IMPOUNDMENT EXPLAINER

November 22, 2024

EXECUTIVE SUMMARY

President Trump may use impoundments to unilaterally do by fiat what he can't pass in Congress.

What is the Impoundment Control Act?

The Congressional Budget and Impoundment Control Act of 1974 (ICA) reasserted Congress' power of the purse. Specifically, Title X of the Act – "Impoundment Control" – established procedures to prevent the President and other government officials from unilaterally substituting their own funding decisions for those of the Congress. The Act also created the House and Senate Budget Committees and the Congressional Budget Office.

Why was the ICA necessary?

Congress passed the ICA in response to President Nixon's executive overreach – his Administration refused to release Congressionally appropriated funds for certain programs he opposed. While the U.S. Constitution broadly grants Congress the power of the purse, the President – through the White House Office of Management and Budget (OMB) and executive agencies – is responsible for the actual spending of funds. The ICA created a process the President must follow if he or she seeks to delay or cancel funding that Congress has provided.

THE BASICS

What does it mean to 'impound' funds?

An "impoundment" is any action – or inaction – by an officer or employee of the federal government that precludes federal funds from being obligated[1] or spent, either temporarily or permanently.

What has the Supreme Court said about the President's power to impound funds?

Several court cases were brought challenging President Nixon's executive overreach on impoundments. Although decided after the ICA passed, the Supreme Court unanimously held in *Train v. City of New York*

[1] To "obligate" funds means to incur a legal obligation to pay, such as by entering into a contract for services.

that even without the ICA, the President does not have unilateral authority to impound funds. Congress has the power of the purse.

How does the ICA work?

The ICA lays out procedures the President must follow to reduce, delay, or eliminate funding in an account. The Act divides impoundments into two categories: rescissions and deferrals.

Rescissions

Put simply, if the President wants to spend less money than Congress provided for a particular purpose, he or she must first secure a law providing Congressional approval to rescind the funding in question. The ICA requires that the President send a special message to Congress identifying the amount of the proposed rescission; the reasons for it; and the budgetary, economic, and programmatic effects of the rescission. Upon transmission of such special message, the President may withhold certain funding in the affected accounts for up to 45 legislative session days. If a law approving the rescission is not enacted within the 45 days, any withheld funds must be made available for obligation.

A 2018 Government Accountability Office legal opinion holds that if the President proposes a rescission, he or she must make the affected funds available to be prudently obligated before the funds expire, even if the 45-day clock is still running. This means, for example, that the President cannot strategically time a rescission request for late in the fiscal year and withhold the funding until it expires, thus achieving a rescission without Congressional approval.

Deferrals

The ICA defines a "deferral" as withholding, delaying, or – through other Executive action or inaction – effectively precluding funding from being obligated or spent. The ICA prescribes three narrow circumstances in which the President may propose to defer funding for a program: (1) providing for contingencies; (2) achieving budgetary savings made possible through improved operational efficiency; and (3) as specifically provided by law.

The ICA requires that the President send a special message to Congress identifying the amount of the proposed deferral; the reasons for it; and the period of the proposed deferral. Upon transmission of such special message, the funds may be deferred without further action by Congress; however, the deferral cannot extend beyond the end of the fiscal year in which the special message is sent. The ICA language on deferrals is long-standing budget law that allows the Executive branch to delay the obligation or expenditure of funding only for the specified reasons rather than policy reasons.

RECENT HISTORY

Fifty years after the ICA became law, Congress once again confronts a threat attempting to push past the long-recognized boundaries of executive budgetary power. During his first administration, President Trump illegally impounded crucial security assistance funding for Ukraine in an effort to benefit his

reelection campaign. Now, Donald Trump and his far-right extremist allies are pushing dangerous legal theories to dismantle that system.

They want to give the president unchecked power to slash funding for programs like food assistance, public education, health care, and federal law enforcement—all without Congressional approval. American families would be forced to pay more for basic necessities, investment in infrastructure and jobs would decline, and our communities would become less safe.

Instead of working within the democratic process, Trump and his allies want to sidestep Congress entirely. But the Constitution is clear: only Congress, elected by the people, controls how taxpayer dollars are spent.

This document has not been reviewed and approved by the Democratic Caucus of the Budget Committee and may not necessarily reflect the views of all members.