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

Decision

Matter of: Application of the Antideficiency Act—Designation of Amounts as an Emergency Requirement

File: B-337988

Date: November 17, 2026

DIGEST

On March 24, 2025, the President issued a message to Congress designating some of the appropriations Congress had designated as emergency accounts under section 1110(a) of the Full-Year Continuing Appropriations Act, 2025 (CR) as emergency requirements. Section 1110(b) of the CR restricts the availability of the funds designated for emergency requirements in section 1110(a) until the President designates all the funding identified in that section. Since the President's message designated less than all of the appropriations designated in section 1110(a), the message did not make the funds available for obligation and expenditure. Therefore, the Department of Justice, the Department of Housing and Urban Development, and the National Aeronautics and Space Administration violated the Antideficiency Act when they obligated and expended the funds in advance of their legal availability.

DECISION

This responds to a congressional request for our decision on whether certain funding designated for emergency requirements in the President's March 24, 2025, message (Message) was available pursuant to section 1110(b) of the Full-Year Continuing Appropriations Act, 2025 (CR) and, if not, whether the obligation and expenditure of the funds by the Department of Justice (DOJ), the Department of Housing and Urban Development (HUD), and the National Aeronautics and Space Administration (NASA) violated the Antideficiency Act.[1] In accordance with our regular practice, we

[1] Pub. L. No. 119-4, div. A, title I, § 1110(b), 139 Stat. 9, 10, 13 (Mar. 15, 2025); Message from the President to Congress, *Presidential Designation of Funding as an Emergency Requirement* (Mar. 24, 2025) (Message), *available at* https://www.whitehouse.gov/wp-content/uploads/2025/03/Presidential-Designation-of-Funding-as-an-Emergency-Requirement-Multiple-Accounts-in-the-Full-Year-

(continued...)

contacted the Office of Management and Budget (OMB), DOJ, HUD, and NASA to seek factual information and its legal views on this matter.[2] DOJ and NASA responded that OMB would provide a response.[3] At present, we have not received a response from HUD. OMB responded with its legal views on this matter.[4]

BACKGROUND

BBEDCA

As a budget enforcement mechanism, the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended, establishes limits on discretionary spending in certain fiscal years as specified by Congress in statute and requires sequestration of non-exempt discretionary appropriations in excess of those limits.[5] Sequestration is the cancellation of budgetary resources implemented under a

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Continuing-Appropriations-and-Extensions-Act.pdf (last visited Sept. 9, 2026); Letter from Senator Patty Murray, Vice Chair, Committee on Appropriations, United States Senate, and Representative Rosa L. DeLauro, Ranking Member, Committee on Appropriations, House of Representatives, to Comptroller General (Dec. 11, 2025) (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; Letter from Managing Associate General Counsel, GAO, to General Counsel, OMB (Feb. 20, 2026); Letter from Managing Associate General Counsel, GAO, to Assistant Attorney General for Administration, Justice Management Division, DOJ (Feb. 20, 2026); Letter from Managing Associate General Counsel, GAO, to General Counsel, HUD (Feb. 20, 2026) (with a copy to HUD Chief Financial Officer and HUD Director of Appropriations Law Staff); Letter from Managing Associate General Counsel, GAO, to General Counsel, NASA (Feb. 20, 2026).

[3] Email from Associate General Counsel for General Law Practice Group, NASA, to Assistant General Counsel for Appropriations Law, GAO, *Subject: Re: GAO letter to NASA, B-337988, Application of the Antideficiency Act–Designation of Amounts as an Emergency Requirement* (Mar. 23, 2026); Email from Acting General Counsel, Justice Management Division, DOJ, to Assistant General Counsel for Appropriations Law, GAO, *Subject: Re: GAO letter to DOJ, B-337988, Application of the Antideficiency Act–Designation of Amounts as an Emergency Requirement* (Mar. 20, 2026).

[4] Letter from General Counsel, OMB, to Managing Associate General Counsel, GAO (May 4, 2026) (Response Letter).

[5] *See* 2 U.S.C. §§ 901(b)(2)(A)(i), 901(c)–(e), 901a(6).

presidential order as required by law.[6] When BBEDCA discretionary spending limits are in effect, such as in fiscal year (FY) 2025, an appropriation designated by both Congress and the President as an emergency requirement effectively does not count towards the spending limits and is exempt from sequestration.[7] OMB determined that the FY 2025 appropriation legislation did not exceed those limits and sequestration pursuant to section 251 of BBEDCA was not required in FY 2025.[8]

FY 2025 Appropriations Act

On March 15, 2025, the President signed into law the full-year continuing resolution funding the government through the end of FY 2025.[9] Section 1101 of the CR generally incorporates by reference the FY 2024 regular appropriations acts to provide funding for FY 2025 in the same amounts and under the same authorities and conditions as in FY 2024.[10]

Section 1110(a)

In Section 1110(a) of the CR, Congress designated as emergency requirements under BBEDCA the amounts incorporated by reference in the CR for multiple accounts across the government, including the Department of Agriculture, Department of Commerce, HUD, DOJ, Department of State, NASA, National

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[6] 2 U.S.C. §§ 901(c)–(e), 901a(6); *see also* GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington D.C.: Sept. 2005), at 90.

[7] 2 U.S.C. §§ 901(b)(2)(A)(i), 901(c)–(e), 901a(6); *see* also Congressional Budget Office, *Sequestration 2025: An Update* (Washington, D.C.: Aug. 2025) (estimating that the discretionary funding for FY 2025 does not exceed the BBEDCA limits and, therefore, no sequestration is required). The appropriation designated by both Congress and the President as an emergency requirement effectively does not count towards the spending limit because BBEDCA provides for the spending limit to be adjusted upwards to accommodate the designated appropriation. *See* 2 U.S.C. § 901(b)(2).

[8] *E.g.*, *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2025*, 90 Fed. Reg. 15163 (Apr. 8, 2025); *see also* 2 U.S.C. §§ 901(b)(2), 904(f).

[9] Pub. L. No. 119-4, §§ 1101(a), 1105, 1106, 139 Stat. at 10–12.

[10] *Id.*, §§ 1101(a), 1105, 139 Stat. at 10–12; *see id*. § 1101(a), 139 Stat. at 10–12 (enacting in the CR anomalies that provide different funding or authorities than would otherwise have been provided by the FY 2024 regular appropriations acts).

Oceanic and Atmospheric Administration, and National Science Foundation.[11] An amount designated by Congress in section 1110(a) requires, pursuant to BBEDCA, a subsequent designation by the President to effectively not count the appropriation towards the BBEDCA discretionary spending limits and be exempt from sequestration.[12]

Section 1110(b)

Section 1110(b) of the CR restricts the availability of the amounts designated in section 1110(a) by incorporating and providing that section 6 of the FY 2024 appropriations acts applies to the amounts designated in section 1110(a).[13] The incorporated provision provides as follows:

> Each amount designated in this Act by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or repurposed, rescinded, or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.[14]

Section 1110(b) restricts the availability of the funds until proper notice is provided.

The President's Message

On March 24, 2025, the President transmitted to Congress his designations citing BBEDCA and section 1110 of the CR.[15] The President's Message designated as emergency requirements some of the appropriations designated as emergency

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[11] *See* Pub. L. No. 119-4, §§ 1101, 1110(a), 139 Stat. at 10–13; *see also* Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, 138 Stat. 460, 742–744, 747–750, 848–850 (Mar. 23, 2024); Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, 138 Stat. 25, 116–117, 121–123, 128, 137–139, 145–149, 158–160, 162, 176–177, 189–190, 345, 365 (Mar. 9, 2024).

[12] *See* 2 U.S.C. § 901(b)(2)(A)(i).

[13] Pub. L. No. 119-4, § 1110(b), 139 Stat. at 13; Pub. L. No. 118-42, § 6, 138 Stat. at 26; Pub. L. No. 118-47, § 6, 138 Stat. at 461.

[14] Pub. L. No. 119-4, § 1110(b), 139 Stat. at 13; Pub. L. No. 118-42, § 6, 138 Stat. at 26; Pub. L. No. 118-47, § 6, 138 Stat. at 461.

[15] Message; *see also Un-designating Funding as Emergency Funding*, H.R. Doc. No. 119-31 (2025) (printing the President's Message transmitted to Congress).

requirements in the CR.[16] The reason, according to the President, for not designating the other appropriations was "that [they] were improperly designated by the Congress as [an] emergency" and he "do[es] not concur that the added spending is truly for emergency needs."[17] The President chose not to designate "nearly $3 billion."[18] According to OMB, to ensure the availability of funds previously designated by Congress, the President "need not designate all accounts, just all of the amounts in the accounts that he chooses to designate."[19] OMB noted that, upon transmittal of the President's Message to Congress, the funds designated by the President "will be immediately available for obligation and expenditure" with "[n]o further congressional action . . . required."[20]

The accounts designated in the President's Message as emergency requirement appropriations include the following: DOJ, United States Marshals Service (USMS), Salaries and Expenses (S&E); DOJ, USMS, Federal Prisoner Detention; DOJ, Drug Enforcement Administration (DEA), S&E; HUD, Public and Indian Housing (PIH), Tenant-Based Rental Assistance (TBRA); HUD, Housing Programs, Project-Based Rental Assistance (PBRA); NASA, Exploration; NASA, Construction and Environmental Compliance and Restoration.[21]

Agency Obligations and Expenditures

Based on the publicly available disaster and emergency funding tracking information reported by DOJ, HUD, and NASA,[22] each agency obligated and expended funding designated in the President's Message as for emergency requirements.

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[16] Message.

[17] *Id*.

[18] *Id*.

[19] Response Letter, at 2.

[20] Message, Attachment, Memorandum for the President from the Assistant to the President and Director of the Office of Management and Budget, *Designation of Funding as an Emergency Requirement*, 1 (Mar. 24, 2025) (OMB Memorandum).

[21] Message; OMB Memorandum, Enclosure, at 1, 2.

[22] Agencies submit the Standard Form (SF)-133, *Report on Budget Execution and Budgetary Resources*, to report on their obligations and expenditures. *See* OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, pt. 4, §§ 130.1, 130.2 (Aug. 29. 2025). OMB directs agencies to use the Disaster Emergency Fund Code (DEFC) to track appropriations designated as emergency requirements. OMB Cir. No. A-11, Appendix F, § 17. OMB makes publicly available in a separate report information about appropriations with the DEFC attribute. This (continued...)

DOJ reported FY 2025 obligations and expenditures equal to (a) the $163 million appropriated for the USMS S&E FY 2025 account,[23] (b) the $250 million appropriated for the USMS Federal Prisoner Detention no-year account,[24] and (c) the $328 million appropriated for the DEA S&E FY 2025 account.[25]

HUD reported obligational activity in FY 2025 and FY 2026 for its accounts. As to the $6 billion appropriated for the PIH TBRA no-year account, HUD reported FY 2025 obligations of $5,999,805,374 and expenditures of $5,840,944,820.[26] As to the $2 billion appropriated for the Housing Programs PBRA no-year account, HUD reported FY 2025 obligations of $1,972,359,208.18 and expenditures of $1,051,732,521.60.[27] For both of these accounts, HUD reported additional activity in FY 2026, including new obligations, adjustments to existing obligations, and expenditure of funds.[28]

NASA reported obligational activity in FY 2025 and FY 2026 for its accounts. As to the $450 million appropriated for the Exploration multiyear (2025–2026) account, NASA reported FY 2025 obligations of $450 million and expenditures of

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report is referred to as the Disaster and Emergency Funding Tracking (DEFT) SF-133. The FY 2025 DEFT SF-133 (Oct. 21, 2025) is available at https://portal.max.gov/portal/document/SF133/Budget/attachments/2580777874/SF133%20DEFC_FY2025_Sep.xlsx (last visited Sept. 8, 2026). The FY 2026 DEFT SF-133 (May 20, 2026) with agency data through April 2026 is available at https://portal.max.gov/portal/document/SF133/Budget/attachments/2692285459/SF133%20DEFC_FY2026_Apr.xlsx (last visited Sept. 8, 2026).

[23] Pub. L. No. 119-4, §§ 1101(a)(2), 1110, 139 Stat. at 10, 13; Pub. L. No. 118-42, 138 Stat. at 137; FY 2025 DEFT SF-133, Treasury Account Fund Symbol (TAFS) 15-0324/25, lines 2001 and 3020.

[24] Pub. L. No. 119-4, §§ 1101(a)(2), 1110, 139 Stat. at 10, 13; Pub. L. No. 118-42, 138 Stat. at 137; FY 2025 DEFT SF-133, TAFS 15-1020/X, lines 2001 and 3020.

[25] Pub. L. No. 119-4, §§ 1101(a)(2), 1110, 139 Stat. at 10, 13; Pub. L. No. 118-42, 138 Stat. at 138–139; FY 2025 DEFT SF-133, TAFS 15-1100/25, lines 2001 and 3020.

[26] Pub. L. No. 119-4, §§ 1101(a)(12), 1110, 139 Stat at 12, 13; Pub. L. No. 118-42, 138 Stat. at 345; FY 2025 DEFT SF-133, TAFS 86-0302/X, lines 2002 and 3020.

[27] Pub. L. No. 119-4, §§ 1101(a)(12), 1110, 139 Stat at 12, 13; Pub. L. No. 118-42, 138 Stat. at 365; FY 2025 DEFT SF-133, TAFS 86-0303/X, lines 2002 and 3020.

[28] FY 2026 DEFT SF-133, TAFS 86-0302/X and 86-0303/X, lines 2002, 2190, and 3020.

$66,486,243.41.[29] As to the $250 million appropriated for the Construction and Environmental Compliance and Restoration multiyear (2025–2030) account, NASA reported FY 2025 obligations of $140,804,993.72 and expenditures of $26,053,992.95.[30] For both of these accounts, NASA reported additional activity in FY 2026, including new obligations, adjustments to existing obligations, and expenditure of funds.[31]

DISCUSSION

At issue here is whether DOJ, HUD, and NASA funds designated by Congress and the President as emergency requirements were available for obligation and expenditure in FY 2025 and thereafter pursuant to section 1110(b) of the CR and, if not, whether the obligation and expenditure of the funds violated the Antideficiency Act.

Section 1110(b)

Section 1110(b) makes available for obligation and expenditure the amounts designated in section 1110(a) "only if" the President "so designates all such amounts and transmits such designations" to Congress.[32] The key question here is whether the President's Message designating less than all of the appropriations designated in section 1110(a) satisfies this statutory condition on the availability of the appropriations.

To ascertain the meaning of this condition, we begin with the text of the statute and the assumption that the words enacted into law should be given their common and ordinary meaning unless otherwise statutorily defined.[33] Our usual practice to determine the common and ordinary meaning of undefined terms is to consult dictionaries.[34] In addition, we do not construe terms in isolation, but rather in the

[29] Pub. L. No. 119-4, §§ 1101(a)(2), 1110, 139 Stat. at 10, 13; Pub. L. No. 118-42, 138 Stat. at 158; FY 2025 DEFT SF-133, TAFS 80-0124 25/26, lines 2002 and 3020.

[30] Pub. L. No. 119-4, §§ 1101(a)(2), 1110, 139 Stat. at 10, 13; Pub. L. No. 118-42, 138 Stat. at 159–160; FY 2025 DEFT SF-133, TAFS 80-0130 25/30, lines 2002 and 3020.

[31] FY 2026 DEFT SF-133, TAFS 80-0124 25/26, lines 2002, 2190, and 3020.

[32] Pub. L. No. 119-4, § 1110(b), 139 Stat. at 13; Pub. L. No. 118-42, § 6, 138 Stat. at 26; Pub. L. No. 118-47, § 6, 138 Stat. at 461.

[33] *E.g.*, B-334308, May 14, 2026; B-336626, Jan. 15, 2026.

[34] *E.g.*, B-334308, May 14, 2026; B-335459, May 8, 2024; B-329603, Apr. 16, 2018.

context of the whole statute.[35] And, as to statutes *in pari materia* (on the same subject or matter) which appear to be in conflict, we seek to construe them in harmony with each other to the extent reasonably possible.[36] Where the language of the statute is plain and unambiguous, we apply such meaning.

We find that the language of section 1110(b) plainly requires that the President designate all of the funds identified in section 1110(a) as emergency requirements in order to make those funds available for obligation and expenditure. Indeed, the placement and definitions of the words "amount," "all," and "such" in that section compel this conclusion. Section 1110(b) opens by referring to "[e]ach amount designated in this Act by the Congress as an emergency requirement" and then restricting the availability of those funds until the President satisfies a statutory condition.[37] The condition requires that the President "designates all such amounts."[38] The ordinary meaning of the term "amount" is a quantity or aggregate.[39] The definition contemplates one single number, as opposed to a varied or undefined number. Therefore, "[e]ach amount," as referred to in the opening of section 1110(b), means each fixed amount (quantity) designated in statute as an emergency requirement. Section 1110(b) then uses the words "all" and "such" to modify the subsequent plural reference to "amounts" in the statement of the statutory condition. The word "all," in ordinary usage, refers to the "total."[40] The adjective "such" —as in "such amounts"—refers back to the last antecedent.[41] The last antecedent here is

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[35] *E.g.*, B-331312, Mar. 8, 2021.

[36] *E.g.*, B-313157, May 21, 2012; B-213786, May 18, 1984; 55 Comp. Gen. 1355 (B-184136, Aug. 17, 1976).

[37] Pub. L. No. 119-4, § 1110(b), 139 Stat. at 13; Pub. L. No. 118-42, § 6, 138 Stat. at 26; Pub. L. No. 118-47, § 6, 138 Stat. at 461. Section 1110(b) incorporates section 6 of the FY 2024 appropriations acts. Pub. L. No. 119-4, § 1110(b), 139 Stat. at 13.

[38] Pub. L. No. 119-4, § 1110(b), 139 Stat. at 13; Pub. L. No. 118-42, § 6, 138 Stat. at 26; Pub. L. No. 118-47, § 6, 138 Stat. at 461.

[39] *The American Heritage Dictionary of the English Language*, Amount (5th ed. 2022), *available at* https://www.ahdictionary.com/word/search.html?q=amount (defining "amount" as "[t]he total of two or more quantities; the aggregate").

[40] *The American Heritage Dictionary of the English Language*, All, *available at* https://www.ahdictionary.com/word/search.html?q=all (defining "all" as "[b]eing or representing the entire or total number, amount, or quantity").

[41] *The American Heritage Dictionary of the English Language*, Such, *available at* https://www.ahdictionary.com/word/search.html?q=such (defining "such" as "[o]f this

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"each amount"—or, each fixed quantity designated in statute as an emergency requirement. Taking these definitions together then, the phrase "all such amounts" plainly and unambiguously refers to the total of the specified appropriation amounts that are incorporated by reference in the CR and designated as an emergency requirement in section 1110(a). Section 1110(b) requires the President to make a choice: designate all or none of Congress's emergency designations. In other words, section 1110(b) does not give the President the authority to pick and choose which incorporated emergency spending to make available for obligation and expenditure.

Section 1110(b), or a substantially similar provision, is a long-standing provision appearing in appropriation acts since at least 2011.[42] OMB acknowledges that in the past it read this provision as presenting an all-or-nothing proposition "authorizing the President to designate either all of the amounts . . . (in which case all of the emergency amounts . . . would be available), or none of them . . . (in which case none of the emergency amounts . . . would be available)."[43] However, OMB explains that it reconsidered its past reading and "concluded that this 'all or nothing' interpretation is not required by the text."[44]

OMB now maintains that section 1110(b) "requires the President to designate the full amount in each account he designates," not all amounts designated by Congress in section 1110(a) as emergency requirements.[45] Pointing out that section 1110(b) references section 251(b)(2)(A)(i) of BBEDCA, OMB notes that section 1110(b)

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kind" and "[o]f a kind specified or implied*"); Black's Law Dictionary* 1738 (12th ed. 2024) (defining "such" as "[o]f this or that kind" and "[t]hat or those; having just been mentioned"); *Black's Law Dictionary* 1473 (8th ed. 2004) (same); *Black's Law Dictionary* 1432 (6th ed. 1990) (stating that "such" "is a descriptive and relative word, referring to the last antecedent").

[42] *See, e.g.,* Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, § 5, 133 Stat. 13, 14 (Feb. 15, 2019); Further Continuing and Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254, § 4, 130 Stat. 1005 (Dec. 10, 2016); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, § 6(b), 128 Stat. 2130, 2133 (Dec. 16, 2014); Continuing Appropriations Act, 2014, Pub. L. No. 113-46, div. A, § 114(c), 127 Stat. 558, 561 (Oct. 17, 2013); Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, § 5, 127 Stat. 198, 199 (Mar. 26, 2013); Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, § 5, 125 Stat. 786, 787 (Dec. 23, 2011).

[43] Response Letter, at 1.

[44] *Id*.

[45] Response Letter, at 2.

refers to “amounts” and section 251 of BBEDCA requires designation of emergency requirements “on an account by account basis.” OMB asserts this “change in language . . . impl[ies] a change in meaning” such that the provisions should be read “harmoniously” so that “each amount” in section 1110(b) refers to each amount “within each account.”[46] We disagree.

Congress framed section 1110 of the CR to refer to section 251 of BBEDCA as a point of reference. The CR, as an appropriation act, lists a considerable number of amounts. The reference in section 1110 to section 251(b)(2)(A)(i) of BBEDCA identifies a subset of the amounts appropriated by the CR and establishes that this subset alone, not every amount in the CR, is subject to section 1110(b). While the CR relies on BBEDCA’s framework, these two statutes address different subjects. Section 1110(b) of the CR speaks to the availability of appropriations for obligation and expenditure. In contrast, BBEDCA is a budget law that establishes sequestration to enforce certain deficit reduction goals.[47] Section 251(b)(2) of BBEDCA does not speak to the availability of the designated funds for obligation or expenditure, but rather it prescribes certain requirements for OMB’s sequestration report, instructing that OMB calculate adjustments to discretionary spending limits for appropriations designated under BBEDCA by both Congress and the President as emergency requirements.[48] Since these two statutes are on different subjects, they do not raise an inconsistency that needs to invoke the cannon of harmonious reading to reconcile inconsistent statutes.[49]

Just as we have not identified an inconsistency, OMB’s response did not identify any conflict between section 1110(b) of the CR and BBEDCA. The statutes use different words to describe distinct statutory requirements on different subjects.[50] OMB’s reading would add to section 1110(b) the words “within each account” after “each amount” because section 251 of BBEDCA requires emergency designations “on an

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[46] Pub. L. No. 119-4, § 1110(b), 139 Stat. at 13; Pub. L. No. 118-42, § 6, 138 Stat. at 26; Pub. L. No. 118-47, § 6, 138 Stat. at 461; Response Letter, at 2 (emphasis omitted).

[47] *See* 2 U.S.C. §§ 901, 901a; *see generally* GAO, *The Nation’s Fiscal Health: Urgent and Sustained Action Needed to Improve the Fiscal Outlook*, GAO-26-108610 (Washington, D.C.: June 11, 2026) (examining the federal government’s fiscal outlook, including its deficits).

[48] *See* 2 U.S.C. § 901(b)(2)(A)(i); *see also* Request Letter, at 1.

[49] *See* 15 Comp. Gen. 1119 (A-72736, June 23, 1936) (declining to invoke the harmonious reading canon for two statutes dealing with the same subject but “in complete harmony”).

[50] *See* Response Letter.

account by account basis." While noting the use of different words in section 1110(b) and section 251 in stating its position, OMB does not explain why it would read into section 1110(b) different words—"within each account"—than those used in section 251. We cannot add words to an unambiguous statute when Congress has chosen not to include those words as Congress is assumed to mean exactly what it says.[51] Here, Congress clearly did not include language in section 1110(b) that would permit the President to pick and choose emergency appropriations to make available for obligation and expenditure.

Finally, OMB's new reading of section 1110(b) of the CR is inconsistent with the balance of the statute that requires the President to transmit his "designations" to Congress before the funds become available. The statutory text refers to "designations" in the plural.[52] Considered alone, a reference in a statute to "designations" might plausibly be read to encompass "designation" in the singular,[53] which could mean that the President could transmit a single designation for an appropriation the President designates as an emergency requirement from the multiple appropriations designated by Congress as emergency requirements. However, section 1110(b) juxtaposes the plural "designations" with the plural "amounts" and the singular "amount." This juxtaposition of the plural and singular is evidence that Congress intentionally used the plural and singular in various places in section 1110(b). We therefore infer that had Congress intended to authorize the President to designate just one appropriation as an emergency requirement, it would have been just as deliberate and used the singular "designation" instead of the plural "designations."

Based on the text of section 1110(b) of the CR using accepted principles of statutory construction and consideration of the views of OMB, we conclude that section 1110(b) restricts the availability of the funding designated for emergency requirements in section 1110(a) until the President designates all such funding.[54] Since the President's Message designated less than all of the appropriations designated in section 1110(a), the Message did not make DOJ, HUD, and NASA funds available for obligation and expenditure as required by law.

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[51] B-331888, June 11, 2020.

[52] Pub. L. No. 119-4, § 1110(b), 139 Stat. at 13; Pub. L. No. 118-42, § 6, 138 Stat. at 26; Pub. L. No. 118-47, § 6, 138 Stat. at 461.

[53] *See* 1 U.S.C. § 1 (instructing that "words importing the plural include the singular," "unless the context indicates otherwise").

[54] We note that our analysis and conclusions here focus on the availability of the funding under section 1110(b). We do not take a position on the policy goals underlying OMB's reading of the statute. Changes to the statutory requirement can be addressed through the legislative process with Congress and the Administration.

The Antideficiency Act

The Antideficiency Act prohibits an officer or employee of the United States from making or authorizing an obligation or expenditure in excess of or in advance of an appropriation.[55] If an agency incurs an obligation or expenditure in excess of the amount legally available, the agency violates the Antideficiency Act.[56]

In B-290600, July 10, 2002, we addressed a situation like the one at issue here. In that decision, we determined that both OMB and the Air Transportation Stabilization Board (ATSB) violated the Antideficiency Act when OMB apportioned and ATSB obligated an appropriation in advance of its legal availability.[57] The Air Transportation Safety and System Stabilization Act (Stabilization Act) authorized the President to issue loan guarantees and subsidies to compensate air carriers for losses they incurred due to the September 11, 2001, terrorist attacks.[58] The Stabilization Act provided that the budget authority for this purpose would be available "only to the extent that" the President transmits a request to Congress designating the amount identified in the request as an emergency requirement.[59] Because ATSB obligated the appropriation before the President transmitted his designation, ATSB obligated before the appropriation was legally available and violated the Antideficiency Act.[60] ATSB violated the Antideficiency Act even though it genuinely acted in reliance on OMB's apportionment.[61] Upon realizing the error, the Administration transmitted the designation and ATSB reported to Congress the Antideficiency Act violation.[62]

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[55] 31 U.S.C. § 1341.

[56] B-327432, June 30, 2016.

[57] B-290600, July 10, 2002.

[58] Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, title I, § 101(a)(1), 115 Stat. 230 (Sep. 22, 2001).

[59] B-290600, July 10, 2002; Pub. L. No. 107-42, § 101(b), 115 Stat. at 230 ("Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this title as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.").

[60] B-290600, July 10, 2002.

[61] *Id.*

[62] *Id*.

We arrive at a similar conclusion here. Like ATSB in our prior decision, DOJ, HUD, and NASA obligated funds that were unavailable for obligation because the President did not satisfy the requirements of section 1110(b). Therefore, DOJ, HUD, and NASA violated the Antideficiency Act and should report their violations as required by law.[63]

CONCLUSION

Section 1110(b) of the CR restricts the availability of the funding designated for emergency requirements in section 1110(a) of the CR until the President designates all the funding designated by Congress in section 1110(a). Since the President's Message designated less than all of the appropriations designated in section 1110(a), the Message does not make DOJ, HUD, and NASA funds available for obligation and expenditure. Therefore, DOJ, HUD, and NASA violated the Antideficiency Act when they obligated and expended the funds in advance of their legal availability.



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[63] *See* 31 U.S.C. § 1351.