

Congress of the United States
Washington, DC 20515

August 19, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Mulvaney:

We write to express our profound concern regarding the Administration's reported plan to submit a rescission request to the Congress just a few weeks before the end of the fiscal year.

Under the Impoundment Control Act of 1974 (ICA), the President may submit a special message proposing the rescission of budget authority and may withhold funds from obligation for a period of 45 calendar days of continuous session following transmission of the special message. In keeping with Congress's constitutional power of the purse, however, such funding must be released absent approval by Congress within the 45-day period. Specifically, section 1012(b) of the ICA states:

Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved.

Submitting a rescissions request and withholding funds from obligation this late in the fiscal year could result in funding being withheld through its expiration date. In December 2018, at the request of the House Budget Committee, the U.S. Government Accountability Office (GAO) issued a legal opinion that addressed this circumstance. GAO found that "the ICA does not permit the withholding of funds through their date of expiration." Further, GAO determined that absent Congressional action to rescind the funds,

amounts proposed for rescission must be made available for prudent obligation before the amounts expire, even where the 45-day period for congressional consideration provided in the ICA approaches or spans the date on which funds would expire: the requirement to make amounts available for obligation in this situation prevails over the privilege to temporarily withhold the amounts.

The authority provided by the ICA to the Executive Branch to withhold funds temporarily is necessarily limited. The GAO opinion states:

It would be an abuse of this limited authority and an interference with Congress's constitutional prerogatives if a President were to time the withholding of expiring budget authority to effectively alter the time period that the budget authority is available for obligation from the time period established by Congress in duly enacted appropriations legislation.

As the chairman and ranking member of the respective House and Senate committees with jurisdiction over the Impoundment Control Act, we affirm our strong agreement with the legal analysis and conclusions reached by GAO. We strongly urge the Administration to refrain from sending a rescission message to the Congress; however, in the event the Administration submits such a message, it must take measures to ensure that the affected funds will be prudently obligated in the event the Congress does not approve the rescission, as required by law. To withhold these funds until they can no longer be prudently obligated or until they expire, in the absence of Congressional approval of the rescission, would violate the ICA and flout an important constitutional check. We trust that you will comply with the law and respect the constitutional role of the Congress to remain at the center of funding decisions.

Thank you for your attention to these concerns.

Sincerely,



John Yarmuth
Chairman
House Committee on the Budget



Bernard Sanders
Ranking Member
Senate Committee on the Budget