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Deferral Requests Would Be Another Tactic in the Trump Administration's Illegal Strategy to Withhold Congressionally Approved Funding

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The Trump Administration has been illegally withholding funds lawfully provided by Congress from its very first days in office.¹ These unprecedented actions — clawing back already committed funds and unilaterally and illegally blocking spending for programs the Administration objects to — appear part of an Administration effort to usurp Congress's constitutional spending powers. Through a presidentially proposed rescissions package — passed via a fully partisan vote for the first time ever in July — the Administration has also cut funding that had been previously enacted on a bipartisan basis.²

Yet even as Republicans in Congress were working to advance the President's \$9 billion rescissions package, the Trump Administration was reportedly considering sending a separate request to Congress to temporarily “defer” \$30 billion in planned spending.³ Press reports suggest that such a package could include funding that is currently being illegally frozen from “more than a dozen agencies,” including the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Interior Department, and the Department of Health and Human Services.⁴

Under the Impoundment Control Act of 1974 (ICA), the President can propose temporarily pausing spending of funds (known as deferral) for a narrowly defined set of reasons without affirmative action from Congress.⁵ But the Trump Administration's reported deferral strategy raises a number of concerns.

- The ICA does not allow deferrals for policy reasons, including any policy objections the Administration may have to legally required spending. Yet that would seem to be the most likely explanation for why the Administration would consider proposing deferrals, particularly because it is already illegally freezing many of the funds reportedly under consideration for deferral on policy, ideological, or politically motivated grounds.
- A deferral cannot extend beyond the period in which the funds are made available for use or cause funds to go unused. (See box below for more details). But given other illegal funding freeze strategies the Trump Administration has floated or implemented, the goal may be to

do just that: give cover to attempts to run out the clock and avoid spending funds by the end of a fiscal year as lawfully required by Congress.

- Lastly, this effort to subvert congressional spending prerogatives would further jeopardize Congress's ability to reach bipartisan funding deals this year and in the future. The broader efforts by the Administration to illegally withhold funding and congressional Republicans' failure to challenge these actions could poison the well for future negotiations.⁶

Any deferral proposals from the Trump Administration should be evaluated carefully for whether the funds proposed for deferral actually meet the limited criteria set forth in the ICA, if they were being illegally withheld *before* the request was made, and if the purpose of such a deferral is only to make the expiration of the funds more likely.

What Is a Legal Deferral Under the ICA?

As the name suggests, the Impoundment Control Act (ICA) helped reinforce Congress's control over the executive branch's spending of funds and provided an explicit pathway for the President to request that lawfully provided funds either be temporarily paused ("withheld" or "deferred") or permanently taken back by Congress ("rescinded"). The ICA was enacted in response to President Nixon's unilateral efforts to impound (i.e., not spend) appropriated funds without congressional approval, which the courts had already ruled unlawful.

Under the ICA, the President can request a temporary pause on spending for only three reasons:

- To provide for contingencies, such as when the President anticipates a greater need for the funds later in the fiscal year;
- When waiting to spend can achieve savings made possible by changes in requirements or greater efficiency of operations; or
- When such pauses are expressly provided for in law.

The ICA does not permit deferrals for policy reasons — whether a reconsideration of priorities or to better advance the President's agenda or political preferences — nor to accommodate indeterminate programmatic reviews.

In enacting the ICA, Congress explicitly eliminated previous authority that presidents had to lawfully delay spending funds when savings would be made possible through "other developments subsequent to the date on which such appropriation was made available." This change, and a subsequent amendment, made even clearer Congress's intention that proposed deferrals are "permissible only" for the three reasons given above and cannot be undertaken for any other reasons, including policy reasons (with the prohibition on deferring funds for policy reasons reaffirmed in a U.S. Court of Appeals decision in 1987).^a The ICA also makes clear that funds temporarily delayed must still be spent before expiration and that presidents cannot propose to delay spending lawfully appropriated funds beyond the end of a fiscal year.

Under the ICA, any time the President wishes to defer funds, they are required to submit a special message to Congress that clearly documents which funds are being paused, for how long, and the allowable reason why. With the transmittal of a special message compliant with the law, the President can pause the spending of funds without the affirmative approval of Congress. Though Congress hypothetically can take action to end a requested pause through an expedited procedure requiring only a simple majority in the House and Senate, it would still be subject to a presidential veto.

Additionally, the ICA lays out a separate procedure for when a President wishes for Congress to rescind funds. The ICA's offering of a separate procedure for preventing funds from being spent at all makes clear that temporarily paused funds still must be spent. (The ICA also prohibits proposing deferrals of funds the President has also proposed for rescission.)

^a James Saturno, "The Impoundment Control Act of 1974: Background and Congressional Consideration of Rescissions," Congressional Research Service, February 20, 2025, <https://www.congress.gov/crs-product/R48432>.

Trump Administration's Illegal Funding Freezes Can't Be Remedied Through a Deferral Request

While we do not yet know whether the Administration will ultimately send a deferral request to Congress, we *do* know that the Administration is currently illegally delaying billions of dollars in funding from both obligation and payment.⁷ Moreover, in many cases, these funds are explicitly being delayed for policy reasons. The Trump Administration has illegally sought to block:

- **School support.** In one recent example, the Trump Administration withheld billions in K-12 education funding intended to support critical school activities and services during the upcoming school year that was only weeks away from starting. The funds were provided in the final bipartisan spending law that President Trump signed in March and were legally required to have been made available for states to distribute to local school districts at the beginning of July. But the Office of Management of Budget (OMB) sat on the funds while it conducted what it described as “an ongoing programmatic review of education funding,” despite neither education statutes nor the appropriations act providing any authority to withhold these funds for any such “programmatic review.”⁸ The withholding prompted ten Republican Senators to write to OMB Director Russell Vought noting that “withholding these funds will harm students, families, and local economies” and asking that he “faithfully implement” the budget enacted back in March.⁹ After facing backlash, OMB announced it would release the funds.¹⁰
- **Critical health research.** In July, 14 Senate Republicans also wrote to OMB out of concern over the “slow disbursement rate” of funds provided to the National Institutes of Health (NIH) in the March budget agreement, warning that “whether formally withheld or functionally delayed...Americans’ ability to access better treatments” and “our nation’s leadership in biomedical science” was threatened.¹¹ Less than a week later, it was reported that the Trump Administration had attempted to block remaining NIH funding for 2025 from being provided to non-federal researchers — restricting an estimated \$15 billion from being awarded for new grants or grant renewals.¹² After the reporting, OMB announced it had released the NIH funds and subsequently tried to justify the freeze as a “programmatic review.”¹³
- **Scientific advancements.** The Trump Administration has been widely reported to be illegally bottling up research funding at the National Science Foundation (NSF) in the spring, cancelling over 1,600 existing grants, blocking new awards — even for awards already approved — and putting the agency on the slowest pace of awarding new funding in 35 years.¹⁴ The illegal deferral of funds came under the auspices of undertaking a “secondary” review to ensure awards would be consistent with the President’s priorities.¹⁵ In July, some NSF employees accused OMB of still restricting over \$2 billion of the appropriations provided in March from NSF use.¹⁶

In each of these instances, sending a deferral request to Congress would not have made the withholding of these funds legal — both because the funds were clearly not being withheld for any of the allowable reasons under the ICA and because the withholding of these funds violated the relevant appropriations act. And even when funds have subsequently been released, these illegal deferrals have proved damaging — causing uncertainty, disruption, and chaos that has harmed

schools' planning and preparation just as the return of students neared or threatened to derail or delay critical benefits from lifesaving health research or other scientific breakthroughs.¹⁷

Deferral Requests May Be One Piece of the Administration's Illegal Strategy to Let Lawfully Provided Funding Expire

The Trump Administration has already engaged in the illegal withholding of funds, including to prevent their use for months before the President finally proposed rescinding them in June and congressional Republicans accepted that proposal in July.¹⁸ More broadly, any deferrals may fit into the Trump Administration's apparent goal to unlawfully impound some set of funds until they expire at the end of the fiscal year in September.

Indeed, the Trump Administration — and in particular OMB Director Vought — has not shied away from publicly suggesting that it can unilaterally impound funds because the ICA is unconstitutional and, contradictorily, that it has the power under the ICA to rescind funds even without Congressional approval, through the use of so-called “pocket rescissions.”¹⁹ A “pocket rescission” approach involves sending an ICA rescissions request to Congress with fewer than 45 legislative days before funds expire, and then withholding funds during that period up to the expiration date. This makes the funds unavailable to be spent and effectively rescinds them, regardless of any congressional vote. As a CBPP paper lays out, this strategy has no basis in the law and would, in fact, “bend the ICA to ends precisely opposite to those for which Congress enacted it.”²⁰

The Trump Administration's reported consideration of sending a deferral proposal to Congress under the ICA, one likely to be contrary to the law, should be viewed in light of its broader goal to “run out the clock” on fiscal year 2025 funding by any means it can get away with — and just one of many strategies the Administration is illegally deploying. A similar dynamic is in play with the Administration's possible attempts to execute a pocket rescission, which would only be made possible by effectively leveraging previous illegal deferrals to get to the point where there are fewer than 45 days remaining in the fiscal year.

Regardless of the form these illegal withholdings take, including in the absence of *any* request to Congress under the ICA to rescind or pause funds, they are all advancing the Administration's illegal effort to prevent money from going out the door as Congress intended. These actions are troubling because they chip away at the constitutional separation of powers and violate the law. And if the Administration continues to illegally frustrate the spending laws passed by Congress, it will also break the existing appropriations process — making it nearly impossible for Congress to reach agreement on appropriations for fiscal year 2026, which starts October 1.

Such an agreement will require Democratic senators to join with Republicans to reach the needed 60-vote threshold. But Democratic support may not materialize if the Administration's actions make clear it has no intention of honoring the terms of the agreement by selectively, unilaterally, and illegally withholding funds — especially if Republicans in Congress do not consistently stand up to the Administration to ensure that funds lawfully provided by Congress are faithfully spent on the purposes intended.

¹ For example, see Matthew Vaeth, “Temporary Pause of Agency Grant, Loan, and Other Financial Assistance

Programs,” Office of Management and Budget, January 27, 2025, <https://www.washingtonpost.com/documents/deb7af80-48b6-4b8a-8bfa-3d84fd7c3ec8.pdf>; White House, “Reevaluating And Realigning United States Foreign Aid,” January 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/reevaluating-and-realigning-united-states-foreign-aid/>

² David Super, “Many Trump Administration Fiscal and Regulatory Actions Are Unlawful,” CBPP, February 11, 2025, <https://www.cbpp.org/research/federal-budget/many-trump-administration-fiscal-and-regulatory-actions-are-unlawful>; Sam Berger and Jacob Leibenluft, “Trump Administration’s Mass Layoffs of Federal Workers Are Illegal,” CBPP, May 2, 2025, <https://www.cbpp.org/sites/default/files/5-2-25bud.pdf>; Devin O’Connor, Sam Berger, and Jacob Leibenluft, “Trump Rescission Proposal Builds on Illegal Impoundments, Would Undermine Future Funding Deals,” CBPP, July 10, 2025, <https://www.cbpp.org/research/federal-budget/trump-rescission-proposal-builds-on-illegal-impoundments-would-undermine>.

³ Scott Waldman and Corbin Hiar, “White House looks to freeze more agency funds — and expand executive power,” E&E News, June 10, 2025, <https://www.eenews.net/articles/white-house-looks-to-freeze-more-agency-funds-and-expand-executive-power/>.

⁴ Waldman and Hiar.

⁵ “A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.” 2 U.S. Code § 684. Once a deferral period ends, the executive branch must spend the funds on their lawfully purpose before expiration to avoid an illegal impoundment. For more details on allowable reasons for a deferral proposal under the ICA, see the text box, above: “What Is a Legal Deferral Under the ICA.”

⁶ O’Connor, Berger, and Leibenluft, “Trump Rescission Proposal Builds on Illegal Impoundments, Would Undermine Future Funding Deals.”

⁷ For a few examples, see GAO, “B-337137: 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,” May 22, 2025, <https://www.gao.gov/assets/880/877916.pdf>; Dan Garisto, “National Science Foundation Halts Funding Indefinitely,” Scientific American, May 2, 2025, <https://www.scientificamerican.com/article/under-trump-national-science-foundation-cuts-off-all-funding-to-scientists/>; and Sara Reardon, “Judge orders NIH to restore hundreds of grants cut under Trump,” Science, June 16, 2025, <https://www.science.org/content/article/judge-orders-nih-restore-hundreds-grants-cut-under-trump>.

⁸ Avery Lotz, “Summer and after-school programs at risk under Trump’s K-12 funding hold,” Axios, July 2, 2025, <https://www.axios.com/2025/07/02/trump-administration-withholds-education-fund>. The funds were already subject to legal restrictions on their use, and all the states had Department of Education-approved spending plans.

⁹ Shelly Moore Capito *et. al.*, “Letter to Director Vought on Education Funds,” July 16, 2025, https://www.capito.senate.gov/imo/media/doc/letter_to_director_vought.pdf.

¹⁰ Collin Binkley and Annie Ma, “Trump administration releases billions in school grants after freeze,” Associated Press, July 25, 2025, <https://apnews.com/article/trump-education-freeze-school-grants-released-gop-f9ac79dd44595fc9d8a3c72609cb5574>.

¹¹ Katie Britt *et. al.*, “Letter to OMB re: FY25 NIH Appropriations,” July 24, 2025, https://www.britt.senate.gov/wp-content/uploads/2025/07/07.24.25_Senate-Letter-to-OMB-re-FY25-NIH-Appropriations.pdf.

¹² Liz Essley Whyte, “Trump Administration Scraps Effort to Pause Health-Research Funding,” Wall Street Journal, July 29, 2025, <https://www.wsj.com/politics/policy/trump-administration-puts-new-chokehold-on-billions-in-health-research-funding-19660215>.

¹³ Hannah Natanson, Dan Diamond, Carolyn Johnson, and Jeff Stein, “Trump administration halts, then releases, NIH research funding,” Washington Post, July 29, 2025, <https://www.washingtonpost.com/politics/2025/07/29/trump-administration-nih-funding/>.

¹⁴ Aatish Bhatia, Irineo Cabrerros, Asmaa Elkeurti, and Ethan Singer, “Trump Has Cut Science Funding to Its Lowest Level in Decades,” New York Times, May 22, 2025, <https://www.nytimes.com/interactive/2025/05/22/upshot/nsf-grants-trump-cuts.html>; Benjamin Weiser and Katrina Miller, “16 States Sue Trump Over \$1.4 Billion in National Science Foundation Cuts,” New York Times, May 28, 2025, <https://www.nytimes.com/2025/05/28/nyregion/trump-science-funding-lawsuit.html>.

¹⁵ Kathryn Palmer, “NSF Halts New Funding and Caps Indirect Rate Costs, Inside Higher Education,” May 5, 2025, <https://www.insidehighered.com/news/government/science-research-policy/2025/05/05/nsf-halts-new-funding-and-caps-indirect-rate>; Jeffrey Mervis, “NSF halts grant awards while staff do second review,” Science, April 16, 2025, <https://www.science.org/content/article/nsf-halts-grant-awards-while-staff-do-second-review>.

¹⁶ Rachel Frazin, “NSF staff claim political bias in firings and grants,” the Hill, July 22, 2025, <https://thehill.com/policy/energy-environment/5413880-national-science-foundation-nsf-trump-grants-doge/>.

¹⁷ Sunlen Serfaty and Riane Lumer, “Education Department funding freeze targets summer school and language programs that are lifelines for families,” CNN, July 16, 2025, <https://edition.cnn.com/2025/07/16/politics/education-students-learning-school>. Prior to the after-school funds being released, the Boys & Girls Clubs had estimated that over 900 centers that run summer and after-school programs serving more than 220,000 kids “stand to close if the Trump administration doesn’t release the money in the next three to five weeks.” Bianca Vazquez Toness, “Trump education grant freeze threatening after-school care prompts lawsuit,” Associated Press, July 14, 2025, <https://apnews.com/article/boys-girls-club-trump-grant-freeze-6f5bd3204d2973784d466e3f0fdb38b4>.

¹⁸ O’Connor, Berger, and Leibenluft, “Trump Rescission Proposal Builds on Illegal Impoundments, Would Undermine Future Funding Deals.”

¹⁹ Diana Stancy, “‘Constitutional crisis’: The Impoundment Control Act takes center stage after Russell Vought’s confirmation,” Fox News, February 10, 2025, <https://www.foxnews.com/politics/constitutional-crisis-impoundment-control-act-takes-center-stage-washington>; Jennifer Scholtes, “White House floats new funding trick — and GOP lawmakers grimace,” Politico, June 20, 2025, <https://www.politico.com/news/2025/06/20/pocket-rescissions-white-house-funding-trick-00410444>.

²⁰ David Super and Sam Berger, “‘Pocket Rescissions’ are Illegal,” CBPP, July 30, 2025, <https://www.cbpp.org/research/federal-budget/pocket-rescissions-are-illegal>.