



THE APPORTIONMENT PROCESS: ITS USES AND ABUSES

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

Background

Under the Antideficiency Act, OMB must apportion (distribute) 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. Federal law prohibits agencies from making expenditures exceeding an apportionment,⁷ and an agency’s failure to comply with a footnote may expose officials to adverse employment actions and potential criminal penalties.⁸ As a result, footnotes give OMB significant leverage over agency operations.⁹

Federal law limits how OMB can exercise this authority. OMB cannot use its apportionment authority to delay or withhold agency funds for policy reasons.¹⁰ It can reserve funds only for

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 (Aug. 2025), § 120.23, <https://www.whitehouse.gov/wp-content/uploads/2025/08/a11.pdf>.

⁵ *Id.* § 120.34.

⁶ *Id.* § 120.12.

⁷ 31 U.S.C. § 1517.

⁸ *Id.* §§ 1518, 1519; U.S. Gov’t Accountability Off., B-310108, Forest Service--Apportionment Limitation for Aviation Resources (Feb. 6, 2008), <https://www.gao.gov/assets/b-310108.pdf>.

⁹ Pasachoff, *supra* note 1, at 2229.

¹⁰ 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); 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>.

contingencies and genuine efficiencies.¹¹ In addition, the Impoundment Control Act provides, “No officer or employee of the United States”—which would include OMB personnel—“may defer any budget authority *for any other purpose.*”¹²

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 in order to withhold congressionally appropriated security assistance funds for Ukraine.¹³ GAO rejected OMB’s argument that the withholding was necessary to ensure that the funds were not spent “in a manner that could conflict with the President’s foreign policy.”¹⁴ In essence, GAO found OMB used apportionment as the mechanism for an illegal impoundment.¹⁵

In response to the Trump Administration’s effort to abuse the apportionment process, Congress included permanent apportionment reporting requirements in the FY2022 and FY2023 appropriations laws.¹⁶ 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.¹⁷

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.

2025 Apportionment Controversies

¹¹ 31 U.S.C. § 1512(c)(1).

¹² 2 U.S.C. § 684(b).

¹³ 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>.

¹⁴ *Id.* at 6.

¹⁵ 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>.

¹⁶ 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>.

¹⁷ Consolidated Appropriations Act, 2023, § 204.

Under the second Trump Administration, OMB has used its apportionment authority far more aggressively than its predecessors, often pressing—and at times exceeding—the limits of its statutory authority. It has taken down a congressionally mandated website reporting apportionment data, delayed and withheld FY25 funds from agencies, and adopted new policies that centralize unprecedented control within OMB. These new apportionment practices have triggered substantial policy disruptions.

Withholding Apportionment Information

On March 24, 2025, OMB took down the public website used to report on apportionments, despite statutory reporting requirements enacted in the FY2022 and FY2023 appropriations laws.¹⁸ Appropriators immediately objected.¹⁹ In response, OMB notified them that it would no longer comply with the reporting requirements, citing the deliberative process privilege and national security and foreign policy concerns.²⁰ On April 8, GAO issued a letter rejecting OMB’s assertions of privilege.²¹

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.²² Neither OMB nor the relevant agencies, however, would share the underlying schedules. This conflicted with GAO’s statutory oversight role over proposed rescissions.²³ It also conflicted with the agencies’ obligation to provide information to GAO upon request.²⁴

The fight over OMB's apportionment website quickly moved to court when Citizens for Responsibility and Ethics in Washington and Protect Democracy Project filed lawsuits to challenge OMB’s removal of the website. In July, a federal judge ordered the website restored, concluding that OMB was relying on “an extravagant and unsupported theory of presidential

¹⁸ 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>.

¹⁹ *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-delauro-murray-demand-omb-promptly-restore-access-website>.

²⁰ 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>.

²¹ 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>.

²² 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>.

²³ 2 U.S.C. § 685(b) (directing the Comptroller to “review” special messages requesting a rescission and inform 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)”).

²⁴ 31 U.S.C. § 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.”).

power.”²⁵ A unanimous D.C. Circuit panel declined to stay the ruling. Two judges jointly emphasized that disclosing apportionments does not intrude on presidential authority, noting that in appropriations the President’s role is “ministerial” and that he is “an agent bound to faithfully execute the legislature’s command.”²⁶ Less than a week later, OMB restored the website.²⁷

Delaying and Withholding FY25 Funding

OMB employed its apportionment authority in three ways to delay spending for policy reasons, despite statutory prohibitions on doing so.²⁸ First, it delayed issuing FY25 apportionments to agencies. Second, for over 100 apportionments, OMB conditioned the release of funds on its approval of separate “spending plans.” OMB has not disclosed these additional spending plans,²⁹ and a motion is pending requesting that a federal judge order their release.³⁰ Third, in some cases, OMB apportioned funds as “unallocated,” meaning the funds would not be available until after the agency reaches an agreement with OMB on their allocation. As a result, many agencies were unable to spend funds Congress appropriated to them.

In effect, OMB used its limited apportionment authority to displace Congress’s constitutional authority over federal spending with its own policy preferences.

OMB has continued and formalized these practices. In September 2025, OMB Director Russell Vought declared that OMB is “not going to take off the table unilateral moves that the president

²⁵ *Citizens for Responsibility & Ethics in Wash. v. OMB*, 791 F. Supp. 3d 29 (D.D.C. 2025),

<https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2025cv01111/279473/34>.

²⁶ *Citizens for Responsibility & Ethics in Wash. v. OMB*, Nos. 25-5266, 25-5267, slip op. at 16 (D.C. Cir. Aug. 9, 2025), <https://protectdemocracy.org/wp-content/uploads/2025/08/DC-Circuit-Stay-Denial.pdf>.

²⁷ Jared Serbu, *OMB Restores Public Spending Database After Losing Court Cases*, Federal News Network (Aug. 19, 2025),

<https://federalnewsnetwork.com/budget/2025/08/omb-restores-public-spending-database-after-losing-court-cases/>.

²⁸ See generally Devin O’Connor & Joe Carlile, *Trump Administration Abused Spending Safeguards to Advance Its Agenda — and Illegally Hid Its Actions*, Center on Budget & Policy Priorities (Sept. 5, 2025),

<https://www.cbpp.org/research/federal-budget/trump-administration-abused-spending-safeguards-to-advance-its-agenda-and>); Alicia Parlapiano, Emily Badger & Alex Lemonides, *In Budget Logs It Tried to Hide, White House Wrests More Control Over Spending*, N.Y. Times (Aug. 29, 2025),

<https://www.nytimes.com/2025/08/29/upshot/trump-congress-federal-budget.html>; 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).

²⁹ Christie Wentworth, *Citizens for Responsibility and Ethics in Washington, OMB’s Latest Effort To Conceal Spending Data* (September 19, 2025),

<https://www.citizensforethics.org/reports-investigations/crew-investigations/ombs-latest-effort-to-conceal-spending-data/>.

³⁰ *Motion to Enforce, Citizens for Responsibility & Ethics in Washington v. OMB*, No. 25-cv-1051, ECF No. 39 (D.D.C. Sept. 29, 2025), <https://www.citizensforethics.org/wp-content/uploads/2025/09/Motion-to-Enforce-filed.pdf>;

Docket, *Citizens for Responsibility & Ethics in Washington v. OMB*, No. 25-cv-1051 (D.D.C.),

<https://www.courtlistener.com/docket/69858087/citizens-for-responsibility-and-ethics-in-washington-v-office-of/> (D.C. Circuit docket).

can do to spend less.”³¹ OMB also incorporated its new apportionment practices into Circular A-11, its binding instruction manual for agencies on preparing, submitting, apportioning, and executing the federal budget. The revised document asserts that OMB may delay spending to “change the scope or design of existing programs, or develop policies concerning program implementation to align with Administration policy.”³² That claim conflicts with OMB’s apportionment authority, which permits apportionments only to prevent agencies from spending more than the amounts appropriated, and with the Impoundment Control Act, which allows delays only for contingencies or genuine efficiencies and bars them “for any other purpose.”³³

Impacts of OMB’s Apportionment Policy

OMB’s new apportionment policy has disrupted programs across the government by delaying the flow of money that Congress has already approved.

These delays were especially prolonged for health agencies, like the Centers for Disease Control and Prevention (CDC) and National Institutes of Health (NIH); smaller agencies the administration has targeted for elimination; and foreign assistance programs.³⁴ For example, OMB delayed NIH’s apportionment for four months and tried to prevent the agency from distributing funding to external researchers.³⁵ Although the funds were eventually released at the urging of Senate Republicans, OMB conditioned that release on NIH fully funding multiyear research grants, reducing the number of total grant awards and shifting how research dollars

³¹ Russ Vought, Dir. Russ Vought | Deconstructing the Administrative State (Sept. 3, 2025), YouTube (video), https://www.youtube.com/watch?v=2yS2p_tKjJE.

³² Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget (Aug. 2025), § 112.2, <https://www.whitehouse.gov/wp-content/uploads/2025/08/a11.pdf>.

³³ 2 U.S.C. § 684(b).

³⁴ See generally Joe Carlile & Devin O’Connor, *New Data Show Trump Administration’s Illegal, Targeted Withholding of Funds*, Ctr. on Budget & Policy Priorities (Sept. 26, 2025),

<https://www.cbpp.org/research/federal-budget/new-data-show-trump-administrations-illegal-targeted-withholding-of-funds> (summary of spending delays); Center for Renewing America, *A Commitment to End Woke and Weaponized Government: 2023 Budget Proposal* (Mar. 2024),

<https://americarenewing.com/wp-content/uploads/2024/03/Budget-Center-for-Renewing-America-FY23.pdf> (analyzing discretionary funding to spending accounts with at least \$15 million of budget authority).

³⁵ Devin O’Connor & Joe Carlile, *Trump Administration Abused Spending Safeguards to Advance Its Agenda — and Illegally Hid Its Actions*, Center on Budget & Policy Priorities (Sept. 5, 2025),

<https://www.cbpp.org/research/federal-budget/trump-administration-abused-spending-safeguards-to-advance-its-agenda-and>; Liz Essley Whyte, Nidhi Subbaraman, & Ken Thomas, *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>.

were allocated.³⁶ In doing so, OMB substituted its own policy judgments for the scientific and programmatic decisions Congress entrusted to the agency.

³⁶ Liz Essley Whyte, Nidhi Subbaraman, & Ken Thomas, *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>; Aatish Bhatia, et al., *The U.S. Is Funding Fewer Grants in Every Area of Science and Medicine*, N.Y. Times (Dec. 2, 2025), <https://www.nytimes.com/interactive/2025/12/02/upshot/trump-science-funding-cuts.html>; Devin O'Connor & Joe Carlile, *Trump Administration Abused Spending Safeguards to Advance Its Agenda — and Illegally Hid Its Actions*, Center on Budget & Policy Priorities (Sept. 5, 2025), <https://www.cbpp.org/research/federal-budget/trump-administration-abused-spending-safeguards-to-advance-its-agenda-and>.