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Congress's Power Over Appropriations: A Primer

A number of constitutional and statutory provisions provide Congress with perhaps its most important legislative tool: the power to direct and control federal spending. This In Focus summarizes relevant constitutional and statutory provisions, and identifies recent developments related to Congress's power over appropriations. For a more detailed discussion of these issues, see CRS Report R46417, *Congress's Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff.

Constitutional Authority

Several constitutional provisions combine to provide Congress its "power of the purse." These include the Spending Clause (Art. I, § 8, cl. 1), which empowers Congress to raise revenue, pay debts, and "provide for the common Defence and general Welfare of the United States." Courts defer substantially to Congress's decision of what constitutes the general welfare. In addition, the Appropriations Clause (Art. I, § 9, cl. 7) states that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Congress must authorize any expenditure of Treasury funds.

Congress's constitutional power over federal funds is subject to three limitations.

First, the text or structure of the Constitution may limit Congress's authority to appropriate funds in a manner that would diminish the independence of the other branches of the federal government. The Constitution constrains Congress's authority to change the compensation of the President or of federal justices or judges (Art. II, § 1, cl. 7 and Art. III, § 1). In *United States v. Klein*, 80 U.S. 128 (1872), the Supreme Court held that Congress could not condition the availability of Treasury funds in a manner that, if honored, would both nullify the effect of a pardon, a power the Constitution vests exclusively in the President, and infringe upon the powers of the federal courts.

Second, the Supreme Court has held that the federal system of government established in the Constitution affects how Congress may offer funds to the states. For example, Congress may require a state to set its minimum drinking age at 21 to receive federal highway funds. However, as the Supreme Court explained in *South Dakota v. Dole*, 483 U.S. 203 (1987), and later cases, the conditions Congress places on funds offered to states must be unambiguous and relate to a federal interest in the program, and Congress cannot threaten to withhold a sum of money so great that the state is "coerced" into accepting Congress's conditions.

Third, the Constitution's protections for individual rights may limit Congress's authority to appropriate funds. For example, the Constitution prohibits Congress from passing

bills of attainder (Art. I, § 9, cl. 3). In *United States v. Lovett*, 328 U.S. 303 (1946), the Supreme Court held that an appropriations act provision prohibiting any agency from paying the salaries of named federal employees amounted to a bill of attainder and, thus, was unconstitutional.

Key Terms

An *appropriation* is authority provided by statute to obligate and expend funds from the Treasury. An appropriation is a type of *budget authority*, which is authority for a federal officer or employee to enter binding legal obligations on behalf of the United States. Congress may provide budget authority in regular appropriations acts (covering a fiscal year), continuing appropriations acts (covering all or part of a fiscal year and generally continuing the level of appropriations provided in a prior appropriations act), supplemental appropriations acts (providing more funds for a fiscal year), or other statutes.

An appropriations act consists of unnumbered paragraphs, each corresponding to an *appropriations account*. An appropriations act may also include numbered *general provisions* that set conditions or limitations on the use of appropriations. Congress grants appropriations in a specific *amount*, for a specific *time period* and *purpose*, and subject to *conditions* specified in the appropriations act or in other law.

Statutory Provisions

Congress implements its constitutional power of the purse with several generally applicable fiscal control statutes. These statutes govern the handling of federal funds throughout their life cycle, from initial receipt by the agency through obligation and expenditure.

Miscellaneous Receipts Act

During its operations, an agency may receive money from a third party. For example, in administering a program, an agency might collect a tax, duty, or fee. The Miscellaneous Receipts Act (31 U.S.C. § 3302) requires officials who receive money on the government's behalf to "deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." When the official deposits the money in the Treasury, the Appropriations Clause is triggered, meaning that the money may later be withdrawn only with an "Appropriation[] made by Law." Thus, as a default rule, an agency may not fund its operations using money the agency collects in the ordinary course of its operations. Congress may provide an exception to this default rule by specifying in statute that funds the agency receives are available to the agency to pay certain expenses.

The Purpose Statute

The Purpose Statute (31 U.S.C. § 1301(a)) defines how an agency may apply appropriations. “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” Under the Government Accountability Office’s (GAO’s) “necessary expense test,” an agency may obligate an appropriation where there is a logical relation between an expense and the appropriation, the expense is not prohibited by law, and no other appropriation more specifically covers the expense.

Antideficiency Act

The Antideficiency Act (31 U.S.C. §§ 1341-42, 1349-51, 1511-19) ensures that obligations and expenditures remain within the amounts granted by Congress. A federal officer or employee “may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.”

This prohibition has at least two effects: an agency may not obligate more than its *total* available budget authority, and it may not obligate budget authority in a way that violates a *cap* or *condition* applicable to that authority. To take an example, Congress might appropriate \$1 billion for an agency to enforce federal criminal law, set aside no more than \$100 million of that sum for drug prosecutions, and prohibit use of the funds to prevent a state from implementing its medical marijuana laws. Thus, the agency may not obligate more than the \$1 billion provided (i.e., more than the *total* appropriation); obligate more than \$100 million for drug prosecutions (i.e., beyond a *cap* within the appropriation); or obligate to prevent a state from implementing its medical marijuana laws (i.e., in disregard of a *condition*).

An officer or employee who violates the Antideficiency Act “shall be subject to appropriate administrative discipline,” and, for willful violations, faces a criminal fine, imprisonment, or both. An agency also violates the Act when it incurs obligations after its appropriations have lapsed. A head of an agency must immediately report any violations to the President, Congress, and GAO.

Under the Antideficiency Act, the President, acting through the Office of Management and Budget (OMB), must apportion a fixed-period appropriation by time period, function, or a combination of the two. Apportionment generally ensures that the agency receiving the appropriation does not use it at a rate that would require another appropriation later in the same fiscal year. OMB may reserve funds from apportionment to provide for contingencies, to achieve savings made possible by changes in requirements or efficiencies, or as specifically provided by law.

Impoundment Control Act

Congress monitors agency delay in making funds available for obligation or expenditure through the Impoundment Control Act of 1974 (ICA) (2 U.S.C. § 681, et seq.). The ICA allows the President to transmit a special message to Congress containing a *rescission* proposal, which is a request that Congress pass a rescission bill that cancels existing budget authority. While Congress considers

whether to enact such a law, the affected budget authority may be withheld from obligation for 45 days of continuous congressional session.

The ICA also requires the President to transmit a special message to Congress whenever the President, the OMB Director, or a department or agency officer or employee proposes a *deferral* of budget authority. A deferral is any action that withholds, delays, or otherwise precludes the obligation or expenditure of budget authority. An agency may only defer budget authority to provide for contingencies, to achieve savings made possible by changes in requirements or efficiencies, or as specifically provided by law.

Acting under the ICA, Congress may respond to rescission proposals by enacting a rescission bill to cancel budget authority, and either house may pass an impoundment resolution disapproving of a proposed deferral. As an added measure of oversight, GAO is tasked with monitoring agency compliance with the ICA. When an agency fails to make budget authority available as required by the ICA, GAO has statutory authority to sue the agency to make the budget authority available.

Recent Developments

Congress’s power over appropriations has drawn repeat attention during the 116th Congress, which began in the midst of the longest partial U.S. government shutdown in history, based on a lapse in certain agencies’ appropriations. In January 2019, Congress amended the Antideficiency Act so that agency staff furloughed as a result of a lapse in appropriations or employed on an excepted basis during a shutdown are paid for the period of the shutdown once Congress appropriates funds to end the shutdown. The shutdown also led to GAO findings that several agencies violated the Antideficiency Act by incurring obligations during the appropriations lapse.

Legislators have proposed amending the fiscal control statutes. In November 2019, the Senate Committee on the Budget reported S. 2765, the Bipartisan Congressional Budget Reform Act of 2020. Among its provisions, S. 2765 would require reporting related to apportionments and also direct agencies to obligate budget authority that is proposed for rescission, reserve, or deferral before the end of its period of availability. S. 2765 would also authorize appropriate administrative discipline for those who violate S. 2765’s relevant provisions. In April 2020, H.R. 6628, the Congressional Power of the Purse Act, was introduced in the House. In June 2020, companion legislation, S. 3889, was introduced in the Senate. The companion bills include provisions similar to those in S. 2765 noted above. In addition, the companion bills would modify, among other things, how an agency reports Antideficiency Act violations. The companion bills would also reduce the time within which GAO may bring suit to enforce provisions of the ICA or to compel an agency to provide information.

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