

Faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law. In fact, Congress was concerned about exactly these types of withholdings when it enacted and later amended the ICA. See H.R. Rep. No. 100-313, at 66-67 (1987); see also S. Rep. No. 93-688, at 75 (1974) (explaining that the objective was to assure that “the practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress”).

OMB asserts that its actions are not subject to the ICA because they constitute a programmatic delay. OMB Response, at 7, 9. It argues that a “policy development process is a fundamental part of program implementation,” so its impoundment of funds for the sake of a policy process is programmatic. *Id.*, at 7. OMB further argues that because reviews for compliance with statutory conditions and congressional mandates are considered programmatic, so too should be reviews undertaken to ensure compliance with presidential policy prerogatives. *Id.*, at 9. OMB’s assertions have no basis in law. We recognize that, even where the President does not transmit a special message pursuant to the procedures established by the ICA, it is possible that a delay in obligation may not constitute a reportable impoundment. See B-329092, Dec. 12, 2017; B-222215, Mar. 28, 1986. However, programmatic delays occur when an agency is taking necessary steps to implement a program, but because of factors external to the program, funds temporarily go unobligated. B-329739, Dec. 19, 2018; B-291241, Oct. 8, 2002; B-241514.5, May 7, 1991. This presumes, of course, that the agency is making reasonable efforts to obligate. B-241514.5, May 7, 1991. Here, there was no external factor causing an unavoidable delay. Rather, OMB on its own volition explicitly barred DOD from obligating amounts.

Furthermore, at the time OMB issued the first apportionment footnote withholding the USAI funds, DOD had already produced a plan for expending the funds. See DOD Certification, at 4-14. DOD had decided on the items it planned to purchase and had provided this information to Congress on May 23, 2019. *Id.* Program execution was therefore well underway when OMB issued the apportionment footnotes. As a result, we cannot accept OMB’s assertion that its actions are programmatic.

The burden to justify a withholding of budget authority rests with the executive branch. Here, OMB has failed to meet this burden. We conclude that OMB violated the ICA when it withheld USAI funds for a policy reason.

#### FOREIGN MILITARY FINANCING

We also question actions regarding funds appropriated to State for security assistance to Ukraine. In a series of apportionments in August of 2019, OMB withheld from obligation some foreign military financing (FMF) funds for a period of six days. These actions may have delayed the obligation of \$26.5 million in FMF funds. See OMB Response, at 3. An additional \$141.5 million in FMF funds may have been withheld while a congressional notification was considered by OMB. See E-mail from GAO Liaison Director, State, to Staff Attorney, GAO, *Subject: Response to GAO on Timeliness of Ukraine Military Assistance* (Jan. 10, 2020) (State’s Additional Response). We have asked both State and OMB about the availability of these funds during the relevant period. Letter from General Counsel, GAO, to Acting Director and General Counsel, OMB (Nov. 25, 2019); Letter from General Counsel, GAO, to Secretary of State and Acting Legal Adviser, State (Nov. 25, 2019). State provided us with

limited information. E-mail from Staff Attorney, GAO, to Office of General Counsel, State, *Subject: RE: Response to GAO on Timeliness of Ukraine Military Assistance* (Dec. 18, 2019) (GAO’s request for additional information); E-mail from GAO Liaison Director, State, to Assistant General Counsel for Appropriations Law, GAO, *Subject: Response to GAO on Timeliness of Ukraine Military Assistance* (Dec. 12, 2019) (State’s response to GAO’s November 25, 2019 letter); State’s Additional Response. OMB’s response to us contained very little information regarding the FMF funds. See generally OMB Response, at 2-3.

As a result, we will renew our request for specific information from State and OMB regarding the potential impoundment of FMF funds in order to determine whether the Administration’s actions amount to a withholding subject to the ICA, and if so, whether that withholding was proper. We will continue to pursue this matter.

#### CONCLUSION

OMB violated the ICA when it withheld DOD’s USAI funds from obligation for policy reasons. This impoundment of budget authority was not a programmatic delay.

OMB and State have failed, as of yet, to provide the information we need to fulfill our duties under the ICA regarding potential impoundments of FMF funds. We will continue to pursue this matter and will provide our decision to the Congress after we have received the necessary information.

We consider a reluctance to provide a full-some response to have constitutional significance. GAO’s role under the ICA—to provide information and legal analysis to Congress as it performs oversight of executive activity—is essential to ensuring respect for and allegiance to Congress’ constitutional power of the purse. All federal officials and employees take an oath to uphold and protect the Constitution and its core tenets, including the congressional power of the purse. We trust that State and OMB will provide the information needed.

THOMAS H. ARMSTRONG,  
General Counsel.

#### PERSONAL EXPLANATION

##### HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 29, 2020

Ms. GRANGER. Madam Speaker, I was unable to attend votes due to circumstances beyond my control.

Had I been present, I would have voted YEA on Roll Call No. 23; YEA on Roll Call No. 24; NAY on Roll Call No. 25; NAY on Roll Call No. 26; and YEA on Roll Call No. 27.

#### PERSONAL EXPLANATION

##### HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 29, 2020

Ms. SÁNCHEZ. Madam Speaker, on Roll Call Number 23, On motion to suspend the rules and pass H.R. 943, To authorize the Secretary of Education to award grants to eligible entities to carry out educational programs about the Holocaust, and for other purposes, I was unavoidably detained and missed the vote.

Had I been present, I would have voted YEA.

I was also unavoidably detained for Roll Call Number 24, On motion to suspend the rules and pass H.R. 4704 to direct the Director of the National Science Foundation to support multidisciplinary research on the science of suicide, and to advance the knowledge and understanding of the issues that may be associated with several aspects of suicide including intrinsic and extrinsic factors related to areas such as wellbeing, resilience, and vulnerability.

Had I been present, I would have voted YEA.

#### PERSONAL EXPLANATION

##### HON. DOUG COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 29, 2020

Mr. COLLINS of Georgia. Madam Speaker, on Monday, January 27, 2020, I was absent from the vote series due to my attendance at a funeral in Georgia.

Had I been present, I would have voted YEA on Roll Call No. 23, and YEA on Roll Call No. 24.

#### KOBE BRYANT

##### HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 29, 2020

Ms. LEE of California. Madam Speaker, I rise today heartbroken upon hearing of the sudden passing of Kobe Bryant, his daughter Gianna, and occupants Christina Mauser, Keri Altobelli, John Altobelli, Alyssa Altobelli, Payton Chester, Sarah Chester, and Ara Zobayan.

Kobe was an inspirational leader, advocate, athlete and father. He inspired people from across the world to strive for greatness, to be the best, and to invoke what he called, the Mamba Mentality.

Kobe not only inspired the people of California but the entire world. From his incredibly difficult jump shots, to his selfless charitable efforts, Kobe always worked hard to stand up for what he believed in and to be a great father to four beautiful girls whom he loved.

This unimaginable tragedy has rocked this world and left many hurt. Kobe Bryant finished his NBA career among the best to have ever played the game.

His legacy will live on forever and we must come together to support the entire Bryant family and all the families affected through this tragedy.

#### WHY IMPOUNDMENT CONTROL ACT MATTERS

SPEECH OF

##### HON. JOHN A. YARMUTH

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 28, 2020

Mr. YARMUTH. Madam Speaker, I include in the RECORD the December 10, 2018 Government Accountability Office’s decision confirming Congress’ power of the purse by concluding that, while the Impoundment Control