
October 7, 2026 | **By Sam Berger, Jacob Leibenluft, and Devin O'Connor**

Administration Again Illegally Impounds Federal Funds

On September 25, with just five days left in the 2026 fiscal year, the Trump Administration announced it was unilaterally withholding roughly \$800 million in congressionally approved funds from 11 program accounts in order to have the funding expire unused after September 30. This illegal action was the second time the Administration has publicly declared it was abusing authorities provided in the Impoundment Control Act (ICA) to impound funds through a so-called “pocket rescission.”

The Government Accountability Office (GAO), members of Congress from both parties, and the courts have all agreed the Administration’s actions are illegal. Yet the Administration’s actions have become even more brazen, with this most recent pocket rescission announced with less than a week remaining in the fiscal year and the House of Representatives already out of session. Moreover, the Administration has been illegally impounding these funds for months. The pocket rescission is rightly being challenged in court, but it is unlikely to be resolved quickly there. Congress doesn’t have to wait – and should not wait – for the courts to act; it should use its powers during the upcoming end-of-year legislative session to restore these illegally impounded funds and prevent future pocket rescissions.

Administration’s Approach Remains Illegal

The ICA, enacted in the wake of President Nixon’s illegal attempts to impound funds in the 1970s, provided a streamlined procedure for Congress to consider presidential proposals to rescind appropriated funds. Under the law, Congress has 45 days to approve rescission requests on an expedited basis. The Administration claims that the ICA has a loophole allowing the President to impound the funds in a rescission request for 45 days, even if they will expire. That is why the Administration waited to transmit this rescission request until so late in the fiscal year. But there is no loophole, and the action is clearly illegal.

The ability under the ICA to transmit a rescission request to Congress does not supersede the requirement in law that the Administration ensure funds are obligated (that is, committed to a particular person or purpose) for the lawful purposes for which they were provided. The ICA does not create a right to ignore the requirements of annually enacted spending laws in the absence of congressional action. As GAO explained just days after the Administration’s September 25 announcement, “Any withholding of

appropriated funds beyond their date of expiration, regardless of size, subverts both the constitutional process for enacting federal law and Congress's constitutional power of the purse. The President may not force the expiration of budget authority Congress has already enacted and did not rescind."¹

Timing of Administration's Request Shows Its Arguments in Court Have Been in Bad Faith

The timing of the Administration's illegal rescission request, delivered to Congress with no advance notice after the House had already left town and with only five days remaining in the fiscal year, shows that the arguments the Administration made in court last year defending a similar impoundment were in bad faith.

In that prior case, a suit brought by humanitarian groups to block the impoundment, a lower court prevented the illegal impoundment from going forward, finding that the Administration's arguments had "no support in the text of the ICA." The Administration then argued to the Supreme Court that the ICA created a "complex scheme of interbranch dialogue" and thus prohibited private lawsuits to enforce spending laws. The Court showed a preliminary openness to this procedural argument and allowed the illegal impoundment to continue while the case continued to play out.² (No court has ruled in favor of the Administration's pocket rescission on the merits.)

But this latest action belies that claim. The Administration can't credibly argue that it is engaging in interbranch dialogue when it waited to transmit its rescission proposal until Congress had virtually no opportunity to act. Moreover, the Administration has claimed in the past that even congressional disapproval on a pocket rescission proposal would not prevent impoundment.³ In light of these actions – and the ICA's clear statement that it should not affect "in any way the claims or defenses of any party to litigation concerning any impoundment" – the Supreme Court should dismiss the Administration's argument that private parties cannot bring suit to enforce spending laws.

Administration Announcement Is an Admission That It Has Been Illegally Withholding Funds for Months

Not only does the Administration's claim that it can impound funds through a pocket rescission have no basis in law; its announcement that it intends to impound the funds is itself a public admission of wrongdoing. The ICA requires the Administration to submit a rescission request as soon as it plans to not make full use of the lawfully provided funds. But the Administration's illegal pocket veto timing gimmick requires it to wait to submit such a request to Congress until late in the fiscal year. As a result, the request is a kind of "signed confession" revealing where the Administration has *already* been illegally withholding funds for months that it never intended to spend. Senator Susan Collins, the Chair of the Appropriations Committee, emphasized this point when she noted that "OMB intentionally withheld these funds for

months to execute this unlawful cancellation of appropriations that were approved on a bipartisan basis and signed into law.”⁴

Take, for example, the housing counseling funds the Administration proposed to rescind. In March 2025, Congress passed and President Trump signed into law final appropriations providing \$57.5 million for housing counseling assistance, with funds available through September 30, 2026. But more than 18 months later, the Administration had used only 2 percent of the funds and proposed rescinding the remaining 98 percent. The Administration had proposed eliminating the Housing Counseling Program in each of its first two budget proposals (released in June 2025 and April 2026), so it is highly unlikely that the Administration decided only in September 2026 that it did not want to spend the funding it had agreed to with Congress a year and a half earlier.

A coalition of housing counseling organizations noted in their legal challenge to the action that it was “just the latest unconstitutional and illegal action by [the Administration] in connection with its long running campaign against the [Housing Counseling Program].” The groups argued that the Administration has done “all they could to discourage . . . continued participation in the program, including improperly delaying” the application for these funds, imposing “new funding restrictions and unlawful post award conditions, unrelated to and inconsistent with the [rules and law],” and “drag[ging] its feet on announcing the awards.”⁵

Illegal Actions Call for Bipartisan Response From Congress

The Administration should follow the law and abandon its illegal attempts to unilaterally cause funds to expire. When it doesn’t, as in this most recent pocket rescission announcement, the courts should intervene to uphold funding laws.

But whereas legal action takes time and imposes an avoidable burden on plaintiffs to compel the Administration to follow the law, Congress has ample tools at its disposal to restore these illegally impounded funds and prevent future pocket rescissions.

Last year, Democrats in Congress proposed guardrails to accomplish just that, but Republicans failed to provide the needed support to enact them. Given the latest evidence of the Trump Administration’s ongoing commitment to violating funding laws, Republicans in Congress should join with Democrats to enact guardrails to prevent future pocket rescissions and other abuses of their constitutional power of the purse when Congress reconvenes in November.

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¹ GAO General Counsel Edda Emmanuelli Perez, Letter to the Honorable JD Vance *et al.*, September 29, 2026, <https://www.politico.com/f/?id=000001a0-ee05-dfdd-afef-ee1f85250000>.

² David Super, "More Fiscal Mismanagement," Balkinization, October 2, 2026, <https://balkin.blogspot.com/2026/10/more-fiscal-mismanagement.html>.

³ Office of Management and Budget, September 3, 2025, 4:47 p.m., <https://x.com/WHOMB/status/1963342991315046833>.

⁴ United States Senate Committee on Appropriations, "Sen. Collins Calls Administration's Pocket Rescissions Package 'Unlawful,'" September 25, 2026, <https://www.appropriations.senate.gov/news/majority/sen-collins-calls-administrations-pocket-rescissions-package-unlawful>.

⁵ *National Urban League et al. vs. Donald J. Trump et al.*, Case 1:26-cv-03401-JMC, September 29, 2026, https://www.democracydefendersfund.org/wp-content/uploads/2026/09/092926_DDF-Complaint-National-Urban-League.pdf.