



THE APPORTIONMENT PROCESS: ITS USES AND ABUSES

July 2025

Apportionment is an important tool that the White House—through the Office of Management and Budget (OMB)—may lawfully use to control the flow of federal funds.¹ Budget experts are now concerned, however, that it may be being misused as a backdoor way to effectuate potentially illegal impoundments.

Background

Under the Antideficiency Act, OMB must apportion congressionally appropriated funds to federal agencies.² In this process, OMB divides the appropriated funds by time period, program, or both to ensure agencies do not prematurely exhaust their budgets. OMB must finalize these apportionment plans by the later of 20 days before the start of the fiscal year or 30 days after the enactment of an appropriations act.³ To support this, OMB requires that each agency provide OMB an apportionment plan for it to review and approve.⁴

OMB may impose conditions on the release of funds,⁵ such as making them available only after an agency has taken a particular action.⁶ These conditions are documented in “footnotes” in the apportionment plan. If an agency does not comply with a footnote, it may violate the Anti-Deficiency Act, giving OMB significant leverage over agency operations.⁷ Nevertheless, OMB cannot use this authority to impound agency funds or otherwise impede the agency’s obligation to faithfully execute the law.⁸

During the first Trump Administration, the Government Accountability Office (GAO) concluded OMB abused the apportionment process by modifying the Department of Defense’s apportionment plan to withhold congressionally appropriated security assistance funds for Ukraine.⁹ In essence, GAO found OMB used apportionment as the mechanism for impoundment, the executive branch’s refusal to spend funds appropriated by Congress.¹⁰

¹ Dominick A. Fiorentino & Taylor N. Riccard, Cong. Research Serv., IN12538, Office of Management And Budget (OMB) Reporting On Apportionments (Version 8) (2025),

https://www.congress.gov/crs_external_products/IN/PDF/IN12538/IN12538.8.pdf; Eloise Pasachoff, *The President’s Budget as a Source of Agency Policy Control*, 125 Yale L.J. 2182, 2228 (2016), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3670&context=facpub#page=48>;

² 31 U.S.C. § 1512.

³ *Id.* § 1513.

⁴ Office of Mgmt. & Budget, Exec. Office of the President, *OMB Circular No. A-11, Preparation, Submission, And Execution of the Budget* (July 2024), § 120.23 <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>

⁵ *Id.* § 120.34.

⁶ *Id.* § 120.12.

⁷ Pasachoff, *supra* note 1, at 2229.

⁸ 31 U.S.C. § 1512(a) (authorizing apportionments only to “prevent obligation... in excess of the appropriation” or to “achieve the most effective and economical use” of no-year funds); Impoundment Control Act of 1974, 2 U.S.C. §§ 681-688 (prohibiting impoundments unless the President transmits a special message to Congress and Congress approves the rescission within 45 days).

⁹ U.S. Gov’t Accountability Off., B-331564, Office of Management and Budget—Withholding of Ukraine Security Assistance (Jan. 16, 2020), <https://www.gao.gov/assets/b-331564.pdf>.

¹⁰ Paul M. Krawzak, *How the OMB Used Its Powers To Delay Ukraine Aid*, Roll Call (Oct. 29, 2019), <https://rollcall.com/2019/10/29/how-the-omb-used-its-powers-to-delay-ukraine-aid>.

In response, Congress included permanent apportionment reporting requirements in the FY2022 and FY2023 appropriations laws.¹¹ These include requirements that:

- OMB provide the Appropriations and Budget Committees and the public with apportionment documents and footnotes within two days of their approval;
- OMB notify the committees of any apportionment changes within five days; and
- Agencies notify the Appropriations, Budget, and relevant authorizing committees if apportionment (1) is not provided within the statutory timeframe, (2) conditions funding on agency action, or (3) may hinder the agency's ability to prudently obligate appropriated funds or carry out its program.¹²

Congress took this step because it believed without public reporting and congressional notification, OMB could use apportionment to impose secret conditions on the use of federal spending.

Current Apportionment Controversies

On March 24, 2025, OMB took down the public website used to report on apportionments, despite statutory reporting requirements enacted in the FY2022 and 2023 appropriations laws.¹³ Appropriators immediately objected.¹⁴ In response, OMB notified them on March 29 that it would no longer comply with the reporting requirements, citing the deliberative process privilege and national security and foreign policy concerns.¹⁵ On April 8, the Government Accountability Office (GAO) [issued a letter](#) rejecting OMB's assertions of privilege.¹⁶

OMB also refused to provide GAO with apportionment information. When GAO reviewed OMB's June 2025 rescission proposal to cancel funds previously appropriated by Congress, it found that OMB was withholding funds through apportionment.¹⁷ Neither OMB nor the relevant agencies, however, would

¹¹ Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. E, § 204, 136 Stat. 49, 136-37 (2022), <https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf>; Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. E, § 204, 136 Stat. 4459, 4467 (2022), <https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf>.

¹² Consolidated Appropriations Act, 2023, § 204.

¹³ Paul M. Krawzak, *White House Scraps Public Spending Database*, Roll Call (Mar. 24, 2025), <https://rollcall.com/2025/03/24/white-house-scraps-public-spending-database>.

¹⁴ *What Are They Hiding? DeLauro, Murray Demand OMB Promptly Restore Access to Website Detailing Federal Spending Allocations, as Federal Law Requires*, Press Release, H. Comm. on Appropriations (Mar. 24, 2025), <https://democrats-appropriations.house.gov/news/press-releases/what-are-they-hiding-de-lauro-murray-demand-omb-promptly-restore-access-website>.

¹⁵ Letter from Russell T. Vought, Director, Office of Mgmt. & Budget, to Hon. Patty Murray, Vice Chair, Senate Appropriations Comm. (Mar. 29, 2025), <https://bsky.app/profile/edwincpark.bsky.social/post/3lltvb22zhv2z>.

¹⁶ Letter from Edda Emmanuelli Perez, General Counsel, U.S. Gov't Accountability Off., to Russell T. Vought, Director, Office of Mgmt. & Budget (Apr. 8, 2025), <https://www.gao.gov/assets/880/878943.pdf>.

¹⁷ Letter from Edda Emmanuelli Perez, General Counsel, U.S. Gov't Accountability Off., to Hon. J.D. Vance, President of the Senate, & Hon. Mike Johnson, Speaker of the House of Representatives, at 2 (June 17, 2025), <https://www.gao.gov/assets/880/878941.pdf>.

share the underlying schedules, despite GAO’s statutory oversight role over proposed rescissions¹⁸ and the agencies’ obligation to provide information upon request.¹⁹

Separately, concerns have also arisen about OMB’s failure to release funds by withholding apportionments. During a May 2025 appropriations hearing, for example, Interior Secretary Doug Burgum testified that his department had not yet received an apportionment from OMB for the State Historic Preservation Office grants. He said they were “waiting on the apportionment to come” out of OMB, and noted twice that the department was actively “pushing” OMB to release the funds.²⁰

¹⁸ 31 U.S.C. § 685(c) (directing the Comptroller to “review” special messages requesting a rescission and information Congress “as promptly as practicable with respect to— . . . the facts surrounding the proposed rescission or the reservation of budget authority (including the probable effects thereof)”).

¹⁹ *Id.* § 716(a)(2) (“Each agency shall give the Comptroller General information the Comptroller General requires about the duties, powers, activities, organization, and financial transactions of the agency.”).

²⁰ Budget Hearing—Department of the Interior, Subcomm. on Interior, Env’t & Related Agencies, H. Comm. on Appropriations, 118th Cong. (May 20, 2025) (statement of Sec’y Doug Burgum), at 1:08:05, 1:09:00 (May 20, 2025), https://www.youtube.com/live/xxscqy0FJ0M?si=e3Evyq4WdE_KNaa&t=4034.