its concerns about the legality of recipient operations or purposes. However, to the extent that FEMA has deobligated SSP funds with the intent to do so, the funds have since expired and are unavailable

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[87] To compile this data, GAO staff searched USAspending.gov for grants under the Assistance Listings associated with the SSP (97.141 and 97.149). We then reviewed award results and obligation data results over time by month with a date filter starting on February 10, 2025, and the "Show New Awards Only" filter selected. This data was last reviewed on September 17, 2025. *See also*, *State of N.Y.*, ECF No. 166-4 (Office of Grants Administration Email).

[88] B-331564, Jan. 16, 2020.

[89] *State of N.Y.,* ECF No. 166-2 (Direction on Grants to Non-Governmental Organizations); ECF No. 166-7 (Grant Processing Guidance).

[90] To compile this data, GAO staff searched USAspending.gov for grants under the Assistance Listing associated with the SSP (97.141). We then downloaded obligation data results over time by month and year. Approximately 99 percent of FY 2025 deobligation data is recorded as occurring in February 2025, with the most recent monthly data also showing negative obligations in July 2025. This data was last downloaded on September 17, 2025.

for new obligations.[91] As a general proposition, a grant amendment that changes the scope of the grant or makes the award to an entirely different grantee and which is executed after the appropriation under which the original grant was made has ceased to be available for obligation and may not be charged to the original appropriation.[92] Further, funds deobligated after the expiration of the original period of obligational availability are not available for new obligations.[93] This means that if an agency has terminated grants or deobligated grant funds that are no longer available for obligation, the agency has "effectively preclude[d] the obligation or expenditure of budget authority."[94]

In certain limited situations, we acknowledge it is possible to make an award to an alternative grantee after funds have expired where the alternative award amounts to a "replacement grant" and is substantially identical in scope and purpose to the original grant.[95] For example, in one case, expired but unexpended grant funds originally awarded to one university were awarded to a second university in a new fiscal year to complete an unfinished project.[96] GAO held that it was proper to award this replacement grant because the project director had transferred from the first university to the second, and he was viewed by all parties as the only person capable of completing the work.[97] But here, FEMA has not made and we are unaware of a "replacement grant" justification where the initial deobligations or grant terminations are predicated on the agency's disavowal of the policies, scope, and purpose for which the award was originally made.[98]

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[91] *See* Pub. L. No. 118-47, 138 Stat. at 597–98 (appropriating one-year funds expiring at the end of FY 2024); Pub. L. No. 117-328, 136 Stat. at 4729–30 (appropriating one-year funds expiring at the end of FY 2023).

[92] B-195163, July 25, 1979.

[93] *See* B-286929, Apr. 25, 2001; 64 Comp. Gen. 410 (1985).

[94] *See* 2 U.S.C. § 682(1)(B).

[95] 57 Comp. Gen. 205 (1978); B-157179, Sept. 30, 1970.

[96] B-157179, Mar. 19, 1979.

[97] *Id.*

[98] *See, e.g.*, DHS, *Statement from a DHS Spokesperson on Termination of 4 FEMA Employees Who Made Payments to Luxury Hotels for Migrants* (Feb. 11, 2025), *available at* https://www.dhs.gov/news/2025/02/11/statement-dhs-spokesperson-termination-4-fema-employees-who-made-payments-luxury (last visited Sept. 24, 2025).

Given the agency's targeted policy directives, corresponding spending data, and failure to otherwise justify withholdings for this program, we find that FEMA has impermissibly withheld and precluded the obligation and expenditure of prior year budget authority for SSP in violation of the ICA.

Next Generation Warning System

Each year since FY 2022, FEMA has received an annual appropriation of one-year funds for the Next Generation Warning System (NGWS) grant program.[99] NGWS improvements enable broadly accessible and authenticated emergency information via national alert and warning systems,[100] and grants were intended to support "investments that improve resiliency, continuity of broadcast operations, and security of public broadcasting networks and systems."[101] In FYs 2022–2024, FEMA's NOFOs for the program stated that "[t]he Corporation for Public Broadcasting [CPB] is the only eligible applicant" for the award,[102] noting at the program's inception that "Congress intended that FEMA work with [CPB] to implement the [NGWS program] for public broadcast entities."[103]

[99] *See* Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 328 (Mar. 15, 2022); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459, 4741 (Dec. 29, 2022); Pub. L. No. 118-47, 138 Stat. at 608; Pub. L. No. 119-4, 139 Stat. at 10–11, 27.

[100] *See* FEMA, *Next Generation Warning System Grant Program* (last updated Aug. 12, 2024), *available at* https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/broadcasters-wireless/ngwsp (last visited Sept. 24, 2025).

[101] DHS, *Fiscal Year 2024 Next Generation Warning System Grant Program,* DHS-24-IPAWS-138-00-99, at 6 (Aug. 20, 2024) (FY 2024 NGWS NOFO).

[102] FY 2024 NGWS NOFO, at 11; DHS, *Fiscal Year 2023 Next Generation Warning System Grant,* DHS-23-IPAWS-138-00-01, at 8 (Aug. 18, 2023) (FY 2023 NGWS NOFO). The FY 2025 NGWS, published August 6, 2025, does not discuss CPB and indicates the agency's intent to administer the program through cooperative agreements with state and tribal partners. See DHS, *Fiscal Year 2025 Next Generation Warning System Grant Program*, DHS-25-IPAWS-138-00-99 (Aug. 6, 2025) (FY 2025 NGWS NOFO).

[103] DHS, *Next Generation Warning System Grant,* DHS-22-IPAWS-138-00-01, at 6 (Sept. 1, 2022) (FY2022 NGWS NOFO).

The grants to CPB were "made on a cost reimbursement basis,"[104] whereby CPB receives the award from FEMA and "manage[s] a competitive process to solicit sub-grant applications from eligible subrecipients to use these funds in accordance with the requirements and priorities" set forth in the NOFO.[105] Sub-grantees incur costs and submit them for reimbursement from CPB,[106] and CPB then requests withdrawals of funds for these reimbursements from its award through the "Payment and Reporting System" (PARS).[107]

Each of the following actions detailed in the previous sections also apply to NGWS funds:

1) February 10 and 11 emails from FEMA Office of Grants Administration directing staff to place financial holds and internal controls on awards for grant programs;[108]

2) February 14, 2025, "Grant Processing Guidance" document issued by former Senior Official Performing the Duties of the FEMA Administrator, Cameron Hamilton;[109] and

3) February 28, 2025, notifications to grant recipients.[110]

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[104] *See* Complaint at 11, *CPB v. FEMA*, 1:25-cv-00740-TJK, ECF No. 1 (Mar. 13, 2025); *see also* Defendants' Memorandum in Opposition to Plaintiff's Motion for Temporary Restraining Order at 2, *CPB v. FEMA*, 1:25-cv-00740-TJK, ECF No. 14 (Mar. 15, 2025).

[105] FY2024 NGWS NOFO, at 6.

[106] *See* Complaint at 11, *CPB v. FEMA*, ECF No. 1 (Mar 13, 2025).

[107] *Id.*; Defendants' Memorandum in Opposition to Plaintiff's Motion for Temporary Restraining Order at 2, *CPB v. FEMA*, ECF No. 14; Plaintiff's Motion for a Temporary Restraining Order, *CPB v. FEMA*, Exhibit 1 at 8, ECF No. 4-2 (Declaration of Daryl Mintz) (Mar. 13, 2025).

[108] *See State of N.Y.*, ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 4); ECF No. 166-4 (Office of Grants Administration Email).

[109] *See State of N.Y.*, ECF No. 166-7 (Grant Processing Guidance).

[110] *See State of N.Y.*, ECF No. 166-1 (Declaration of Cameron Hamilton at ¶ 20); ECF No. 166-9 (FEMA Recovery Directorate Email).

CPB noticed a “hold” on its FY 2022 NGWS funds in PARS on February 19, 2025, which showed remaining grant funding as unavailable for draw down.[111] While CPB noted that reimbursement requests through PARS were typically processed in two days, by March 13, 2025, CPB had received no communication from FEMA indicating that the “hold” status had changed, preventing $1.88 million of reimbursements to “sub-awardee public media stations [that] . . . purchase[d] critical equipment for NGWS program upgrades and enhancements.”[112]

FEMA confirmed that its February 10, 2025, email guidance implemented “a process for the manual review of requests for payment,” but that the “hold” placed on CPB grant funds in PARS was “not a freeze on the funds” but a mechanism to allow the agency to “protect the integrity of government funding programs” and “review[] grant projects, activities, and source documentation” before releasing funds.[113]

After FEMA initiated its manual review, the U.S. District Court for the District of Rhode Island entered a preliminary injunction on March 6, 2025, enjoining FEMA from “pausing, freezing, blocking, canceling, suspending, terminating, or otherwise impeding the disbursement of appropriated federal funds” to certain named plaintiffs.[114] FEMA states that it complied with the preliminary injunction by allowing grant recipients, including CPB, to draw down grant funds.[115] A CPB press statement confirmed that it made five sub-awards in April when FEMA lifted the

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[111] Plaintiff’s Motion for a Temporary Restraining Order, Exhibit 1 at 8, *CPB v. FEMA,* ECF No. 4-2 (Mar. 13, 2025) (Declaration of Daryl Mintz).

[112] Complaint at 2, 12, 18, ECF No. 1 (Mar. 13, 2025).

[113] Defendants’ Memorandum in Opposition to Plaintiff’s Motion for Temporary Restraining Order at 1–2, *CPB v. FEMA,* ECF No. 14 (Mar. 15, 2025).

[114] *New York v. Trump*, 769 F. Supp. 3d 119, 146 (D.R.I. Mar. 6, 2025).

[115] Defendants’ Memorandum in Opposition to Plaintiff’s Motion for Preliminary Injunction, *CPB v. FEMA*, ECF No. 33-1 (June 24, 2025) (Declaration of Thomas Breslin at ¶ 7).

PARS hold.[116] Four of these five awards are reflected in the sub-award history section of the FY 2022 NGWS grant summary on USAspending.gov.[117]

On May 1, 2025, Executive Order No. 14290, "Ending Taxpayer Subsidization of Biased Media," prompted agencies to "identify and terminate, to the maximum extent consistent with applicable law, any direct or indirect funding of [National Public Radio (NPR)] and [Public Broadcasting Service (PBS)]."[118] The Order also directed "[t]he [Corporation for Public Broadcasting] Board [to] cease indirect funding to NPR and PBS, including by ensuring that licensees and permittees of public radio and television stations, as well as any other recipients of CPB funds, do not use Federal funds for NPR and PBS."[119]

Because NPR and PBS affiliate stations receive subgrants from CPB through the NGWS grant program, FEMA again turned off CPB's ability to draw down NGWS funds on May 8, 2025, while the agency "conduct[ed] the review to ensure compliance with the Biased Media [Executive Order]."[120]

USAspending.gov records for the NGWS awards for FYs 2022, 2023, and 2024 show revisions on May 8, 2025, deobligating almost the entire unexpended amount

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[116] CPB, *FEMA Lifts Hold on Funds for Next Generation Warning System Grants* (Apr. 24, 2025), *available at* https://cpb.org/pressroom/CPB-Announces-Five-New-Grants-Totaling-96-Million-Rural-Public-Broadcasters-Upgrade (last visited Sept. 24, 2025).

[117] *See* USAspending.gov, *Grant Summary: FAIN EMW-2022-OS-00001, available at* https://www.usaspending.gov/award/ASST_NON_EMW-2022-OS-00001_070 (last visited Sept. 24, 2025).

[118] Exec. Order No. 14290, Ending Taxpayer Subsidization of Biased Media, 90 Fed. Reg. 19415 (May 1, 2025).

[119] *Id.*

[120] *CPB v. FEMA*, ECF No. 33-1 (Declaration of Thomas Breslin at ¶ 9).

for each year's appropriation and award to CPB.[121] These totals were reobligated on June 5, 2025.[122]

As of June 24, 2025, FEMA stated in litigation that while its review continues in order "to ensure that the program's design effectively serves its statutory purpose, program goals, and agency priorities" and while the agency considers "whether the NGWS grant awards to [CPB] are effectuating program goals or agency priorities," the agency restored CPB's ability to draw down funds on June 6, 2025.[123] CPB press statements do not indicate whether any sub-awards have been made since this date, and no additional sub-awards since this date are recorded in USAspending.gov grant summaries.

Declarations from FEMA officials confirm that NGWS funding was unavailable to CPB pursuant to executive branch orders and reviews between February 11 and March 6, 2025, and again between May 8 and June 6, 2025.[124]

There was nothing unavoidable about FEMA's withholdings in this instance, nor was FEMA withholding funds to comply with statutory requirements.[125] As both FEMA's sworn declarations and spending data make clear, the agency withheld funds awarded to CPB under the NGWS grant to comply with various policy directives. Most clearly, the agency deobligated NGWS awards to CPB from May 8, 2025, to June 5, 2025, and withheld disbursements of funds in PARS until June 6, 2025, in order to "ensure compliance with" Executive Order No. 14290, "Ending Taxpayer

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[121] For FY 2022 funds, this was a deobligation of $37,056,658 of the $40 million appropriation. USAspending.gov, *Grant Summary: FAIN EMW-2022-OS-00001, available at* https://www.usaspending.gov/award/ASST_NON_EMW-2022-OS-00001_7022 (last visited Sept. 24, 2025). For FY2023 funds, this was a deobligation of $55,654,471 of the $56 million total appropriation. USAspending.gov, *Grant Summary: FAIN EMW-2023-OS-00003, available at* https://www.usaspending.gov/award/ASST_NON_EMW-2023-OS-00003_7022 (last visited Sept. 24, 2025). In FY 2024, no expenditures had been made yet and this was a deobligation of the entire $40 million appropriation. USAspending.gov, *Grant Summary: FAIN EMW-2024-OS-05000, available at* https://www.usaspending.gov/award/ASST_NON_EMW-2024-OS-05000_7022 (last visited Sept. 24, 2025). These were Action Type C revisions. *See* note 55, *supra* (outlining FINCEN revision codes).

[122] *See id.*

[123] *CPB v. FEMA*, ECF No. 33-1 (Declaration of Thomas Breslin at ¶ 10–12).

[124] *See CPB v. FEMA*, ECF No. 33-1 (Declaration of Thomas Breslin at ¶ 7, 9).

[125] *See* B-337375, June 16, 2025.

Subsidization of Biased Media," which "instructed" the CPB Board to "cease direct" and "indirect funding to NPR and PBS."[126]

USAspending.gov records for FYs 2022, 2023, and 2024 NGWS awards show revisions on May 8, 2025, deobligating almost the entire unexpended amount of each year's appropriation for the program.[127] The complete deobligation of CPB's NGWS awards aligns with the date on which FEMA placed its second PARS hold to implement Executive Order No. 14290.[128] The agency claims that the PARS hold is simply a "system term" allowing the agency to manually review each request for allowable expenses prior to reimbursement.[129] Whereas there are no deobligations recorded for NGWS awards during the initial PARS hold placed on funds from February 11, 2025, to March 6, 2025,[130] later holds from May 8, 2025, to June 6, 2025, were coupled with deobligations and temporally aligned with the signing of Executive Order No. 14290, which sought to prohibit the disbursement of funds to specific entities.

These circumstances indicate that that the latter withholding from May 8, 2025, to June 6, 2025, was undertaken with an intent to withdraw the entire amount from the awardee and withhold the budget authority from obligation or expenditure, rather than merely reviewing the propriety of individual reimbursement requests. Although the funds were ultimately reobligated on June 5, 2025, and released in PARS the

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[126] *See CPB v. FEMA*, ECF No. 33-1 (Declaration of Thomas Breslin at ¶ 9). This Executive Order prompted agencies to "identify and terminate, to the maximum extent consistent with applicable law, any direct or indirect funding of NPR and PBS" and directed "[t]he CPB Board [to] cease direct" and "indirect funding to NPR and PBS, including by ensuring that licensees and permittees of public radio and television stations, as well as any other recipients of CPB funds, do not use Federal funds for NPR and PBS." Exec. Order No. 14290, *Ending Taxpayer Subsidization of Biased Media*, 90 Fed. Reg. 19415 (May 7, 2025).

[127] *See* note 55, *supra*.

[128] *See CPB v. FEMA*, ECF No. 33-1 (Declaration of Thomas Breslin at ¶ 9).

[129] *See* Defendants' Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction at 8, *CPB v. FEMA*, ECF No. 33 (June 24, 2025).

[130] *See* note 121, *supra*. Transaction histories for each award show no deobligation transactions during the dates of the PARS hold between February and March.

following day,[131] the purpose of this withholding and the agency's failure to comply with the procedures of the ICA constitute a violation.[132]

We therefore find violations of the ICA with respect to FEMA's interruptions and withholdings of prior year funding for the EFSP, SSP, and NGWS grants.

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 FEMA help ensure compliance with the ICA and appropriations law. GAO does not take a position on the policy goals of DHS or FEMA, and this decision is not to be interpreted as taking a position on the underlying policies entailed. Changes to FEMA's grant administration functions can be addressed through the legislative process with Congress and the Administration.

The publicly available information, obtained from policy statements and sworn testimony from DHS and FEMA officials, federal court cases, data on USAspending.gov, and other sources, indicates that FEMA impermissibly withheld or delayed the obligation and expenditure of funds that Congress appropriated for the EFSP, SSP, and NGWS grants without regard for the procedures and constraints set forth in the ICA. The burden to justify withholdings rests with the executive branch, and GAO has a statutory duty to report impoundments to Congress.

If FEMA wishes to make changes to the budget authorities provided to it, it must propose funds for rescission or otherwise propose legislation to make changes to the law for consideration by Congress.

Edda Emmanuelli Perez

Edda Emmanuelli Perez
General Counsel

[131] *See* note 121, *supra*; *CPB v. FEMA*, ECF No. 33-1 (Declaration of Thomas Breslin at ¶ 9).

[132] *See* B-329092, Dec. 12, 2017 (finding that an impoundment occurred though funds had since been released).

Availability of Appropriations
As to Purpose

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Appraisal Subcommittee of the Federal Financial Institutions Examination Council—Application of Purpose Statute and Antideficiency Act to Cooperative Agreement

File: B-335871

Date: August 28, 2024

DIGEST

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council violated the purpose statute when it awarded a cooperative agreement to a nonprofit entity. ASC's appropriation permitted it to award grants to states and to a particular nonprofit corporation. The cooperator in this case was neither, so it was not eligible to receive funding under the appropriation. Because ASC's appropriation is not legally available for such an assistance arrangement, ASC also violated the Antideficiency Act by entering into and expending funds toward the cooperative agreement.

In a separate transaction, ASC's appropriation was available to obtain the development of a census survey and a review of appraisal standards and appraiser qualification criteria. These expenditures logically relate both to ASC's statutory authority to temporarily waive requirements in a state with a scarcity of qualified appraisers and its responsibility to maintain a national registry of qualified and eligible appraisers.

DECISION

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) requests our decision on the application of the purpose statute, 31 U.S.C. § 1301(a), and the Antideficiency Act, *id*. § 1341, to a cooperative agreement ASC awarded.[1]

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[1] Letter from Certifying Officer and Executive Director, ASC, to General Counsel, GAO (Dec. 21, 2023) (Request Letter).

Our practice when rendering decisions is to obtain the legal views of the relevant agencies and establish a factual record on the subject of the request.[2] ASC's request letter provided information and its views.

BACKGROUND

Congress established ASC within FFIEC through Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.[3] ASC's responsibilities include monitoring the requirements that states establish for certifying and licensing real-estate appraisers; maintaining a national registry of state-certified and -licensed appraisers eligible to perform appraisals in federally related transactions; and maintaining a national registry of Appraisal Management Companies (AMCs).[4] 12 U.S.C. § 3332(a); B-279866.3, Feb. 28, 2000. ASC also monitors and reviews the Appraisal Foundation, which is a private, nonprofit corporation that sets criteria for appraisals and appraisers.[5]

ASC is funded by registry fees that appraisers and AMCs pay. 12 U.S.C. §§ 3337(a), 3338. ASC must use those amounts for, among other things, supporting its "activities" under Title XI, making grants to the Appraisal Foundation to defray some of its costs, and making grants to state agencies to support their Title XI activities. *Id*. § 3338(b)(2), (4)–(5).

In September 2020, ASC published a Notice of Funding Availability for a cooperative agreement.[6] Its purpose was to select an entity to work with ASC to support the "continued development and administration of training" for state appraiser and AMC

[2] GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), *available at* www.gao.gov/products/gao-24-107329.

[3] Pub. L. No. 101-73, title XI, 103 Stat. 183, 511–519 (Aug. 9, 1989); B-279866, Sept. 11, 1998.

[4] AMCs are third parties that, among other things, select appraisers for assignments on behalf of lenders. *Residential Appraisals: Regulators Should Take Actions to Strengthen Appraisal Oversight: Testimony Before the Subcommittee on Insurance, Housing and Community Opportunity, Committee on Financial Services, House of Representatives,* GAO-12-840T, at 9 (statement of William B. Shear, Director Financial Markets and Community Investment) (Washington, D.C.: June 28, 2012); *see* 12 U.S.C. § 3350(11).

[5] 12 U.S.C. §§ 3332(b), 3350(9); GAO-12-840T, at 'Highlights;' GAO, *Real Estate Appraisals: Most Residential Mortgages Received Appraisals, but Waiver Procedures Need to Be Better Defined*, GAO-22-104472 (Washington, D.C.: Nov. 24, 2021), at 4.

[6] Request Letter, at 1–2.

regulatory programs, and to provide training opportunities that states could access at their discretion.[7] In March 2021, ASC awarded the cooperative agreement to a nonprofit organization called the Council on Licensure, Enforcement and Regulation (CLEAR).[8] In July 2021, ASC amended the cooperative agreement to include (1) the development of a "census survey" of the appraisal industry and (2) a review of appraisal standards and appraiser qualification criteria to ensure neither encourages or systematizes bias.[9]

In September 2023, ASC determined CLEAR may have been ineligible for the award and directed it to stop work.[10] ASC now "acknowledges" CLEAR was an unauthorized recipient and is pursuing remediation.[11] Specifically, ASC is (1) "mutually terminating" the cooperative agreement and (2) awarding a sole-source contract to CLEAR for two items that CLEAR had not yet delivered under the cooperative agreement.[12] ASC is also revising its procedures to emphasize that only the Appraisal Foundation and state appraiser and AMC regulatory agencies may receive grants.[13]

DISCUSSION

At issue is whether ASC violated the purpose statute or the Antideficiency Act when it awarded the cooperative agreement at issue.

Purpose Statute

We first consider whether ASC used appropriated fee amounts for their provided purpose in awarding the cooperative agreement.[14]

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[7] Request Letter Exhibits (Exhibits), at 2.

[8] Request Letter, at 1, 3, 5.

[9] Exhibits, at 23; Request Letter, at 3.

[10] Request Letter, at 4.

[11] Request Letter, at 1, 5.

[12] Request Letter, at 4, 8.

[13] Request Letter, at 8.

[14] As a threshold matter, as we concluded in a 1998 decision, the language in 12 U.S.C. § 3338 constitutes an appropriation to ASC. B-279866, Sept. 11, 1998. We explained that statutes authorizing the collection and deposit of fees into a particular fund, and making the fund available for expenditure for a specified purpose, create a continuing or permanent appropriation. Congress authorized ASC
(continued...)

Appropriations are available only for authorized purposes. 31 U.S.C. § 1301(a); B-331419, July 1, 2021. Each authorized expense need not be stated explicitly in an appropriation. B-336076, Apr. 18, 2024. So we apply a three-part "necessary expense" test to determine whether an appropriation is available for a particular purpose. B-333508, Sept. 7, 2023. An appropriation is available for an expense that (1) bears a reasonable, logical relationship to the purpose of the appropriation; (2) is not prohibited by law; and (3) is not otherwise provided for. B-334541, Aug. 9, 2023. Here, steps two and three are not at issue: we are unaware of any relevant statutory prohibition on the use of these funds, nor are we aware of another appropriation available for these expenses. So, our analysis will focus on step one.

There are two aspects that we will analyze separately: (1) the training, and (2) the review and survey.

Training

ASC's cooperative agreement with CLEAR supported the development and administration of training for nonfederal entities—namely, state entities that regulate appraisers and AMCs.[15] Agencies do not have authority to provide assistance—that is, to award a grant or a cooperative agreement—unless specifically permitted by statute.[16] *See* 65 Comp. Gen. 605 (1986). Here, ASC's appropriation is available to make grants to the Appraisal Foundation, 12 U.S.C. § 3338(b)(4), and to state agencies, 12 U.S.C. § 3338(b)(5). "It is a general principle of statutory interpretation that the mention of one thing implies the exclusion of another under the maxim '*expressio unius est exclusio alterius*.' Hence, a statute that mandates a thing to be done in a given manner normally implies that it shall not be done in any other manner." B-190011, Dec. 30, 1977.

Therefore, the provision explicitly permitting ASC to assist the Appraisal Foundation and state agencies provided authority only to assist entities in those two categories. 12 U.S.C. § 3338(b). It did not vest ASC with authority to assist other types of entities, and ASC cites no other legal authority permitting it to award assistance of this nature to any other type of entity.

Despite this lack of authority, ASC awarded assistance to CLEAR, which is neither the Appraisal Foundation nor a state agency. By awarding a cooperative agreement

to collect registry fees and use them for a specified purpose, without the need for further congressional action each fiscal year. And Congress did not define those fees as nonappropriated funds. Therefore, the fees ASC receives constitute appropriated funds.

[15] Exhibits, at 2.

[16] In contrast, agencies generally have inherent authority to enter into contracts to provide for their needs. 65 Comp. Gen. 605, at 607.

to a recipient not authorized by law, ASC failed to follow the conditions specifically referenced in its appropriation concerning grants to the Appraisal Foundation and states. Therefore, ASC violated the purpose statute when it awarded the cooperative agreement to CLEAR for training.[17]

Review and Survey

Having determined that ASC was not authorized to award the cooperative agreement to CLEAR to develop training for nonfederal entities, there is a separate issue of the additional expenditures ASC incurred. ASC also used the cooperative agreement with CLEAR to obtain the development of a census survey and a review of appraisal standards and appraiser qualification criteria. These proposed expenditures are not related to the training purposes previously analyzed nor subject to the restriction that they be awarded to the Appraisal Foundation or a state agency. The proposed expenditures are not specifically provided for in the appropriation or authorizing statute for ASC. Therefore, we apply the necessary expense analysis beginning with step 1.

To determine whether a reasonable, logical relationship exists between the appropriation and the expense, the starting point is the appropriation's text. B-333508, Sept. 7, 2023. The appropriation at issue appropriates fees that ASC collects. 12 U.S.C. § 3338(b). It makes these amounts available to, among other things, maintain a national registry of qualified appraisers, support ASC's Title XI "activities," and make certain grants. *Id*.

Here, ASC's expenditures toward the criteria review and survey bear a reasonable, logical relationship to its appropriation's purpose of supporting ASC's "activities." *Id*. § 3338(b)(2). As noted, those activities include monitoring and reviewing the Appraisal Foundation, *id.* § 3332(b), and reviewing these criteria, which Appraisal Foundation-sponsored boards issue,[18] furthers this ASC responsibility. Moreover, a survey of the appraisal profession logically relates both to ASC's statutory authority to temporarily waive requirements in a state with a scarcity of qualified appraisers, *id.* § 3348(b), and its responsibility to maintain a national registry of qualified and eligible appraisers. *Id*. § 3338(b)(1). Therefore, the expenditures meet step 1 of the necessary expense analysis. Furthermore, there are no prohibitions relating to

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[17] We also note that while ASC is authorized by law to award a "grant," it instead awarded a cooperative agreement. There are similarities between grants and cooperative agreements, as both are assistance relationships through which an agency carries out public purposes as permitted by law. *See* 65 Comp. Gen. 605. Nevertheless, because ASC lacked authority to make an award to this recipient, we need not decide here whether ASC's authority to award a "grant" also permitted it to award a cooperative agreement.

[18] Request Letter, at 3 (criteria are from two Appraisal Foundation-sponsored boards: the Appraiser Qualifications Board and the Appraisal Standards Board).

these expenditures in accordance with step 2 nor other appropriations provided for with step 3. *See*, *e.g*., B-333691, Feb. 8, 2022, at 3 (addressing only step 1 because steps 2 and 3 were not at issue). Accordingly, ASC's appropriation was available for this purpose.[19]

Antideficiency Act

We turn next to the Antideficiency Act's application. An agency violates this law if it incurs an obligation in excess of legally available amounts. 31 U.S.C. § 1341(a); B-329955, May 16, 2019. No amount is available for an unauthorized purpose. *See* B-326013, Aug. 21, 2014.

ASC's permanent indefinite appropriation is available for, among other things, making grants to the Appraisal Foundation and state agencies. 12 U.S.C. § 3338(b). Its appropriation, then, permits grants only to particular entities. Or, stated negatively, it is unavailable for providing funds to non-specified entities. This unauthorized purpose, moreover, is rooted directly in the text of ASC's appropriation.

ASC awarded a cooperative agreement to CLEAR for training. But CLEAR is neither the Appraisal Foundation nor a state agency. Because ASC's appropriation is not legally available for such an assistance arrangement, ASC violated the Antideficiency Act by entering into and expending funds toward an unauthorized agreement with an ineligible recipient. *But cf.* B-334541, Aug. 9, 2023 (finding no violation of the Antideficiency Act where the appropriation at issue did not condition the availability of funds on the manner in which the agency applied certain statutory provisions). *See also* B-290005, July 1, 2002 (agency violated the Antideficiency Act and purpose statute by entering into unauthorized legal services contracts and charging the expenditures to an appropriation unavailable for purchasing such services). ASC should report an Antideficiency Act violation as 31 U.S.C. § 1351 requires.

[19] ASC should consider whether the review and survey should have been obtained via a contract rather than a cooperative agreement. It appears that ASC acquired these services for its direct benefit, which by law would make them the proper subject of a contract. 31 U.S.C. § 6303. Review of criteria issued by Appraisal Foundation-sponsored boards furthers ASC's statutory responsibility to oversee the Foundation. 12 U.S.C. § 3332(b). And ASC told us the survey relates to its authority to temporarily waive appraiser requirements in a state facing a scarcity of qualified appraisers. Request Letter, at 6–7. *See* 12 U.S.C. § 3348(b). The survey would be for ASC's direct benefit if its main purpose was to aid ASC in the performance of its statutory authority.

CONCLUSION

ASC violated the purpose statute and the Antideficiency Act by providing assistance to an ineligible entity in a manner inconsistent with its appropriation. ASC should report an Antideficiency Act violation.

Edda Emmanuelli Perez

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General Counsel

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Decision

Matter of: *Department of the Treasury Office of Inspector General—Availability of Appropriations for Pandemic Emergency Rental Assistance Program Oversight and Recoupment*

File: B-336626

Date: January 15, 2026

DIGEST

Congress makes an annual appropriation to the Inspector General, Department of the Treasury (TIG) for the agency's salaries and expenses. In 2020, Congress also made an appropriation to TIG specifically for oversight and recoupment activities related to funds provided to eligible recipients under the Emergency Rental Assistance (ERA1) program. TIG has requested a decision as to whether TIG may use funds from both its annual salaries and expenses (S&E) appropriation and its ERA1 appropriation for ERA1 oversight and recoupment. We find that there is a reasonable and logical relationship between the purpose of TIG's S&E appropriation and its ERA1 oversight activities. Additionally, there is a provision in the ERA1 appropriation that permits TIG to obligate its annual S&E appropriation for oversight of the ERA1 program in addition to the funds appropriated for ERA1 oversight.

However, we find that there is not a reasonable and logical relationship between the purpose of TIG's S&E appropriation and TIG's ERA1 recoupment activities nor is there a provision specifically permitting the use of TIG's S&E appropriation for recoupment. Accordingly, TIG may not use its annual S&E appropriation for ERA1 recoupment expenses.

DECISION

This responds to a request for a decision from the then-Acting Inspector General, Department of the Treasury (TIG), regarding whether TIG may use its annual salaries and expenses (S&E) appropriation for oversight of Emergency Rental Assistance (ERA1) program funds and recoupment of ERA1 funds.[1]

Our practice when rendering decisions is to establish a factual record and to elicit the agency's legal positions on the issues raised.[2] Here, TIG provided factual information and legal views in its request letter. We contacted TIG to seek additional factual information and legal views on this matter.[3] TIG provided a written response providing those pertinent facts and legal views.[4]

BACKGROUND

The Inspector General Act of 1978 (IGA), as amended, defines duties and responsibilities for offices of inspectors general, including TIG. [5] Among other things, the law directs inspectors general, including TIG, to "provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of [Treasury]" and "to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by [Treasury] for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations."[6]

In 2020, Congress established the ERA1 program, which provides pandemic relief in the form of grants for specified grantees to assist renters with housing costs.[7] The

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[1] Letter from the then-Acting Inspector General, Department of the Treasury (Treasury), to Comptroller General, GAO (Aug. 15, 2024) (Request Letter).

[2] 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.

[3] Letter from Assistant General Counsel, GAO, to Acting Counsel to the Inspector General, Department of the Treasury (Sept. 27, 2024) (Development Letter).

[4] Letter from Acting Counsel to the Inspector General, Department of the Treasury, to Assistant General Counsel, GAO (Oct. 15, 2024) (Agency Response).

[5] Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978), *as amended.* Pub. L. No. 117-286, 136 Stat. 4196 (Dec. 27, 2022) restated and incorporated IGA, as amended, into a new Chapter 4 of Title 5 of the United States Code. *See* 5 U.S.C. § 402(a)(2)(A) for the provision establishing TIG within the Department of the Treasury.

[6] 5 U.S.C. § 404(a)(1), (3).

[7] 15 U.S.C. § 9058a. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, title V, § 501, 134 Stat. 1182, 2069–2078 (Dec. 27, 2020). Congress
(continued...)

program is administered by Treasury.[8] Congress appropriated $25 billion for payments to eligible grantees through the ERA1 program for fiscal year (FY) 2021.[9]

Congress also mandated TIG to "carry out oversight and recoupment activities" for ERA1 and appropriated $6.5 million to carry out these activities providing that the funds would "remain available until expended."[10] The law governing ERA1 directs TIG to "conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under [ERA1]."[11] In addition, the law gives TIG authority to recoup funds when specified grantees fail to comply with the use-of-funds provisions found in section 501(c) of the ERA1 legislation.[12] The law also provides explicit language pertaining to TIG's authority stating that "[n]othing in this subsection shall be construed to diminish the authority of any Inspector General, including such authority as provided in the [IGA]" (non-diminishment clause).[13]

In addition to the $6.5 million appropriated to TIG specifically for ERA1 oversight and recoupment activities, TIG receives an annual appropriation for salaries and expenses.[14] In FY 2024, TIG received approximately $48.3 million in its S&E account "[f]or necessary expenses of the Office of Inspector General in carrying out the provisions of chapter 4 of title 5, United States Code . . ."[15] Congress appropriated the same amounts referenced above to TIG in FY 2025.[16]

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subsequently established a second ERA program—ERA2—in section 3201 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3201, 135 Stat. 4, 52–58 (Mar. 11, 2021). This decision is focused solely on the ERA1 program and funding.

[8] 15 U.S.C. § 9058a(k)(5).

[9] 15 U.S.C. § 9058a(a)(1).

[10] 15 U.S.C. § 9058a(i)(1), (3).

[11] 15 U.S.C. § 9058a(i)(1).

[12] 15 U.S.C. § 9058a(i)(2).

[13] 15 U.S.C. § 9058a(i)(4). *See* IGA, Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978), which was subsequently recodified by Pub. L. No. 117–286, § 3(b), 136 Stat. 4196, 4208 (Dec. 27, 2022) at 5 U.S.C. chapter 4, as amended.

[14] *See e.g.* Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. E, title I, 136 Stat. 49, 241 (Mar. 15, 2022).

[15] Further Consolidated Appropriation Act, 2024, Pub. L. No. 118-47, div. B, title I, 138 Stat. 460, 522 (Mar. 23, 2024).

[16] *See* Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119- 4, div. A, title I, § 1101(a), 139 Stat. 9, 10 (Mar. 15, 2025) (appropriating
(continued...)

TIG stated it used funds from the S&E account to conduct ERA1 oversight and recoupment when the money appropriated specifically for ERA1 oversight and recoupment activities was depleted.[17] TIG asserts that the non-diminishment clause in the law governing ERA1 provides authority for TIG to use both its ERA1 appropriation and its S&E appropriation for ERA1 oversight and recoupment.[18]

In its response, TIG explains that its need to use its S&E funds for oversight and recoupment of ERA1 program funds was preempted when Congress made additional funds available in FY 2025.[19] Specifically, TIG points to section 124 of the Continuing Appropriations and Extensions Act, 2025.[20] Section 124 of this Act provides that, for the duration of FY 2025, TIG may use certain funds available under the Social Security Act "for any necessary expenses" of TIG with respect to subtitle A of title V of division N of the Consolidated Appropriations Act, 2021—which is the ERA1 legislation—and that these funds are "in addition to amounts otherwise available for such purposes."[21]

DISCUSSION

TIG requested our decision on whether its annual S&E appropriation could be used for ERA1 oversight and recoupment activities in addition to amounts provided specifically for those activities in the ERA1 legislation.[22] Appropriated funds are available only for the purposes for which Congress appropriated them.[23] To determine whether a particular expense is an authorized use of the appropriation, we apply a three-step necessary expense analysis. First, the expense must bear a logical relationship to the appropriation charged. Second, the expense must not be prohibited by law. Third, the expense must not be otherwise provided for.[24] With

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funds to federal agencies, including TIG, "under the authority and conditions" specified in agencies' FY 2024 appropriations at specified levels).

[17] Agency Response, at 4.

[18] Agency Response, at 3, referring to language in 15 U.S.C. § 9058a(i)(4).

[19] Agency Response, at 4.

[20] Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 118-83, § 124, 138 Stat. 1524, 1529 (Sept. 26, 2024).

[21] *Id*.

[22] Request Letter, at 4.

[23] 31 U.S.C. § 1301(a).

[24] *See* B-334321, Feb. 8, 2023; B-330862, Sept. 5, 2019.

respect to step two, we are unaware of any statutory provision that specifically prohibits the use of TIG's S&E appropriation for ERA1 oversight and recoupment activities. Accordingly, at issue here are steps one and three of this analysis. As explained below, we conclude that TIG may use its S&E appropriation for ERA1 oversight but may not use its S&E appropriation for ERA1 recoupment activities.

Step 1: Reasonable, logical relationship between the expense and the appropriation

Oversight

We first consider whether TIG's ERA1 oversight activities are reasonably and logically related to the purpose of TIG's S&E appropriation. To determine whether a reasonable, logical relationship exists between the expense and the appropriation, the starting point is the text of the appropriation.[25] Other relevant considerations include authorizing legislation and the agency's interpretation of its appropriations.[26]

The purpose of TIG's S&E appropriation is "[f]or necessary expenses of [TIG] in carrying out the provisions of chapter 4 of title 5, United States Code . . ."[27] TIG's duties and responsibilities under 5 U.S.C. § 404 include, among other things, conducting, supervising, and coordinating audits and investigations "relating to the programs and operations of [Treasury]" and recommending, conducting, supervising, or coordinating "other activities carried out or financed by [Treasury] for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations."[28] TIG's annual S&E appropriation is broadly available for oversight activities related to Treasury programs and operations.[29]

ERA1 is a program administered by Treasury under which Treasury may provide grants to assist renters with housing costs.[30] TIG's oversight of Treasury's operation of the ERA1 program is reasonably and logically related to the purposes of TIG's S&E appropriation, which include investigations of Treasury programs and

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[25] *See, e.g.*, B-330984, May 27, 2020; B-330862, Sept. 5, 2019.

[26] B-330862, Sept. 5, 2019.

[27] *See e.g.,* Further Consolidated Appropriation Act, 2024, div. B, title I, Pub. L. No. 118-47, 138 Stat. 460, 522 (Mar. 23, 2024).

[28] 5 U.S.C. § 404(a)(1) and (3).

[29] TIG asserted that its S&E appropriation is "effectively for oversight itself, as it enables [TIG] to conduct oversight of all programs and operations of the Treasury." Request Letter, at 3.

[30] 15 U.S.C. § 9058a.

operations.[31] Accordingly, we conclude that there is a reasonable, logical relationship between TIG's S&E appropriation and the expenses TIG incurs for oversight of ERA1 program funds.

Recoupment

We next consider whether TIG's ERA1 recoupment activities are reasonably and logically related to the purpose of TIG's S&E appropriation. The ERA1 legislation provides for TIG to conduct recoupment activities. Specifically, the statute provides that TIG "shall [book] as a debt . . . owed to the [f]ederal [g]overnment" any ERA1 amounts used by a grantee in violation of the ERA1 legislation and directed that amounts recovered shall be deposited into the general fund of the Treasury.[32]

TIG noted that it does not traditionally conduct recoupment, and stated that the ERA1 legislation was unusual in that it provided recoupment authority to TIG.[33] TIG explained that if Congress had not appropriated funds to TIG specifically for recoupment activities for ERA1, then "TIG would have followed past practice and [] relied upon [Treasury] to conduct the recoupment actions that resulted from [TIG's] oversight work."[34] According to TIG, in the absence of specific congressional action, recoupment would remain the responsibility of Treasury.[35]

Here, the purposes of TIG's S&E appropriation include conducting audits and investigations, promoting economy and efficiency, and preventing and detecting fraud and abuse. Recoupment activities involve booking debts owed to the federal government by grantees due to the grantees' violation of ERA1 legislation. There is not a reasonable connection between the purposes of the S&E appropriation and recoupment activities. Recoupment involves actions taken as a result of an investigation or detection of fraud and does not fall within the scope of the investigation or fraud detection itself. Further, TIG's past practice indicates that TIG does not consider recoupment to be one of its duties or responsibilities under IGA.

We conclude that there is not a logical relationship between TIG's recoupment activities for ERA1 funds and TIG's S&E appropriation. Therefore, TIG may not use its S&E appropriation to conduct recoupment activities related to ERA1. To the

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[31] TIG noted that it would have conducted risk-based oversight of ERA1 using its S&E appropriation if Congress had not provided additional funding for TIG oversight of ERA1. Agency Response, at 2.

[32] 15 U.S.C. § 9058a(i)(2).

[33] Request Letter, at 2. TIG explained that it may recommend that Treasury recoup funds and it is within Treasury's discretion as to whether Treasury will recoup.

[34] Agency Response, at 2.

[35] *Id.*

extent TIG obligated S&E funds for ERA1 recoupment activities, TIG should adjust its accounts and record those obligations against an appropriation available for the purpose of ERA1 recoupment. If TIG determines that it does not have sufficient budget authority to make the adjustments, then it should report a violation of the Antideficiency Act as required by law.[36]

Step 3: Expense is not otherwise provided for

While we have concluded that TIG's ERA1 oversight activities have a reasonable and logical relationship to the purpose of TIG's S&E appropriation, we must also consider whether ERA1 oversight activities are provided for by another appropriation such that the S&E appropriation is not available for this purpose. The general rule is that an appropriation is not available for an expenditure where another appropriation is more specifically available for the expenditure.[37]

Congress sometimes makes an appropriation available in addition to other appropriations available for the same object.[38] On such occasions, an agency may elect to use both appropriations for the particular expense.[39] For example, we found that the Special Inspector General for the Troubled Asset Relief Program could use two separate appropriations for the same purpose when the language of the statute clearly provided that the amounts in the appropriation at issue were made available *in addition to*, and not exclusive of, other funding sources available to the agency.[40] In that case, the language made clear that both appropriations were available for the agency to carry out its oversight activities.[41]

Here, Congress mandated that TIG "carry out oversight and recoupment activities" for ERA1 and provided $6.5 million for such activities providing that the funds would "remain available until expended."[42] Congress did not include words such as "in addition to," explicitly indicating that these funds were intended to be used along with other available funds. However, the law governing ERA1 also provides that "nothing in this subsection shall be construed to diminish the authority of any Inspector

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[36] 31 U.S.C. §§ 1341, 1351; *see* B-331888, June 11, 2020.

[37] B-334321, Feb. 8, 2023; B-330984, May 27, 2020; B-307382, Sept. 5, 2006.

[38] B-330984, May 27, 2020; B-322062, Dec. 5, 2011.

[39] *Id.*

[40] B-330984, May 27, 2020.

[41] *Id.*

[42] 15 U.S.C. § 9058a(i)(3); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, title V, § 501(i)(3), 134 Stat. 2077. (Dec. 27, 2020).

General, including such authority as provided in the [IGA]."[43] TIG asserted that the specific reference to the authorities of IGA indicates that Congress intended for TIG to exercise oversight of the ERA1 program under both IGA and the ERA1 legislation.[44] We agree.

To determine the meaning of any statute, we must begin by analyzing its language.[45] When interpreting statutes, we must give effect to all words in the statute, as Congress does not enact unnecessary language.[46] A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.[47]

We analyze both of the relevant clauses enacted here. Congress provided a mandate for TIG to carry out specific oversight and recoupment and provided a no-year appropriation for that purpose. We recognize that Congress did not include the traditional language such as "in addition to," that would have explicitly indicated that the funds were in addition to amounts otherwise appropriated to TIG. However, Congress did include language that recognized TIG's general statutory authority to conduct oversight which is funded by its S&E appropriation specifically stating that "nothing in this subsection shall be construed to diminish the authority of any Inspector General, including such authority as provided in the [IGA]."[48] As we recognized above, TIG's oversight of Treasury's operation of the ERA1 program is reasonably and logically related to the purposes of TIG's S&E appropriation, which include investigations of Treasury programs and operations. It is clear that absent the mandate to carry out oversight of the ERA1 program, TIG would still be authorized to carry out oversight of this program under its general authorities and using its general S&E appropriation. If we were to conclude that TIG could only carry out oversight of the ERA1 program with the funds specifically provided for that purpose in the ERA1 legislation, then TIG would not be able to provide additional oversight it deems necessary as part of its standard statutory duties and responsibilities under IGA once the ERA1 funds were exhausted. Nothing in the ERA1 authority limits TIG's general authorities and appropriations in this way. It is TIG's duty and responsibility under its statute to oversee programs and operations of Treasury using TIG's S&E appropriation, and this duty and responsibility would be

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43 15 U.S.C. § 9058a(i)(4).

44 Request Letter, at 3.

45 B-325351, Apr. 25, 2014.

46 *Id.*

47 *See* Hibbs v. Winn, 542 U.S. 88 (2004) (*quoting* 2A N. Singer, Statutes and Statutory Construction § 46.06, pp 181–186 (rev. 6th ed. 2000)).

48 15 U.S.C. § 9058a(i)(4).

diminished if TIG was precluded from oversight once the ERA funds were exhausted.

We think the best reading of the law governing ERA1 and IGA is that Congress intended for TIG to conduct oversight of ERA1 using its specific ERA1 appropriation while maintaining its authority to use its S&E appropriation. This construction preserves TIG's ability to exercise its oversight authority under IGA once the ERA1 funds are depleted and gives meaning to language in the non-diminishment clause in the law governing ERA1. We conclude that TIG may use both its ERA1 appropriation and S&E appropriation for its ERA1 oversight activities.

CONCLUSION

TIG's annual S&E appropriation is available for oversight of ERA1 program funds in addition to amounts appropriated to TIG specifically for ERA1 oversight. TIG may not use its annual S&E appropriations to conduct recoupment activities of ERA1 funds because there is not a reasonable and logical relationship between the S&E appropriation and TIG's recoupment activities for ERA1 funds. To the extent TIG obligated S&E funds for ERA1 recoupment activities, TIG should adjust its accounts and record those obligations against an appropriation available for the purpose of ERA1 recoupment. If TIG determines that it does not have sufficient budget authority to make the adjustments, then it should report a violation of the Antideficiency Act as required by law.

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Decision

Matter of: U.S. Capitol Police—Availability of Appropriations for Local Lodging of Employees

File: B-335808

Date: August 14, 2025

DIGEST

The Capitol Police Board seeks to use its appropriation to pay for local lodging for Dignitary Protection Division Agents working certain overtime shifts. Generally, lodging within an employee's duty station is a personal expense of the employee for which appropriated funds are not available, but section 1973 of title 2 of the United States Code authorizes the Capitol Police Board to find that an emergency exists that permits the U.S. Capitol Police to provide local lodging to these agents. The U.S. Capitol Police and the Board may use this authority to provide local lodging to agents working certain overtime shifts with less than 8 hours of rest between shifts, as that constitutes an emergency that involves the safety of human life and protection of property.

DECISION

The U.S. Capitol Police (USCP) requests a decision under 31 U.S.C. § 3529 on whether the Capitol Police Board (the Board), pursuant to 2 U.S.C. § 1973, may permit the expenditure of appropriated funds to address a staffing shortage within the ranks of USCP Dignitary Protection Division (DPD) Agents. Specifically, USCP would use the funds on an interim basis to pay for local lodging of DPD agents who are working a significant amount of overtime hours with less than 8 hours of rest between shifts. Our practice when rendering decisions is to contact the relevant agencies to seek factual information and their legal views.[1] USCP's request letter on this matter provided factual information and its legal views.[2]

BACKGROUND

USCP has been facing staffing challenges in DPD, the entity responsible for providing personal protection for leadership positions within Congress.[3] DPD has experienced a significant reduction in staffing due to resignations, retirements, reassignments, and promotions.[4] In addition, DPD task assignments have increased.[5] As a result, DPD agents work an average of 40-50 hours of overtime per pay period.[6] USCP believes that DPD agents working multiple shifts without adequate rest presents a significant risk to the safety of protectees, the agents, and the public.[7] For instance, USCP noted two instances in which DPD agents were involved in car-related accidents. In both instances, the DPD agent had worked multiple shifts without sufficient turn-around time to rest.[8]

USCP believes that an immediate short-term solution to its staffing challenges and the overtime required of DPD agents is to provide local lodging near the Capitol Grounds.[9] USCP believes the current situation is an emergency affecting the safety of human life and the protection of property and, as such, that section 1973 allows the use of USCP's appropriations for local lodging of DPD agents.[10]

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[1] 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.

[2] *See* Letter from General Counsel, USCP, to Comptroller General, GAO (Nov. 28, 2023) (Request Letter). Call with Thomas DiBiase, USCP General Counsel, July 10, 2025.

[3] Request Letter, at 1–2.

[4] *Id.* at 2.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at 2–3.

[9] *Id.* at 3.

[10] *Id.*at 3–4.

DISCUSSION

At issue here is whether the staffing situation in DPD constitutes an emergency involving the safety of human life and protection of property.

Section 1973 of Title 2 of the U.S. Code provides that the Board may incur obligations and make expenditures “for meals, refreshments and other support and maintenance for the Capitol Police when, *in the judgment of the Capitol Police Board*, such obligations and expenditures are necessary to respond to emergencies involving the safety of human life or the protection of property” 2 U.S.C. § 1973 (emphasis added). Through this language, Congress vested the Board with discretion. In its request to us, USCP described many facts that could reasonably lead the Board to find an emergency. For example, USCP stated that in 2022, it investigated 7,501 threats cases, a significant increase from the 3,939 threat cases it investigated in 2017.[11] USCP also noted that significant mandatory overtime requires DPD agents to work an average of 40 to 50 hours of overtime per pay period, resulting in officer fatigue that increases risk to the safety of protectees, the agents, and the public.[12]

Law enforcement agencies are entitled to discretion in deciding how best to protect our national institutions, such as the United States Congress, its Members, staff, and facilities. B-303964, Feb. 3, 2005 (finding that a USCP security checkpoint program was clearly a counterterrorism measure and fell within the broad scope of a congressionally established fund meant to support national security). The law vests the Board with reasonable discretion to determine the existence of an emergency.[13] Considering the facts USCP has presented, we would not question the Board if it determined that such an emergency exists in these circumstances.

Ordinarily, appropriations are not available for the personal expenses of federal employees, including lodging. *See* B-318229, Dec. 22, 2009; 71 Comp. Gen. 517 (1992). Appropriations generally are available for such expenses only when expressly provided by law. *See, e.g.*, 5 U.S.C. § 5702(a)(1) (providing payment for employee lodging when the employee is traveling on official business away from the designated post of duty).

In this case, USCP has statutory authority to pay for “meals, refreshments and other support and maintenance for the Capitol Police”[14] where the Board has made the requisite determination of an emergency as discussed above. The relevant

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[11] Request Letter, at 2 note 3.

[12] *Id*. at 2.

[13] 2 U.S.C. § 1973.

[14] *Id*.

question, then, is whether “other support and maintenance” encompasses lodging. The general phrase “other support and maintenance” follows the more specific words “meals” and “refreshments.” Principles of statutory interpretation provide that where “general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *See Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler*, 537 U.S. 371, 384 (2003) (citation and internal quotation marks omitted); *see also* B-320998, May 4, 2011.

Here, the specific words “meals” and “refreshments” indicate that in emergencies, USCP may provide officers with these personal items, which provide sustenance and comfort. Therefore, the broader phrase “other support and maintenance” indicates that USCP may provide officers with other items necessary to provide sustenance and comfort, such as local lodging. The Board could reasonably determine that section 1973 authorizes USCP to use its appropriations to provide local lodging for officers where it has made the requisite determination of the existence of an emergency.

We note that the statute permits provision of lodging only in association with the emergency situation. USCP and the Board should institute appropriate safeguards to ensure that lodging is provided only as required by an accompanying emergency. These safeguards should also ensure that the provision of lodging is a prudent use of appropriations when considered in light of other available options, such as temporary changes in staff assignments.

CONCLUSION

Under the circumstances USCP describes, section 1973 authorizes the Board to find that an emergency exists that permits USCP to provide local lodging to officers. USCP and the Board should ensure they use this authority only emergencies that involve the safety of human life or the protection of property, and that they institute appropriate safeguards to ensure proper use of this authority.

Edda Emmanuelli Perez

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Availability of Appropriations As to Time

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Decision

Matter of: General Services Administration—Application of Bona Fide Needs Rule to Severable Services Task Order

File: B-336079

Date: November 20, 2025

DIGEST

The General Services Administration (GSA), Office of Financial Management, within the Office of the Chief Financial Officer (OCFO) requested our decision regarding whether GSA may obligate excess fiscal year 2023 funds from one task order to fund a portion of a separate, severable services task order for which the period of performance begins in fiscal year 2023 and crosses into fiscal year 2024. Specifically, a GSA contracting officer questions whether GSA can retain expired fiscal year 2023 funds and use them to provide additional funding for a separate task order that had not been funded up to its overall potential award price.

In the context of both severable and nonseverable services, we have determined that a modification to increase the ceiling of a cost-reimbursement contract is chargeable to the appropriation current at the time that the modification is approved by the contracting officer. Because the task order contains contractual clauses limiting GSA's obligation, GSA is not required to add additional funds above the contractually stipulated ceilings, including to cover the difference between the potential award price and the actual funded/ceiling amount. If GSA, in its discretion, chooses to cover this difference in whole or in part, GSA must obligate appropriated funds current to the time of that decision. The expired fiscal year 2023 funds cannot now be obligated to fund any part of the separate task order and should be deobligated and returned to the requesting agency.

DECISION

The General Services Administration (GSA), Office of Financial Management, within the Office of the Chief Financial Officer (OCFO) requests a decision under 31 U.S.C. § 3529 regarding whether GSA may obligate excess fiscal year (FY) 2023 funds from one task order to fund a portion of a separate, severable services task order for which the period of performance covers two fiscal years, FY 2023 and FY 2024.[1]

Our practice when rendering decisions is to contact the relevant agencies to seek factual information and their legal views.[2] We contacted GSA to seek additional factual information and its legal views on this matter.[3] GSA responded with its explanation of pertinent facts and legal analysis.[4]

BACKGROUND

GSA's Assisted Acquisition Service (AAS), located within GSA's Federal Acquisition Service, helps government agencies acquire services, including information and technology services, research and development, and professional services.[5] This work is carried out through interagency agreements using GSA's authority under 40 U.S.C. § 321 (Acquisition Services Fund) instead of the Economy Act (ch. 314, part II, 47 Stat. 399 (June 30, 1932), see 31 U.S.C. § 1535). Request Letter, at 1.

According to OCFO, as part of an effort to recompete a severable services contract for the Department of the Air Force's Adjunct Professor Program, AAS realized it would need to extend an existing task order by six months and advised the Air Force that it needed $2,271,518.99 in FY 2023 funding to cover both the cost of the extension and the base period of the new contract. Request Letter, at 1 and

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[1] Letter from Director, Office of Financial Management, General Services Administration, to General Counsel, GAO (Feb. 15, 2024) (Request Letter).

[2] 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.

[3] Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, GSA (June 11, 2024); Email from Assistant General Counsel for Appropriations Law, GAO, to Deputy Associate General Counsel, GSA, *Subject: RE: Letter from GAO to GSA re: Adding Expired FY 23 Funds to Severable Services Contract* (Aug. 5, 2024).

[4] Letter from General Counsel, GSA, to Assistant General Counsel for Appropriations Law, GAO (July 9, 2024) (Response Letter); Email from Deputy Associate General Counsel, GSA, to Assistant General Counsel for Appropriations Law, GAO, *Subject: Re: Letter from GAO to GSA re: Adding Expired FY 23 Funds to Severable Services Contract* (Aug. 6, 2024).

[5] Request Letter, at 1; GSA, Assisted Acquisition Services, *About Us*, *available at* https://www.gsa.gov/assisted-acquisition-services/about-us (last visited Nov. 19, 2025).

Attachments. The Air Force sent the required funding to AAS in two separate military interdepartmental purchase requests (MIPRs), one on March 14, 2023, and the other on June 22, 2023. Request Letter, at 1; Response Letter, at 2.

The March 14, 2023, MIPR provided $1,135,759.49 in FY 2023 funding to cover the six-month extension of the existing task order, with the extension having a period of performance of March 13, 2023, to September 30, 2023 (the extension). Response Letter at 1-2; Attachments. The June 22, 2023, MIPR provided $1,135,759.50 in FY 2023 funding to cover the base period of the new contract, with the new task order having a period of performance of September 24, 2023, to March 23, 2024 (the new task order). *Id*. Both the extension and the new task order are hybrid contracts, structuring Contract Line Item Number (CLIN) 1 for program management and administrative support as firm fixed price, CLIN 2 for adjunct professors, subject matter experts, and instructor trainers as labor hours, and CLIN 3 for travel costs as cost reimbursement. Response Letter, at 1 and Attachments. GSA used the funds from the March 14, 2023, MIPR to fund the extension. Request Letter, at 2.

OCFO stated that the initial plan was to use the funds from the June 22, 2023, MIPR to fund the new task order in full. Request Letter, at 2. Prior to award of the new task order, however, it was determined that the final price of the new task order was $1,381,624.31, which exceeded the available funding from the June 22, 2023, MIPR by $245,864.81. *Id.* GSA applied the June 22, 2023, MIPR funds to the new task order. *Id*. CLIN 1 of the new task order was fully funded at the time of award, but CLIN 2 and CLIN 3 were funded up to a ceiling amount at the time of award. Attachments. Specifically, CLIN 2 had a funded/ceiling amount of $778,049.37, and an overall potential award of $912,206.31. Attachments. CLIN 3 had a funded/ceiling amount of $100,000, and an overall potential award of $200,000. *Id*. Both CLIN 2's and CLIN 3's funded/ceiling amounts are subject to clauses that limit GSA's obligation to amounts actually allotted and set procedures for how GSA may add additional funds. In particular, CLIN 2 is subject to a Limitation of Government's Obligation clause, DFARS 252.232-7007, which states:

> (a) Contract line item(s) 0002 is incrementally funded. For this/these item(s), the [funded/ceiling amount] of the total price is presently available for payment and allotted to this contract. . . (b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s). Attachments.

CLIN 3 is subject to the FAR 52.232-22 Limitation of Funds clause, which states:

> The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract. *Id*.

When closing out the extension that was fully funded by the March 14, 2023, MIPR, GSA discovered that cost savings initiatives taken during the extension's period of performance resulted in a savings of $197,355.87. Request Letter, at 2. GSA discovered this after the FY 2023 funding from both MIPRs had expired. *Id*. GSA's policy when making awards and recording obligations of annual appropriations to contracts with periods of performance that cross FYs is to not permit expired funds to be used for new awards or to provide additional funding for severable services contracts that were awarded and initially incrementally funded during the time period in which the expired funds were available. *Id*., at 1. The AAS contracting officer, however, believes it is proper for GSA to retain the expired funds and use them to provide additional funding for the new task order. *Id*., at 2.

DISCUSSION

At issue in this decision is whether GSA may obligate the expired FY 2023 funds remaining from the March 14, 2023, MIPR to fund the unfunded portion of the new task order. As discussed further below, rather than obligating the expired FY 2023 savings from the extension to the new task order, GSA must obligate appropriations current at the time when a discretionary increase above the contractually stipulated ceiling is granted.

Under 31 U.S.C. § 1502, an appropriation or fund limited for obligation to a definite period is available for obligation only to fulfill a genuine or bona fide need of the period of availability for which it was made.[6] In other words, annual appropriations that are made for a specific fiscal year are only available to fulfill a genuine or bona fide need of the fiscal year the funds are appropriated. B-317139, June 1, 2009; 73

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[6] Section 1502(a) of title 31 provides: "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law." 31 U.S.C. § 1502(a).

Comp. Gen. 77 (1994). This is known as the bona fide needs rule. We have recognized that, as a general matter, the relevant date to ascertain whether a severable service is a bona fide need of a particular fiscal year is the date that the service is delivered. This is because severable service contracts are typically viewed as chargeable to the appropriation current at the time the services are rendered. B-241415, June 8, 1992 (71 Comp. Gen. 428). As an exception to this rule, Congress has provided most federal agencies the authority to enter into one-year severable services contracts, beginning at any time during the fiscal year and extending into the next fiscal year, and to obligate the total amount of such contract to the appropriation current at the time of award. 41 U.S.C. § 3902; 10 U.S.C. § 3133.

In the context of both severable and nonseverable services, we have determined that a modification to increase the ceiling of a cost-reimbursement contract is chargeable to the appropriation current at the time that the modification is approved by the contracting officer. *See* B-219829, July 22, 1986; B-195732, Sept. 23, 1982. In B-219829, July 22, 1986, we concluded that a "contract modification is properly chargeable to the appropriation available when the modification was approved … [when] the amount involved exceeds the original contract ceiling price." There, we examined a cost reimbursement contract that contained a Limitation of Funds clause that established an estimated cost ceiling and provided that once the ceiling was reached, the contractor would be under no obligation to continue performance unless additional funds were allocated to the contract. *Id*. There, we held that the entire amount of the original contract was properly charged to the earlier fiscal year appropriation since that appropriation was available when the contract was executed, but that the modification occurring in the later fiscal year was properly charged to the appropriation available when the modification was approved by the contracting officer in the later fiscal year. *Id*. *See also* B-317139, June 1, 2009.

Similarly, in B-195732, September 23, 1982, we determined that in cost reimbursement contracts, discretionary cost increases (*i.e.*, increases that are not enforceable by the contractor), which exceed funding ceilings established by the contract, may properly be charged to funds currently available when the discretionary increase is granted by the contracting officer. *See also* B-219829, July 22, 1986. In both B-219829 and B-195732, the relevant Limitation of Funds clause stated that once the ceiling was reached, the contractor was no longer under obligation to continue performance unless additional funds were allocated to the contract.

The extension funded by the March 14, 2023, MIPR was unquestionably a bona fide need of FY 2023 since the extension covered services performed entirely in FY 2023. Additionally, GSA relied on 41 U.S.C. § 3902 to obligate $1,135,759.50 in FY 2023 funds from the June 22, 2023, MIPR to fund the new task order, which had a period of performance of September 24, 2023, to March 23, 2024. Response Letter, at 3. It would have been permissible for GSA to obligate the total potential award price of the new task order to FY 2023 funds because the contract's period of performance began in FY 2023 and did not exceed 12 months. However, GSA only funded $1,135,759.50 at the time of award since the June 22, 2023, MIPR did not completely cover the potential award price of the new task order.[7]

Importantly, the amounts actually obligated to CLIN 2 (a labor hour, severable service CLIN) and CLIN 3 (a cost-reimbursement CLIN for travel) from the June 22, 2023, MIPR were the funded/ceiling amounts for both CLINs, despite not reflecting the overall potential award price. The new task order contained Limitation of Funds clauses recognizing that the proposed work in the contract was being partially funded, that the contractor should not perform work in excess of the amount actually allotted by GSA to the contract, and that GSA was not required to reimburse costs in excess of what was allotted to the contract. The Limitation of Funds clauses applicable to CLIN 2 and to CLIN 3 made it clear that the contractor was not required to continue performance under the contract or otherwise incur costs in excess of the amount then allotted to the contract by GSA. The new task order shows that the funded/ceiling amount subject to the Limitation of Funds clause for CLIN 2 is $778,049.37, and for CLIN 3, $100,000. Because these ceilings were both made subject to their respective Limitation of Funds clauses, GSA is not contractually bound to obligate additional funds to the new task order above these ceilings.

Since GSA is not contractually required to fund the remainder of the new task order, GSA's decision to add funds to the labor hour CLIN and the cost-reimbursement CLIN would be seen as a discretionary cost increase, similar to that in B-195732, September 23, 1982. Therefore, as any funds added to CLIN 2 and CLIN 3 would exceed the ceilings established by contract, the obligations should be charged to funds available when the discretionary increase is granted. Accordingly, the savings from the March 14, 2023, MIPR, which are FY 2023 annual appropriations, are not available to add additional funds to the new task order. Rather, GSA must use funds current at the time when a discretionary increase above the ceiling is granted to fund any part of the new task order above the ceiling amounts.

This conclusion is consistent with GSA OCFO's views. GSA stated that the scope of the contract was limited to the amount and types of work that were actually funded since the contract contained clauses that specified that while GSA intended to obligate additional funds to CLINs, it was not legally bound to do so. Response Letter, at 3. GSA observed that had GSA and the Air Force elected to add FY 2023 funds to the contract prior to October 1, 2023, the Air Force could have met its FY 2023 bona fide need with FY 2023 funding but, failing to do so, the unfunded work in the new task order became a bona fide need of the next fiscal year requiring funding current to that year. *Id*.

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[7] CLINs 2 and 3 did not involve nonseverable services for which the general rule is that agencies must obligate the entire amount at contract award. *Cf*. B-317139, June 1, 2009.

CONCLUSION

We conclude that the expired FY 2023 funds received under the March 14, 2023, MIPR cannot now be obligated to fund any part of the new task order. Because of the Limitation of Government's Obligation and the Limitation of Funds clauses in the new task order, GSA is not required to add additional funds above the contractually stipulated ceilings for CLIN 2 and CLIN 3, including to cover the difference in the new task order between the potential award price and the funded/ceiling amount. If GSA, in its discretion, chooses to cover this difference in whole or in part, GSA must obligate appropriated funds current to the time of that decision. The savings from the March 14, 2023, MIPR, being expired FY 2023 funds, should be deobligated and returned to the Air Force.

Edda Emmanuelli Perez
General Counsel

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

**441 G St. N.W.
Washington, DC 20548**

Decision

Matter of: Architect of the Capitol—*Bona Fide* Need for End-of-Year Purchase of Supplies

File: B-336373

Date: April 8, 2026

DIGEST

The Architect of the Capitol (AOC) obligated its fiscal year (FY) 2023 funds for a contract modification near the end of the fiscal year to purchase supplies in support of continuity of operations (COOP) planning for the legislative branch. We conclude that AOC properly recorded an obligation for the modification on September 27, 2023, in light of having a binding agreement on that date and having ordered the specific supplies in question on that date. We also conclude that AOC did not violate the *bona fide* needs rule when it obligated its FY 2023 funds to purchase the COOP supplies to be delivered in FY 2024. The quantity of supplies purchased and the delivery time was reasonable under the circumstances of creating stock in support of COOP planning. Although we have questioned the propriety of stocking supplies for more than one year prior to use when the supplies have a shelf life, we do not raise similar questions here in the context of COOP planning because AOC identified a need for the supplies at the time of obligation. The fact that an emergency does not materialize or that the supplies to respond to the emergency expire before use does not mean that the COOP supplies are not a *bona fide* need of FY 2023.

DECISION

The Architect of the Capitol (AOC) Office of Inspector General (OIG) asked whether AOC may obligate its fiscal year (FY) 2023 appropriation for a contract modification near the end of the fiscal year to purchase supplies.[1]

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[1] Letter from the Inspector General, AOC, to Comptroller General, GAO (May 7, 2024) (Request Letter).

In accordance with our regular practice, we contacted AOC to seek factual information and its legal views on this matter.[2] AOC provided facts and its legal views in its written response.[3]

BACKGROUND

AOC is responsible for the maintenance, operation, development, and preservation of the U.S. Capitol campus.[4] AOC's Capitol Police Buildings and Grounds (CPBG) appropriation is available for "all necessary expenses" of AOC's "resilience and security programs."[5] As a part of these programs, AOC explains that its Office of the Chief Security Officer (OCSO) maintains responsibility for purchasing and storing emergency supplies and personal protective equipment (PPE) under its continuity of operations (COOP) plan for multiple legislative branch stakeholders, including the House, Senate, AOC, U.S. Capitol Police, and Library of Congress.[6] As a general matter, COOP planning is intended to facilitate the continued performance of essential functions before, during, and in the aftermath of a catastrophic emergency.[7]

AOC's FY 2023 budget request noted that OCSO had "expanded its mission with the creation of" a new Logistics Division to serve as "the central depository for

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[2] 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 Assistant General Counsel, GAO, to General Counsel, AOC (July 2, 2024).

[3] Letter from General Counsel, AOC, to Assistant General Counsel, GAO (Aug. 30, 2024) (Response Letter).

[4] Response Letter, Attachment, AOC Contract No. AOCSSB23C1024 (Aug. 3, 2023) (Contract), Statement of Work (SOW), § 2.0, at 1; *see* 2 U.S.C. § 1811. The U.S. Capitol campus includes the U.S. House of Representatives, U.S. Senate, U.S. Capitol Police, and other legislative branch agencies. Contract, SOW, § 2.0.

[5] 2 U.S.C. § 1865(b)(1); Response Letter, at 3. The name of the CPBG appropriation in the appropriation act is "Capitol Police Buildings, Grounds and Security." *See* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. I, title I, 136 Stat. 4459, 4928 (Dec. 29, 2022).

[6] Response Letter, at 1, 3.

[7] *See generally* U.S. Department of Homeland Security, Federal Emergency Management Agency, *Federal Continuity Directive 1: Federal Executive Branch National Continuity Program and Requirements* (Jan. 17, 2017) (establishing the requirements for continuity planning in the executive branch).

emergency supplies, materials, and PPE."[8] The budget request describes warehousing and delivery services as "imperative for an effective emergency management program."[9]

In support of its COOP planning, AOC awarded a warehouse and delivery services contract on August 3, 2023.[10] Pointing to the supply shortages created by high demand for critical PPE during the coronavirus disease 2019 (COVID-19) pandemic, AOC explained that it intended for the contractor to assume care and custody of supplies for disbursement under the COOP program.[11] The statement of work for the contract provides that "[t]he contractor may be requested to procure products on occasion as a reimbursable cost," but does not identify the specific products or supplies that may be requested.[12] According to AOC, the contract was treated as a hybrid contract with firm-fixed price contract line items (CLINS) and when the contractor was requested to procure supplies, the cost was reimbursed under the contract on a reimbursable basis.[13]

AOC's contracting office, as an internal procedural matter, establishes an annual cutoff date by which program offices must submit requisitions to the contracting office.[14] The applicable cutoff date in 2023 was July 28, 2023.[15] Almost two months after this cutoff date, OCSO submitted its internal request to modify the contract to add a CLIN for the contractor to procure supplies.[16] The Internal Form listed the following items to be purchased for a total amount of $4,560,500 along with the unit price per item: 115,000 BinaxNow COVID-19 tests; 100,000 USA made KN-95 masks; 100,000 3M N95 masks; 100,000 boxes of gloves in all sizes; and 100,000

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[8] Response Letter, Attachment, *FY 2023 Budget Request: Capitol Police Building, Grounds and Security*, at CPBG&S-8 (AOC Budget Request).

[9] *Id*.

[10] Response Letter, at 1, 3; Contract.

[11] Response Letter, at 1; Contract, SOW, § 2.0, at 1.

[12] Contract, SOW, § 5.0, at 4.

[13] Response Letter, at 1; *see* Contract, SOW, § 5.0, at 1–4, and § 9.0, at 7. In its response, AOC explained that the contract incorrectly included the indefinite delivery-indefinite quantity clause. Response Letter, at 1.

[14] Response Letter, at 2.

[15] *Id*.

[16] *Id*.; Response Letter, Attachment, *Modification Request Form for the Warehouse and Delivery Services Contract* (approved Sept. 27, 2023) (Internal Form).

containers of Lysol wipes.[17] OCSO received an override of the cutoff date to permit processing of the modification.[18]

On September 27, 2023, AOC and the contractor signed a modification to add CLIN 0004 for the purchase of "materials/supplies" in the amount of $4,560,500 in support of COOP planning.[19] According to AOC, the modification was a binding agreement on September 27.[20] On the same date, AOC recorded an obligation in the amount of the modification against its FY 2023 lump-sum, annual CPBG appropriation that was expiring September 30, 2023.[21] Without directing any delayed deliveries, AOC received the ordered supplies between October 10, 2023, and January 25, 2024.[22]

In September 2023, OIG received a complaint about the year-end modification.[23] In its request to us, OIG stated, as a general matter, it does not question the propriety of purchasing COVID-19 test kits and PPE.[24] Rather, OIG questions the propriety of obligating FY 2023 funds for supplies to be delivered entirely in FY 2024 for what it considers to be an unreasonable quantity of supplies that are unlikely to be used in FY 2024 or at all prior to the end of their useful life.[25]

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[17] Internal Form; *see also* Response Letter, at 3, 5 (providing the full name for the purchased supplies).

[18] Response Letter, at 2; *see also* Internal Form (reflecting AOC approval of the proposed modification).

[19] Response Letter, at 1–3, 5; Response Letter, Attachment, Contract, Modification 002, CLIN 0004 (Sept. 27, 2023) (Modification).

[20] Response Letter, at 3.

[21] *Id*.; *see also* Pub. L. No. 117-328, 136 Stat. at 4928.

[22] Response Letter, at 3, 4; Request Letter, at 2.

[23] Request Letter, at 1. The complainant expressed concern about whether a *bona fide* need existed for the supplies and whether the modification used reprogrammed funds. *Id*. AOC stated that the modification did not require any reprogramming of funds. Response Letter, at 6.

[24] Request Letter, at 3.

[25] Request Letter, at 2–3. OIG and AOC expressed different opinions on the existence and term of the useful life for the supplies. OIG states that all the supplies had a shelf life. *Id*. at 2. According to OIG, the BinaxNow COVID-19 test kits had an expiration date of August 2024 when purchased, the Lysol wipes were effective for one to two years, the masks had a three to five year shelf life according to the Centers for Disease Control, and the gloves had a shelf life of about five years. *Id*. In contrast, AOC states that only the BinaxNow COVID-19 test kits and Lysol wipes
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DISCUSSION

At issue is whether AOC complied with the recording statute and the *bona fide* needs statute when it obligated its FY 2023 appropriations for the modification to purchase COOP supplies near the end of the fiscal year.

Recording Statute

The recording statute, 31 U.S.C. § 1501(a)(1), requires that an agency record the full amount of an obligation when there is sufficient documentary evidence of "a binding agreement" for "specific goods to be delivered . . . or work . . . to be provided" that is signed during the period of availability of the appropriation used.[26] By establishing criteria to record an obligation, the statute addressed the practice by some agencies of adopting "strained" or "overly broad" concepts of obligation for the purpose of impermissibly reducing the amount of expiring, unobligated appropriations.[27] The criteria ensures that contracting parties understand and accept their rights and duties under the agreement and that Congress, as part of its oversight role, has a reasonably precise picture of an agency's financial requirements so it can more accurately assess the agency's future appropriation needs.[28]

An agreement that lacks a specific, definite description of the goods is not firm and complete and, as such, is not recordable as an obligation.[29] For example, in B-308944, July 17, 2007, we concluded that the Department of Defense (DOD) did not incur an obligation on September 17, 2004, against its FY 2004 appropriations, when it submitted an order to purchase "'equipment through the Pentagon IT Store.'"[30] Instead DOD incurred an obligation in FY 2005 when it perfected the order

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had a shelf life. Response Letter, at 3. AOC states the COVID-19 test kits had a 12 month shelf life and the Lysol wipes had a 24 month shelf life. *Id*. In its August 2024 response, AOC notes that it had disbursed 30,780 of the 115,000 BinaxNow COVID-19 test kits; 720 of the 100,000 USA made KN-95 masks; 580 of the 100,000 boxes of gloves; none of the 100,000 3M N95 masks; and 3,800 of the 100,000 containers of Lysol wipes. *Id*. at 3.

[26] *See e.g.*, B-336036, Feb. 12, 2025; B-330628, Dec. 9, 2024.

[27] 54 Comp. Gen. 962, 964 (May 15, 1975); 51 Comp. Gen. 631, 633 (B-174981, Apr. 7, 1972).

[28] B-308944, July 17, 2007; 64 Comp. Gen. 410, 414 (B-214551, Mar. 25, 1985).

[29] 31 U.S.C. § 1501(a)(1); B-308944, July 17, 2007.

[30] B-308944, July 17, 2007, at 6 (citation omitted). Congress does not want an agency to record an obligation against its current appropriation based on an incomplete agreement whether that agreement is with a private contractor as here or another agency as in B-308944 when DOD submitted orders to a revolving fund of

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by e-mailing the descriptions of the specific items sought from the Pentagon IT Store.[31] In contrast, as to a different order, we concluded that DOD did incur an obligation on the same date it submitted the order to purchase "'XEROX 3400 Printers'" because the order was sufficiently specific to obligate DOD's FY 2004 appropriation.[32]

Applying our previous decisions, the totality of the circumstances here are sufficient for us to conclude that AOC properly recorded an obligation for the modification to purchase COOP supplies. The contract and modification by themselves lack the requisite specificity for a contractor to determine what supplies the agency sought when it modified the contract to add CLIN 0004 for "materials/supplies." However, the Internal Form that AOC prepared before processing the modification shows that AOC knew the specific supplies it sought along with the associated quantity and unit price per item. Further, OIG reviewed contract documentation and determined that, on the date the modification was signed, AOC ordered the specific supplies at issue.[33] In its response to us, AOC states that the modification "became effective with a binding written agreement between the AOC and the contractor" on September 27, 2023.[34] Based on these circumstances, in particular OIG's review of the contract documentation, it is clear to us that AOC properly recorded an obligation for the modification on September 27, 2023.[35]

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the Department of Interior. *See* 31 U.S.C. § 1501(a)(1) (establishing the recording criteria for agreements between "an agency and another person (including an agency)").

[31] B-308944, July 17, 2007.

[32] *Id*. at 4 (citation omitted).

[33] Request Letter, at 2. Based on OIG's review of the contract documentation for the modification, OIG states that AOC ordered, on September 27, 2023, certain supplies and the supplies identified by OIG match those listed in AOC's Internal Form. *Id*. (listing the supplies ordered on September 27, 2023).

[34] Response Letter, at 3.

[35] Notwithstanding our conclusion, AOC should ensure that it both creates and retains the necessary documentation, including e-mails or other written communications to the contractor identifying the specific supplies sought, to ensure that it properly records its obligations in accordance with 31 U.S.C. § 1501. Proper recording of obligations is essential to avoid violations of the Antideficiency Act. *See id*. § 1341(a) (prohibiting agencies from obligating in excess, or in advance, of an available appropriation unless otherwise authorized by law).

Bona Fide Needs Statute

While the modification in question was signed during FY 2023, it may be properly charged to AOC's FY 2023 appropriation only if AOC had a *bona fide* need for the supplies in FY 2023. Under the *bona fide* needs statute, 31 U.S.C. § 1502(a),[36] a time-limited appropriation is available only to fulfill a genuine or *bona fide* need of the period of availability of the appropriation.[37] Known as the *bona fide* needs rule, this rule, similar to the requirements of the recording statute, serves Congress's oversight role because an appropriation's limited period of availability for obligation requires the agency to return to Congress "to justify continuing the program or to debate about how much is needed to carry on the program at the same or a different level."[38]

Compliance with the *bona fide* needs statute is measured at the time the agency incurs an obligation and depends on the facts and circumstances of the particular transaction.[39] In this instance, the modification was signed near the end of FY 2023 and AOC obligated its annual FY 2023 appropriation.[40] We have long recognized that an appropriation is just as much available to supply the needs of the last days of

[36] The *bona fide* needs statute provides that "[t]he balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with [the recording statute]." 31 U.S.C. § 1502(a).

[37] *E.g.*, B-336079, Nov. 20, 2025; B-308944, July 17, 2007; B-308010, Apr. 20, 2007. Congress provided AOC, and most agencies, with statutory exceptions to the *bona fide* needs statute. *E.g.*, 41 U.S.C. §§ 3902, 3903, 3904(g). One exception authorizes AOC to sign a multiyear contract to purchase supplies or services for the needs of up to five years, subject to certain conditions. 41 U.S.C. §§ 3903, 3904(g)(2); *e.g.*, B-322455, Aug. 16, 2013. Another exception authorizes AOC to sign a contract to procure severable services for the needs of up to 12 months with the period of performance beginning in one fiscal year and ending in the next, subject to certain conditions. 41 U.S.C. §§ 3902, 3904(g)(1); *e.g.*, B-336079, Nov. 20, 2025. AOC did not state that it used any exception to the *bona fide* needs statute.

[38] 64 Comp. Gen. 359, 362 (B-217722, Mar. 18, 1985).

[39] B-309530, Sept. 17, 2007; B-308010, Apr. 20, 2007; 37 Comp. Gen. 155, 159 (B-130815, Sept. 3, 1957).

[40] Response Letter, at 1, 3; Modification.

a fiscal year as any other day or time in the year and that the timing of an obligation, does not, in and of itself, establish anything improper.[41]

In the context of the purchase of supplies, as a general matter, the relevant date to ascertain whether the supplies to be purchased are a *bona fide* need of a particular fiscal year is the date that the supplies will be used.[42] Thus, the agency generally obligates the appropriation available in the fiscal year in which the supplies will be used.[43]

In limited circumstances, supplies may be a *bona fide* need of a fiscal year prior to the fiscal year in which the supplies will be used. First, under what is sometimes referred to as the lead-time exception, an agency may use a current year appropriation for supplies to be used in the subsequent fiscal year where the supplier requires a lead-time to deliver, produce, or fabricate the supplies; the time between contracting and delivery is necessary and not excessive; and the purchase is not for commercial supplies readily available from other sources.[44] While AOC mentioned that “[i]n prior years” there were “shortages, demand and supply chain issues and other delays” that “contributed to significant lead time and availability,” AOC does not point to a supplier required lead-time for the supplies purchased here.[45]

Next, we have recognized an exception to the *bona fide* needs rule referred to as the stock-level exception. Stock, here, generally refers to “readily available common-use standard items.”[46] In limited circumstances, an agency may use a

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[41] 38 Comp. Gen. 628 (B-138574, Mar. 25, 1959); *see also* 8 Comp. Dec. 346, 348 (1901) (writing about a time limited appropriation, the Comptroller General of the Treasury noted that “[a]n appropriation should not be used for the purchase of an article not necessary for the use of a fiscal year in which ordered merely in order to use up such appropriation,” but such “appropriation is just as much available to supply the needs of the [day before the end] of a particular [fiscal] year as any other day or time in the year” and to conclude otherwise “would work as an undeserved punishment to those” who conserve “their appropriations for exigencies that are liable to arise at any time during the year”).

[42] B-221204-O.M., Jan. 31, 1986; 35 Comp. Gen. 692 (B-128065, June 11, 1956).

[43] *Id*.

[44] B-309530, Sept. 17, 2007; 38 Comp. Gen. 628 (B-138574, Mar. 25, 1959); 37 Comp. Gen. 155 (B-130815, Sept. 3, 1957).

[45] Response Letter, at 4.

[46] 44 Comp. Gen. 695, 697 (B-156161, May 11, 1965); 32 Comp. Gen. 436, 438 (B-114578, Apr. 7, 1953).

current year appropriation to replace stock previously used that the agency continues to need even though the agency will not use the replacement stock in that year or to purchase "additional stock for expanded office needs."[47] We have upheld such uses provided that the stock quantity and delivery time was reasonable under the circumstances.[48] At issue here is the stock-level exception.

We applied the stock-level exception in B-251706, August 17, 1994, to the use by the U.S. Department of Agriculture (USDA), Farmers Home Administration (FmHA) of its FY 1991 funds for a June 1991 order of a sizeable number of office chairs as part of a project to relocate and improve its headquarters office with delivery scheduled to occur in four shipments during November and December 1991.[49] In concluding that USDA did not violate the *bona fide* needs rule when it obligated FY 1991 funds, we noted that replacement stock need not be used in the fiscal year of obligation and stock "need not be merely replacement items but could be additional stock for expanded office needs."[50] Such expanded office needs may include supplies needed to respond to legitimately anticipated dangers and exigencies. For example, the September 11, 2001, terrorist attacks heightened the nation's awareness of terrorist activity and the need for ongoing vigilance.[51] In B-301152, May 28, 2003, in a published memorandum we concluded that GAO could purchase protective hoods for use in the event of a terrorist attack on government facilities involving explosives or chemical or biological weapons. We advised that a reasonable quantity of protective hoods based on an estimate of the number of people in the GAO headquarters building at any one time would be a *bona fide* need of GAO.[52]

Here, AOC saw an urgent need to prepare for virulent, infectious disease by creating a stock of emergency supplies in support of its COOP planning.[53] As in B-251706, August 17, 1994, and B-301152, May 28, 2003, the quantity of supplies purchased and the time between contracting and delivery was reasonable in the circumstances here. Explaining the quantity of supplies purchased, AOC points to the number of legislative branch personnel across the U.S. Capitol campus, a July 2023 uptick in

[47] B-251706, Aug. 17, 1994, at 4; 44 Comp. Gen. 695 (B-156161, May 11, 1965); 29 Comp. Gen. 489 (B-95380, June 1, 1950).

[48] B-309530, Sept. 17, 2007; B-301152, May 28, 2003; B-251706, Aug. 17, 1994.

[49] B-251706, Aug. 17, 1994.

[50] *Id*. at 4.

[51] B-303964, Feb. 3, 2005.

[52] B-301152, May 28, 2003.

[53] Response Letter, at 2, 3; AOC Budget Request.

COVID-19 infection rates, and increased requests for PPE from the agencies supported by AOC.[54] For example, AOC explains that the purchase of 115,000 COVID-19 test kits was based on an estimate of four kits per person for approximately 30,000 legislative branch personnel.[55] AOC also purchased 100,000 of each of these PPE items for legislative branch personnel: KN-95 masks, N95 masks, boxes of gloves, and containers of Lysol wipes.[56] The supplies ordered on September 27, 2023, were received between October 10, 2023, and January 25, 2024.[57] AOC explained that it was possible to use the stocked supplies within one fiscal year based on usage rates from the prior fiscal year, the virulence of COVID-19, demand from personnel, and other factors.[58] Under these circumstances of COOP planning in response to legitimately anticipated dangers and exigencies, AOC had a *bona fide* need for the supplies in FY 2023.

In the past we have questioned the propriety of stocking supplies for more than one year prior to use when the supplies have a shelf life.[59] In B-134277, December 18, 1957, we considered the purchase by the Department of Veterans Affairs (VA) of a chemical to be carried in stock for more than a year prior to use. We questioned the propriety of the purchase where the chemical stocked may have been incapable of storage without deterioration before use.[60] Although some of the supplies that AOC purchased had a shelf life,[61] the circumstances here are distinguishable from those in B-134277. The supply purchase here was specifically focused on AOC's COOP planning that provides for AOC to purchase and store emergency supplies for the legislative branch.[62] In this context of COOP planning, we do not object, from the *bona fide* needs perspective, to the possibility that the supplies may expire prior to

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[54] Response Letter, at 4.

[55] *Id.* at 4, 5.

[56] *Id*. at 5.

[57] *Id*. at 3, 4; Request Letter, at 2.

[58] Response Letter, at 4. AOC distributed 547,560 KN-95 and N95 masks in FY 2022 and purchased 200,000 masks by the modification. *Id*. at 5. AOC distributed 592,422 COVID-19 tests in FY 2022 and purchased 115,000 COVID-19 test kits by the modification. *Id*. Although AOC distributed fewer gloves and Lysol wipes in FY 2022 than the quantity purchased by the modification, AOC also noted the existence of supply shortages in prior years. *Id*.

[59] B-134277, Dec. 18, 1957.

[60] *Id*.

[61] *See* note 25, *supra* (describing the shelf life for the supplies).

[62] Response Letter, at 1, 3, 5.

use so long as the agency has identified a need for such supplies at the time of obligation. Here, AOC identified a need for the supplies at least in FY 2023. The fact that an emergency does not materialize or that the supplies to respond to the emergency expire before use does not mean that the supplies are not a *bona fide* need of FY 2023.

Last, we consider the impact of AOC's July 28, 2023, cutoff date on our *bona fide* needs analysis for an appropriation expiring on September 30, 2023. As AOC explains, the cutoff date is an internal deadline established by AOC's contracting office "[t]o efficiently and effectively obligate annual and expiring appropriations."[63] The cutoff date does not shorten the period of availability of AOC's appropriation. We see no basis to infer from AOC exceeding or waiving its internal cutoff date that the agency did not have a *bona fide* need here for the supplies. Prudent management of a time limited appropriation counsels in favor of an agency establishing similar internal deadlines so that the agency, through early identification of funds soon to expire, may obligate any unobligated amounts before the amounts expire.

CONCLUSION

We conclude that AOC properly obligated its FY 2023 funds for a contract modification near the end of the fiscal year to purchase supplies in support of COOP planning for the legislative branch. AOC properly recorded an obligation for the modification on September 27, 2023, in light of having a binding agreement on that date and having ordered the specific supplies in question on that date. And AOC did not violate the *bona fide* needs rule when it obligated its FY 2023 funds to purchase the COOP supplies to be delivered in FY 2024. The quantity of supplies purchased and the delivery time was reasonable under the circumstances of creating stock in support of COOP planning. Although we have questioned the propriety of stocking supplies for more than one year prior to use when the supplies have a shelf life, we do not raise similar questions in the context of COOP planning here because AOC identified a need for the supplies at the time of obligation.

Edda Emmanuelli Perez

Edda Emmanuelli Perez
General Counsel

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[63] *Id*. at 2.

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Decision

Matter of: U.S. Department of Agriculture—Application of Recording Statute, *Bona Fide* Needs Statute, and Antideficiency Act to Supplemental Nutrition Assistance Program Benefits

File: B-336036

Date: February 12, 2025

DIGEST

The U.S. Department of Agriculture (USDA) administers the Supplemental Nutrition Assistance Program (SNAP), which provides monthly benefits to low-income households to purchase food. SNAP is an appropriated entitlement, with benefits generally funded by a one-year appropriation provided by annual appropriations acts. Prior to September 19, 2023, USDA recorded daily obligations for SNAP in an amount equal to household benefits issued. On September 19, 2023, USDA changed this practice. On that date, USDA obligated its fiscal year (FY) 2023 one-year appropriation for FY 2024 SNAP benefits that would be issued to households during the month of October 2023. Here, we consider whether USDA's recording practices for SNAP in FY 2023 were consistent with the recording statute, the *bona fide* needs statute, and the Antideficiency Act.

We conclude that both practices violated the recording statute. The point of obligation for SNAP benefits is when appropriations for such payments have been enacted and are available for obligation, not when USDA takes action as part of the process to pay benefits. In addition, the proper amount to record was USDA's best estimate of the SNAP benefits due in FY 2023, not the amount of benefits issued each day or benefits due in FY 2024. We also conclude that USDA's change in practice violated the *bona fide* needs statute when it used its FY 2023 one-year SNAP appropriation to pay for FY 2024 SNAP benefits. However, USDA complied with the *bona fide* needs statute with respect to its previous practice of recording obligations for SNAP benefits on a daily basis because the agency properly used its FY 2023 appropriation to pay for FY 2023 benefits. Finally, because USDA's FY 2023 one-year SNAP appropriation was not available to pay for FY 2024 benefits, USDA should adjust its accounts and charge those benefit amounts to appropriations available for obligation in FY 2024. If USDA lacks sufficient funds in the relevant appropriations, it must report an Antideficiency Act violation.

DECISION

This responds to a request from the U.S. Department of Agriculture (USDA), Office of Inspector General (OIG) on whether USDA's September 2023 change in practice for recording obligations for Supplemental Nutrition Assistance Program (SNAP) benefits is consistent with the recording statute, the *bona fide* needs statute, and the Antideficiency Act.[1] The request stemmed from USDA OIG's audit of USDA's consolidated financial statements for fiscal years (FY) 2022 and 2023.[2] As explained below, we conclude that USDA violated the recording statute with respect to both its original and new recording practices. In addition, we conclude that while USDA's original practice for recording obligations during FY 2023 was consistent with the *bona fide* needs statute, USDA violated the statute when it used its FY 2023 appropriation to pay for FY 2024 benefits. Given the *bona fide* needs statute violation, USDA should adjust its accounts, and if it lacks sufficient funds in the relevant appropriations, it must report an Antideficiency Act violation.

In accordance with our regular practice, we contacted USDA to seek factual information and its legal views on this matter.[3] USDA responded with its explanation of the pertinent facts and legal analysis.[4] We also requested and received the views of the White House Office of Management and Budget (OMB).[5]

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[1] Letter from Counsel to the Inspector General, USDA OIG, to General Counsel, GAO (Feb. 16, 2024).

[2] USDA OIG, *USDA's Consolidated Financial Statements for Fiscal Years 2023 and 2022*, Audit Report 50401-0022-11 (Jan 16, 2024), *available at* https://usdaoig.oversight.gov/reports/audit/usdas-consolidated-financial-statements-fiscal-years-2023-and-2022 (last visited Feb. 3, 2025).

[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 Assistant General Counsel for Appropriations Law, GAO, to Principal Deputy General Counsel, USDA (Apr. 10, 2024).

[4] USDA, *USDA Response to GAO B-336036: U.S. Department of Agriculture—Application of Recording Statute, Bona Fide Needs Statute, and Antideficiency Act to Supplemental Nutrition Assistance Program Benefits* (June 13, 2024) (with attachments) (USDA Response).

[5] Email from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, OMB, *Subject: Seeking OMB GC's views regarding obligations for SNAP benefits* (July 10, 2024); Letter from Assistant General Counsel, OMB, to Assistant General Counsel for Appropriations Law, GAO (Aug. 22, 2024) (with attachments) (OMB Response).

BACKGROUND

SNAP

SNAP is authorized by the Food and Nutrition Act of 2008, *as amended* (Food and Nutrition Act),[6] and provides monthly benefits to 42 million people to purchase food.[7] SNAP is jointly administered by USDA and the states. USDA pays the full cost of SNAP benefits (using the Federal Reserve Bank of Richmond (Federal Reserve Bank) to make funds available), promulgates program regulations, and ensures state compliance with program rules. States are responsible for determining applicant eligibility, calculating the amount of their benefits, and issuing the benefits on Electronic Benefits Transfer (EBT) cards.[8]

Prior to issuing benefits, USDA sends a letter to the Federal Reserve Bank stating the maximum amount of funds available to states for the period in question.[9] Each day, USDA receives a file from the Federal Reserve Bank consolidating issuance data from the states.[10] USDA certifies the payments are proper, and the Federal Reserve Bank makes funds available to the states via individual letters of credit.[11] Benefits are issued to participants on EBT cards.[12]

SNAP benefits are primarily funded with one-year appropriations provided in annual appropriations acts.[13] These acts also generally provide a much smaller amount of three-year funds ($3 billion per year) (SNAP contingency fund) that is kept in reserve

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[6] 7 U.S.C. §§ 2011–2029, 2031–2032, 2034–2036b, 2036d.

[7] GAO, *Improper Payments: USDA's Oversight of the Supplemental Nutrition Assistance Program*, GAO-24-107461 (Washington, D.C.: Sept. 2024), at 2.

[8] GAO, *Supplemental Nutrition Assistance Program: Actions Needed to Better Measure and Address Retailer Trafficking*, GAO-19-167 (Washington, D.C.: Dec. 2018) (2018 GAO Report), at 3; *see* USDA Response, at 2–3, Attachments C, F.

[9] USDA Response, at 3.

[10] *See id.* at 2–3, Attachment C.

[11] *Id.* at 3.

[12] 2018 GAO Report, at 3; *see* USDA Response, at 3.

[13] USDA Response, at 1; *see*, *e.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. A, tit. IV, 136 Stat. 4459, 4488–89 (Dec. 29, 2022).

and is to be used only at such times as is necessary to carry out program operations.[14]

USDA Recording Practices

Prior to September 19, 2023, USDA recorded obligations each day in the amount of SNAP benefits issued to households that day.[15] USDA relied on Food and Nutrition Service Interface Inquiries to record these obligations.[16]

On September 19, 2023, USDA changed its practice and recorded obligations against its FY 2023 one-year appropriation for SNAP benefits that would be issued to households through October 31, 2023, in other words, through the first month of FY 2024.[17] USDA treated a September 19, 2023, letter to the Federal Reserve Bank as the point of obligation and recorded obligations based on the letter.[18] The letter informed the Bank of the maximum amount of funds available to states for SNAP benefits through October 31, 2023, along with the estimated value of SNAP benefits to be issued to each state during the period.[19] Specifically, the letter states, in relevant part:

> Attached is a list of the estimated dollar value of SNAP benefits to be issued to each state, within the above-referenced funding limitation, for which the Food and Nutrition Service has incurred a legal liability in accordance with approved States Plans of Operation. Pursuant to 31 U.S.C. § 1501(a)(5)(A), that amount will be recorded as an obligation as of today's date.[20]

DISCUSSION

At issue here is whether USDA's recording practices with respect to SNAP benefits comply with the recording statute, the *bona fide* needs statute, and the Antideficiency Act. In particular: (1) when did USDA incur obligations for FY 2023 and October 2023 (FY 2024) SNAP benefits; (2) what amount should have been

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[14] USDA Response, at 1; *see*, *e.g.*, Pub L. No. 117-328, 136 Stat. at 4488–89.

[15] USDA Response, at 3–4.

[16] *Id.*

[17] *Id.* at 4, 6.

[18] *Id.* at 6.

[19] *Id.* at Attachment F. We have attached to this decision a chart illustrating USDA's recording practices during FY 2023.

[20] *Id.*

recorded for those obligations; and (3) whether those obligations and the corresponding expenditures comply with the *bona fide* needs statute.

Recording Statute

(1) Point of Obligation

An obligation occurs when an agency incurs a legal liability or a legal duty that could mature into a legal liability by virtue of actions beyond the control of the agency. B-333150, Apr. 8, 2024; B-300480, Apr. 9, 2003. The recording statute, 31 U.S.C. § 1501, requires that an agency record an obligation when there is sufficient documentary evidence of the government's liability. *See, e.g.*, B-329712, Oct. 15, 2020. The statute also specifies the type of documentary evidence necessary to record an obligation for different types of transactions. 31 U.S.C. § 1501(a).

In particular, the statute requires agencies to record an obligation based on documentary evidence of a grant or subsidy payable from appropriations that is "required to be paid in specific amounts fixed by law or under formulas prescribed by law." 31 U.S.C. § 1501(a)(5)(A). We have consistently determined that this provision applies when a statute requires the government to provide federal assistance and prescribes a formula to calculate the payments, *see*, *e.g.*, B-316915, Sept. 25, 2008, even if the statute does not characterize the payments as a "grant" or "subsidy." *See* 63 Comp. Gen. 525 (1984) (involving "allotments" to states); B-212145, Sept. 27, 1983 (involving "payments" to local governments).

The Food and Nutrition Act requires SNAP benefits to be paid to eligible households (as identified by each state) based on a specified formula, subject to the availability of appropriations. 7 U.S.C. §§ 2013(a) (authorizing SNAP "[s]ubject to the availability of funds appropriated under" the Act), 2014(a) (providing that "[a]ssistance under this program shall be furnished to all eligible households who make application for such participation"), 2017 (prescribing the formula for calculating a household's monthly allotment), 2027(b) (prohibiting the issuance of benefits in excess of the amount appropriated); *see* A-51604, Apr. 3, 1979 (examining the previous food stamp program and noting that "[o]nce a household is determined to be eligible for an allotment on the basis of uniform national standards, [USDA] is required to furnish such a household with assistance if it applies for participation under the program"). Because the government is required to provide SNAP benefits in specific amounts under a formula prescribed by law, USDA should record obligations for SNAP benefits in accordance with section 1501(a)(5)(A) of title 31.[21]

[21] Both USDA and OMB agree that section 1501(a)(5)(A) applies to SNAP benefits, though they state in their responses that the recording statute's catchall provision (section 1501(a)(9)) may also apply. *See* USDA Response, at 8–9, Attachment F; OMB Response, at 3.

The next question is at what point does USDA incur an obligation for SNAP benefits. In FY 2023, USDA initially treated the point of obligation for SNAP benefits as the day such benefits were issued.[22] Then, in September 2023, USDA changed its practice and treated its letter to the Federal Reserve Bank as the point of obligation for SNAP benefits.[23]

Under section 1501(a)(5)(A), an agency must record an obligation when supported by documentary evidence of federal assistance payable from appropriations that is required to be paid in specific amounts fixed by law or under formulas prescribed by law. *See* B-212145, Sept. 27, 1983; B-316915, Sept. 25, 2008. For programs covered by section 1501(a)(5)(A) that are funded by one-year appropriations, the point of obligation is generally when appropriations for such payments have been enacted and are available for obligation. *See* GAO, *Tracking the Funds: Specific Fiscal Year 2022 Provisions for Federal Agencies*, GAO-22-105467 (Washington, D.C.: Sept. 2022), at 30 (citing B-316915, Sept. 25, 2008) (noting that "in some circumstances the obligational event occurs immediately when the appropriation for the grant becomes law").[24] In these cases, the underlying statute and the appropriation create a legal liability or a legal duty that could mature into a legal liability by virtue of actions taken by other parties beyond the control of the government.

For example, in B-212145, we examined a statute requiring the Secretary of the Interior to make payments each fiscal year to local governments in which certain federal lands were located. B-212145, Sept. 27, 1983. We determined that the criteria for recording an obligation in section 1501(a)(5)(A) were met by virtue of the authorizing legislation requiring annual payments using a specified formula and the enactment of appropriations for that particular fiscal year. *Id.*

In another decision, we looked at a statutory program administered by the Election Assistance Commission (EAC). B-316915, Sept. 25, 2008. The statute directed EAC to make payments to states under a prescribed formula, provided that the state certified that it met certain statutory requirements. *Id.* We noted that Congress had appropriated amounts for the particular year at issue and concluded that EAC incurred an obligation for the grant payments for that fiscal year by operation of law, regardless of when or if a particular state submitted a certification, because the states had the ability to fulfill the preconditions without any action on the part of the agency. *Id.*

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[22] USDA Response, at 3–4.

[23] *Id.* at 4, 6.

[24] Neither the Food and Nutrition Act nor the SNAP appropriation specifies an alternative point of obligation.

SNAP is considered an appropriated entitlement, meaning that the government is legally required to make payments to those who meet the program requirements and funding is provided by annual appropriations acts. *See* OMB Response, at 3 & n.2 (citing H.R. Rep. No. 105-217 (1997) and OMB, Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, §§ 20.3, 123.11 (July 2024)). The Food and Nutrition Act imposes a legal duty on USDA that could mature into a legal liability for SNAP benefit payments by virtue of actions taken by program participants (such as applying for SNAP benefits) and states (such as determining household eligibility and benefit amounts) that are beyond the control of USDA, but conditions USDA's liability on the availability of appropriations for these payments.[25] Accordingly, the point of obligation for SNAP benefits generally occurs when appropriations for the benefits are enacted and available for obligation. USDA therefore incorrectly treated each day SNAP benefits were issued and, later, its September 19, 2023, letter to the Federal Reserve Bank, as the point of obligation for SNAP benefits in violation of the recording statute.

USDA does not explain in its response how its previous practice, namely treating each day that benefits were issued as the point of obligation, comported with the recording statute and simply states that it was unaware of any legal analysis of the previous practice.[26] With respect to its new practice, USDA states that the point of obligation is the issuance of the letter to the Federal Reserve Bank reflecting the maximum amount of funds available to states for SNAP benefits.[27] USDA states that this is because the letter quantifies and memorializes the benefit amounts.[28]

USDA's position is inconsistent with our previous decisions concluding that obligations described in section 1501(a)(5)(A) arise by operation of law and not as a result of agency action. *Compare* B-316915, Sept. 25, 2008 (concluding that an agency's obligation arose by operation of law within the meaning of section 1501(a)(5)(A)), *with* B-316372, Oct. 21, 2008 (concluding that an agency incurred an obligation within the meaning of a different provision of the recording statute, section 1501(a)(5)(B), when it transmitted a grant award to the recipient). Although USDA's failure to issue the letter to the Federal Reserve Bank may have affected whether benefits were paid, such action did not affect USDA's underlying liability for the benefits established by the Food and Nutrition Act and the relevant appropriation.

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[25] One way USDA exercises control over its liability is its approval of state plans of operation to participate in SNAP. 7 U.S.C. § 2020(d); 7 C.F.R. § 272.2. However, neither USDA nor OMB suggests that there were any states that did not already have approved plans in place when appropriations for FY 2023 were enacted and available for obligation. *See* USDA Response; OMB Response.

[26] USDA Response, at 4.

[27] USDA Response, at 8–9.

[28] *Id.* at 8–9.

See B-212145, Sept. 27, 1983 (concluding that an agency incurred an obligation within the meaning of section 1501(a)(5)(A) based on a statute requiring payments and the availability of appropriations for such payments, notwithstanding that the agency had to take additional action, namely identifying specific recipients and amounts due, before making those payments).[29]

(2) Amount Recorded

The recording statute requires an agency to record the full amount of its obligation against funds available at the time it incurs the obligation. *See*, *e.g.*, B-327242, Feb. 4, 2016. As discussed above, the point of obligation for SNAP benefits is generally when an appropriation for those benefits is enacted and available for obligation.

With respect to entitlements and other programs described in section 1501(a)(5)(A), the government's obligation "is the full amount required for payment under the applicable statute, even though that actual amount may not be finally determined until later." 65 Comp. Gen. 4 (1985); *see* 63 Comp. Gen. 525 (1984); B-212145, Sept. 27, 1983; B-164031(3).150, Sept. 5, 1979. This includes programs, like SNAP, where the number of beneficiaries fluctuates based on external factors like economic conditions.[30] *See* 65 Comp. Gen. 4 (1985) (examining a program where,

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[29] In a 2019 decision, we examined SNAP benefit obligations recorded by USDA during a lapse in appropriations. B-331094, Sept. 5, 2019. At the time, USDA was initially recording obligations for SNAP benefits on a daily basis and then deviated from this practice by recording obligations for February 2019 SNAP benefits in January 2019. *Id.* We concluded that USDA lacked authority under the most recent continuing resolution (CR) to record those obligations against the CR appropriation. *Id.*

Our focus in B-331094 was USDA's obligations during the CR period and whether those obligations violated the Antideficiency Act. *See id.* In line with previous decisions examining agency practices during CRs, we compared USDA's actions during the CR period with the agency's normal practice for recording obligations and concluded that USDA was not authorized to change its practice. *Id.* We thus did not, and had no reason to, make a determination as to whether USDA's normal practice of obligating SNAP benefits on a daily basis comported with the recording statute. Examining that issue in this decision, we conclude that the practice violated the statute.

[30] *See* USDA, *Supplemental Nutrition Assistance Program (SNAP): Key Statistics and Research*, *available at* https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/key-statistics-and-research/ (last visited Feb. 3, 2025) (noting that economic downturns result in increased SNAP participation and benefit sizes).

because “the number of eligible beneficiaries [would] vary—depending on external factors—the exact amount of the [g]overnment's obligation [could not] be determined in advance”). For these programs, “the appropriate amount to be recorded initially as an obligation is the agency’s best estimate of the [g]overnment’s ultimate liability under the relevant entitlement legislation.” 65 Comp. Gen. 4 (1985); *see* 63 Comp. Gen. 525 (1984); B-212145, Sept. 27, 1983. The agency should subsequently adjust the recorded amount as necessary, 65 Comp. Gen. 4 (1985), such as when specific recipients and exact payment amounts become known. B-212145, Sept. 27, 1983.

In determining the scope of USDA’s ultimate liability for SNAP benefits and the amount to record, we look to the provisions of the Food and Nutrition Act. The Act states that SNAP benefits are subject to the availability of appropriations. 7 U.S.C. § 2013(a). In particular, the Act requires that “[i]n any fiscal year, the Secretary [of Agriculture] shall limit the value of those allotments issued to an amount not in excess of the appropriation for such fiscal year.” 7 U.S.C. § 2027(b). If, in any fiscal year, the Secretary finds that the allotments will exceed the appropriation, the Secretary shall direct the states to reduce allotments to the extent necessary to comply with the statutory limitation. *Id.*

The Food and Nutrition Act therefore ties SNAP benefits for a particular fiscal year to the appropriation for that fiscal year, limiting such benefits to the amount appropriated for the year. This limitation, in effect, establishes the scope of USDA’s liability. With respect to SNAP, once an appropriation is enacted and available for obligation, USDA’s liability is limited to SNAP benefits for the current fiscal year.[31]

This interpretation is consistent with our previous decisions examining programs for which liability arises by operation of law and are funded annually with one-year appropriations. In B-212145 and B-316915, the relevant authorizing legislation provided for payments for each fiscal year, and programs were funded with one-year appropriations. B-212145, Sept. 27, 1983 (citing 31 U.S.C. § 6902 (1983)); Pub. L. No. 97-394, title I, 96 Stat. 1966, 1966 (Dec. 30, 1982); B-316915, Sept. 25, 2008 (citing 42 U.S.C. §§ 15401, 15403 (2008)); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. D, title V, 121 Stat. 1844, 1996 (Dec. 26, 2007). In both decisions, we determined that an obligation arose by operation of law with respect to payments for the fiscal year covered by the appropriation. B-212145, Sept. 27, 1983; B-316915, Sept. 25, 2008.

[31] If the total amount of SNAP benefits for a particular fiscal year exceeds the one-year SNAP appropriation, or if a one-year SNAP appropriation is not available due to a lapse, USDA may use available amounts in the SNAP contingency fund to provide benefits. *See* B-331094, Sept. 5, 2019 (noting the availability of the SNAP contingency fund for SNAP benefit obligations when other budget authority was not available due to a lapse in appropriations).

Considering both the requirements of the recording statute and the provisions of the Food and Nutrition Act, when an appropriation for SNAP is enacted and available for obligation, USDA must record its best estimate of the agency's total liability for SNAP benefits for the fiscal year covered by the appropriation and then adjust that amount as necessary.

USDA's initial practice of recording obligations daily violated the recording statute with respect to the amount recorded because USDA did not record its best estimate of its total liability for SNAP benefits issued during the entire fiscal year; rather, it only recorded the amount of SNAP benefits issued on a particular day.

USDA also violated the recording statute with respect to the amount recorded for the September 19, 2023, obligation. Specifically, USDA recorded an obligation against its FY 2023 one-year appropriation in an amount that included October 2023 SNAP benefits. But, as discussed above, USDA's liability for SNAP benefits in FY 2023 was limited to benefits owed for FY 2023 and did not include the October 2023 benefits. Instead, USDA should have recorded an obligation for the October 2023 benefits against its FY 2024 SNAP appropriation when that appropriation was enacted and available for obligation.[32]

Bona Fide Needs Statute

The *bona fide* needs statute states that a time-limited appropriation is available only to pay for obligations properly incurred during the appropriation's period of availability. 31 U.S.C. § 1502(a). An obligation is "properly incurred" if it fulfills a genuine or "*bona fide*" need that exists during the period of availability of the appropriation. *See*, *e.g.*, B-326945, Sept. 28, 2015. Unless otherwise provided, an agency may not use an appropriation to pay for obligations that are properly incurred after the appropriation expires. *See* B-308944, July 17, 2007; B-164031(3).150, Sept. 5, 1979 (stating that "a prior year's appropriation, even if some amount remains unobligated, cannot be applied to expenditures . . . in the current fiscal year"); B-286929, Apr. 25, 2001 (noting that "[n]othing in the *bona fide* needs rule suggests that expired appropriations may be used for a project for which a valid obligation was not incurred prior to expiration").

Compliance with the *bona fide* needs statute is measured at the time the agency incurs an obligation and depends on the purpose of the transaction and the nature of the obligation. B-333150, Apr. 8, 2024; B-289801, Dec. 30, 2002 (citing 61 Comp. Gen. 184 (1981)). When an agency incurs an obligation by taking some action, such as entering into a contract or awarding a grant, determining compliance with the *bona fide* needs statute often focuses on whether the obligation fulfills a *bona fide*

[32] At the beginning of FY 2024, USDA had available budget authority for the October 2023 SNAP benefits by virtue of a continuing resolution. *See* Continuing Appropriations Act, 2024 and Other Extensions Act, Pub. L. No. 118-15, 137 Stat. 71 (Sept. 30, 2023).

need existing during the relevant appropriation's period of availability and was thus "properly incurred." *See, e.g.*, B-332430, Sept. 28, 2021; B-289801, Dec. 30, 2002. In contrast, when an obligation arises by operation of law, there is no question that the obligation was properly incurred, and our decisions instead focus on: (1) when the obligation arose; and (2) whether the agency paid for the obligation with an appropriation that was available at that time. *See* B-226801, Mar. 2, 1988; *see also* B-164031(3).150, Sept. 5, 1979 (analyzing agency compliance with an earlier version of the statute).

As explained above, the point of obligation for SNAP benefits is when appropriations are enacted and available for obligation. And the Food and Nutrition Act establishes that USDA's liability for SNAP benefits is limited to the benefits for the current fiscal year. *See* 7 U.S.C. § 2027(b). In other words, when USDA's FY 2023 SNAP appropriation was enacted and available for obligation, USDA incurred an obligation for FY 2023 SNAP benefits (up to the amount appropriated for the year). USDA then incurred an obligation for FY 2024 SNAP benefits in FY 2024 when appropriations for that year were enacted and available for obligation.
With respect to USDA's initial practice of recording obligations on a daily basis, there was no *bona fide* needs statute violation. Although the practice did not comply with the recording statute, both with respect to the point of obligation and the obligation amount, USDA used its FY 2023 one-year appropriation to pay for FY 2023 benefits in compliance with the *bona fide* needs statute.

In contrast, USDA violated the *bona fide* needs statute when it used its FY 2023 one-year SNAP appropriation to pay for benefits issued to households in FY 2024. As discussed above, notwithstanding USDA's attempt to record an obligation for the October 2023 benefits in FY 2023, USDA did not incur an obligation for those benefits until FY 2024. Therefore, USDA could not use its FY 2023 one-year appropriation to pay for the October 2023 benefits.

In their responses, USDA and OMB state that a *bona fide* need to obligate funds for October 2023 benefits existed in FY 2023.[33] USDA points to GAO decisions concluding that, in the federal assistance context, the agency's need is fulfilled when it makes the award, regardless of when the recipient will expend the funds.[34] USDA further states (and OMB agrees) that given the lead time and preliminary steps necessary to facilitate payments, there was a need to send the Federal Reserve Bank letter and obligate funds for the October 2023 benefits in FY 2023.[35]
The previous GAO decisions cited by USDA addressed situations in which the agency incurred an obligation by issuing a grant award or entering into a cooperative agreement. *See* B-289801, Dec. 30, 2002 (grant); B-229873, Nov. 29, 1988

[33] USDA Response, at 9–11; OMB Response, at 4.

[34] USDA Response, at 10–11.

[35] *Id.*; OMB Response, at 4.

(cooperative agreement). In those decisions, agency action created an obligation, and the question was whether the obligation fulfilled a *bona fide* need existing during the period of availability of the appropriation charged. *See* B-289801, Dec. 30, 2002; B-229873, Nov. 29, 1988.

Unlike the programs at issue in the cited decisions, the obligations for SNAP benefits arise by operation of law rather than from agency action. As described above, our analysis differs for those types of obligations. Instead of looking at whether the obligation was "properly incurred," we look at when the obligation arose and whether USDA paid for the obligation with an appropriation available at that time. As discussed above, USDA incurred an obligation by operation of law for the October 2023 SNAP benefits in FY 2024. Because the obligation arose in FY 2024, the FY 2023 one-year SNAP appropriation was not available to pay for the obligation. However, nothing in this decision precludes USDA, the Federal Reserve Bank, or states from taking actions at the end of the fiscal year to prepare for the issuance of benefits at the beginning of the new fiscal year, though, as prescribed by the Food and Nutrition Act, USDA's authority to make funds available for benefits will depend on the availability of appropriations in the new fiscal year.

<u>Antideficiency Act</u>

The Antideficiency Act prohibits agencies from obligating or expending in excess of, or obligating in advance of, an available appropriation unless otherwise authorized by law. 31 U.S.C. § 1341(a). And, unless otherwise provided, appropriations are not available to liquidate obligations incurred before or after the appropriation's period of availability. *See* B-226801, Mar. 2, 1988; GAO, *Anti-Deficiency Act: Agriculture's Food and Nutrition Service Violates the Anti-Deficiency Act*, GAO/AFMD-87-20 (Washington, D.C.: Mar. 1987) (concluding that USDA violated the Antideficiency Act when the agency used its appropriation for Child Nutrition Programs to liquidate obligations for meals served at the end of the previous fiscal year).[36]

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[36] We have previously stated that the prohibitions with respect to obligations are directed at discretionary obligations entered into by agency officers, 65 Comp. Gen. 4 (1985), and recognized that Congress may implicitly authorize an agency to incur obligations in excess of its appropriation by virtue of a law that necessarily requires such obligations. B-329712, Oct. 15, 2020; B-262069, Aug. 1, 1995. To confer such authority, the statute must require the agency to incur the obligation regardless of the availability of sufficient appropriations. B-329712, Oct. 15, 2020.

Although the Food and Nutrition Act requires the payment of SNAP benefits, such payment is expressly subject to the availability of appropriations, 7 U.S.C. §§ 2013(a), 2027(b), and the Act therefore does not authorize USDA to incur obligations or make expenditures for such benefits in excess of its appropriations.
(continued...)

Here, USDA incurred obligations for October 2023 SNAP benefits in FY 2024 when FY 2024 appropriations were enacted and available for obligation. However, USDA incorrectly recorded an obligation for those benefits against its FY 2023 one-year appropriation and used that appropriation to liquidate the obligation. Nothing in the Food and Nutrition Act or the SNAP appropriation authorizes USDA to use its one-year appropriation to liquidate obligations for SNAP benefits incurred in future fiscal years, and, therefore, USDA was not permitted to expend funds from its FY 2023 one-year appropriation to pay for the October 2023 benefits.[37]

USDA should adjust its accounts by charging the October 2023 benefits to SNAP appropriations available for obligation in FY 2024. Should USDA lack sufficient amounts in these appropriations to cover the October 2023 benefits, it must report an Antideficiency Act violation to the President and Congress, with a copy of the report to the Comptroller General.

CONCLUSION

USDA violated the recording statute with respect to the point of obligation and amount recorded for SNAP benefits. USDA should have recorded obligations for FY 2023 SNAP benefits when appropriations for those benefits were enacted and available for obligation, not when benefits were issued or later in the year when USDA communicated to the Federal Reserve Bank the amount of funds available for benefits. With respect to the amount recorded for its liability for FY 2023 SNAP benefit payments, USDA should have recorded its best estimate of the total amount of FY 2023 SNAP benefits. USDA violated the recording statute when it continuously recorded the amount of benefits issued each day and, later, when it recorded an amount that included some FY 2024 benefits.

While USDA's original practice for recording obligations during FY 2023 was consistent with the *bona fide* needs statute, USDA violated that statute when it used its FY 2023 one-year SNAP appropriation to pay for FY 2024 SNAP benefits. USDA should adjust its accounts by charging those benefits to SNAP appropriations available for obligation in FY 2024. Should USDA lack sufficient amounts in these

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Cf. B-331094, Sept. 5, 2019 (concluding that USDA was not authorized to incur certain SNAP benefit obligations without available budget authority).

[37] Although our analysis of USDA's SNAP benefit obligations differed somewhat in B-331094, our determination in that decision is consistent with our conclusions here. *See* B-331094, Sept. 5, 2019. In that decision, we found that the relevant CR language limited the scope of SNAP benefits payable from the CR appropriation to those benefits due within a certain time period. *Id.* Thus, in the same way that USDA's FY 2023 one-year SNAP appropriation was not available to pay for FY 2024 SNAP benefits, the CR appropriation at issue in B-331094 was not available to pay for benefits due after the period prescribed in the CR.

appropriations to cover the FY 2024 benefits, it must report an Antideficiency Act violation.

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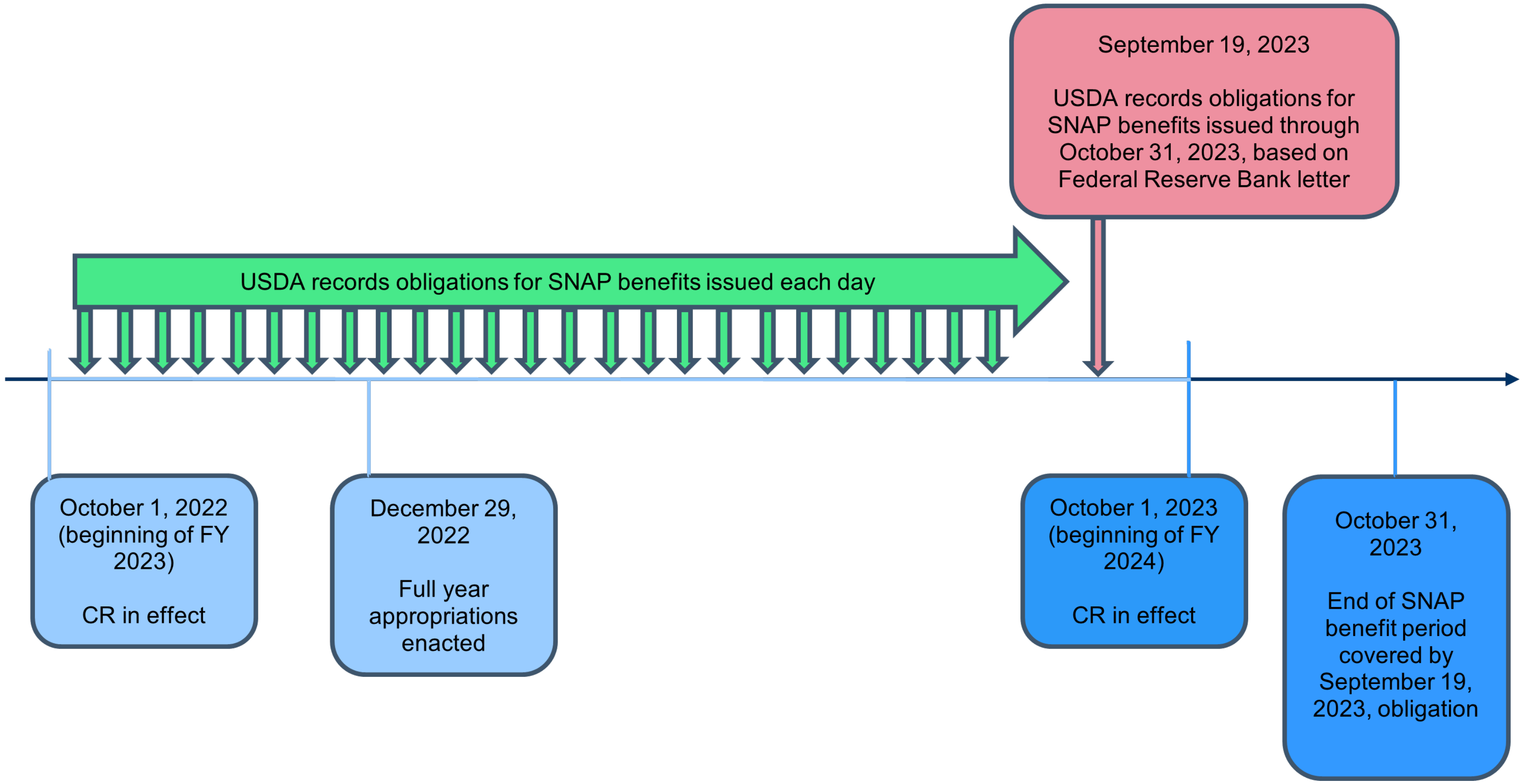
Attachment

SNAP Obligations



B-336036

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Defense Health Agency—Payment of Conference Costs under a Continuing Resolution

File: B-336934

Date: September 22, 2025

DIGEST

A certifying officer asks whether the Defense Health Agency (DHA) could use amounts appropriated to its Operations and Maintenance (O&M) appropriations account under a continuing resolution to cover the registration costs of a training event held after the continuing resolution's end date. The continuing resolution contained standard provisions that meant the funds appropriated by the continuing resolution to DHA's O&M appropriations account were available for fiscal year (FY) 2025.

The *bona fide* needs statute provides that a fixed-period appropriation is only available to fulfill a genuine need of the appropriation's period of availability. The training at issue was a legitimate agency need of FY 2025. During the pendency of the continuing resolution, DHA's O&M appropriations were available for all of its FY 2025 needs, not only the needs of the time period of the continuing resolution. Therefore, DHA would comply with the *bona fide* needs statute for incurring obligations for the costs of this training during the continuing resolution, even though the training took place after the continuing resolution ended.

DECISION

A Defense Health Agency (DHA) certifying officer requests our decision under 31 U.S.C. § 3529 on whether DHA could obligate amounts appropriated under a continuing resolution for the registration costs of a training held after the resolution expired.[1]

[1] Letter from Certifying Officer and Business Operations Manager, DHA, to Comptroller General, at 1 (Nov. 20, 2024) (Request Letter).

In accordance with our regular practice, we contacted DHA to seek additional facts and its legal position on this matter.[2] DHA responded with information and its views on this matter.[3]

BACKGROUND

Continuing Resolution

On September 26, 2024, Congress enacted a continuing resolution, which provided appropriations to DHA.[4] The continuing resolution incorporated several standard provisions, three of which are relevant here.[5]

Section 101 of the continuing resolution appropriated fiscal year (FY) 2025 amounts at a "rate for operations" and under the authority and conditions as provided in FY 2024 appropriations acts.[6] Section 103 of the continuing resolution made amounts appropriated by section 101 available "to the extent and in the manner" provided by the pertinent FY 2024 appropriations acts.[7] Section 106 of the continuing resolution directed that all appropriations and authorities provided by the continuing resolution shall be available until the first of three events occurs: the enactment of an appropriation for any project or activity provided for in the continuing resolution; the enactment of an FY 2025 appropriation that does not provide funding for a project or activity provided for in the continuing resolution; or December 20, 2024.[8]

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[2] GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 21, 2024), *available at* www.gao.gov/products/gao-24-107329; Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, DHA (Dec. 20, 2024).

[3] Letter from Principal Deputy General Counsel, DHA, to Comptroller General (Apr. 28, 2025) (Response Letter).

[4] Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 118-83, div. A, § 101, 138 Stat. 1524, 1524–25 (Sept. 26, 2024).

[5] *See* B-328325, Sept. 12, 2016, at 4 ("Recent continuing resolutions have generally contained the same standard provisions that govern most agencies, programs, and activities covered by the continuing resolution."); GAO, *Federal Budget: Selected Agencies and Programs Used Strategies to Manage Constraints of Continuing Resolutions*, GAO-22-104701 (Washington, D.C.: June 30, 2022), at 10.

[6] Pub. L. No. 118-83, div. A, § 101.

[7] *Id.* § 103.

[8] *Id.* § 106.

At issue here are amounts appropriated by section 101 of the continuing resolution to DHA's Operations and Maintenance (O&M) appropriations account.[9] The FY 2024 Appropriations Act provided $36.6 billion in FY 2024 funds to this account, with not to exceed one percent of that amount remaining available through FY 2025.[10] In other words, the act provided funds to DHA for the current fiscal year, and made available for obligation a small portion of those funds for an additional fiscal year.

Training for Medical Professionals

In November 2024, DHA staff sought to process training authorization forms for personnel to attend training for certain medical professionals. The event at issue here was scheduled for March 2025 (March training), and the purpose of it was to strengthen warfighter healthcare operations.[11] Attendees could earn 27 continuing medical education credit hours for attending the training.[12]

According to DHA, the deadline to secure a discounted rate for the March training was November 15, 2024, and DHA would charge the cost to its O&M appropriations account.[13] On November 18, 2024, a DHA component said it could not process the registrations under the continuing resolution.[14]

DISCUSSION

At issue here is whether DHA could obligate funds appropriated by section 101 of the continuing resolution to its O&M appropriations account to cover the registration costs of the March meeting.

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[9] Response Letter, at 1. Defense Health Program O&M funding provides for specialized services for the training of medical personnel, among other things. Department of Defense, *Defense Health Program Fiscal Year (FY) 2025 President's Budget* , at 2 (Mar. 2024), *available at* https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2025/budget_justification/pdfs/09_Defense_Health_Program/00-DHP_Vols_I_and_II_PB25.pdf (last visited Sept. 11, 2025).

[10] Further Consolidated Appropriations Act, 2024 (FY 2024 Appropriations Act), Pub. L. No. 118-47, div. A, title VI, 138 Stat. 460, 479 (Mar. 23, 2024).

[11] Response Letter, at 2–3.

[12] *Id*. at 2.

[13] Response Letter, at 1, 3.

[14] *Id.,* Attachment 3, at 2.

Period of Availability of Appropriations Provided by the Continuing Resolution

First, we address the period of availability of appropriations provided to DHA's O&M appropriations account by the continuing resolution. As explained below, appropriations provided by section 101 of the continuing resolution retain their period of availability from the prior year's appropriations act only while the continuing resolution is in effect, unless otherwise specified.

As a general matter, continuing resolutions are temporary stop-gap measures intended to keep existing federal programs functioning after the prior year's appropriations act expires and regular appropriations are not yet in place.[15] Relatedly, continuing resolutions have a limited duration. To this end, continuing resolutions have an end date.[16] After that date passes, if the continuing resolution has not been extended or a full-year appropriations act is not enacted, the funds provided by the continuing resolution are no longer available to incur new obligations.[17]

In addition, continuing resolutions include standard provisions that, when read together, continue the appropriations and authorities of the prior year's appropriations act. Relevant here, one standard provision—section 101 of the continuing resolution—appropriates "[s]uch amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for fiscal year 2024 and under the authority and conditions provided in such Acts, for continuing projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise specifically provided for in this Act, that were conducted in fiscal year 2024. . . ."[18] In general, this provision appropriates amounts at the levels provided in the FY 2024 Appropriations Act.[19]

Another standard provision of the continuing resolution provides that "appropriations made by section 101 shall be available to the extent and in the manner that would be provided by the pertinent appropriations Act."[20] When read in conjunction, these provisions provide that appropriations made by section 101 of the continuing resolution are provided at the same amount and for the same period of availability as funds that were provided in the FY 2024 Appropriations Act. Therefore, the

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[15] 58 Comp. Gen. 530 (1979).

[16] *See* Pub. L. No. 118-83, § 106, 138 Stat. 1526.

[17] *See*, *e.g.*, B-152098, Jan. 30, 1970.

[18] *See* Pub. L. No. 118-83, § 101, 138 Stat. 1524.

[19] *See* B-271304, Mar. 19, 1996.

[20] *See* Pub. L. No. 118-83, § 103, 138 Stat. 1526.

continuing resolution, which expired on December 20, 2024, provided $36.6 billion in FY 2025 funds to DHA's O&M appropriations account, with one percent of such amount available for FYs 2025 and 2026.

Bona Fide Needs Statute

The *bona fide* needs statute provides that a time-limited appropriation is only available to meet a genuine, or *bona fide*, need arising during the appropriation's period of availability.[21] An agency may not use an appropriation for obligations incurred after the appropriation expires, unless otherwise provided.[22]

As explained above, amounts made available to DHA's O&M appropriations account by the continuing resolution were available for FY 2025, with a small portion available through 2026. Therefore, these amounts were available for the *bona fide* needs of the entirety of FY 2025, with a small portion also available for FY 2026 needs during the period the continuing resolution was in effect.

In previous decisions, we have held that training is generally a *bona fide* need of the fiscal year in which it is delivered.[23] Here, the March meeting took place in March 2025, which is in FY 2025. Because the training was delivered in FY 2025, it was a *bona fide* need of FY 2025 and should be charged to DHA appropriations available for such FY. In addition, registration occurred in November 2024, also in FY 2025, so the timing of the registration raises no *bona fide* need concerns, even though registration occurred during the period the continuing resolution was in effect. Therefore, DHA could validly incur and record an obligation for the March meeting in November 2024.

For these reasons, DHA would not violate the *bona fide* needs statute by incurring an obligation during the continuing resolution period against appropriations made by the continuing resolution to its O&M appropriations account.[24]

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[21] 31 U.S.C. § 1502(a); B-333150, Apr. 8, 2024.

[22] B-336036, Feb. 12, 2025.

[23] B-321296, July 13, 2011(explaining that generally the relevant date for whether training is a *bona fide* need of a particular fiscal year is the date the training is delivered).

[24] While we conclude here that DHA could incur an obligation for the costs of the March meeting during the pendency of the continuing resolution, DHA is not, as a legal matter, required to incur obligations for such costs during the continuing resolution. To the extent DHA were to make a policy, or budgetary, decision to incur an obligation for the costs of the meeting once a full-year appropriations act is enacted, it could do so.

Antideficiency Act

We next consider whether DHA's proposed obligation of funds would violate the Antideficiency Act. The Antideficiency Act, in pertinent part, prohibits government officials or employees from obligating or expending in excess or in advance of an appropriation unless otherwise authorized by law.[25]

Were DHA to have incurred the obligation at issue here before the continuing resolution expired, DHA would have used its O&M appropriations, which were available for FY 2025 needs. To the extent DHA had sufficient O&M appropriations available to cover the March meeting's costs, this obligation would not be in excess or in advance of an appropriation, which the Antideficiency Act prohibits.

In the Request Letter, the certifying officer raised concerns that the registration fees do not satisfy "current CR exceptions not limited to life, health, and/or safety. . . ."[26] Assuming DHA had available funds in its O&M appropriations account to cover the registration costs at issue here, we need not consider whether DHA would have properly complied with the Antideficiency Act's emergency exception, to determine whether DHA would have complied with the Antideficiency Act had it covered these costs.

CONCLUSION

DHA could obligate appropriations provided to its O&M appropriations account by the continuing resolution, with a termination date of December 20, 2024, in November 2024 for the registration costs of a meeting held in March 2025.

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[25] 31 U.S.C. § 1341; B-334541, Aug. 9, 2023.

[26] Request Letter, at 3.

Resources

https://www.gao.gov/legal/appropriations-law/forum
• Provides an overview of GAO's annual appropriations law forum and includes copies of forum materials for this year and prior years.

https://www.gao.gov/legal/appropriations-law/red-book
• Provides links to Chapters 1–3 of the 4th Edition and Chapters 5–15 of the 3rd Edition of the Red Book—GAO's multi-volume treatise concerning federal fiscal law. For questions about our case law, the Red Book, or federal fiscal law more generally, please email redbook@gao.gov.

https://www.gao.gov/legal/appropriations-law/resources
• Provides an overview of the Antideficiency Act, agencies' reporting responsibilities, and information about how to submit reports to GAO. In addition, provides links to GAO's Antideficiency Act Reports Compilations through fiscal year 2026. For questions about the Antideficiency Act or to submit Antideficiency Act reports to GAO, please email AntideficiencyActRep@gao.gov.

https://www.gao.gov/legal/appropriations-law/impoundment-control-act
• Provides an overview of the Impoundment Control Act and GAO's responsibilities. In addition, provides links to recent GAO decisions.

https://www.gao.gov/legal/appropriations-law/lapses-in-appropriations
• Provides an overview of a lapse in appropriations, commonly referred to as a government shutdown. In addition, highlights particular topics addressed by GAO's decisions and provides links to GAO decisions.

https://www.gao.gov/legal/appropriations-law/appropriations-law-training
• Provides an overview and registration instructions for GAO's virtual and in-person Principles of Appropriations Law (PAL) course, which is taught by experienced GAO appropriations law attorneys. For questions about the PAL course, please email PALCourse@gao.gov.

https://www.gao.gov/products/gao-05-734sp
• Provides access to GAO's *A Glossary of Terms Used in the Federal Budget Process* (Budget Glossary), which provides standard terms, definitions, and classifications for the government's fiscal, budget, and program information. To provide feedback on the Budget Glossary, please email budgetglossary@gao.gov.

https://www.gao.gov/legal/federal-vacancies-reform-act
• Provides an overview of the Federal Vacancies Reform Act of 1998, including a description of GAO's responsibilities under the act, and information about how agencies can report information required by the act. In addition, provides links to GAO letters and

decisions regarding compliance with the act and a search tool to find information about federal vacancies for the current administration.

https://www.gao.gov/legal/other-legal-work/congressional-review-act
• Provides an overview of the Congressional Review Act, including a description of GAO's responsibilities under the act, and information about how agencies can report information required by the act. In addition, provides links to GAO's major rule reports and GAO decisions regarding compliance with the act as well as access to a search database of rules and major rule reports.

Contributors

The 2026 Appropriations Law Forum was organized by the Appropriations Law Group (AL) within GAO's Office of the General Counsel. AL attorneys write appropriations law decisions, teach the Principles of Appropriations Law course and appropriations law courses to members of Congress and congressional staff, respond to requests for informal technical assistance from officials and staff in all three branches of the federal government, and support GAO's budget and procurement offices. AL attorneys are in the process of updating the *Principles of Federal Appropriations Law* treatise and *A Glossary of Terms Used in the Federal Budget Process.* AL also maintains a repository for Antideficiency Act violations reported by executive branch agencies and issues an annual summary report. Lastly, the group carries out statutory responsibilities under the Impoundment Control Act, Congressional Review Act, Davis-Bacon Act, and Federal Vacancies Reform Act.

The group is led by Shirley A. Jones, Managing Associate General Counsel; Omari Norman, Assistant General Counsel for Appropriations Law; Shari Brewster, Assistant General Counsel for Appropriations Law; and Kristine Hassinger, Assistant General Counsel for Appropriations Law. AL attorneys include Aimee Aceto, Gary Allen, Zach Buchta, Christina Chan, Josh Dubois, Holly Firlein, Juan Garay, Jeff Haywood, Andrew Howard, Dana Ledger, Karly Newcomb, Daniella Royer, Doug Sahmel, Will Shakely, Heather Stryder, Cree Townsend, Laura Wait, Jennifer Whitworth, and Nicole Willems. The group is supported by the Appropriations Law Support Branch (ALSB). ALSB is led by Gwen Middleton, Manager, and includes two paralegals, Naarah Jackson and Aisha Patel-Smith.