

Congressional and Executive Roles in Spending: Legal Frameworks

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President Donald Trump has made federal spending decisions a centerpiece of his second Administration. On January 20, 2025, President Trump issued the first group in a series of executive orders that seek to align past and future federal spending decisions with the Administration’s policy priorities. The executive orders address policy issues that cross agency lines, such as [energy policy](#); [diversity, equity, and inclusion](#); and [gender ideology](#). A later executive order directs all agencies to review certain contracts and grants with a view toward [reducing overall federal spending or reallocating funds to promote efficiencies](#) and advance government priorities. [Other executive orders](#) seek to [scale back](#) or eliminate certain entities that receive appropriated funds. President Trump’s spending-related actions have not been limited to domestic programs. He has ordered a reevaluation of [foreign assistance generally](#) and of [contributions to international intergovernmental organizations](#) in particular.

Federal agencies have taken further actions to implement the executive orders, ranging from a [since-rescinded government-wide freeze](#) on most forms of federal financial assistance, to [department-wide](#) reviews of selected grant projects, to grant terminations in [particular grant programs](#). Grant recipients affected by certain executive actions have sought to challenge them in litigation.

This Legal Sidebar, the first in a two-part series, seeks to contextualize these recent executive branch spending-related actions by discussing the powers of Congress and of the Executive, respectively, in making and carrying out the spending decisions reflected in federal law. This Sidebar begins by describing the scope of Congress’s “power of the purse,” including the substantive and procedural limitations of that power. The Sidebar then examines the executive role in using appropriations. A companion Sidebar discusses selected litigation challenging recent executive actions affecting domestic and foreign spending.

Congress’s Role: Power

Congress is often described as wielding the “power of the purse,” or the ability to decide how public money may be spent. This power stems from the Constitution’s positive grants of legislative power to Congress, many of which appear in Article I, § 8. Some of these grants of spending authority are part and parcel of an enumerated power to legislate on particular subject matter. For example, Congress has the power to [raise and support armies](#), to [provide and maintain a navy](#), and to establish [post offices and post](#)

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roads. Legislation to pursue these ends often entails spending. Perhaps more significant is Congress's power under the Spending Clause to "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States."

The Spending Clause's relationship to Congress's other enumerated legislative powers was the subject of sharp debate throughout much of American history. Some, including James Madison, contended that Congress's authority to tax and spend in pursuit of the "general welfare" was "confined to the enumerated legislative fields" such as Congress's Article I, Section 8 powers with respect to postal matters. Others, including Alexander Hamilton, argued the Spending Clause "confers a power separate and distinct from those later enumerated." On the latter view, Congress's power extends to spending that advances the "general welfare" and not just to ends otherwise mentioned in the Constitution. In the 1936 decision in *Butler v. United States*, the Supreme Court endorsed the Hamiltonian view, explaining that "the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution."

Under the Court's case law, Congress has extremely broad discretion to decide which spending advances the general welfare. The Court's cases have seemingly varied in describing the role, if any, for the federal courts in reviewing general welfare decisions. For example, the Court has said that whether a court might regard spending as "bad," "unwise," or "unworkable" is "irrelevant" to whether Congress has permissibly concluded that the spending in fact advances the commonweal. In 1937, the Court stated that spending decisions rest with Congress unless the choice it made "is clearly wrong, a display of arbitrary power, [or] not an exercise of judgment." While this statement suggests that a court might review Congress's judgments on a limited basis, in 1987, the Court questioned whether the requirement that spending advance the general welfare "is a judicially enforceable restriction at all." The Court has never invalidated Spending Clause legislation on the grounds that it failed to advance the general welfare.

The Court has also broadly constructed the Spending Clause's reference to legislation to "pay the Debts" of the United States. Under this authority, Congress may appropriate funds to pay claims founded on "general principles of right and justice," even though the person advancing a claim might have had no prior legal entitlement to payment. Congress may thus pass legislation to aid those affected by natural disasters. Congress is the only federal forum in which an individual can seek payment of "debts" that stem from moral considerations only.

Congress often uses its Spending Clause power to attach conditions to the receipt of federal funds. Funding conditions can be a uniquely powerful congressional tool. As the Court has explained, Congress may pursue policy outcomes that it could not directly accomplish using its enumerated powers.

The Court's Spending Clause case law uses analogies to contract law to describe Congress's offer of federal funds to third parties. The Court has explained that, like a contract, a conditional offer of federal funds gets its legitimacy from a funds recipient's knowing and voluntary acceptance of the terms of the offer. To permit knowing acceptance, Congress must provide clear notice to a prospective funds recipient of the conditions that are attached to those funds. Appellate courts have opined that this needed clarity must "come directly from the statute"; an agency rule cannot purport to clarify an ambiguous statutory condition. To permit voluntary acceptance, Congress may not offer a financial inducement that amounts to compulsion. For example, if a state stands to lose federal funding equal to 10% of its overall budget if it does not accept a new funding condition, then the terms of Congress's offer cross "the line distinguishing encouragement from coercion" and thus are not capable of voluntary acceptance, but there is no bright marker in the Court's cases for when financial inducements might cross that line in other cases. If a third party is able to knowingly and voluntarily accept a funding condition, Congress may impose the condition so long as it relates to the federal interest in a program and is not prohibited by other features of the Constitution, such as the First Amendment's freedom-of-speech protections.

A common misconception is that Congress's power of the purse stems from [Article I, § 9, clause 7](#) of the Constitution, the Appropriations Clause. That provision states that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." An "appropriation" is a "[law that authorizes expenditures from a specified source of public money for designated purposes](#)." As the Court explained in the 2024 case of *CFPB v. Community Financial Services Association of America*, the Appropriations Clause "[presupposes Congress' powers over the purse](#)." Its "phrasing and its location in the Constitution make clear that it is not itself the source of those powers." The Clause is "[phrased as a limitation](#)" on the powers of the federal government generally.

Though the Appropriations Clause is phrased as a limitation, in practice it serves to amplify Congress's spending powers. As the Court has explained, the Clause was [primarily aimed at restraining the executive branch's disbursing powers](#), which are responsible for most outlays. It [denies general or inherent authority](#) to use Treasury funds. Whatever powers the Constitution or a statute might vest in the President or another executive branch actor, those authorities [cannot direct spending](#) from the Treasury without an appropriation.

Congress's Role: Constraint

As discussed above, Congress's spending powers, coupled with the restraining effect of the Appropriations Clause, vest the legislative branch with broad power. Other provisions or features of the Constitution, however, may limit Congress's spending authority. These limits can be both substantive and procedural.

As to substantive limitations, the Court has seemingly recognized that Congress may decide *whether* to make an appropriation. In 1867, for example, Congress [broadly forbade](#) use of appropriations to pay pre-Civil War claims owed to those who had supported the Confederacy; the Court subsequently decided that this prohibition was "[entirely within the competency of Congress to declare](#)." However, the Court's cases explain that the Constitution does not accord Congress similarly broad discretion to place conditions or limitations on appropriations it *does* decide to make. The fact that Congress is legislating appropriations does not permit it to employ means or achieve an end that it could not employ or achieve in non-spending legislation. For example, the Court has held that Congress could not lawfully enact a limitation on appropriations that prevented payment of the salaries of [specific government employees](#) who had been [determined by a congressional committee to be subversives](#); such a limitation [functioned as a bill of attainder](#), which [Article I, § 9, clause 3](#) of the Constitution forbids. The Court has likewise [refused to enforce](#) an appropriations limitation that it concluded sought to nullify the effect of a presidential pardon and impermissibly direct how federal courts were to decide particular pending cases.

As to procedural limitations, aside from requiring that appropriations to "[raise and support Armies](#)" be for a term of not more than two years, the Constitution does not specify any particular procedures that Congress may (or must) use to make appropriations beyond the requirements that apply to all legislation under [Article I, § 7 of the Constitution](#). As with other legislation, appropriations must secure bicameral passage and be presented to the President for approval before becoming law. Congress may thus make appropriations in a variety of ways, including, for example, on an annual or permanent basis. The Constitution does, however, constrain Congress's ability to involve itself in decisions about how to obligate or expend executive branch appropriations once enacted. By providing appropriations, Congress creates rights, duties, and obligations for executive branch actors, such as the power to decide the portion of an appropriation that should go to support one program as opposed to another. Congress can only alter these authorities [by again employing the lawmaking process](#). "[Congress must abide by its delegation](#)" until, by law, it revises the terms of the prior appropriation. Thus, the Constitution [likely does not allow](#) Congress to require, for example, congressional committee approval before an agency makes certain uses of its existing appropriations, but Congress may require notification or establish other procedural requirements for agencies to follow.

The Executive Role: Power and Constraint

As described above, the Constitution generally vests in Congress the affirmative power to decide whether and on what terms to make appropriations. The [Appropriations Clause](#) qualifies all executive branch powers, including those vested in the President by the Constitution, by stipulating that no such power may permit spending from the Treasury without an appropriation. However, the task of implementing executive branch appropriations—that is, using them to incur obligations and then make expenditures of funds to third parties—is an executive function. It entails interpreting “[a law enacted by Congress to implement the legislative mandate](#)” contained in the appropriation. Congress may not retain direct control over this executive function, which instead is guided by Congress’s delegation as reflected in the appropriation. Congress’s delegation is a product both of the terms of a particular appropriation and generally applicable statutes that govern how appropriations may or must be used, and such statutes simultaneously empower and constrain executive branch actors in making spending decisions.

Using Appropriations: Availability and Allocation

An appropriation is a form of [budget authority](#), which is “authority provided by Federal law to incur financial obligations.” An *obligation*, in turn, is a [definite, legally binding commitment](#) requiring the payment of federal funds to a third party. Congress uses the legal concept of “availability” to identify the obligations for which an appropriation may be used. To say that an appropriation is “available,” in other words, is to say that it may be used to make a particular obligation.

Appropriations usually have three dimensions of availability: amount, time period, and purpose. First, Congress makes an *amount* available, either a definite amount (i.e., \$1 billion) or an indefinite amount (i.e., “such sums as may be necessary”). Second, Congress makes appropriations available for a stated *time period*, which serves as a stipulation that the funds provided may only be used for expenses that the law attributes to that time period. Federal employees, for example, generally earn pay as they [render services to their employing agency](#). Thus, an agency may not use appropriations provided for one fiscal year to pay its employees for work they would not perform until the next fiscal year. Third, Congress makes appropriations for particular *purposes*, sometimes called *objects*. A purpose describes the types of obligations (e.g., foreign military financing, construction, or student aid administration) that the appropriation may be used to pay.

Apart from the appropriation itself, generally applicable statutes restrain executive branch disbursing power. The Antideficiency Act prohibits, among other things, [involving the federal government](#) in an obligation or expenditure that exceeds an amount available in an appropriation. The Time Statute specifies that appropriations made for a fixed time period can only be used to [pay expenses properly incurred or contracts properly made during that time period](#). The Purpose Statute emphasizes that appropriations are [available only for the objects](#) (i.e., the purposes) for which they are made.

Defining appropriations along these dimensions of availability restrains agency spending discretion because an agency’s spending must comply with the limits of each of these dimensions. At the same time, the dimensions help define permissible discretion within those outer bounds. Together, they identify a range of obligations that could properly be charged to a given appropriation.

Most appropriations (aside from, perhaps, appropriations that Congress has required to be distributed by formula or paid to named recipients or projects) describe a range of expenses that the agency may use the funds to pay. As an example, Congress might appropriate a single amount to carry out various parts of a statute (e.g., [funding for several portions](#) of the Elementary and Secondary Education Act of 1965) that authorize different competitive grant programs. Each of the grant programs fits the object of the appropriation, and Congress might decide not to earmark any portion of the appropriation for a specific grant program. The appropriation contains no statutory restriction on which of these grant programs to

fund or at what levels. Where an appropriation is unrestricted in a manner relevant to how the funds should be allocated among its permissible objects, the Supreme Court has said that the agency's allocation is [not judicially reviewable under the Administrative Procedure Act](#). The absence of relevant statutory restrictions "[reflects a congressional recognition that an agency must be allowed flexibility](#)" to adapt its allocation decisions to changing circumstances. The [decision of how to adapt planned spending](#), the Court has said, entails policy judgments that "the agency is far better equipped than the courts to deal with" given "the many variables involved in the proper ordering of its priorities."

Once an agency makes a particular financial commitment (e.g., a procurement contract, grant, or cooperative agreement) and obligates appropriations to account for the liability imposed by that commitment, those funds are no longer available for other uses. The legal instrument that gave rise to the obligation may give the award recipient enforceable rights to payment. For example, the Court has said that grant agreements have "[contractual aspect\[s\]](#)," though the programs that make grants "remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy." Any such rights would be subject to the terms of the government's commitment, including its ability to terminate the commitment. An agency [may terminate procurement contracts](#) for its convenience. An agency may likewise terminate a federal financial assistance award (i.e., a grant or cooperative agreement) if a [recipient fails to comply with award terms and conditions](#). OMB guidance, which some agencies have adopted as regulation, also provides that an agency may terminate such an award if it determines that the award "[no longer effectuates the program goals or agency priorities](#)."

Delays in Using Appropriations: Impoundment and Programmatic Delay

The terms of particular appropriations and generally applicable budget execution statutes dictate how an agency *may* use its appropriations. A related statute, the [Impoundment Control Act of 1974](#) (ICA), regulates whether and to what extent an agency *must* make its appropriations available for use.

The ICA directs the President to transmit *special messages* to Congress in one of two settings. First, if for "fiscal policy or other reasons" the President wishes to [propose the rescission](#) of "any budget authority," the President *may* transmit a special message to Congress. Sending a rescission special message allows the President to [impound the budget authority](#) that he proposes to rescind for 45 days of continuous session of Congress, unless that budget authority is [subject to a statutory requirement](#) that it be used in the meantime. A [rescission bill](#) introduced solely with respect to a rescission special message may receive [expedited consideration](#) during the 45-day period. Among other things, these procedures effectively eliminate "[the need to invoke cloture \[in the Senate\] to reach a final vote on the bill](#)."

Second, the President [must transmit a special message](#) whenever he or a federal officer or employee proposes to temporarily withhold or delay the use of budget authority. Such a proposal is, in ICA parlance, a [deferral of budget authority](#), and it [may not extend](#) beyond the end of the fiscal year of the special message. Unlike its rescission provision, the ICA does not independently authorize deferrals. Rather, the ICA refers to [three categories of deferrals](#), all authorized by other statutes. The Antideficiency Act's [apportionment provisions](#) authorize the first two categories of permissible deferrals and make reference to the third. Under that statute, the President may apportion appropriations by reserving (i.e., withholding) budget authority (1) to account for contingencies or (2) to "[achieve savings made possible by or through changes in requirements or greater efficiency of operations](#)." The ICA's third category of deferrals are those [specifically authorized](#) by another statute. The ICA further provides that "No officer or employee of the United States may defer any budget authority for any other purpose." As a federal appellate court has explained, Congress included this phrase in the ICA to remove authority for "[unchecked policy deferrals](#)."

As interpreted by the Comptroller General, the ICA's special message requirements mean that unless the President transmits a rescission special message or a deferral special message containing an authorized

deferral, the agency must make its appropriations available for use and take steps to [prudently obligate them](#). It may not *impound* those funds, that is, withhold them. Whether funds are being impounded in violation of the ICA is a fact-specific question. The statute assigns oversight duties to the Comptroller General, who has developed more than a half-century's worth of ICA decisions that [either review special messages](#) for conformity with the statute or investigate whether an agency is impounding funds [without the President having transmitted a special message](#) that articulates a lawful basis for such impoundment.

One theme that arises from these decisions is that an agency's delay in using budget authority, without more, is not impoundment. Comptroller General decisions instead sort delay into one of two categories. The first category of delay, *programmatic delay*, is delay that occurs despite an [agency taking necessary steps to implement the program](#) for which the appropriations were provided. For example, a statute might require that an agency give advance notice to Congress of the agency's plans for allocating an appropriation before obligating the funds. Delay that results from preparing the agency's spend plan, a "necessary prerequisite" for obligating the funds, [may be programmatic](#). GAO has opined that the President [need not report](#) programmatic delay to Congress using an ICA special message. The second category of delay, impoundment, exists [where an agency is not making](#) "reasonable efforts to obligate" or where "no external factor" causes delay. For example, an agency that withholds funds to [await congressional action on a cancellation proposal](#) (i.e., a [rescission that is not proposed under the ICA](#)) may be impounding those funds. Unlike programmatic delay, GAO has stated that the President [must report impoundment](#) to Congress via an ICA special message.

A second theme from the Comptroller General's decisions is that the ICA does not regulate program implementation decisions as such. It instead governs executive branch withholding of appropriations. For example, the ICA does not [address](#) whether a particular obligation would fit the dimensions of availability or be a permissible exercise of agency allocation discretion. Similarly, absent an intent to withhold funds, the Comptroller General has [opined](#) that certain [workforce reductions](#), themselves, were not impoundments because the agency concerned did not display an intent to withhold appropriations.

The Federal Courts: Assessing When Power Meets Constraint

To date, the Trump Administration has taken a number of actions to suspend, review, terminate, or otherwise limit funding decisions reached by the Biden Administration. These actions, in turn, have spurred numerous lawsuits brought by award recipients and other assertedly affected parties. These lawsuits pose important questions about the respective powers and constraints of Congress and the executive branch in federal spending decisions, from whether certain grant terminations were accompanied by [sufficiently reasoned explanations](#), to whether a party other than the Comptroller General may [sue to enforce the ICA to](#), to questions [about the separation of powers](#). A companion Legal Sidebar discusses selected pending litigation that poses questions of this type in the context of foreign assistance and domestic spending.

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