



September 2, 2025

Hon. Gene Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street NW
Washington, DC 20548

Comptroller General Dodaro:

On Thursday, August 28, 2025, President Trump issued a special message to Congress pursuant to the Impoundment Control Act of 1974 purporting to unilaterally terminate \$4.9 billion dollars in previously appropriated foreign assistance funding through a so-called “pocket rescission.”¹ On behalf of Democracy Defenders Fund (DDF), we respectfully urge you to exercise your statutory authority under Section 1016 of the Impoundment Control Act of 1974 (ICA)² to prevent President Trump from unilaterally and illegally rescinding these funds.

The President’s actions are contrary to the text of the ICA, exceed the bounds of executive authority, and encroach upon core legislative powers that the Constitution vests exclusively in Congress under Article I, Section 1. Because the appropriations in question lapse upon the conclusion of the fiscal year on September 30, 2025, time is of the essence. To preserve Congress’s “power of the purse” and ensure that you can file suit on or before September 30, we urge your office to immediately file notice with the Speaker of the House and the President of the Senate of your intention to enforce the ICA.

Background

President Trump’s Administration signaled months ago that he would use a so-called “pocket rescission” to permanently avoid disbursing funds for programs the Administration disfavors. Office of Management and Budget Director Russell Vought indicated that the Administration aimed to use “pocket rescissions, later in the year, to be able to bank some of these savings, without [a] bill actually being passed.”³

Last week, the President issued a letter to Congress wherein he “report[ed] 15 rescissions of budget authority, totaling \$4.9 billion.”⁴ The next day, the Office of Management and Budget

¹ Off. of Budget and Mgmt. (@WHOMB), X.com (Aug. 29, 2025), <https://x.com/whomb/status/1961410044907458780?ftag=MSF0951a18>.

² 2 U.S.C. § 687.

³ Jennifer Scholtes, *White House Floats New Funding Trick—and GOP Lawmakers Grimace*, POLITICO (June 20, 2025), <https://www.politico.com/news/2025/06/20/pocket-rescissions-white-house-funding-trick-00410444>.

⁴ Off. of Budget and Mgmt. (@WHOMB), X.com (Aug. 29, 2025), <https://x.com/whomb/status/1961410044907458780?ftag=MSF0951a18>.

posted the President’s letter to its X account stating, “Last night, President Trump CANCELLED \$4.9 billion in America Last foreign aid using a pocket rescission.”⁵ The White House press release that accompanied the President’s letter explained that “the President is using his authority under the *Impoundment Control Act* to deploy a pocket rescission, cancelling \$5 billion in foreign aid and international organization funding that violates the President’s America First priorities.”⁶

As your office has previously noted, however, there is no such thing as a “pocket rescission” and the ICA provides no authority for the President to unilaterally terminate Congressional enacted budget authority.⁷ The ICA merely provides that the President can petition Congress to rescind previously appropriated amounts and a timeline for Congress to act on that recommendation.⁸

Analysis

The Constitution is clear: “*all* legislative Powers” are vested in Congress.⁹ The power to repeal a law is a legislative power which is non-delegable.¹⁰ Congress, and Congress only, may determine whether a legislative enactment is to be overturned, not the President. As the Supreme Court famously explained in *Youngstown Sheet & Tube Co. v. Sawyer*, “[i]n the framework of our Constitution, the President’s power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.”¹¹

The ICA does not purport to change this separation of powers. Section 1012 of the ICA merely provides that the President may *petition* Congress to rescind budget authority if he believes that it will “not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons.”¹² The law is clear that the petition has no substantive effect on the underlying appropriations law itself:

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.¹³

⁵ *Id.*

⁶ White House Press Office, *Historic Pocket Rescission Package Eliminates Woke, Weaponized, and Wasteful Spending* (Aug. 29, 2025), <https://www.whitehouse.gov/briefings-statements/2025/08/historic-pocket-rescission-package-eliminates-woke-weaponized-and-wasteful-spending/>.

⁷ GOVERNMENT ACCOUNTABILITY OFFICE, *IMPOUNDMENT CONTROL ACT – WITHHOLDING OF FUNDS THROUGH THEIR DATE OF EXPIRATION*, B-330330 (Dec 10, 2018), <https://www.gao.gov/products/b-330330>.

⁸ 2 U.S.C. § 683.

⁹ U.S. CONST. ART. I, § 1.

¹⁰ See *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529 (1935) (“Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested”); *Panama Ref. Co. v. Ryan*, 293 U.S. 388, 421 (1935).

¹¹ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952).

¹² 2 U.S.C. § 683(a).

¹³ 2 U.S.C. § 683(b) (emphasis added).

Put simply, if Congress has not decided within the 45-day period that it is appropriate to rescind the appropriation, the president is required to make that money available. Nevertheless, the President has taken the position that he can terminate any congressionally enacted appropriations so long as he tells Congress late enough in the day. The President is wrong.

Contrary to what the President suggests, issuing a late in the day notice to Congress that the president wishes to rescind an appropriation only serves to restrict *the executive's* time for complying with the underlying requirement to expend the money previously appropriated. If the President chooses to delay a rescission request to the end of the fiscal year, the burden is on him to ensure that ample time has been left to disburse those funds in accordance with the law if Congress chooses not to change its mind.

Notwithstanding the plain text of the ICA, the President and his Administration have taken the position that they have “CANCELLED” these funds, apparently on the misguided view that the 45-day period will end after the appropriations lapse on September 30, 2025, leaving Congress with no recourse to enforce its institutional rights.

Again the President is wrong. When “budget authority is required to be made available for obligation and such budget authority is not made available for obligation,” the Comptroller General is “expressly empowered” to bring a lawsuit in the District Court for the District of Columbia “to require such budgetary authority to be made available for obligation.”¹⁴ To date, your office has only been required to go to court once to check a President’s illegal impoundment of funds.¹⁵ Yet the authority, and responsibility, exist for you to do so in cases like this.

The President has made clear that he has no intention of obligating these funds. Given his blatant attempt to usurp Congress’s “power of the purse,” it is imperative that your office begin the process of enforcing the ICA. As required by law, you must issue an “explanatory statement” noting the circumstances giving rise to any proposed civil action to the Speaker of the House and the President of the Senate, and must wait until the “expiration of 25 calendar days of continuous session of the Congress” before you can file suit.¹⁶

Time is of the essence in this matter. The funds in question are slated to lapse on September 30, 2025, a mere 28 days from today’s date. That leaves you no more than three days to file the required notice with the Speaker of the House and the President of the Senate to ensure that you can file suit on or before September 30. Once your office files suit, D.C. circuit precedent provides that you may seek a preliminary injunction to

¹⁴ 2 U.S.C. § 687. The term “continuous session of Congress” includes all days, including weekends and holidays, in which the Congress is not in recess for more than 3 days. 2 U.S.C. § 682(5).

¹⁵ *Staats v. Ford*, No. 75-0551 (D.D.C., filed Apr. 15, 1975); See Edwin L. Dale, Jr., *Staats Sues Ford on Impoundment*, N.Y. TIMES (Apr. 16, 1975), <https://www.nytimes.com/1975/04/16/archives/staats-sues-ford-on-impoundment-congress-seeks-release-of-housing.html>.

¹⁶ 2 U.S.C. § 687.

suspend the operation of the lapse provision and extend the time for the appropriations.¹⁷

Conclusion

Our Founding Fathers understood Congress’s “power over the purse” was the “most compleat [sic] and effectual weapon” against “all the overgrown prerogatives of the other branches of government.”¹⁸ The President’s attempt to overturn Congress’s express will, usurp legislative authority, and repeal duly enacted provisions of law cannot stand. For this reason, DDF strongly encourages your office to undertake your solemn responsibility to prevent the President from illegally impounding the appropriations that are subject to his so-called “pocket rescission” of August 28, 2025 and immediately notify Congress of your intention to enforce the ICA.

Sincerely,

/s/

Norman L. Eisen
Executive Chair and Founder
Democracy Defenders Fund

/s/

Virginia Canter
Chief Counsel and Director for Ethics and Anticorruption
Democracy Defenders Fund

/s/

Christopher Swartz
Senior Ethics Counsel
Democracy Defenders Fund

¹⁷ *City of Houston v. Dep't of Hous. & Urban Dev.*, 24 F.3d 1421, 1427 (D.C. Cir. 1994) (“In such situations, the courts simply suspend the operation of a lapse provision and extend the term of [the] already existing budget authority.”); *Nat'l Ass'n of Reg'l Councils v. Costle*, 564 F.2d 583, 588 (D.C. Cir. 1977).

¹⁸ THE FEDERALIST NO. 58 (Feb 20, 1788), <https://founders.archives.gov/documents/Hamilton/01-04-02-0207>.