



Insight

The Executive Branch Is Showing Its Receipts

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Executive Summary

- Congress took an important step in requiring the White House Office of Management and Budget (OMB) to make public a database of critical funding decisions to agencies and activities, known as apportionments.
- Once Congress makes high-level budget decisions, it falls to the executive branch to distribute that funding to agencies and activities, but many of the executive branches' budget functions are less than transparent to the public and policymakers.
- Congress is currently considering making permanent the public availability of the OMB database, as well as additional reforms to strengthen Congress's primacy in budget policy.

Introduction

Title 31 of the United States Code is unlikely to be this summer's top beach read, but perhaps it should be. Title 31 houses U.S. laws governing the executive branch's role in public finance, such as the preparation of the President's Budget, and the [Antideficiency Act](#) (ADA). The statutes themselves are perhaps less than stirring, but their reason for being is somewhat livelier: the centuries-long tension between the legislative and executive branches of the United States government. The Antideficiency Act generally prohibits the executive branch from spending more money than Congress authorizes, among other provisions, consistent with the legislative branch's power of the purse under Article I of the Constitution. Other statutes, such as the [Impoundment Control Act](#) (ICA) found under Title 2, similarly reflect Congress's periodic flexing of its power over the national fisc. And as dry and drab as the statutes may be, they are borne of conflicts that define the separation of powers that undergirds U.S. democracy.

Quietly, Congress is wresting some of its fiscal prerogative back from an executive branch that has, under both Republican and Democratic presidents, overstepped its proper constitutional role in the disposition of the taxpayer funds. Among these actions is Congress's requirement that the executive branches' Office of Management and Budget (OMB) make public a database of critical funding decisions to agencies and activities.

A Quiet Breakthrough in Government Transparency

On March 15, President Biden signed into law H.R. 2471, the Consolidated Appropriations Act of 2022. By some lights, this law reflects the worst of congressional legislative behavior: It was nearly 6 months late and riddled with [thousands of earmarks](#), an unfortunate rediscovery of past bad practice. But while tardiness and self-dealing is somewhat business as usual on Capitol Hill, less so was the inclusion of critical reforms to the nation's budget laws that will substantially improve the transparency and accountability of the executive branch's budgeting activities. Buried in the provisions funding is Section 204, which required OMB to provide Congress's Appropriations and Budget Committees with apportionment documents on appropriations and ultimately develop a database for making those apportionments publicly available.

[That database is now live.](#)

The Executive Branch and Fiscal Policy

This reform, albeit temporary, is a significant evolution in executive accountability in the budget process. OMB serves as the coordinating agency for [budget execution](#), which is the administration and disposition of taxpayer funds appropriated by Congress. Its directives and processes are codified in [Circular-A-11](#), which serves as the handbook for how the federal government spends and collects taxpayer funds once Congress has passed the laws that authorize and set the parameters for that spending and revenue collection.

Among the key responsibilities OMB performs is apportionment - which is the distribution of a congressional appropriation into discrete disbursements over time. At the most basic level, Congress provides funds in large blocks, typically over the course of a single fiscal year. Congress usually specifies the disposition of these funds at the [budget-account level](#) of detail. Budget accounts are highly detailed compared to overall agency budgets - indeed there are thousands - but are well short of the specificity required to oversee expenditures well in excess of \$4 trillion a year. The apportionment process divides congressional appropriations over the course of the year and into discrete agency functions at a greater level of granularity than does Congress in order that agencies carry out their missions within the limits of the resources Congress provides. Apportionment also ensures that

taxpayer funds are spent at the rate intended by Congress. One of the key prongs of the ADA prohibits executive branch officials from spending more than has been apportioned for a given program over a certain period. This precludes the executive branch from exhausting its funding too soon – and coming back for more. Indeed, abuses such as these, known as “[coercive deficiencies](#),” inspired the first iteration of the Antideficiency Act.

The modern apportionment process is a formal, legally binding exercise which, through the ADA, can pose criminal charges for those who violate its strictures. With each apportionment, OMB officials document the disposition of taxpayer funds. Apportionments track the flow of funding throughout the federal government and memorialize any changes to budgetary flows. Additional contextual information and conditions on the availability of funds—used to compel or bar certain agency actions—are included in footnotes to these apportionments, and senior budget officials must formally authorize apportionments through authority [officially delegated](#) by the president to the OMB director and on to subordinates. Indeed, to the extent the ADA holds federal officials personally responsible for violations, the requirement that senior OMB officials approve apportionments is not merely a formality.

Apportionments

The information contained in these apportionments is, more often than not, routine and ministerial in nature. Indeed, a survey of the apportionments recently made public reveal what is largely a bookkeeping exercise as funding for federal agencies transitioned from a continuing resolution to full-year appropriations.

But apportionments are not always quite such a sleepy domain. Indeed, the 2019 impeachment trial in the Congress turned in part on whether the executive branch’s withholding of military aid to Ukraine was lawful. The mechanism by which the aid was withheld was the apportionment process, and the executive branch’s rationale for that action was [noted in the accompanying footnotes](#). Those apportionments were not public, however, and were not reported by the press [until months](#) after the executive branch withheld, or “impounded,” the appropriated funds. The U.S. Government Accountability Office ultimately determined that this withholding of funding, executed through and documented in an apportionment, violated the Impoundment Control Act, which prohibits the executive branch from withholding funding appropriated by Congress except under certain circumstances. It is worth noting that the ICA was enacted as part of a broader package of laws that gave rise to the modern congressional budget process and established the Congressional Budget Office. It was also inspired by a major conflict between the Nixon Administration, which refused to spend funding on certain congressionally approved programs, and a hostile Congress. Whereas the ADA prohibits the executive branch from

overspending, the ICA essentially prohibits the executive branch from underspending and ignoring the funding requirements Congress laid out in statute.

Legislative Outlook

Section 204—which required OMB to create the public apportionment database—will expire, along with the rest of the Consolidated Appropriations Act of 2022, on September 30. There is a risk that apportionments will only have 11 weeks in the sun. The legislative calendar will potentially be dominated by more fractious matters, but at least with respect to reclaiming some of its power of the purse, Congress appears inclined to press on with yet more reforms. Recently, the House Appropriations Committee reported out the fiscal year (FY) 2023 Financial Services and General Government Appropriations Act which would make the apportionment database permanent and includes additional reforms to strengthen adherence to the ADA and ICA. [Among other reforms](#), these would require the executive branch to report potential ADA violations, even if the executive branch does not agree that such a violation occurred. This used to be standard practice, but was not codified in law, meaning the executive branch was free to alter this policy, which it did in June 2019. OMB has since restored this requirement. The bill makes includes other reforms informs by [GAO’s observations](#) of gaps in the ADA and ICA. The bill would also ensure agencies report potential violations of the Impoundment Control Act to Congress and prohibit OMB from impounding funds until expiration. While the practice of impounding funds until expiration is likely not lawful, it remains possible that an aggressive executive branch might take such action, in part because the ICA lacks the strong criminal enforcement provision found in the ADA. In a [Statement of Administration Policy](#), the White House objected to “additional burdens” that some of these new requirements may impose.

Conclusion

One could be forgiven for assuming Congress is content to cede authority, accountability, and responsibility to the executive branch. There is ample evidence for such a conclusion. From time to time, however, Congress does affirmatively legislate in the public’s best interest. That the Constitution vested Congress, the legislature, with the power of the purse is no accident. Indeed, one could imagine the framers wandering the halls of the Eisenhower Executive Office Building and wondering what OMB could possibly be doing. But a modern government very much needs modern budget execution functions - and it needs to be done in full view.