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 fulsome 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

Act does, under limited circumstances, allow the President to withhold money for up to 45 congressional session days, the President cannot freeze the money for so long that it can no longer be used. I am submitting this in the RECORD to help inform the public of the Administration's systematic disregard of Congress' constitutional authority, separation of powers principles, and the Impoundment Control Act.

GAO, U.S. GOVERNMENT
ACCOUNTABILITY OFFICE,
December 10, 2018.

Subject: Impoundment Control Act—Withholding of Funds through Their Date of Expiration

Hon. STEVE WOMACK,
Chairman, Committee on the Budget,
House of Representatives.
Hon. JOHN YARMUTH,
Ranking Member, Committee on the Budget,
House of Representatives.

This responds to your request for our legal opinion regarding the scope of the authority provided under the Impoundment Control Act of 1974 (ICA) to withhold budget authority from obligation pending congressional consideration of a rescission proposal. Pub. L. No. 93–344, title X, 88 Stat. 297, 332 (July 12, 1974), *amended* by Pub. L. No. 100–119, title II, §§206, 207, 101 Stat. 754, 785 (Sept. 29, 1987), *classified* at 2 U.S.C. §§681–688; Letter from Representative Steve Womack, Chairman, and Representative John Yarmuth, Ranking Member, House Committee on the Budget, to Comptroller General (Oct. 31, 2018). Under limited circumstances, the ICA allows the President to withhold amounts from obligation for up to 45 calendar days of continuous congressional session. *See* ICA, §1012(b); 2 U.S.C. §683(b). At issue here is whether the Act allows such a withholding of a fixed-period appropriation scheduled to expire within the prescribed 45-day period to continue through the date on which the funds would expire.

As discussed below, we conclude that the ICA does not permit the withholding of funds through their date of expiration. The statutory text and legislative history of the ICA, Supreme Court case law, and the overarching constitutional framework of the legislative and executive powers provide no basis to interpret the ICA as a mechanism by which the President may unilaterally abridge the enacted period of availability of a fixed-period appropriation. The Constitution vests in Congress the power of the purse, and Congress did not cede this important power through the ICA. Instead, the terms of the ICA are strictly limited. The ICA permits only the temporary withholding of budget authority and provides that unless Congress rescinds the amounts at issue, they must be made available for obligation. The President cannot rely on the authority in the ICA to withhold amounts from obligation, while simultaneously disregarding the ICA's limitations. In accordance with our regular practice, we contacted the Office of Management and Budget (OMB) for its legal views on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO–06–1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/products/GAO-06-1064SP; Letter from General Counsel, GAO, to General Counsel, OMB (Nov. 1, 2018). In response, OMB provided its legal analysis. Letter from General Counsel, OMB, to General Counsel, GAO (Nov. 16, 2018) (Response Letter).

BACKGROUND

The Constitution specifically vests Congress with the power of the purse, providing that ''No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.'' U.S. Const., art. I, §9, cl. 7. The Constitution also vests all legislative powers in Congress and sets forth the procedures of bicameralism and presentment, through which the President may accept or veto a bill passed by both houses of Congress and Congress may subsequently override a presidential veto. *Id.*, art. I, §7, cl. 2, 3. The procedures of bicameralism and presentment form the only mechanism for enacting federal law. *See INS* v. *Chadha*, 462 U.S. 919, 951 (1983) (''[T]he prescription for legislative action in Art. I, §§1, 7, represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.''). The Constitution also vests Congress with power to make all laws ''necessary and proper'' to implement its constitutional authorities.

U.S. Const., art. I, §8, cl. 18. To that end, Congress has enacted several permanent statutes that govern the use of appropriations, including the Antideficiency Act, which provides that agencies may incur obligations or make expenditures only when sufficient amounts are available in an appropriation.

31 U.S.C. §1341. Because agencies may incur obligations only in accordance with appropriations made by law, and because the Constitution vests all lawmaking power in Congress, only appropriations duly enacted through the constitutional processes of bicameralism and presentment authorize agencies to incur obligations or make expenditures. The Presentment Clauses allow the President to veto an appropriations bill before it becomes law. *See* Art. I, §7, cl. 2, 3. However, the Constitution provides no mechanism for the President to invalidate a duly enacted law. Instead, the Constitution requires the President to ''take Care that the Laws be faithfully executed.'' U.S. Const., art. II, §3; *see also Clinton* v. *City of New York*, 524 U.S. 417, 438 (1998) (the Constitution does not authorize the President ''to enact, to amend, or to repeal statutes'').

An appropriation is a law like any other; therefore, unless Congress has enacted a law providing otherwise, the President must take care to ensure that appropriations are prudently obligated during their period of availability. *See* B–329092, Dec. 12, 2017 (noting that the ICA operates on the premise that the President is required to obligate funds appropriated by Congress, unless otherwise authorized to withhold). An ''impoundment'' is any action or inaction by an officer or employee of the federal government that precludes obligation or expenditure of budget authority. GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO–05–734SP (Washington, D.C.: Sept. 2005), at 61. The President has no unilateral authority to withhold funds from obligation. *See* B–135564, July 26, 1973. The ICA, however, allows the President to impound budget authority in limited circumstances. The President may temporarily withhold funds from obligation—but not beyond the end of the fiscal year—by proposing a ''deferral.'' ICA, §1013; 2 U.S.C. §684. The President may also seek the permanent cancellation of funds for fiscal policy or other reasons, including the termination of programs for which Congress has provided budget authority, by proposing a ''rescission.'' ICA, §1012; 2 U.S.C. §683. When the President transmits a special message proposing a rescission of budget authority (a rescission proposal) in accordance with the ICA, amounts proposed for rescission may be impounded (that is, withheld from obligation) for a period of 45 calendar days of continuous congressional session. *See* ICA, §1012; 2 U.S.C. §683. The Act states that such amounts ''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.'' ICA, §1012(b); 2 U.S.C. §683(b). Section 1017 of the ICA establishes expedited procedures to facilitate Congress's consideration of a rescission bill during the 45-day period. ICA, §1017; 2 U.S.C. §688. This opinion focuses on the withholding of amounts pursuant to a rescission proposal.

DISCUSSION

The ICA authorizes the President to withhold funds from obligation under limited circumstances. At issue here is whether the ICA allows the withholding of a fixed-period appropriation, pursuant to the President's transmission of a rescission proposal, to continue through the date on which the funds would expire.

POWERS GRANTED BY THE ICA ARE LIMITED

To interpret the ICA, we begin with the text of the statute and give ordinary meaning to statutory terms, unless otherwise defined. *Sebelius* v. *Cloer*, 569 U.S. 369,376 (2013); *BP America Production Co.* v. *Burton*, 549 U.S. 84, 91 (2006). Section 1012(b) states that funds proposed to be rescinded ''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 . . . .'' Use of the conjunction ''unless'' denotes that the clause that follows provides an exception to the rule that precedes the term. *See American Heritage Dictionary* (4th ed. 2009) (defining ''unless'' as ''except on the condition that'' and ''except under the circumstances that''). Further, ''shall,'' in the context of a statute, generally means ''must.'' *Ballentine's Law Dictionary* (3d ed. 2010) (defining shall as ''the equivalent of 'must,' where appearing in a statute''). *See also Western Minnesota Municipal Power Agency* v. *FERC*, 806 F.3d. 588, 592 (D.C. Cir. 2015) (''shall give preference'' was a mandatory directive to the commission); *Drummond Coal Co.* v. *Watt*, 735 F.2d 469, 473 (11th Cir. 1984) (noting '' 'shall' is a mandatory, not permissive form''). The phrase ''shall be made available'' thus constitutes a mandatory directive that funds proposed for rescission be made available for obligation, and the term ''unless'' denotes the single exception to this requirement.

The text of section 1012(b) then provides that the only mechanism that permits budget authority to be permanently withheld is Congress's completion of action on a rescission bill within the 45-day period.

An appropriation is available to incur new obligations only during its period of availability, which, for a fixed-period appropriation, is a finite period of time. *See* 31 U.S.C. §1551(a)(3). *See also* 31 U.S.C. §§1501, 1502 (obligation of a fixed-period appropriation must correspond to the *bona fide* needs of the appropriation's period of availability and must be executed before the end of such period). For example, an agency may use a one-year appropriation to obligate the government for expenses properly chargeable to that year, or may use a multiple-year appropriation to obligate the government for expenses properly chargeable to that multiple-year period. But the government may not incur obligations against such appropriations after the relevant time frame, as the budget authority's period of availability would have ended.

Immediately after the period of availability for obligation of a fixed-period appropriation ends, the budget authority is ''expired'' and no longer available to incur new obligations. *Glossary*, at 23 (defining expired budget authority). *See also* 18 Comp. Gen. 969 (1939). An expired account is only available to record, to adjust, and to liquidate obligations properly chargeable to that account

during the account's period of availability. 31 U.S.C. §1553(a). Notably, the permissible uses of an expired appropriation relate back to obligations incurred during the period of availability of the funds and do not constitute new obligations themselves.

The plain language of section 1012(b) provides that absent Congress's completion of action on a rescission bill rescinding all or part of amounts proposed to be rescinded within the prescribed 45-day period, *such amounts must be made available for obligation*. The authority to withhold is not severable from the provision's requirement regarding the release of the funds. Indeed, the provision permits a *temporary* withholding of budget authority, and otherwise requires its availability for obligation in all other circumstances. As budget authority is available to incur obligations only during its period of availability, implicit in the ICA's requirement under section 1012(b) that budget authority be ''made available for obligation'' is that such budget authority must not be expired. Because a fixed-period appropriation is current only for a definite period of time, section 1012(b) of the ICA requires that if Congress does not enact a rescission bill, the appropriation must be made available for obligation during that finite period. After this finite period has ended, the appropriation is expired and cannot be available for new obligations.

Consequently, the ICA does not permit budget authority proposed for rescission to be withheld until its expiration simply because the 45-day period has not yet elapsed. A withholding of this nature would be an aversion both to the constitutional process for enacting federal law and to Congress's constitutional power of the purse, for the President would preclude the obligation of budget authority Congress has already enacted and did not rescind. For example, consider a situation where fiscal year budget authority is withheld pursuant to a special message submitted less than 45 days before the end of the fiscal year and where, upon conclusion of the 45-day period, Congress has not completed action on a corresponding rescission bill. An interpretation of section 1012(b) that would permit the withholding of such budget authority for the duration of the 45-day period would result in the expiration of the funds during that period. The expired amounts then could not be made available for obligation despite Congress not having completed action on a bill rescinding the amounts, as expired appropriations are not available for obligation. The ICA represents an agreement between the legislative and executive branches, whereby the President may withhold budget authority for a limited period during which Congress may *consider* the corresponding proposal to rescind the amounts using expedited procedures. The expiration of these amounts would frustrate the design of the ICA, as it would contravene the plain meaning of section 1012(b), which requires that amounts not rescinded during this period of *consideration* be ''made available for obligation.''

Regardless of whether the 45-day period for congressional consideration provided in the ICA approaches or spans the date on which funds would expire, section 1012(b) requires that budget authority be made available in sufficient time to be prudently obligated. The amount of time required for prudent obligation will vary from one program to another. In some programs, prudent obligation may require hours or days, while others may require weeks or months. We have previously signaled that the consequence of an unenacted rescission proposal should be the full and prudent obligation of the budget authority. B–115398, Aug. 27, 1976. In 1976, the President submitted a special message for which the 45-day period would end on September 29, 1976, leaving one day to obligate appropriations that were withheld. *Id.* We noted this one-day period could be insufficient to prudently obligate the funds. *Id.* We found the timing of the proposal ''particularly troublesome'' as it could ''operate to deny to the Congress the expected consequence of its rejecting a rescission proposal—the full and prudent use of the budget authority.'' *Id.*

We have drawn similar conclusions concerning deferrals under the ICA. In such cases we have noted that deferred funds must be released in sufficient time to allow them to be prudently obligated. *See* B–216664, Apr. 12, 1985 (emphasizing that deferral, under the President's sixth special message for fiscal year 1985, of amounts scheduled to expire should not extend beyond the point at which the funds could be prudently obligated). *See also* 54 Comp. Gen. 453 (1974) (recognizing that a deferral of budget authority that ''could be expected with reasonable certainty to lapse before [it] could be obligated, or would have to be obligated imprudently to avoid that consequence'' constitutes a de facto rescission, and must be reclassified as a rescission proposal).

The legislative history of the ICA supports this construction of section 1012(b). During consideration of the report of the committee of conference on H.R. 7130, 93rd Cong. (1974), which was ultimately enacted into law as the ICA, members recognized that affirmative congressional action is required for a rescission of funds under the language of section 1012. Senator Sam J. Ervin, Jr., the sponsor of a related bill, stated regarding section 1012:

''[The purpose) is to provide an orderly method by which differences of opinion may be reconciled between the President and Congress in respect to the amounts of appropriations sought . . . The recommendation of the President that an appropriation be eliminated or reduced *in and of itself would have no legal effect whatsoever*. In other words, for it to become effective, both Houses of Congress, by a majority vote, would have to take action either eliminating the appropriation or reducing the appropriation . . . I might say that the 45-day provision is placed in the bill for the purpose of spurring speedy congressional action, but with recognition of the fact that Congress cannot deprive itself of any other power it has under the Constitution.''

120 Cong. Rec. 20,473 (June 21, 1974) (statement of Sen. Ervin) (emphasis added). As one member stated succinctly when discussing similar language: ''the impoundment fails unless Congress acts affirmatively.'' 119 Cong. Rec. 15,236 (May 10, 1973) (statement of Sen. Roth) (debating S. 373, which would have required an impoundment to cease within 60 days unless it had been ratified by Congress). *See also* H.R. Conf. Rep. No. 93–1101, at 76 (1974); S. Conf. Rep. No. 93–924, at 76 (1974) (''Unless both Houses of Congress complete action on a rescission bill within 45 days, the budget authority shall be made available for obligation.'').

Congress considered bill language under which an impoundment would have continued indefinitely unless Congress took specific action to affirmatively *disapprove* of the impoundment. H.R. 8480, 93rd Cong. (1973) (providing that an impoundment ''shall cease *if* within [60] calendar days of continuous session after the date on which the message is received by the Congress the specific impoundment shall have been disapproved by either House . . .'' (emphasis added)). However, Congress did not enact such language. Instead, Congress enacted legislation under which an impoundment becomes permanent only if Congress enacts appropriate legislation through the processes of bicameralism and presentment.

Under the Constitution, the President must take care to execute the appropriations that Congress has enacted. Though the ICA permits the President to withhold amounts from obligation under limited circumstances, the amounts are permanently rescinded only if Congress takes affirmative legislative action through the constitutional processes of bicameralism and presentment. One must read the ICA as a whole. The Act outlines a process, and affords the President limited authority to withhold appropriated amounts while Congress expedites its consideration of the President's legislative proposal to rescind the already enacted appropriations. It would be an abuse of this limited authority and an interference with Congress's constitutional prerogatives if a President were to time the withholding of expiring budget authority to effectively alter the time period that the budget authority is available for obligation from the time period established by Congress in duly enacted appropriations legislation. It would be inimical to the ICA and to its constitutional underpinnings for the executive to avail itself of the withholding authority in the ICA, but to ignore the remainder of the process. *See generally* B–330376, Nov. 30, 2018 (*citing NROC* v. *Abraham*, 355 F.3d 179, 205 (2d Cir. 2004)) (finding that agencies ''cannot have it both ways,'' claiming both the benefit of adhering to a statutory provision, while simultaneously arguing that the requirements of the provision do not apply). Therefore, amounts proposed for rescission must be made available for prudent obligation before the amounts expire, even where the 45-day period for congressional consideration provided in the ICA approaches or spans the date on which funds would expire: the requirement to make amounts available for obligation in this situation prevails over the privilege to temporarily withhold the amounts. OMB asserts that the ICA does not preclude an impoundment from persisting through the date on which amounts would expire. Response Letter, at 2.

Specifically, OMB relies on the purported silence of section 1012 with regard to the President's ability to propose rescissions under the ICA late in the fiscal year, as compared to the language in section 1013, which governs the deferral of budget authority. *Id.* In particular, section 1013 states that a deferral ''may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate[,]'' and also provides that the provisions of the section, which necessarily includes this proscription, do not apply to amounts proposed for rescission under section 1012. ICA, §§1013(a), (c); 2 U.S.C. §§684(a), (c). According to OMB, these distinctions demonstrate that section 1012 does not require the President to make withheld budget authority available for obligation before the end of the fiscal year. Response Letter, at 1. Under OMB's rationale, the ICA grants the President authority to withhold funds for the entire 45-day period, even if such withholding would result in the expiration of impounded balances.

We disagree with OMB's position. As a practical matter, OMB's interpretation of the ICA would grant the President unilateral authority to rescind funds that are near expiration by altering the time period that the budget authority is available for obligation from the time period established in existing law. Suppose the President were to transmit a special message less than 45 days before amounts are due to expire. In OMB's view, an impoundment could continue through the funds' date of expiration—at which point the funds would no longer be available for new obligations. Therefore, fiscal year funds proposed for rescission in a special message late

in the fiscal year, even if not legally rescinded by the enactment of legislation, would be effectively rescinded if Congress takes no action at all. In OMB's view, only through affirmative legislative action could Congress prevent the rescission of funds that the President proposes for rescission in a special message transmitted close to the date on which the funds would expire. OMB's reading of the ICA would preempt the congressional process by which the budget authority's period of availability was established, fundamentally ceding Congress's power of the purse to the President.

This interpretation would contradict the plain meaning of section 1012, which, by its terms, requires that amounts not rescinded through a rescission bill be made available for obligation. As previously discussed, this requirement that amounts be made available for obligation already limits the time frame during which such amounts may be permissibly withheld; there is no need in section 1012 for language that specifically prohibits amounts from being withheld beyond the end of the fiscal year.

In addition, the legislative history of the ICA indicates that the distinctions between section 1012 and section 1013, on which OMB relies, do not carry the implications that OMB suggests. *See* 120 Cong. Rec. at 20,473 (statements of Sen. Ervin and Sen. McClellan) (discussing distinction between deferral and rescission proposals). Unlike a rescission proposal, through which the President seeks the permanent cancellation of budget authority and may temporarily withhold amounts pending congressional consideration, the ultimate objective of a deferral proposal is a temporary withholding only. Section 1013 was crafted to govern this temporary withholding of budget authority and, thus, specifies that amounts may not be withheld beyond the end fiscal year. *See id.* In contrast, section 1012 limits withholding to the prescribed 45-day period, absent Congress's completion of a bill rescinding the amounts proposed for rescission. Neither does section 1013(c), which provides that the provisions of section 1013 do not apply to rescission proposals submitted under section 1012, support OMB's position that there is no restriction on when the President may submit a rescission proposal. Rather, section 1013(c) was intended to clarify that any action that would seek the permanent cancellation of budget authority must be governed by the more stringent provisions of section 1012. *See id.* (statement of Sen. Ervin) (''Any action or proposal which results in a permanent withholding of budget authority must be proposed under section 1012. Section 1013(c) specifically provides that section 1013 does not apply to cases to which section 1012 applies. Only temporary withholding may be proposed under section 1013 . . .'').

Through the ICA, Congress did not grant the President the extraordinarily broad rescissions authority that OMB asserts. Indeed, the ICA grants the President no authority whatsoever to rescind funds. The Act allows the President to transmit legislative proposals for rescission to Congress, while granting the President authority to withhold the funds for limited periods of time while Congress considers the proposals. Congress considered, and did not enact, language that would have granted the President authority to propose rescissions that would take permanent effect if Congress took no action. Instead, as we discussed above, under the ICA only Congress may rescind budget authority.

Under the Constitution, Congress enacts laws, and the President must take care to faithfully execute the terms of those laws, including appropriations acts. Within this framework, Congress enacted the ICA, which granted the President strictly circumscribed authority to temporarily withhold funds from obligation. The overarching constitutional framework of the executive and legislative powers, as well as the statutory text and legislative history of the ICA, provide no basis to construe the ICA as a mechanism by which the President may, in effect, unilaterally shorten the availability of budget authority by transmitting strategically-timed special messages. Rather, amounts proposed for rescission must be made available for prudent obligation before the amounts expire, even where the 45-day period for congressional consideration in the ICA approaches or spans the date on which the funds would expire.

PRIOR OPINIONS

We have previously considered situations in which the President transmitted special messages concerning amounts that were near their date of expiration. We have intimated that in such a situation, the President may withhold the budget authority from obligation for the duration of the 45-day period, and that Congress must take affirmative action to prevent the withheld funds from expiring. *See, e.g.*, B–115398, Dec. 15, 1975. In some instances we have simply noted that funds may expire, without stating whether the funds were properly withheld or reporting that they must be made available for obligation. *See, e.g.*, B–115398, Aug. 27, 1976. *See also* B–220532, Sept. 19, 1986 (reclassifying deferral as rescission proposal, recognizing potential for funds to expire before being able to be obligated for intended purpose). As we explain below, in light of Supreme Court precedent and subsequent amendments to the ICA, we overrule these prior opinions.

In the President's second special message for fiscal year 1976, submitted on July 26, 1975, he included two rescission proposals of budget authority scheduled to expire on September 30, 1975. B–115398, Aug. 12, 1975. In our review of the special message, we stated that these amounts would lapse nearly a month before expiration of the 45-day period, B–115398, Aug. 12, 1975, and, in a subsequent report on the status of funds, confirmed the amounts had in fact lapsed during the 45-day period, B–115398, Dec. 15, 1975. In our report on the status of the funds, we stated that ''having to wait 45 days of continuous session before it can be determined that a proposed rescission has been rejected is a major deficiency of the [ICA].'' B–115398, Dec. 15, 1975. We offered that Congress should have an affirmative means within the Act to address scenarios such as this, by, for example ''changing the Act to allow a rescission resolution as is now allowed for deferrals, or changing the Act to prevent funds from lapsing where the 45-day period has not expired.'' *Id.* We stated that with respect to the two rescission proposals, ''Congress was unable, under the Act, to reject the rescission in time to prevent the budget authority from lapsing.'' *Id.* When the ICA was enacted, it required deferred funds to be made available if either house of Congress passed an ''impoundment resolution'' disapproving of the deferral. Pub. L. No. 93–344, §1013(b) (prior to 1987 amendment). In 1975, we suggested that Congress create an analogous process to enable rejection of a rescission proposal. B–115398, Dec. 15, 1975. However, our statement predated *INS* v. *Chadha*, 462 U.S. 919, in which the Supreme Court held a one-house veto provision to be unconstitutional because it was an exercise of legislative power that circumvented the procedures of bicameralism and presentment. The deferral provision in the ICA was later eliminated in the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. Pub. L. No. 100–119, title II, §206.

Our 1975 opinions are based on the premise that Congress could amend the ICA to provide Congress with a unilateral mechanism to reject a rescission proposal. In addition to *Chadha*, other Supreme Court decisions also have resoundingly invalidated this premise. *See Clinton*, 524 U.S. 417, 438–41; *Chadha*, 462 U.S. at 951–58. As the Court made clear in *Clinton*, the Constitution vests the President with authority to ''initiate and influence legislative *proposals*.'' 524 U.S. at 438 (emphasis added). A rescission proposal is one such legislative proposal. The rescission proposal does not have the force of law: ''[t]here is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.'' *Id.*

Because bicameral passage by Congress is necessary for the President's proposal to become law, no congressional action is necessary to invalidate the President's proposal. Without affirmative congressional action, the President's proposal remains just that: a proposal. Our 1975 opinions intimate that, under some circumstances, congressional inaction on a rescission proposal can be tantamount to affirmative congressional action to enact the rescission proposal. This interpretation would, in effect, give the President power to amend or to repeal previously enacted appropriations merely by calibrating the timing of the submission of a special message. This interpretation is clearly contrary to the Supreme Court's rulings in *Chadha* and *Clinton*. *See* 524 U.S. at 448–49; 462 U.S. at 951–58. Therefore, we overrule our prior inconsistent opinions.

CONCLUSION

The terms of the ICA are strictly limited. They vest in the President limited authority to propose a rescission of budget authority and to withhold such budget authority from obligation for a limited time period during which Congress may avail itself of expedited procedures to consider the proposal. However, the statutory text and legislative history of the ICA, Supreme Court case law, and the overarching constitutional framework of legislative and executive powers provide no basis to construe the ICA as a mechanism by which the President may, in effect, unilaterally shorten the availability of budget authority by transmitting rescission proposals shortly before amounts are due to expire.

To dedicate such broad authority to the President would have required affirmative congressional action in legislation, not congressional silence. *See, e.g.*, B–303961, Dec. 6, 2004 (declining to interpret a general ''notwithstanding'' clause to imply a waiver of the Antideficiency Act without indication that Congress intended to relinquish its ''strongest means'' to enforce its power of the purse). To paraphrase the Supreme Court, Congress does not alter the fundamental details of its constitutional power of the purse through vague terms or ancillary provisions—''it does not, one might say, hide elephants in mouseholes.'' *See Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (declining to interpret a statute in a manner inconsistent with its plain meaning). A construction of the ICA that would permit the withholding of funds proposed for rescission through their date of expiration would be precisely this elephant.

Though the ICA permits the President to withhold amounts from obligation under limited circumstances, the amounts are rescinded only if Congress takes affirmative legislative action through the constitutional processes of bicameralism and presentment. Therefore, amounts proposed for rescission must be made available for prudent obligation before the amounts expire, even where the 45-day period for congressional consideration in the ICA approaches or spans the

date on which the funds would expire. We overrule prior inconsistent GAO opinions.

Sincerely,

THOMAS H. ARMSTRONG,
General Counsel.

50TH ANNIVERSARY OF SAINT ELMO VILLAGE

HON. KAREN BASS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 29, 2020

Ms. BASS. Madam Speaker, on May 25, 2019, Saint Elmo Village celebrated 50 years as an artist colony that has worked to bring art into the everyday lives of young and old in the heart of Los Angeles. I congratulate all of the past and present residents, teachers, neighbors and supporters. I also commend its community of citizens for using their powers of creativity and artistic expression to create an oasis of beauty in Mid-City.

Saint Elmo Village was founded in 1969 by painter Rozzell Sykes, once featured in Life magazine, and his artist nephew Roderick Sykes, who hoped to use a small group of bungalows in the 4800 block of St. Elmo Drive to enhance the neighborhood and to further their artistic visions. Their goals: to capitalize on a thriving art scene in Southern California; construct a space to nurture urban and African American artists; and to prove that everyone has creative talents.

The Village continued to gain prestige, with the Sykes receiving numerous public art commissions and international recognition for their work, specifically in painting and photography. Soon enough, Saint Elmo welcomed resident artists to expand the diversity and types of pieces created at the Village.

With creativity at its core, Saint Elmo Village consistently emphasizes the inclusive aspects of art-making. Now under the leadership of executive director Jacqueline Sykes, the organization holds workshops and art showings tailored to the idea that all people can be creative.

Community engagement stands as a cornerstone of the Village's mission. St. Elmo offers a creative space for locals and hosts art classes, festivals, and numerous educational enrichment programs to spread love for art in the Mid-City neighborhood.

Guided by a singular phrase, "Do What You Love—Love What You Do" Saint Elmo Village has spent a half-century enriching Los Angeles. I congratulate Saint Elmo Village on its host of accolades, and I look forward to another half century of memorable milestones.

RECOGNIZING LISA WILLIAMS OF COLLEYVILLE, TEXAS FOR HER OUTSTANDING WORK

HON. KENNY MARCHANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 29, 2020

Mr. MARCHANT. Madam Speaker, I rise today to recognize Lisa Williams for her tireless devotion to helping victims of human trafficking overcome the many challenges they face. As a distinguished leader in the nonprofit community, Lisa has been working to counter the tragic effects of child abuse and sexual exploitation since she founded Circle of Friends: Celebrating Life, Inc. in 1999.

From the outset, Circle of Friends has collaborated with various stakeholders to fundraise and create awareness about the systemic issues that human trafficking presents to communities across the country. Under Lisa's guidance, other programs were established to further this goal, such as Living Water for Women, Living Water for Girls and the Living Water Learning Resource Center. Through these channels, Lisa has focused on providing services that are based on proven intervention and rehabilitative strategies, such as creating spaces for safe refuge, delivering therapeutic treatments, and facilitating educational and career opportunities for victims of sex trafficking.

For over twenty years, Lisa's work has enabled women and children to heal by way of an extensive network of support services. Her efforts will continue through the Circle of Friends Impact Legacy Scholarship Fund, a dollar-for-dollar, matched endowment that is administered by the Century Challenge at Boston University. The Circle of Friends scholarship fund will empower survivors of adverse sexual experiences to pursue an education and achieve self-sufficiency.

Ms. Williams's philanthropic endeavors have undoubtedly served as a beacon of hope to many. Madam Speaker, it is a pleasure to recognize the remarkable work that Lisa has produced in support of human trafficking victims. I ask all my distinguished colleagues to join me in recognizing Lisa Williams for her distinguished years of service.

PERSONAL EXPLANATION

HON. DOUG COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 29, 2020

Mr. COLLINS of Georgia. Madam Speaker, on Tuesday, January 28, 2020, I was absent from the vote series due to commitments in my district.

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

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 2019 House Budget Committee report outlining the timeline of actions taken by the Office of Management and Budget (OMB), the seemingly unprecedented step of stripping career officials of their normal role in the apportionment process, and how the OMB's actions hindered agencies' ability to obligate funds by the end of the fiscal year. I am submitting this in the RECORD to help inform the public of the Administration's systematic disregard of Congress' constitutional authority, separation of powers principles, and the Impoundment Control Act.

On September 27, House Budget Chairman John Yarmuth (KY–03) and House Appropriations Chairwoman Nita Lowey (NY–17) sent a letter to the Trump administration expressing ''serious concerns'' that recent actions taken by the Office of Management and Budget (OMB) constitute unlawful impoundments and are an abuse of the authority delegated to OMB to apportion appropriations. As part of the committees' efforts to ensure Congress maintains the power of the purse, as established in the Constitution, the Chairs requested documents and answers regarding OMB's involvement in the withholding of foreign aid, including nearly $400 million in crucial security assistance funding for Ukraine.

The committees received a partial production from OMB, however, OMB failed to meet the committees' deadlines and has not provided the bulk of the documents.

SUMMARY

After careful review of the materials provided to the committees, the Chairs have become more concerned that the apportionment process has been abused to undermine Congress's constitutional power of the purse. Specifically:

1. The timeline of actions taken by OMB (as seen in the provided apportionments, which are legally binding documents) suggest a pattern of abuse of the apportionment process, OMB's authority, and current law.

2. OMB took the seemingly unprecedented step of stripping career officials of their normal role in the apportionment process and instead vesting a political appointee with that authority. This is a troubling deviation from long-standing procedures.

3. OMB's actions may have hindered agencies' ability to prudently obligate funds by the end of the fiscal year in violation of the Impoundment Control Act of 1974 (ICA), possibly creating backdoor rescissions.

TIMELINE

June 19, 2019: OMB asserts in our documents that they first inquired with the Department of Defense about the Ukraine Security Assistance Initiative (USAI).

July 18, 2019: OMB admits in our documents (and it has been reported) that they notified an interagency working group, which included DoD and the State Department, about an instruction to withhold all funds for Ukraine security assistance.

July 25, 2019 at 6:44pm ET: the first apportionment withholding $250 million in DoD funding for USAI until August 5, 2019, is signed by an OMB career official. OMB confirms in our documents that this is the first written apportionment action and states that USAI funds were not made available to DoD until September 12.

August 3, 2019: a letter apportionment signed by Michael Duffey (the OMB political appointee) withholds State/USAID foreign aid, including $26.5 million in Foreign Military Financing (FMF) funding from the FY18 appropriations act for assistance to Ukraine. The apportionment responsibility for these accounts is not returned to the career official for the remainder of the fiscal year.

August 6, 2019 at 2:22pm ET: Michael Duffey (the OMB political appointee) signs an apportionment withholding the DoD funding for USAI until August 12, 2019. The apportionment responsibility for this account is not returned to the career official for the remainder of the fiscal year.

August 9, 2019: The House (majority) and Senate (minority) Appropriations Committees write to OMB and the White House warning the Trump administration that the August 3 letter apportionment for State/USAID foreign aid may constitute an illegal impoundment of funds and urging the administration to adhere to the law and obligate