



## Judicial Update 9: What Can Congress Can Do in Response to Violations of the Impoundment Control Act and Appropriation Bills?

**Policy Brief on Impoundment and Rescission**  
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April 1, 2025

**Summary:** The policy brief focuses Congress's role in reviewing the termination of USAID and State Department grants. Recent articles the [New York Times](#), [Politico](#), the Washington Post and elsewhere suggested that the Administration plans to cut to life saving programs that have already been approved by Congress. The Continuing Resolution just passed by Congress to fund the government through September 2025 (FY25 funding) maintains level funding for global health with no cuts. However, the Administration's proposal to Congress challenges these appropriations and proposes cuts to priorities and programs that were approved by a bipartisan majority in Congress for FY25 spending.

Under the **Impoundment Control Act (ICA)**, the Administration can officially report a **rescission** (a proposal to cancel funds Congress has explicitly directed to be spent) to Congress. A **rescission** allows the U.S. government to cancel previously approved funding, but it must be **formally reported to Congress**. Once reported, Congress can approve, reject, or partially accept the rescission. Without congressional approval, withholding funds beyond 45 days is considered illegal under the ICA. Of note, the funds for some organizations have already been withheld in excess of 45 days per the funding freeze announced in a [20 January Executive Order](#) and subsequent [Memorandum](#) issued by the Department of State. While litigation is underway and the Administration has been [ordered by the Courts](#) to pay funds expended through 13 February, many organizations have not yet received monies.

If the administration's action was not an official rescission report, Congress could challenge it as unlawful and demand oversight hearings.

The **Government Accountability Office** (GAO) is supposed to ensure appropriations' compliance, report unauthorized and de facto impoundments, and even take legal action to release funds. Given the two month spending freeze - a clear de facto rescission - and the mass USAID and Department of State foreign aid grant terminations - also a de facto rescission on ongoing appropriations, the GAO should immediately report these rescissions to Congress.

To counter the funding cuts, **supporters will need to advocate with members of Congress who support foreign aid on both sides of the aisle, and push for oversight hearings on the administration's de facto impoundment and for the GAO to perform its statutory duties in reporting, assessing, and litigating Impoundment Control Act rescissions.**

## **Constitutional Background and Outline of the Impoundment Control Act**<sup>[1]</sup>

The U.S. Constitution divides authority between the Executive, Legislative, and Judicial Branches of Government. Congress is given authority to enact laws, including laws to establish Executive agencies, and to appropriate funding for the federal government for specified purposes. The Executive branch, in turn, is required to faithfully execute the laws that Congress enacts. More specifically, the Executive branch is obligated to spend appropriated funds for Congressionally determined purposes and for the time period designated, despite presidential or agency policy disagreement.

Following an effort by President Nixon to thwart Congress's power of the purse, Congress passed the [Congressional Budget and Impoundment Control Act of 1974](#) (Impoundment Control Act). This Act further codified Congress's constitutional spending powers and rejected the right of the Executive branch to unilaterally withhold appropriated funds, while permitting the President to temporarily withhold or cancel funding only pursuant to specified circumstances and procedures. Those procedures require the Executive to report, and the Legislative branch to review, spending delays or proposals to cancel previously enacted budget authority. Although Congress can vote to ratify or approve rescissions/cancellations of appropriated funds, a positive majority vote is required.

"Impoundment" is the term used to describe any withholding, delay, or termination of the legal obligation to pay or the expenditure of a Congressional appropriation, including how much budget authority was specified and for what purpose and time period. An impoundment can be temporary or permanent, can result from action or inaction, and can occur at the Office of Management and Budget (OMB) or agency level. A "deferral" is a temporary withholding or delay that would not interfere with appropriated funds being expended within the timeframe specified by Congress. Programmatic deferrals, which are unavoidable due to legitimate

programmatic purposes or external forces outside of agency control are not deemed impoundment deferrals. However, actual impoundment deferrals must be reported to Congress by the President and are available only to provide for contingencies, to achieve savings made possible by changes in requirement or greater efficiencies, or as otherwise specified in law. Budget authority may not be deferred for policy reasons.

[T]he president must include in the special message the amount of budget authority proposed for deferral, the account and projects involved, the proposed time period for the deferral, the reason for the deferral, the estimated fiscal, economic and budgetary effect of the proposed deferral and a statement and analysis of the relevant facts and circumstances. (CREW. p. 2)

A proposed permanent cancellation of appropriated budget authority, for policy reasons or otherwise, is called a “rescission,” which should be accompanied by a message to Congress.

When a president proposes to rescind funds, the president must include in the special message the amount of budget authority proposed for rescission, the account and projects involved, the reason for the rescission, the estimated fiscal, economic and budgetary effect of the proposed deferral, and the relevant facts and circumstances. (CREW, p. 3)

Following a rescission notice the President can generally withhold funds for up to 45 days. During that time period Congress may pass a rescission bill ratifying the proposed rescission in whole or in part. If Congress does not do so, the President is obligated to make available for spending any withheld funds that Congress has not rescinded.

The Government Accountability Office (GAO) has an important oversight role with respect to impoundments. The President is required to send a copy of any special message proposing rescission or deferrals to the Comptroller General of the GAO, who is required to review each special message and report their findings to Congress as soon as practicable. The Comptroller General is also supposed to report any non-notified, de facto impoundment to the Congress and is further required to monitor that non-rescinded impoundments are actually spent within allotted timeframes. The Comptroller General is empowered to bring suit in the U.S. District Court for the District of Columbia for violations of the Impoundment Control Act after having given a required report of its intent to do so to the Congress.

### **The Dismantling of USAID without Congressional Authority Violates Congressional Powers as Well**

As is being argued in several court cases, Congress established USAID and only Congress can authorize its dismantling. Moreover, USAID’s continued existence has been provided for in multiple appropriations acts. In the Further Consolidated Appropriations Act of 2024, Congress explicitly barred the Executive from using appropriated funds to make major changes to USAID without prior consultation with the appropriate congressional committee. Further *Consolidated Appropriations Act, 2024, Pub. L. 118-47, § 7063(a), 138 Stat. 460, 843–44.*

Sec. 7063. (a) Prior Consultation and Notification.--Funds appropriated by this Act, prior Acts making appropriations for the Department of State, foreign operations, and related programs, or any other Act may not be used to implement a reorganization, redesign, or other plan described in subsection (b) by the Department of State, the United States Agency for International Development, or any other Federal department, agency, or organization funded by this Act without prior consultation by the head of such department, agency, or organization with the appropriate congressional committees: Provided, That such funds shall be subject to the regular notification procedures of the Committees on Appropriations: Provided further, That any such notification submitted to such Committees shall include a detailed justification for any proposed action: Provided further, That congressional notifications submitted in prior fiscal years pursuant to similar provisions of law in prior Acts making appropriations for the Department of State, foreign operations, and related programs may be deemed to meet the notification requirements of this section.

(b) Description of Activities.--Pursuant to subsection (a), a reorganization, redesign, or other plan shall include any action to--

- (1) expand, eliminate, consolidate, or downsize covered departments, agencies, or organizations, including bureaus and offices within or between such departments, agencies, or organizations, including the transfer to other agencies of the authorities and responsibilities of such bureaus and offices;
- (2) expand, eliminate, consolidate, or downsize the United States official presence overseas, including at bilateral, regional, and multilateral diplomatic facilities and other platforms; or
- (3) expand or reduce the size of the permanent Civil Service, Foreign Service, eligible family employed staff workforce of the Department of State and USAID from the staffing levels previously justified to the Committees on Appropriations for fiscal year 2024.

Similarly, the [Continuing Resolution](#) just passed by Congress to fund the government through September 2025 (FY25 funding) maintains level funding for global health, allowing no cuts. The Administration's proposal to Congress challenges these FY 2025 appropriations and makes cuts to priorities and programs passed by a bipartisan majority in Congress. Once again required Congressional notifications have not been provided and dismantling/restructuring has not been Congressionally authorized.

### **USAID and Department of State Mass Terminations of Foreign Assistance Grants and Agreements and the Dismantling of USAID Violate the Impoundment Control Act and Appropriations Acts Requiring GAO and Congressional Action**

It does not appear that the Trump Administration has given a proper deferral notice or rescission notice to Congress or notices concerning proposed USAID restructuring. Although we have not been able to review copies of memos accompanying the list of active and terminated [USAID Programs](#) and Department of State Programs sent to Congress, a [New York Times report](#) on

those memos confirms that the memos describe a “unilateral” decision by the agencies instead of the detailed presidential rescission report required by the Impoundment Control Act. Likewise, it is undisputed that the President and agencies never sent a required deferral report detailing the foreign assistance funding-freeze announced by President Trump’s Executive Order and subsequent orders from the Office of Budget Management and affected agencies. So, in effect, there has been an actual rescission during the funding-freeze/stop-work order time period, and an a further massive rescission occasioned by the abrupt termination of 87% of existing foreign assistance agreements.

Since the Administration merely announced its unilateral decision, rather than a rescission in compliance with the Impoundment Control Act, Members of Congress should denounce the terminations as unlawful in blatant violation of the ICA and demand oversight hearings on the same. Because the OMB is acting in concert with Trump, obscuring whether it has any intention to abide by its budgeting responsibilities, Congress should hold hearings on OMB malfeasance as well the Administration’s illegal foreign assistance terminations. Since there is no practical way for the Trump administration to spend appropriated foreign assistance funds pursuant to FY 2025 Congressional mandates, the only practical route to compliance is reinstating terminated grants as fully and quickly as possible.

Similarly, because the GAO is supposed to review “reports” to Congress and also report to Congress if de facto impoundments have occurred, the GAO should be mandated to file impoundment reports to Congress both with respect to the funding-freeze rescissions and now the mass termination rescissions. Such GAO reporting would trigger the 45-day limit on withholding of funds and allow Congress to decide whether to prevent or accede to the mass rescissions. (The illegal funding freeze impoundment has in our estimation already exceeded nine weeks and the illegal mass termination impoundment is now two weeks old, though the administration might still be legally entitled to the full 45 days after the rescission report is sent to Congress.) The GAO is further authorized to file suit in the District of Columbia District Court demanding release of improperly impounded funds and should do so in this instance.

Members of Congress should reject all (or at least most) of the proposed rescissions. (Given the balance of power in the House and Senate, at least some Republican defenders of foreign aid must be identified to defeat a party-line vote.) There are strong reasons to reject the mass rescissions given the importance of foreign assistance and global health assistance to U.S. soft power and health security. Important interests are at stake: the health of ultimate foreign assistance beneficiaries, the livelihood of hundreds of thousands of workers, foreign and domestic, delivering U.S. foreign assistance, the survival of organizations and indeed the whole ecosystem of humanitarian relief and global health service delivery, and the economic wellbeing of U.S. health-commodity and food producers. In addition, an entire regime of international and multi stakeholder cooperation and coordination is at risk, within the United Nations system and beyond. The decimation of global HIV, TB, and malaria programming, of maternal and child

health services, and nutrition programming, is unnecessary and counterproductive. The gutting of immunization, family planning, and other prevention programs is completely incoherent.

The unilateral dismantling and reorganization of USAID is contrary to Congress's previous appropriations acts and should also be subject to Congressional hearings and rejection. Although Congress may ultimately determine that some restructuring is appropriate, it should not ratify USAID having been [fed into the woodchipper](#) nor the now [near total termination](#) of 10,000 employees.

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[1] This section relies substantially on Citizens for Responsibility and Ethics in Washington, Key Concepts Related to the Impoundment Control Act of 1974, <https://www.citizensforethics.org/wp-content/uploads/2025/01/Key-ICA-Concepts.pdf> (CREW), and GAO, Impoundment Control Act: Use and Impact of Rescission Procedures (2009), <https://www.gao.gov/assets/gao-10-320t.pdf#page=4>.