

Spend, Defer, or Rescind: How Congress Requires Presidents to Implement Appropriations Laws

For fifty years, Congress has given presidents three choices when it comes to implementing appropriations laws: they can spend the money, or they can send a special message to Congress either deferring the spending or proposing to cut the funding for good. Withholding funds outside of this framework is an unlawful impoundment.

50 years ago, Congress limited when presidents can impound funds.

- According to the Office of Management and Budget's (OMB) own guidance for implementing spending laws, an impoundment is "any Executive Branch action or inaction that temporarily or permanently withholds, delays, or precludes the obligation or expenditure of budgetary resources." [OMB Circular A-11](#), § 20, at 8 (2024).
- If, for example, the Department of Government Efficiency (DOGE) "[saved](#)" \$180 billion (according to its own site), or the administration withheld over \$425 billion as [estimated](#) by the congressional Appropriations Committees, that money is being *impounded* rather than spent.
- Congress made this kind of withholding of funds illegal in the Impoundment Control Act (ICA) of 1974—unless the president follows the Act's procedures and sends a special message to Congress proposing either to defer the spending until later in the year or to rescind (that is, permanently cancel) the funds. 2 U.S.C. §§ 681-88.

Funding can be cut only when Congress passes a new law, called a rescission.

- When presidents want to propose cutting funds, they must send a special message to Congress providing detailed information about which funds they are proposing to cut. The proposed cuts are called "rescissions."
- Congress has expedited procedures to consider rescissions, which go into effect only if Congress passes a law and the president signs it. Just as it takes passing a law for the government to spend money, it takes passing a law to take that money away.
- As then-Judge Kavanaugh explained: "a President sometimes has policy reasons... for wanting to spend less than the full amount appropriated by Congress.... But in those circumstances, even the President does not have unilateral authority to refuse to spend the funds. Instead, the President must propose the rescission of funds, and Congress then may decide whether to approve a rescission bill." *In re Aiken Cty.*, [725 F.3d 255](#), 261 n.1 (D.C. Cir. 2013).

*Presidents must send a special message before withholding any funds.
Withholding funds before asking Congress to make cuts violates the law.*

- The ICA limits the president's ability to delay or refuse to spend money appropriated by Congress. Because the law gives the president only three options — to spend the money, send a message to Congress deferring the spending, or send a message to Congress proposing to rescind it — if a president withholds funds *before* sending a special message that is, generally, breaking the law.
- The Government Accountability Office has [explained](#) that outside the ICA's framework, delays in spending are permissible only where "operational factors unavoidably impede the obligation of budget authority, notwithstanding the agency's reasonable and good faith efforts to implement the program." *Principles of Federal Appropriations Law*, Ch. 2, at 2-50 (4th ed., 2016).
- OMB Director Vought sent a memo to Congress on [April 15th](#) recommending \$9.4 billion in cuts. But the White House did not send that special message to Congress until [June 3rd](#) — almost fifty days later.
- Withholding those \$9.4 billion from being spent during that period of time before sending a special message to Congress was an unlawful impoundment.
- If the administration is withholding additional funds with the intent of not spending them, such as for other rescissions packages OMB Director Vought has said he may propose, the administration is violating the law. Cf. [A-11](#) § 112.2 (noting "amounts proposed for cancellation," which exist outside the ICA's framework, "are not to be withheld from obligation").
- When Congress passed the Impoundment Control Act in 1974, two of the architects of the law in the Senate had [this](#) to say:
 - Sen. Magnuson: "Is it correct to say that under title X, the executive branch may not take any action to delay or withhold appropriations or budget authority, whatever the method or semantic description of the method?"
 - Sen. Ervin: "That is correct."
- The Congress that passed the ICA intended the law to "reach all the past and future mechanisms which this President or any other Executive has devised or will devise" to impound funds. [120 Cong. Rec. S7913 \(Mar. 22, 1974\)](#) (Sen. Ervin).