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# The Executive Budget Process: An Overview

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SUMMARY

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The Constitution vests Congress with the power of the purse, with several provisions referring to congressional authority to levy taxes, authorize the issuance of debt, and make appropriations to fund the federal government. The Constitution does not provide an explicit role for the President in the budget process. The executive budget process, as currently constituted, exists primarily due to statutes enacted by Congress.

The Budget and Accounting Act of 1921 centralized many functions of the executive budget process within the presidency. The executive budget process consists of three main phases: development of the President's budget proposal, submission and justification of the President's budget proposal, and execution of enacted annual appropriations and other budgetary legislation. This report provides an introduction to many elements of the executive budget process, highlighting the roles of the President, the Office of Management and Budget (OMB), and executive agencies.

The President's budget is a statement of the President's policy priorities and a unified plan for the allocation of federal budgetary resources. The President's budget is a set of recommendations, which Congress is not required to adopt. Under current law, the President must develop and submit a consolidated budget to Congress no later than the first Monday in February prior to the start of the fiscal year. In practice, the President has delegated to OMB certain budgetary tasks and authorities necessary for developing the budget, such as providing guidance to executive branch agencies, reviewing agency budget requests, and reviewing agency budget justifications.

After budgetary legislation is enacted, individuals in the executive branch are responsible for the execution of the budget. With certain exceptions, the Antideficiency Act requires that appropriated funds be apportioned (i.e., subdivided), often by fiscal quarter, prior to obligation or expenditure. Agencies then allocate those funds to programs, projects, and activities.

Congress has recognized a need to permit agencies some flexibility during budget execution, and it has provided agencies with limited authority to make spending adjustments. For example, Congress may provide agencies with limited authority to reallocate funds from one appropriations account to another (transfers) or from one purpose to another within an appropriations account (reprogramming). Under the Impoundment Control Act of 1974, the President may withhold appropriated funds temporarily (deferrals) or propose to Congress permanent cancellations of budget authority (rescissions).

Certain executive budgetary procedures are triggered under limited, less common circumstances. For example, OMB and agencies have procedures for implementing a shutdown of certain government operations in the event that their full-year or interim appropriations are not enacted by the start of the fiscal year. OMB and agencies may also be subject to additional procedures in the event of a statutorily prescribed sequestration.

The federal budget sustains government functions and plays an important role in shaping policy decisions. Congress regularly reviews the appropriate balance of budgetary responsibilities between the legislative and executive branches, the transparency of budget execution decisions made by the President and OMB, and whether the existing budget timeline continues to meet the needs of the federal government. In light of these considerations, Congress may evaluate legislative or oversight options that amend aspects of the executive budget process. Relevant topics may include the length of the budget cycle and its effect on information technology investment; congressional oversight of agency transfers and reprogramming; transparency of OMB's apportionment processes; and agency budget planning for shutdowns, funding gaps, and sequestration.

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# Introduction

The Constitution vests Congress with the authority to levy taxes, authorize the issuance of debt, and make appropriations to fund the federal government—collectively known as the power of the purse.[1] Notably, those funds may be drawn from the Treasury only in consequence of appropriations made by law.[2] The Constitution does not provide an explicit role for the President in the budget process. The executive budget process, as currently constituted, exists primarily due to statutes enacted by Congress.

Prior to the enactment of the Budget and Accounting Act of 1921,[3] executive budgeting was highly decentralized. At that time, agencies submitted their budget estimates to Congress individually, either directly or through the Secretary of the Treasury, with varying levels of involvement or direction by the President.[4] The Budget and Accounting Act centralized many functions of the executive budget process within the institutional presidency. This statute, and subsequent legislation, instituted the current executive budget process timeline and milestones. For more information about historical statutes related to the executive budget process, see **Appendix A**.

The executive budget process consists of three main phases:

1. Development of the President's budget proposal
2. Submission and justification of the President's budget proposal
3. Execution of enacted annual appropriations and other budgetary legislation

The President's budget is one of the institutional presidency's most significant policy tools. Through the executive budget process, the President may set forth legislative and program objectives and attempt to influence the nation's overall fiscal course. It also creates a starting point for congressional revenue and spending actions. The executive budget process provides a venue for complex and often nuanced dynamics between Congress and actors in the executive branch. The process vests executive branch agencies with some budgetary discretion to carry out their missions, which may create additional oversight implications for Congress.

This report outlines many of the budgetary procedures performed by the President, the Office of Management and Budget (OMB), and agencies, including an overview of the development, submission, and justification of the President's budget proposal.[5] The report also describes how the President, OMB, and agencies execute the federal budget following the enactment of annual appropriations and other budgetary legislation by Congress. Finally, the report highlights a number of potential issues for congressional consideration.

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[1] U.S. Const., art. I, §8, cl. 1, §9, cl. 7. See also CRS Report R46417, *Congress's Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff.

[2] U.S. Const., art. I, §9, cl. 7.

[3] P.L. 67-13, Budget and Accounting Act, 1921, June 10, 1921 (42 Stat. 20, at 22), currently codified in part at 31 U.S.C. §501.

[4] Allen Schick, *The Federal Budget: Politics, Policy, Process*, 3rd ed. (Washington, DC: Brookings Institution Press, 2007), pp. 13-14.

[5] For an overview of how information technology budgeting aligns with key steps in the executive budget process, see CRS Report R46877, *Federal Information Technology (IT) Budgeting Process in the Executive Branch: An Overview*, by Dominick A. Fiorentino.

# Development of the President's Budget

The President's budget proposal—referred to by statute as the *Budget of the United States Government*—is a statement of the President's policy priorities and a unified plan for the allocation of federal budgetary resources.[6] The President's budget is a set of recommendations which Congress may consider but is not required to adopt. Though it is not legally binding, the President's budget usually initiates the congressional budget process. It provides Congress with recommended spending levels for agency programs, projects, and activities funded through the annual appropriations acts. Additionally, the budget includes proposals to change revenues and mandatory (also known as "direct") spending programs that are controlled by other legislation. The President's budget also includes budgetary projections based on existing law and provides Congress with estimates of the effects the President's revenue and direct spending proposals would have on those projections.

Under current law, the President must develop and submit a consolidated budget to Congress no later than the first Monday in February prior to the start of the upcoming fiscal year.[7] In practice, the President sometimes fails to meet this submission deadline, particularly during transition years.[8] There is no statutorily established consequence for missing this submission deadline; a late submission could delay other aspects of the budget process. The other dates and milestones in the executive budget process are based on a mixture of statutes, OMB administrative practices, and appropriations committee and subcommittee norms and practices (see **Figure 1**).

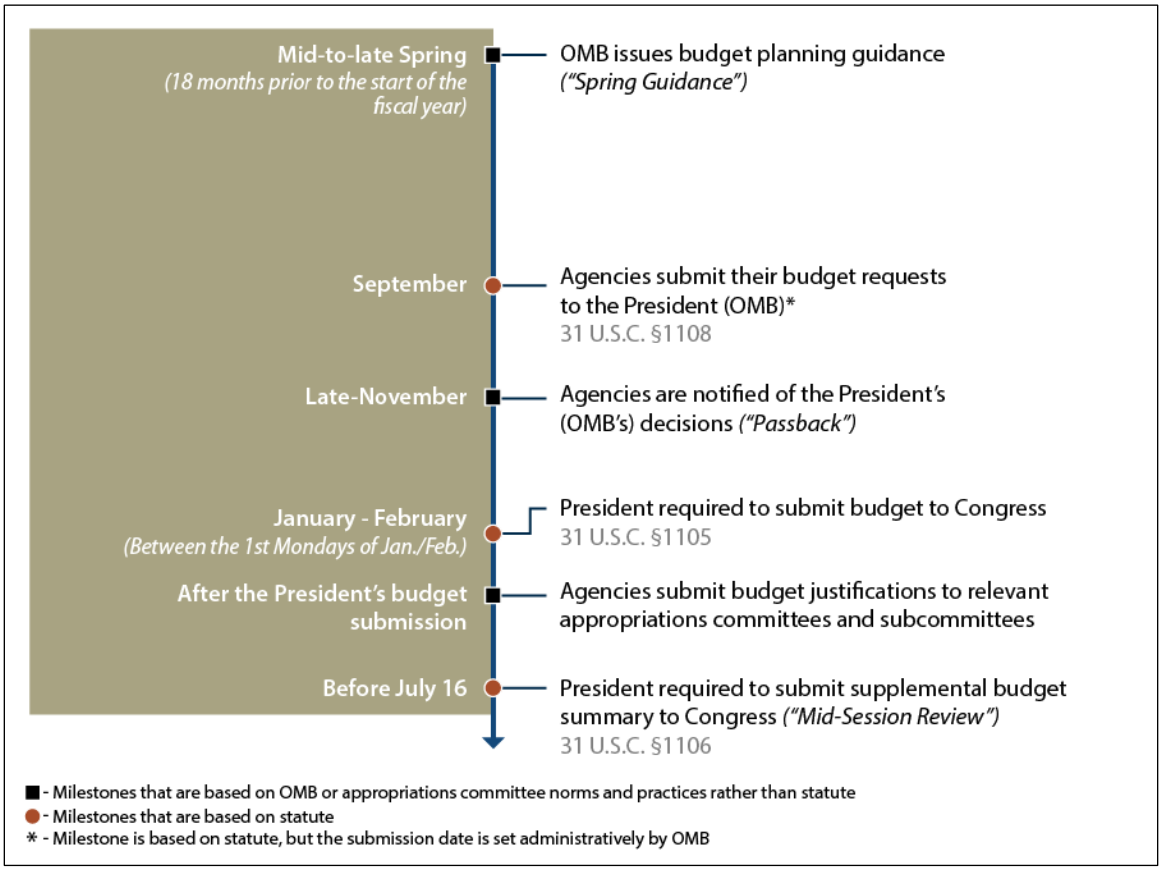
The development of the President's budget begins approximately 18 months prior to the start of the fiscal year that the budget will cover. To put this timeline in context, as Congress begins action on appropriations bills and other budgetary legislation for the upcoming fiscal year, OMB and agencies have already begun planning for the subsequent fiscal year. (See **Appendix B** for a graphical representation of how the executive budget process overlaps with the congressional budget process, as well as how agencies concurrently plan and execute budgets for multiple fiscal years.)

[6] 31 U.S.C. §1105(a).

[7] 31 U.S.C. §1105. The President's budget includes budget requests for all executive departments and agencies as well as budget requests for entities in the legislative and judicial branches. The President and OMB play no role in the development of legislative- and judicial-branch requests. Instead, entities in the legislative and judicial branches transmit their budget requests to the President, who then is required to include them in the budget submission to Congress without modification (31 U.S.C. §1105(b)).

[8] For more information about the submission of the President's budget during transition years from FY1977 to present, see CRS Report RS20752, *Submission of the President's Budget in Transition Years*, by Taylor N. Riccard.

**Figure 1. Executive Budget Process Milestones Before and After Annual Submission to Congress**




**Sources:** CRS analysis of *U.S. Code*, OMB guidance documents, and Presidents' budget submissions. Milestones that are established by law are also indicated by listing relevant *U.S. Code* citations.

## Initial Preparation of Agency Budget Requests

In practice, the President has delegated to OMB certain budgetary tasks and authorities necessary for developing the budget.[9] OMB coordinates the development of the President's budget proposal by issuing circulars, memoranda, and guidance documents to the heads of executive agencies. Executive agencies then prepare their budget requests in accordance with the instructions and guidance provided by OMB.

In particular, OMB's *Circular No. A-11* is an extensive document that contains instructions and schedules for agency submission of budget requests and justification materials to OMB.[10] Updated annually, *Circular No. A-11* provides agencies with an overview of applicable budgetary laws, policies for the preparation and submission of budgetary estimates, and information on financial management and budget data systems. *Circular No. A-11* also provides agencies with

[9] See CRS Report RS21665, *Office of Management and Budget (OMB): An Overview*, coordinated by Taylor N. Riccard.

[10] OMB, "Circulars," https://www.whitehouse.gov/omb/information-for-agencies/circulars/.

directions for budget execution and guidance regarding agency interaction with Congress and the public.

Early in the development phase of the executive budget process, OMB usually issues a budget planning guidance memorandum that observers often refer to as the "spring guidance." This memorandum provides executive agencies with detailed instructions and deadlines for submitting their budget requests and supporting materials to OMB.[11] The guidance may also include specific instructions for how agency budget requests may help achieve the President's budgetary priorities and other policy goals. For example, the FY2019 budget guidance instructed

> Unless otherwise directed by OMB, your initial discretionary FY 2019 budget submission to OMB should continue the proposals included in the FY 2018 Budget, and should reflect a level no higher than the net total provided for your agency in the FY 2019 column of the FY 2018 Budget.[12]

The relevant statute does not require a certain date for submission of these budget requests to OMB. OMB typically has administratively set the annual submission dates for September, which occurs 13 months before the beginning of the forthcoming fiscal year. Agencies rely on internal processes and analysis to formulate their budget requests, which may vary from agency to agency. In practice, budget preparation is a time- and data-intensive process for agencies involving detailed analysis and estimation of past and future budgetary resources.[13]

## OMB Review and Modification of Agency Budget Requests

Agency budget requests are submitted to OMB in early fall, approximately four to five months before the President must submit the budget to Congress. In practice, the President delegates to OMB responsibility for reviewing executive agency requests and justification materials to ensure that they are consistent with the President's policy objectives.

Agency requests are first reviewed by the OMB program examiners who are responsible for the associated policy areas. Agency requests may also be reviewed by more senior OMB officials. Prior to making a recommendation, OMB program examiners may ask for additional information from agencies, either informally or by conducting formal hearings. Examiners' recommendations are reviewed by more senior OMB officials, culminating in review and approval by the OMB director and the President.[14]

Agencies are notified of the President's decisions through a process known as "passback." During passback, OMB officials notify agencies of their approved budgetary levels, which may differ from the agencies' budget requests.[15] The passback process and the content of passback decisions may differ under each Administration and each OMB director. For example, passback decisions may also include program policy changes.[16] Agencies may appeal these decisions to the OMB

[11] The budget planning guidance memorandum is usually issued in mid- to late spring, nearly a year before the President submits the budget proposal to Congress. However, the memorandum has been issued as late as August.

[12] OMB, Memorandum from Mick Mulvaney, Director of OMB, M-17-28, "Fiscal Year 2019 Budget Guidance," July 17, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-28.pdf.

[13] Schick, *Federal Budget*, pp. 92-93.

[14] Shelley Lynne Tomkin, *Inside OMB: Politics and Process in the President's Budget Office* (New York: M.E. Sharpe, 1998), pp. 120-130.

[15] Tomkin, *Inside OMB*, p. 131.

[16] U.S. Government Accountability Office (GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, p. 105, https://www.gao.gov/products/gao-05-734sp (hereinafter "GAO, *Glossary*").

director, a group of officials, or, in some cases, to the President directly, depending on the procedures established by the OMB director.[17]

# Submission and Justification of the President's Budget

In recent decades, the President's budget submission has comprised a multi-volume set of printed and electronic documents, which may vary in size and composition from Administration to Administration. This section briefly discusses typical components of the President's budget submission to Congress and highlights some of the formal and informal interactions among Congress, the President, OMB, and agencies.[18]

## Composition of the President's Budget Submission to Congress

The President is statutorily required to provide certain information in the budget submission to Congress, including (1) estimated receipts, expenditures, and proposed appropriations for the next five fiscal years; (2) actual receipts, expenditures, and appropriations for the previous fiscal year; (3) information on the public debt; and (4) separate statements of amounts for specified appropriations accounts and trust funds.[19] The manner in which the information is packaged may change across Administrations.

The budget submissions of the past three Presidents have each included the following volumes:

- *Budget of the U.S. Government*. Sometimes referred to as "the budget volume," it includes a short budget message summarizing the President's policy priorities, summary tables of budgetary aggregates, and a detailed narrative description of proposed government activities organized by issue and agency.
- *Appendix*. This volume includes detailed budget estimates and financial information on individual programs and appropriations accounts, proposed text of appropriations language, and information on the legislative and judicial branch appropriations that are not included in other volumes of the President's budget proposal.[20]
- *Analytical Perspectives*. This volume contains in-depth discussion of government programs, including credit and insurance programs, discussion of crosscut budgets that span two or more agencies, and technical explanation of the budget baselines used in the analyses and estimates contained in the President's budget proposal.
- *Historical Tables*. This volume provides a historical overview of federal government finances, including time series statistics on budget authority, government receipts, outlays, government employment, gross domestic product,

[17] Tomkin, *Inside OMB*, pp. 131-134.

[18] The details of the congressional budget process are outside the scope of this report. For discussion of congressional budgetary procedures, see CRS Report R46240, *Introduction to the Federal Budget Process*, by James V. Saturno.

[19] 31 U.S.C. §1105.

[20] See CRS Report R43475, *FY2022 Budget Documents: Internet and GPO Availability*, by Carol Wilson.

and the federal debt going back several decades and in some cases as far back as 1789.[21]

**The President's Budget Submission and Congressional Oversight**

Budgetary reporting may facilitate Congress's oversight of federal government operations and may help Congress to make better-informed decisions about the allocation and use of government resources. The President's budget submission often provides the most definitive record of actual outlays by agencies and programs. More specifically, the *Historical Tables* volume includes summary-level (as well as more detailed) reporting of receipts, outlays, surpluses, and deficits.[22]

Presidents have also included additional materials in their submissions to Congress, such as legislative proposals for budget process reform, federal credit supplements, a brief guide to the budget intended for the public, and a summary of proposed spending reductions or program consolidations sometimes referred to as a "Major Savings and Reforms" volume.[23]

## Revisions and Supplements to the President's Budget Request

The President may also update the budget proposal by submitting revisions to the original request and, in the wake of key events, supplemental requests to Congress.[24] Under current law, the President is required to submit a supplemental summary of the budget, commonly referred to as the "Mid-Session Review" (MSR), after the January/February budget submission deadline but before July 16 of each year. The MSR contains supplemental budget estimates and changes including substantial changes in estimates of expenditures and receipts and substantial changes to obligations imposed (i.e., entitlements) within the current fiscal year.[25] In addition to covering the current fiscal year, the MSR is required to include certain information pertaining to the four fiscal years following the fiscal year for which the budget is submitted and for future fiscal years. Previous MSRs have reflected changes in economic conditions, budgetary actions taken by Congress, or other factors that have led the President to make adjustments to the initial budget submission.

## Agency Budget Requests and Justifications

Once the President has submitted the budget, OMB and agency officials explain and justify the request to Congress. This frequently involves both formal and informal interactions. Early in the congressional budget process, often in the week following the submission of the President's budget, the OMB director and other Cabinet officials may provide testimony regarding the President's budgetary objectives before congressional committees.

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[21] The time frame for the information contained in the *Historical Tables* volume varies from table to table. For example, information on aggregate levels of receipts and outlays is provided for all years starting with 1789, while information on total levels of federal government employment is provided as far back as 1962. This volume is only available electronically.

[22] OMB, *Budget of the United States Government Historical Tables*, May 2021, https://www.govinfo.gov/app/details/BUDGET-2022-TAB/context.

[23] OMB typically posts the most recent budget submission on its website at https://www.whitehouse.gov/omb/budget/. The most recent and some historical submissions are posted separately by the U.S. Government Publishing Office (GPO) at https://www.govinfo.gov/app/collection/budget.

[24] OMB, "Supplementals, Amendments, and Releases," https://www.whitehouse.gov/omb/supplementals-amendments-and-releases/.

[25] 31 U.S.C. §1106.

Agencies submit written justification of their budget requests to the appropriations committee and subcommittees of jurisdiction in each chamber. Agencies also post their justifications on their websites. The form and content of agency budget justifications (also referred to as congressional budget justifications or "CBJs") have been shaped by appropriations committee and subcommittee norms and practices. OMB also provides guidance for the creation of CBJs in *Circular No. A-11*.[26]

As Congress formulates budgetary legislation, agency officials are often called before the appropriations subcommittees to justify and explain their budget requests to Congress. To ensure that testimony and written justification materials are consistent with the President's policy objectives, OMB may review materials before agencies provide them to Congress.[27]

Agency testimony and written justification materials facilitate dialogue and information sharing between federal agencies and congressional committees. Agency justification materials also provide program details that Congress may use when determining the amounts to be appropriated and the language to be included in reports accompanying appropriations acts.

[26] OMB, *Circular No. A-11*, §22.6.

[27] *Circular No. A-11* establishes guidelines regarding agency conversations with Congress or the public and emphasizes statutory restrictions on attempts to influence legislation outside of official channels; see OMB, *Circular No. A-11*, §22.

**Congressional Budget Justification Transparency Act of 2021 (P.L. 117-40)**

In 2021, Congress passed legislation to newly define agency budget justifications by statute and require their posting online.[28] Prior to the enactment of this law, statutory provisions that establish key aspects of the executive budget process in Title 31 of the *U.S. Code* were relatively silent on the topic of agency budget justifications that are submitted to Congress.[29] In practice, this silence left considerable discretion in the creation of these documents.[30] OMB's *Circular No. A-11* provides guidance to agencies requiring them to consult with appropriators before submitting their budget justifications.[31] Typically, the written justifications vary in form and content with each agency and appropriations subcommittee, reflecting the ongoing relationship between them.[32] An agency's budget justification usually contains a detailed description of its programs and activities and their purposes, as well as an explanation of the proposed changes in appropriations and program activities for the next fiscal year.

Among other things, P.L. 117-40 newly defined in statute that agency "'budget justification materials' [are] the annual budget justification materials of a Federal agency, or a component of a Federal agency, that are submitted, in conjunction with" the President's annual submission.[33] Prospectively, these materials are required to be posted on the website currently known as USAspending.gov, subject to OMB-developed data standards. Separately, the President's budget submission is also required to include a "tabular list" of the justifications.

## Statements of Administration Policy and Other Presidential Actions

As Congress is considering budgetary legislation, formal and informal communications may be used to clarify and reiterate the President's policy positions. For example, OMB may formally communicate the President's position on proposed or pending legislation by issuing Statements of Administration Policy.[34]

The President and other executive branch officials may also negotiate with Congress informally at any time during the congressional budget process by holding summits or private meetings with Members of Congress. The President may also attempt to influence Congress indirectly by promoting his or her policy priorities through direct appeals to the public.[35] Finally, the President may veto, or threaten to veto, any budgetary legislation passed by Congress. Between 1979 and 2020, for example, Presidents vetoed 83 appropriations acts.[36]

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[28] P.L. 117-40, Congressional Budget Justification Transparency Act of 2021, September 24, 2021 (135 Stat. 337), amending the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282); located at 31 U.S.C. §6101 note.

[29] Title 31, Section 1105, of the *U.S. Code* requires the President to submit an annual budget request to Congress. Prior to enactment of P.L. 117-40, the provision made no mention of agency-produced budget justifications.

[30] As part of the process for developing the President's submission, Title 31, Section 1108, of the *U.S. Code* requires agencies to submit budget requests to the President for potential modification. These agency-to-President submissions "shall be prepared and submitted in the form prescribed by the President under this chapter and by the date established by the President" (31 U.S.C. §1108(b)(1)).

[31] OMB, *Circular No. A-11*, August 2021, §22.6.

[32] See CRS Report RS20268, *Agency Justification of the President's Budget*, by Michelle D. Christensen.

[33] Federal Funding Accountability and Transparency Act of 2006, §3(b)(2).

[34] OMB, "Statements of Administration Policy," https://www.whitehouse.gov/omb/statements-of-administration-policy/.

[35] Samuel Kernell, *Going Public: New Strategies of Presidential Leadership*, 4th ed. (Washington: CQ Press, 2006).

[36] See CRS Report RS22188, *Regular Vetoes and Pocket Vetoes: In Brief*, by Meghan M. Stuessy; also see U.S. Senate, "Vetoes, 1789 to Present," https://www.senate.gov/legislative/vetoes/vetoCounts.htm. The number of vetoed appropriations acts includes regular, supplemental, and continuing appropriations acts.

# Execution of Enacted Budgetary Legislation

The Constitution provides that federal spending may occur only through appropriations passed by Congress and enacted into law. Accordingly, agencies cannot begin to execute the budget until Congress has enacted appropriations bills and the President has signed them into law.[37] The President, OMB, and agencies execute the budget in accordance with the budgetary laws that have been enacted. They possess limited authority to make spending adjustments after appropriations and other spending legislation have been enacted.

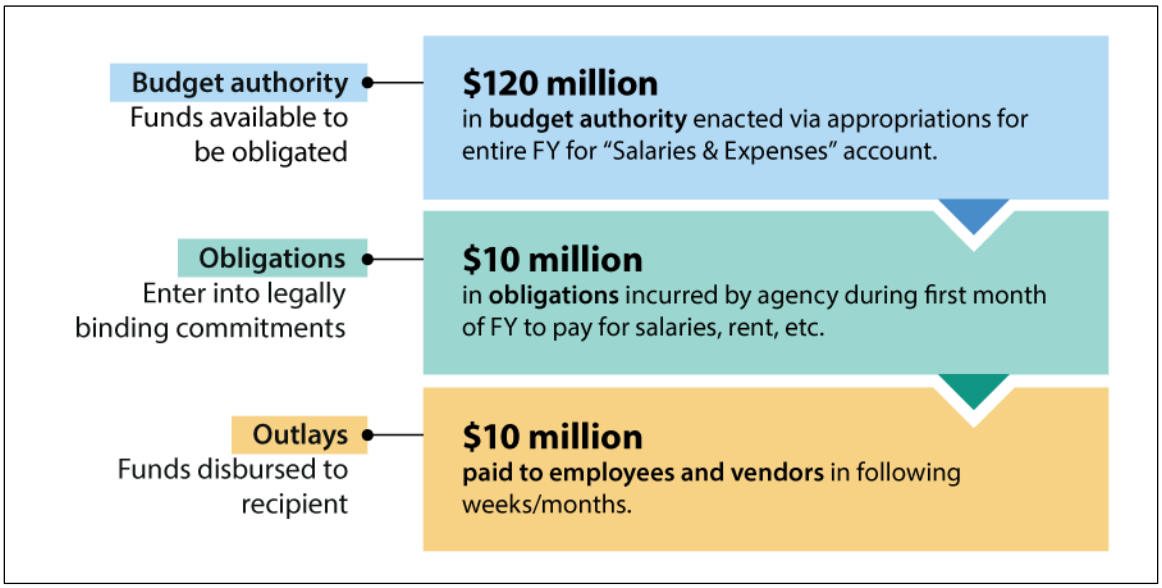
Budget execution occurs in multiple steps.

- "Budget authority" is enacted into law by appropriations legislation. Budget authority provides agencies with the legal basis to incur obligations.
- "Obligations" are incurred when agencies enter into legally binding commitments such as employing personnel or awarding contracts for the provision of goods or services.
- "Outlays" are payments made to liquidate these obligations.[38]

For an illustrative example of how appropriated funds are executed through these three steps, see **Figure 2**.

**Figure 2. Example of Appropriated Funds Lifecycle**

Relationship Between Budget Authority, Obligations, and Outlays




**Source:** CRS analysis.

**Notes:** This graphic serves as an illustrative example and does not represent a particular appropriations account or appropriated amount. In a given fiscal year, outlays may pay for obligations incurred within the same fiscal year or during prior fiscal years.

[37] In the event that an agency's regular appropriations act has not become law prior to the start of the fiscal year, a temporary continuing appropriations act (i.e., a continuing resolution or CR) may be enacted. This allows the agency to continue operating programs funded with annual appropriations for the period of time covered by the CR. See CRS Report R46595, *Continuing Resolutions: Overview of Components and Practices*, coordinated by Kevin P. McNellis.

[38] GAO, *Glossary*, p. 105.

## Apportionment and Allocation of Budget Authority

Annual appropriations and other budgetary legislation provide agencies with budget authority, which allows agencies to enter into obligations. With certain exceptions, the Antideficiency Act requires that appropriated funds be apportioned (i.e., subdivided)—by time period, function, or program—to prevent agencies from exhausting their appropriated funds prematurely.[39] (See **Appendix A** for more information about the Antideficiency Act.)

Under the Antideficiency Act, funds appropriated for a definite time period shall be apportioned "to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation," while funds appropriated for an indefinite amount of time shall be apportioned "to achieve the most effective and economical use."[40] Appropriations must be apportioned no later than (1) 30 days prior to the start of the fiscal year for which the appropriations were provided or (2) 30 days after the date of enactment of the appropriations act.[41]

OMB apportions funds that are appropriated to executive agencies.[42] The agencies must submit apportionment requests to OMB at least 40 days before the start of the fiscal year or within 15 days of the enactment of the appropriations act.[43] OMB determines how executive agency funds will be apportioned, generally by fiscal year, quarter, or by project.[44] OMB may also apportion multi-year and no-year funds for a period longer than one fiscal year provided that an apportionment is made at the beginning of each fiscal year.[45]

OMB may include "footnotes" on an apportionment, which provide additional information or direction associated with one or more lines on the apportionment.[46] In some cases, a footnote will

[39] The collection of statutes commonly referred to as the Antideficiency Act have been codified in multiple sections of Title 31 of the *U.S. Code* (31 U.S.C. §§1341-1342, 1349-1350, 1511-1519). Selected government entities are exempted from the apportionment requirements of the Antideficiency Act, including the Senate, the House of Representatives, congressional committees, and the Office of the Architect of the Capitol (31 U.S.C. §1511(b)(3)).

[40] 31 U.S.C. §1512(a).

[41] 31 U.S.C. §1513(a).

[42] Under Title 31, Section 1513(b)(1), of the *U.S. Code*, the President is statutorily responsible for apportioning funds for executive branch agencies. This responsibility has been delegated to OMB. For the legislative and judicial branches, apportionments are made by the officials who maintain administrative control of each appropriations account.

[43] Title 31, Section 1513(b)(1), states that agencies must submit "information required for the apportionment" to the President. *Circular No. A-11* has further specified that agencies should submit their apportionment requests by August 21 or "within 10 calendar days after the approval of the appropriation or substantive acts providing new budget authority, whichever is later." See OMB, *Circular No. A-11*, §120.23.

[44] *Circular No. A-11* defines *apportionment* as "a plan, approved by OMB, to spend resources provided by one of the annual appropriations acts, a supplemental appropriations act, a continuing resolution, or a permanent law (mandatory appropriations)." See OMB, *Circular No. A-11*, §120. OMB may also apportion nonfinancial resources, such as personnel and motor vehicles. In addition to apportioning appropriated funds, OMB may also attempt to provide agencies with guidance regarding the implementation of laws related to mandatory spending (i.e., spending provided in acts other than appropriations), such as laws authorizing certain entitlement programs. For discussion of one past practice, see CRS Report R41375, *OMB Controls on Agency Mandatory Spending Programs: "Administrative PAYGO" and Related Issues for Congress*, by Clinton T. Brass and Jim Monke.

[45] Multi-year funds are appropriations that remain available for obligation for more than one year. No-year funds are appropriations that remain available until expended. Unobligated balances from each quarter remain available until the end of the fiscal year without reapportionment. See GAO, *Glossary*, p. 36.

[46] OMB, *Circular No. A-11*, §120.34.

state that apportioned amounts are available for obligation only when a specified event occurs, such as an agency taking a particular action.[47]

Executive agencies are responsible for ensuring that their obligations and expenditures stay within the allowable limits throughout the fiscal year. Agency heads must report any Antideficiency Act violations to the President (through the OMB director), to Congress, and to the Comptroller General.[48]

If an agency's budgetary needs exceed its funding resources, the President may request, and Congress may enact, additional funding for selected activities in the form of one or more supplemental appropriations measures. Supplemental appropriations are enacted subsequent to a regular annual appropriations act when the need for funds is too urgent to be postponed until the next regular annual appropriations act.[49] OMB reviews agency requests for supplemental appropriations prior to the President's transmittal of those requests to Congress. In *Circular No. A-11*, OMB states that it will consider requests for supplemental appropriations only in limited circumstances such as an unforeseen emergency situation or natural disaster.[50]

## Entering into Obligations

Agencies enter into obligations when they incur legal liability for the payment of goods and services.[51] Examples of obligations include awarding contracts for the provision of goods or services and hiring personnel. Agencies are required to implement a system of administrative controls to restrict obligations from exceeding the apportionment or reapportionment of a given appropriation.[52]

Budget authority provided by Congress to agencies typically takes the form of "lump-sum" appropriations that cover one or more specific purposes and related programs.[53] Once funds are apportioned by OMB, executive agencies determine how to allocate, sub-allocate, reallocate, and eventually obligate those funds among the programs, projects, and activities that fall within the scope of each apportionment. (For discussion of processes regarding reallocation, see "Reallocation of Budget Authority During Budget Execution.")

## Public Reporting of Obligations

Congress has passed into law numerous provisions that require public reporting of obligated funds.[54] This budgetary reporting may help inform Congress, agencies, the President, and nonfederal stakeholders about federal government operations. Additionally, this reporting may help Congress, the President, and agency executives to make better-informed decisions about the

[47] OMB, *Circular No. A-11*, §120.12.

[48] 31 U.S.C. §1517(b).

[49] OMB, *Circular No. A-11*, §20.3.

[50] OMB, *Circular No. A-11*, §110.1. For a list of supplemental appropriations enacted since FY2000, see Congressional Budget Office, "Report: Supplemental Appropriations Enacted Since Fiscal Year 2000, as of December 3, 2021," https://www.cbo.gov/topics/budget/status-appropriations.

[51] GAO, *Glossary*, p. 74.

[52] 31 U.S.C. §1514(a)(1).

[53] GAO, *Principles of Federal Appropriations Law*, 3rd ed., Vol. II, GAO-06-382SP, February 2006, p. 19, https://www.gao.gov/assets/210/202819.pdf#page=19.

[54] For additional information about various types of budgetary reporting, see CRS In Focus IF11610, *Federal Financial and Budgetary Reporting: A Primer*, by Dominick A. Fiorentino.

allocation and use of government resources. Agencies have additional internal budgetary reporting responsibilities that may be publicly available. OMB may also direct agencies to report data internally within the executive branch as a result of ad hoc budget data requests.

## OMB SF-133 Reports

OMB established the *SF-133 Report on Budget Execution and Budgetary Resources* to fulfill a statutory requirement associated with the Antideficiency Act for the President to review the pace of obligations or expenditures at least four times annually.[55] These *SF-133* reports have historically provided quarterly snapshots of appropriations and obligations at the account level. These reports are posted on OMB's MAX.gov website and are populated using data submitted by agencies to the Treasury's Government-wide Treasury Account Symbol Adjusted Trial Balance System.[56]

## USASpending.gov Website

Congress has also passed statutory provisions resulting in reporting on budget execution at the account level.[57] The USASpending.gov website started with a singular focus on federal awards (i.e., grants and contracts), but following the passage of the Digital Accountability and Transparency Act of 2014, the website evolved into a broader portal on budgetary and financial reporting.[58] Specifically, Congress mandated account-level reporting on appropriated amounts and obligations.[59] This account-level view of budget execution is made publicly available at the Spending Explorer portal on USAspending.gov.[60]

## Budget Appendix

Certain account-level information about actual and proposed spending is included in the budget submission's *Appendix*.[61] This volume contains prior year appropriations and obligations, current year appropriations, and proposed appropriations for each account. Proposed appropriations bill text, transfer authorities, and general provisions are included among other budgetary details.

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[55] 31 U.S.C. §1512(d). For electronic versions of the reports, see OMB, "MAX Information and Reports (Executive, Legislative, and Judicial Users): SF 133 Report on Budget Execution and Budgetary Resources," https://portal.max.gov/portal/document/SF133/Budget/FACTS%20II%20-%20SF%20133%20Report%20on%20Budget%20Execution%20and%20Budgetary%20Resources.html.

[56] U.S. Department of the Treasury, "Government-wide Treasury Account Symbol Adjusted Trial Balance System," https://fiscal.treasury.gov/gtas/.

[57] After the enactment of appropriations and other legislation corresponding to expenditures and receipts, the Department of the Treasury establishes multiple kinds of *accounts* to track multiple aspects of federal fiscal activity for budgetary, management, and accounting purposes. GAO, *Glossary*, pp. 2-7.

[58] For more information about the tracking of federal awards using the USAspending.gov website, see CRS Report R44027, *Tracking Federal Awards: USAspending.gov and Other Data Sources*, by Jennifer Teefy.

[59] Federal Funding Accountability and Transparency Act of 2006, as amended by the Digital Accountability and Transparency Act of 2014; see 31 U.S.C. §6101 note.

[60] The USASpending.gov "Spending Explorer" portal can be found at https://www.usaspending.gov/#/federal_account.

[61] OMB, *Budget of the United States Government Appendix*, May 2021, https://www.whitehouse.gov/wp-content/uploads/2021/05/appendix_fy22.pdf.

### Outlay of Funds

Outlays occur when an agency disburses funds to liquidate an obligation. In a given fiscal year, outlays may pay for obligations incurred within the same fiscal year or during prior fiscal years.[62] Outlays within a given year may contribute to the annual deficit—when outlays surpass receipts—as well as the overall federal debt level. The *Historical Tables* volume of the President's budget submission provide a summary of receipts, outlays, surpluses, and deficits.[63]

## Reallocation of Budget Authority During Budget Execution

While executing their budgets, agencies may face cost changes or re-prioritization of their missions due to external events (e.g., a military conflict, natural disaster, or recession) or decisions by an agency or the current Administration. To account for such events, including circumstances unforeseen by Congress, agencies have been granted some discretion to reallocate their budget authority. Congress has established multiple statutory and informal practices to engage with and monitor agencies in many of these activities.

The basic unit of regular appropriations acts is the unnumbered paragraph, which during budget execution corresponds to an "account."[64] Funding for each department and independent agency is organized in one or more accounts. Each account may generally include one or more related "programs, projects, or activities" (PPAs). Under certain conditions, an agency might use discretion under law to reallocate funding:

- within a single PPA that is contained in a larger budget account,
- from one PPA to another within a larger budget account through reprogramming processes, or
- from one account to another through the transfer process.[65]

Each possibility occurs under different procedures, as described below.

### Use of Discretion Within a Particular Account PPA

The House and Senate Appropriations Committees may use an agency's budget justification as a basis for how funds will be allocated within a given account, PPA, program, or agency component. An agency may consider reallocating funds within a particular PPA in a given budget account among allowable purposes (as authorized by law) and objects (e.g., salaries, rent, programmatic expenses). After enactment of a particular appropriation into law, agencies may

[62] GAO, *Glossary*, p. 73.

[63] OMB, *Budget of the United States Government Historical Tables*, May 2021, https://www.govinfo.gov/app/details/BUDGET-2022-TAB/context.

[64] Unlike most authorizing legislation, regular appropriations legislation is drafted as unnumbered paragraphs that provide a lump-sum amount for each appropriations account.

[65] For additional information about appropriations law and Congress's authority over appropriations, see CRS Report R46417, *Congress's Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff; and CRS In Focus IF11577, *Congress's Power Over Appropriations: A Primer*, by Sean M. Stiff.

obligate and expend funds, subject to several conditions addressed by appropriations statutes.[66] These conditions on the availability of appropriations include

- the purpose(s) for which particular funds are appropriated,[67]
- the time period during which funds are available for obligation and expenditure,[68] and
- the amount of appropriated funds that may be obligated and expended.[69]

While executive agencies may have legal discretion to determine how to allocate and obligate the funds available to them, they are also legally required to execute spending legislation as enacted.[70]

## Reprogramming: Moving Funds Among an Account's PPAs

Reprogramming is the shifting of funds within an appropriations account to "use them for purposes other than those contemplated at the time of appropriation; it is the shifting of funds from one object class to another within an appropriation or from one program activity to another."[71] The reprogramming of funds is generally permitted unless it is restricted by statute.[72] Statutory provisions may also prohibit reprogramming funds without congressional notification. Prior congressional notification might be required for reprogrammings that

- shift funds among PPAs above a threshold level;
- create or eliminate a program;
- relocate or reorganize offices and employees; or
- contract out certain functions or activities.

Notification provisions establish a venue where appropriations or other committees may approve reprogrammings prior to agency action. According to the Government Accountability Office (GAO), reprogramming "is implicit in an agency's responsibility to manage its funds."[73]

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[66] Authorizing statutes may also prescribe how funds can be spent, especially with respect to the appropriation's purpose.

[67] GAO, *Principles of Federal Appropriations Law*, 4th ed., "Chapter 3, Availability of Appropriations: Purpose," 2017 Revision, GAO-17-797SP, 2017, https://www.gao.gov/assets/690/687162.pdf. Some appropriations paragraphs refer to separate authorizing statutes as defining purposes for which appropriations are provided.

[68] GAO, *Principles of Federal Appropriations Law*, 3rd ed., Vol. I, GAO-04-261SP, January 2004, p. 558, https://www.gao.gov/assets/210/202437.pdf#page=558. For a discussion about duration of funds availability, see CRS Report R46417, *Congress's Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff.

[69] GAO, *Principles of Federal Appropriations Law*, 3rd ed., Vol. II, p. 18.

[70] Title 31, Section 1301(a), of the *U.S. Code*, which is often referred to as the "purpose statute," states, "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

[71] GAO, *Glossary*, p. 85. According to OMB, object classes are "categories in a classification system that presents obligations by the items or services purchased by the Federal Government," such as personnel compensation, acquisition of assets, and grants. See OMB, *Circular No. A-11*, §83. This section draws in part from CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*, by Michelle D. Christensen. The Department of Defense uses the term *reprogramming* to encompass both transfers and reprogramming actions. See Under Secretary of Defense (Comptroller), "Budget Execution," https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2021/.

[72] GAO, *Principles of Federal Appropriations Law*, 3rd ed., Vol. I, p. 98.

[73] GAO, *Principles of Federal Appropriations Law*, 3rd ed., Vol. I, pp. 91-97. Also see *In re LTV Aerospace Corp.*, 55

Nevertheless, an agency's ability to reprogram may be restricted by "limiting provisions" within its annual appropriations acts or other statutes.[74]

**Example of Limiting Provisions**

Provisions in the Consolidated Appropriations Act, 2021, established the following limitations and notification requirements on reprogramming actions by the Department of Homeland Security:[75]

> (a) None of the funds provided by this Act … shall be available for obligation or expenditure through a reprogramming of funds that:
>
> (1) creates or eliminates a program, project, or activity, or increases funds for any program, project, or activity for which funds have been denied or restricted by the Congress; (2) contracts out any function or activity presently performed by Federal employees or any new function or activity proposed to be performed by Federal employees in the President's budget proposal for fiscal year 2021 for the Department of Homeland Security; (3) augments funding for existing programs, projects, or activities in excess of $5,000,000 or 10 percent, whichever is less; (4) reduces funding for any program, project, or activity, or numbers of personnel, by 10 percent or more; or (5) results from any general savings from a reduction in personnel that would result in a change in funding levels for programs, projects, or activities as approved by the Congress.
>
> (b) Subsection (a) shall not apply if the Committees on Appropriations of the Senate and the House of Representatives are notified at least 15 days in advance of such reprogramming.

## Transfers: Moving Funds from One Account to Another

Transfers—that is, the shifting of budgetary resources from one appropriations or fund account to another—typically involve movement of funds between accounts, either within an agency or across agency boundaries.[76] Transfers are prohibited unless an agency has specific statutory authorization to make transfers.[77] This prohibition prevents agencies from transferring funds from one account to another in ways that may be inconsistent with the purposes for which Congress originally provided the funding.

There are statutory exceptions to this general restriction, and Congress may provide agencies with "transfer authority" either in authorizing statutes or appropriations measures. For example, an agency's movement of budget authority from a salaries and expenses account to a research and development account would be a transfer.

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Comp. Gen. 307 (B-183851), October 1, 1975, http://www.gao.gov/products/428015#mt=e-report. The 1975 decision by the Comptroller General was later quoted in Supreme Court opinions, including *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993) and *Hein v. Freedom from Religion Found., Inc.*, 511 U.S. 587, 608 n.7 (2007) (Alito, J.) (plurality op.).

[74] For examples of additional limitations on reprogrammings, see CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*, by Michelle D. Christensen.

[75] Consolidated Appropriations Act, 2021 (Division F of P.L. 116-260, at 134 Stat. 1469), https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf#page=288.

[76] This section draws in part from CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*, by Michelle D. Christensen. Transfers come in two general types. According to GAO, an *expenditure transfer* refers to a transaction between appropriation and fund accounts that represents payments, repayments, or receipts for goods or services furnished or to be furnished (e.g., if an agency pays for a good or service from another agency). A *nonexpenditure transfer*, by contrast, refers to a transaction between appropriation and fund accounts that adjusts the amounts available in the accounts for making subsequent payments. This CRS report focuses on *nonexpenditure transfers*. For further discussion of transfers, see GAO, *Glossary*, pp. 95-96. Many expenditure transfers are conducted under the Economy Act (31 U.S.C. §1535), which established guidelines and procedures allowing agencies to perform work and provide goods and services to one another. Transfers to and from federal funds (e.g., revolving, trust, or other special funds) are also considered expenditure transfers, as are transfers between budget accounts and off-budget deposit accounts.

[77] "An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law" (31 U.S.C. §1532).

Appropriations or authorizing statutes that provide agencies with transfer authority often include limitations on that authority. For example, transfers may be limited to a specific dollar amount or to a certain percentage of the total amount appropriated for the transferor account, the transferee account, or both. In addition, statutes may limit the use of the transferred funds to specific purposes. Agencies that exercise transfer authority are often required to notify Congress, either prior to the transfer or within a certain time period following the transfer.

**Examples of Transfer Authority and Limitations**

**Not to Exceed Limits (Dollar Amount):** The Consolidated Appropriations Act, 2021, provided the authority to transfer up to $330 million of certain funds appropriated to the Environmental Protection Agency:[78]

> The Administrator is authorized to transfer up to $330,000,000 of the funds appropriated for the Great Lakes Restoration Initiative under the heading "Environmental Programs and Management" to the head of any Federal department or agency … to carry out activities that would support the Great Lakes Restoration Initiative and Great Lakes Water Quality Agreement programs, projects, or activities.

**Not to Exceed Limits (Percentage):** The Consolidated Appropriations Act, 2021, included the following restriction on the amount of funds that may be transferred between accounts at the Department of Commerce[79]:

> Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers.

## Congressional Notification and Holds

Congress may exercise oversight over agency budget execution by requiring congressional notification before certain expenditures take place. Following receipt of a notification, one or more of the notified congressional committees may issue a hold instructing agencies not to obligate the specified funds until the hold is released by the issuing committee. While the congressional notification requirement is statutory, there is no statutory basis for the hold itself. If an agency complies with the hold on the obligation or expenditure of funds, its action reflects a practical accommodation between congressional committees and the agencies under their jurisdiction.[80]

## Impoundment of Budget Authority: Rescissions and Deferrals

The concept of an impoundment generally refers to an action or inaction by the President or a federal officer or employee that delays or withholds the obligation or expenditure of budget authority provided in law.[81] The Impoundment Control Act of 1974 (ICA), as amended, establishes procedures that govern when impoundments are allowed, when they are prohibited, and how impoundments may be proposed and considered under expedited legislative procedures.

Impoundment is a process by which budgetary authority is reduced—either permanently or temporarily—subsequent to the enactment of annual appropriations and other budgetary

[78] Consolidated Appropriations Act, 2021 (Division G of P.L. 116-260, at 134 Stat. 1515), https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf#page=335.

[79] Consolidated Appropriations Act, 2021 (Division B of P.L. 116-260, at 134 Stat. 1243), https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf#page=63.

[80] Agencies maintain the authority to obligate funds despite a congressional hold. For further discussion of nonstatutory understandings, see CRS Report R45442, *Congress's Authority to Influence and Control Executive Branch Agencies*, by Todd Garvey and Daniel J. Sheffner.

[81] GAO, *Glossary*, p. 61.

legislation. Under the procedures established by the ICA, the President has limited authority to withhold budget authority from obligation or expenditure.[82] (See **Appendix A** for additional information about the ICA.)

The ICA distinguishes between two types of impoundments that must be reported to Congress via a special message: proposed rescissions, which, if enacted by Congress, permanently cancel budget authority, and deferrals, a term that describes agency action to withhold funds from obligation or expenditure for reasons authorized by the ICA.

## Rescissions

When enacted by Congress, rescissions permanently cancel a specified portion of the budget authority available to an agency. The President may propose a rescission by a special message to Congress.[83]

Under the ICA, if the President determines that the total amount of budget authority is no longer required to carry out the objectives for which it was provided, he or she may transmit a special message to Congress. If Congress enacts the proposal, the funds are no longer available for obligation and expenditure. However, if Congress does not enact the rescission within 45 calendar days of continuous session after the special message's receipt, any withheld funds must be reapportioned and made available for obligation and expenditure.

## Deferrals

Deferrals are the temporary delay in the obligation or expenditure of appropriated funds. Deferrals allow agencies to adjust the timing of their obligations and expenditures in response to changing circumstances, such as a reduction or delay in expenses.

Under the ICA, funds may be deferred only (1) to provide for contingencies, (2) to achieve savings made possible by changes in requirements or greater efficiency of operations, or (3) as specifically provided by law. The President and executive branch officials may not defer funds for any other purpose, including policy reasons (e.g., to curtail overall federal spending or because the President opposes a particular program).[84] Funds may be deferred without prior approval of Congress. However, the President must inform Congress and the Comptroller General of all deferrals by transmitting a special message to Congress.[85] While there is no statutorily established deadline for transmitting a special message, the President is required to submit a cumulative report of proposed deferrals on a monthly basis.[86] If the President fails to submit a special message, the Comptroller General shall provide a report on this deferral to Congress.[87]

[82] Title X of P.L. 93-344; 2 U.S.C. §681 et seq.

[83] Congress may also initiate rescissions by cancelling previously enacted budget authority. Congressionally imposed rescissions are legislative actions rather than executive branch proposals or uses of discretion and therefore are not covered by the ICA.

[84] Title X of P.L. 93-944, §1013(b); 2 U.S.C. §684(b).

[85] 2 U.S.C. §684(a).

[86] 2 U.S.C. §685(e).

[87] 2 U.S.C. §686(a).

# Occasional Procedures During Budget Execution

The previous section provided an overview of the budget execution procedures that the President, OMB, and agencies utilize under normal conditions. Under existing law, there are additional executive budgetary procedures that are triggered under specific, less common circumstances, such as shutdowns and sequestration.

## Budget Execution During Federal Funding Gaps and Government Shutdowns

Under the Antideficiency Act, agencies are generally prohibited from obligating or spending funds prior to the enactment of their appropriations. A funding gap occurs when full-year or interim appropriations are not enacted by the start of the fiscal year.[88] A funding gap may also occur if an agency's interim appropriations (i.e., a CR) expire and an additional CR is not subsequently enacted.[89] When a funding gap begins and appears likely to continue a full calendar day or longer, the federal government generally begins a "shutdown" of the affected activities.[90] During a shutdown, the only budgetary resources that may be obligated or expended are those that will be used to provide for excepted activities, such as those involving "the safety of human life or the protection of property."[91]

During a period when enactment of full-year or interim appropriates seems uncertain, OMB may instruct executive agencies to prepare for a funding gap and government shutdown.[92] *Circular No. A-11* provides general guidance on how executive agencies should proceed if their regular appropriations or CRs are not enacted or if their existing CRs have expired.[93] For example, *Circular No. A-11* instructs agencies to develop shutdown plans that identify "excepted" activities that will continue and "non-excepted" activities that will be terminated in the event of a funding gap.[94] In addition, the circular instructs agencies to determine which of their employees will be subject to furlough and which will be retained.[95] If a funding gap is imminent, OMB may issue additional guidance to agency heads.[96]

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[88] 31 U.S.C. §1341(a)(1)(A).

[89] For historical information on previous federal funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by James V. Saturno. For discussion of the potential impact of CRs, see CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[90] See CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[91] 31 U.S.C §1342.

[92] See CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[93] OMB, *Circular No. A-11*, §124.

[94] OMB, "Agency Contingency Plans," https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans/.

[95] For more information on federal employee furloughs, please see CRS In Focus IF11703, *Federal Employee Furloughs: Types and Implications*, by Taylor N. Riccard.

[96] For example, OMB Director Mick Mulvaney issued a memorandum instructing agencies on how to prepare for operations in the event of a funding gap and subsequent shutdown of the federal government. OMB, Memorandum M-18-05, "Planning for Agency Operations During a Potential Lapse in Appropriations," January 19, 2019, https://www.whitehouse.gov/wp-content/uploads/2017/11/m-18-05-REVISED.pdf.

## Budget Execution in the Event of Sequestration

Sequestration involves the cancellation of budgetary resources under a statutorily prescribed presidential sequester order. A sequester order identifies the specific budgetary resources that can no longer be obligated or expended despite their being enacted into law. Under the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA),[97] as amended by the Statutory Pay-As-You-Go Act of 2010 (PAYGO),[98] a sequestration of nonexempt direct spending may be triggered if the new revenue and new direct spending legislation enacted during a congressional session are not "deficit neutral."[99] Congress may exempt legislation from sequestration that would otherwise be triggered under the provisions of PAYGO.

The Budget Control Act of 2011 (BCA), among other things, established a mechanism to automatically reduce spending in response to concerns with deficit and debt levels.[100] The BCA established limits on discretionary spending for FY2012-FY2021, with these limits enforced by sequestration. Congress has not acted to extend these discretionary spending limits beyond FY2021. The BCA also required an annual sequester of nonexempt mandatory spending programs through FY2029. The Coronavirus Aid, Relief, and Economic Security Act extended sequestration for mandatory spending through FY2030.[101] Several programs are exempted from the annual mandatory spending sequesters, including Social Security and Medicaid. In addition, special rules govern the sequestration of certain programs, such as Medicare, which is limited to a 2% reduction.[102]

OMB is responsible for tracking the cumulative deficit impact of enacted budgetary legislation. If a sequestration is triggered, OMB is responsible for calculating the uniform percentage by which the budgetary resources of nonexempt programs will be reduced. Under both the BCA and the BBEDCA, once issued, the implementation of a sequestration and execution of the resulting spending cuts are the responsibility of OMB and each agency, respectively.[103]

# Potential Issues for Congress

Although the Constitution vests the power of the purse with Congress, the President, agencies, and OMB exercise numerous budgetary responsibilities. Furthermore, under the Constitution's separation of powers with checks and balances, Congress and the President may cooperate or

[97] P.L. 99-177, Balanced Budget and Emergency Deficit Control Act of 1985, December 12, 1985 (99 Stat. 1038), located at 2 U.S.C. §900 note.

[98] P.L. 111-139, Statutory Pay-As-You-Go Act of 2010, February 12, 2021 (124 Stat. 8), codified at 2 U.S.C. §§931-939.

[99] For additional information on sequestration under the BBEDCA and the Statutory PAYGO Act, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr. In addition, see CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, by Megan S. Lynch.

[100] See CRS Report R44874, *The Budget Control Act: Frequently Asked Questions*, by Grant A. Driessen and Megan S. Lynch.

[101] P.L. 116-136. Also see CRS Report R45106, *Medicare and Budget Sequestration*, by Patricia A. Davis.

[102] These exemptions and special rules are found in Sections 255 and 256 of the BBEDCA (Title II of P.L. 99-177), commonly known as the Gramm-Rudman-Hollings Act. For more information, see CRS Report R42050, *Budget "Sequestration" and Selected Program Exemptions and Special Rules*, coordinated by Karen Spar.

[103] According to GAO, under the BCA "the execution and impact of any spending reductions will depend on the legal interpretations and actions taken by the Office of Management and Budget, which is vested with implementing the Budget Control Act." See GAO, *The Budget Control Act and the Department of Veterans Affairs' Programs*, B-323157, May 21, 2012, pp. 4-5, http://gao.gov/assets/600/591052.pdf.

compete for influence over the manner in which agencies pursue their statutory missions and duties. In this context, the budget process has been shaped by a series of laws, passed by Congress, that have

- centralized aspects of the executive budget process by creating explicit statutory roles for the President;
- created OMB within the Executive Office of the President;
- vested agencies with authority to pursue their statutory missions using appropriated funds under a body of authorizing statutes and appropriations-related law;
- established budget execution processes, including apportionment;
- limited the President's authority to withhold appropriated funds;
- provided for some transparency regarding budget activities and decisions; and
- created the current budget timeline.

The federal budget sustains government functions and shapes policy decisions. Given the importance of the budget process, Congress may consider the balance of budgetary responsibilities among Congress, agencies, the President, and OMB. Additionally, Congress may consider how agencies exercise discretion in allocating their budget authority, as well as the appropriate level of transparency in their activities. In this light, the following budget-related issues may be of interest to Congress.

## Length of Time Between Budget Formulation and Enactment of Full-Year Appropriated Funds: Implications for Information Technology

Congress might face challenges in exercising control and conducting oversight over agencies' information technology (IT) investments if substantial discretion were granted to agencies in how to allocate and spend funds for IT projects. In this light, Congress might explore potential strategies and tools to preserve congressional prerogatives while allowing for modern IT investment practices.

Agencies typically begin their budget formulation processes in the spring—approximately 18 months prior to the beginning of the fiscal year on October 1—upon receipt of OMB's spring guidance. Consequently, agencies may experience a gap of at least a year-and-a-half between budget planning and the receipt of appropriated funds, with an even longer gap in the case of a CR. This lag may complicate the ability of agencies to undertake programs and activities that benefit from more iterative planning, budgeting, and development.

Software development is one example of an activity that may benefit from a more iterative approach. Iterative development approaches frequently fall under the term *agile*, which GAO has defined as "an approach to software development that encourages collaboration across an organization and allows requirements to evolve as a program progresses. Agile software development emphasizes iterative delivery; that is, the development of software in short, incremental stages."[104] According to the General Services Administration's 18F office, which

[104] GAO, *Science and Tech Spotlight: Agile Software Development*, GAO-20-713SP, September 2020, p. 1, https://www.gao.gov/assets/gao-20-713sp.pdf.

focuses on digital services, the lead time under the current executive budget process often fails to align with the shorter timelines associated with iterative or incremental software development.[105] A 2019 Department of Defense study found that long development cycles could result in software becoming outdated before it is implemented.[106]

## Effect of Transfer and Reprogramming Authorities on Congressional Oversight and Agency Actions

Agencies are granted a certain amount of discretion over the allocation of funds appropriated by Congress. These flexibilities may allow agencies to respond to changing circumstances and better fulfill their missions.[107] In exercising this discretion, however, agencies may allocate funding in ways that deviate from congressional intent. Congress may consider the appropriate balance of agency discretion and congressional oversight in the context of transfer and reprogramming authorities.

Agencies that exercise transfer or reprogramming authority are often required to notify particular congressional committees before the authority is exercised and obtain committee approval for the proposed exercise (prior approval requirements). The 1983 U.S. Supreme Court case *Immigration and Naturalization Service (INS) v. Chadha* may constrain Congress's ability to make prior approval requirements legally binding.[108] Specifically, the Supreme Court ruled that a type of legislative veto—a one-house veto provision—then included in the Immigration and Nationality Act was unconstitutional.[109] Prior approval requirements may be considered a type of legislative veto, and therefore agencies may not view them as legally binding.[110] In practice, however, agencies may treat prior approval requirements as practically binding, because Congress could reduce an agency's future appropriations if an agency chooses not to comply with such expectations.

Transfers and reprogramming of appropriated funds may have ramifications for congressional oversight of agency execution of enacted appropriations throughout the fiscal year. Many transfer and reprogramming authorities grant substantial discretion to agencies based on norms and understandings regarding how discretion will be used in practice. When transfers and reprogramming actions deviate from the norms and understandings, however, it is possible that funds may be used in ways contrary to congressional intent.[111]

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[105] U.S. General Services Administration, 18F, "De-Risking Guide," https://derisking-guide.18f.gov/federal-field-guide/planning/#invest-in-technology-incrementally-and-budget-for-risk-mitigation-prototyping.

[106] Department of Defense, "Software Acquisition and Practices (SWAP) Study," May 2019, https://innovation.defense.gov/software/.

[107] See CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*, by Michelle D. Christensen.

[108] See CRS Report RL33151, *Committee Controls of Agency Decisions*, by Louis Fisher; and CRS Report R46417, *Congress's Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff.

[109] For further discussion, see CRS Report R46421, *DOD Transfer and Reprogramming Authorities: Background, Status, and Issues for Congress*, by Brendan W. McGarry.

[110] See CRS Report R46417, *Congress's Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff at 37-38 (discussing Department of Justice and GAO assessments of prior approval requirements).

[111] For example, see discussion under the heading "Border Wall and Related Matters" in CRS Report R46812, *FY2021 Defense Appropriations Act: Context and Selected Issues for Congress*, by Brendan W. McGarry.

## Transparency of OMB's Apportionment Processes

The Antideficiency Act gives OMB apportionment authority in order to exercise efficient funds management and to ensure that agencies do not prematurely exhaust their budget authority. Under this statute, OMB apportionment decisions are legally binding. Congress has expressed concern that OMB may use its apportionment authority to implement the policy preferences of the President without seeking congressional approval. More specifically, apportionment decisions (and accompanying footnotes) may condition funding availability on agency actions that contravene Congress's policy preferences.[112] Additionally, these apportionment decisions are not made publicly available as a matter of course. In light of these concerns, Congress may consider legislation requiring greater transparency and public disclosure of OMB's apportionment decisions.

The withholding of funds appropriated to the Defense Department for security assistance to Ukraine further raised the salience of this issue.[113] In summer 2019, OMB issued apportionments with footnotes that made certain unobligated balances unavailable for obligation. In issuing its ruling that these actions violated the ICA, GAO noted, "Faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law."[114]

In a report to accompany the FY2021 Financial Services and General Government appropriations bill, the House Committee on Appropriations noted that apportionments are legally binding only to the extent that they are compliant with the law.[115] The committee also expressed disappointment that OMB had not provided greater transparency around apportionments as directed by the joint explanatory statement accompanying the FY2020 appropriations act.[116] Demonstrating Congress's sustained interested in apportionments, legislation introduced in the 117th Congress contains provisions requiring that OMB make all apportionment decisions, including associated footnotes, publicly available in a timely manner.[117] Additionally, the legislation would require agencies to notify Congress if an apportionment is made conditional on further action.[118]

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[112] U.S. Congress, House Committee on the Budget, *Hearing on Congress' Power of the Purse and the Rule of Law*, hearings, 116th Cong., 2nd sess., March 11, 2020, H.Rept. 116-25, p. 82.

[113] See section titled "Ukraine Aid and the 2019 U.S. Presidential Impeachment" in CRS Report R45008, *Ukraine: Background, Conflict with Russia, and U.S. Policy*, by Cory Welt.

[114] GAO, *Office of Management and Budget—Withholding of Ukraine Security*, B-331564, January 16, 2020, p. 1, https://www.gao.gov/assets/b-331564.pdf.

[115] U.S. Congress, House Committee on Appropriations, Subcommittee on Financial Services and General Government, *Financial Services and General Government Appropriations Bill, 2021*, 116th Cong., 2nd sess., July 17, 2020, H.Rept. 116-456, p. 10, https://www.congress.gov/116/crpt/hrpt456/CRPT-116hrpt456.pdf#page=10.

[116] U.S. Congress, House Committee on Appropriations, Subcommittee on Financial Services and General Government, *Financial Services and General Government Appropriations Bill, 2021*, 116th Cong., 2nd sess., July 17, 2020, H.Rept. 116-456, p. 38, https://www.congress.gov/116/crpt/hrpt456/CRPT-116hrpt456.pdf#page=38; U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2020*, committee print, 116th Cong., 2nd sess., January 2020, H.Prt. 38-678, p. 639, https://www.govinfo.gov/content/pkg/CPRT-116HPRT38678/pdf/CPRT-116HPRT38678.pdf#page=639.

[117] See the proposed Protecting Our Democracy Act, H.R. 5314, 117th Congress.

[118] H.R. 5314, 117th Congress.

## Effects of Funding Gaps, Shutdowns, and Sequestration on Agency Budget Planning

During a shutdown, an agency may lack authority to obligate and spend certain funds due to a lapse in annual appropriations or the expiration of an authorizing act.[119] Under sequestration, certain percentage reductions are applied to specific PPAs across major categories of spending. Both situations may present potential issues for Congress.[120] Congress may consider legislative options that would increase oversight of agency planning in the event of a shutdown or sequestration.

For example, given the often unexpected nature of a government shutdown, there may be concerns surrounding the quality of agency planning, including the distinctions between excepted and nonexcepted activities and employees. Thus, Congress may have an interest in increasing oversight activities related to agency shutdown planning. In recent years, OMB has required agencies to update their shutdown plans whenever there is a change in the source of funding for an agency program or "any significant modification, expansion, or reduction in agency program activities."[121] Congress could consider establishing a statutory structure for updating of agency shutdown plans and their availability to Congress and other relevant stakeholders. In the context of sequestration, Congress might consider options for requiring greater transparency into the programmatic effects of reductions.[122]

[119] For more information about shutdowns associated with a lapse in appropriations, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass.

[120] For more information, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[121] See CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[122] For discussion of the effects of sequestration in 2013, see GAO, *2013 Sequestration: Agencies Reduced Some Services and Investments, While Taking Certain Actions to Mitigate Effects*, GAO-14-244, March 2014, https://www.gao.gov/products/gao-14-244.

# Appendix A. Selected Statutes Relevant to the Executive Budget Process

The executive budget process, as currently constituted, exists primarily due to statutes passed by Congress and enacted into law. Subsequently, many provisions were modified in light of new developments and evolving perspectives on how to properly fulfill Congress's constitutional responsibilities. This appendix includes brief summaries of three key statutes from this history.[123]

## Antideficiency Act

What is commonly referred to as the Antideficiency Act consists of a series of provisions and revisions incorporated into appropriations laws over the years relating to matters such as prohibited activities, the apportionment system, and budgetary reserves.[124] These provisions, now codified in several locations in Title 31 of the *United States Code*,[125] continue to play a pivotal role in the execution phase of the executive budget process, when agencies spend the funds provided in appropriations laws.

The origins of the Antideficiency Act date back to 1870, where legislation provided

> [t]hat it shall not be lawful for any department of the government to expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year, or to involve the government in any contract for the future payment of money in excess of such appropriations.[126]

Changes to the 1870 version of the act made in 1905 and 1906 strengthened the prohibitions of the 1870 law by expanding the coverage of its provisions, adding restrictions on voluntary services for the government, and imposing criminal penalties for violations.[127] Notably, the laws established a new administrative process for budget execution. This process, which remains in use today, is termed "apportionment." Apportionment may result in the distribution of the budget authority provided in appropriations law to the agencies in installments, rather than all at once, and more granular levels of disaggregation within an appropriated amount.[128]

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[123] These summaries draw in part on CRS Report RL30795, *General Management Laws: A Compendium* (available to congressional clients upon request) and other CRS research.

[124] GAO, *Principles of Federal Appropriations Law*, 3rd ed., Vol II, p. 48.

[125] The collection of statutes commonly referred to as the Antideficiency Act have been codified in multiple sections of Title 31 of the *U.S. Code* (31 U.S.C. §§1341-1342, 1349-1350, 1511-1519). Selected government entities are exempted from the apportionment requirements of the Antideficiency Act, including the Senate, the House of Representatives, congressional committees, and the Office of the Architect of the Capitol (31 U.S.C. §1511(b)(3)).

[126] An Act making Appropriations for the legislative, executive, and judicial Expenses of the Government for the Year ending the thirtieth of June, eighteen hundred and seventy-one (41st Congress; 16 Stat. 230, at 251; July 12, 1870).

[127] For the 1905 version, see P.L. 58-217, An Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and five, and for prior years, and for other purposes, Chapter 1484, Section 4 (33 Stat. 1214, at 1257; March 3, 1905), at https://www.loc.gov/collections/united-states-statutes-at-large/. For the 1906 version, see P.L. 59-28, An Act Making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and six, and for prior years, and for other purposes, Chapter 510, Section 3 (34 Stat. 27, at 48; February 27, 1906), at https://www.loc.gov/collections/united-states-statutes-at-large/. Additional changes were forthcoming in subsequent decades, but the changes are not summarized here.

[128] 31 U.S.C. §1512(a).

Under current law, the Antideficiency Act also includes four types of prohibitions: (1) making or authorizing expenditures in excess of the amount available in an appropriation or fund; (2) involving the government in a contract or obligation for payment in advance of an appropriation; (3) accepting voluntary services for the government, except in certain cases of emergency; and (4) making or authorizing obligations or expenditures in excess of an apportionment or in excess of the amount permitted by agency regulations for administrative control of funds.[129]

## Budget and Accounting Act of 1921

In the 20th century, the Budget and Accounting Act of 1921 created an explicit statutory role for the President. Specifically, the law required executive agencies to submit their budget requests to the President for potential modification and, in turn, for the President to submit a consolidated request to Congress.[130] The law also had the effect of centralizing many executive branch budget processes in a new institution. Among other things, it established the Bureau of the Budget in the Department of the Treasury, which functioned under supervision of the President. In 1939, the bureau was transferred to the Executive Office of the President and, in 1970, re-designated as OMB.[131] Finally, the law established the General Accounting Office, which was in 2004 renamed the Government Accountability Office (GAO).

## Congressional Budget and Impoundment Control Act of 1974

The concept of an "impoundment" generally refers to an action or inaction by the President or a federal officer or employee that delays or withholds the obligation or expenditure of budget authority provided in law.[132] Title X of ICA, as amended, establishes procedures that govern when impoundments are allowed, when they are prohibited, and how impoundments may be proposed and considered under expedited legislative procedures.[133] The ICA established a framework for Congress to decide whether to approve impoundment proposals.[134] The act divides impoundments into two categories, rescissions and deferrals, and establishes distinct procedures for each.[135]

[129] For discussion and related statutory citations, see GAO, "Antideficiency Act Resources," https://www.gao.gov/legal/appropriations-law/resources.

[130] P.L. 67-13, Budget and Accounting Act, 1921, June 10, 1921 (42 Stat. 20, at 22), currently codified in part at 31 U.S.C. §501.

[131] See CRS Report RS21665, *Office of Management and Budget (OMB): An Overview*, coordinated by Taylor N. Riccard.

[132] GAO, *Glossary*, p. 61.

[133] 31 U.S.C. §1512(c)(2). The ICA is Title X of P.L. 93-344 (88 Stat. 332), as subsequently amended (see 2 U.S.C. §§601-688).

[134] Title X of P.L. 93-344 (88 Stat. 332), and subsequently amended (see 2 U.S.C. §§601-688). The Office of the Legislative Counsel of the House of Representatives maintains an unofficial, compiled (i.e., current) version of the law at http://legcoun.house.gov/members/HOLC/Resources/comps_alpha.html#C.

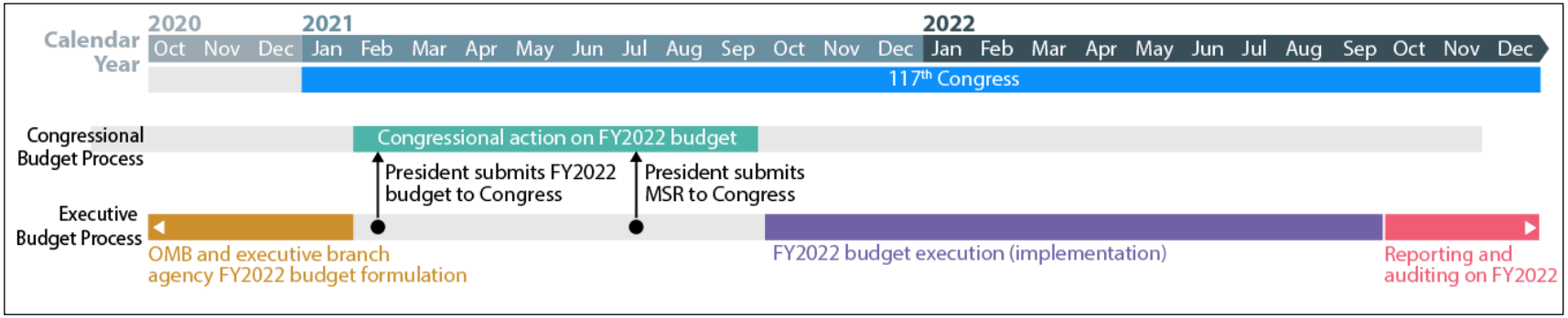
[135] For further discussion, see CRS Report R46417, *Congress's Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff.

# Appendix B. Executive Budget Process Timelines

This appendix presents more detailed graphical representations of how the executive budget process overlaps with the congressional budget process, as well as how agencies concurrently plan and execute budgets for multiple fiscal years.

FY2022 is the first fiscal year to fully elapse within the confines of the 117th Congress (i.e., January 2021-January 2023). **Figure B-1** provides a timeline of the FY2022 budget process compared to the 2021 and 2022 calendar years and executive budget process milestones. FY2022 began on October 1, 2021, but executive agency budget planning for FY2022 began 18 months prior in the spring of 2020. By statute, the President was required to submit the consolidated FY2022 budget to Congress no later than the first Monday in February 2021. In practice, Presidents sometimes fail to meet this submission deadline, particularly during transition years between outgoing and incoming Presidents. In the case of FY2022, President Biden submitted the budget to Congress on May 28, 2021.[136]

**Figure B-1. Executive Budget Process and the Congressional Budget Process for FY2022**




**Sources:** CRS analysis of *U.S. Code*, OMB guidance documents, and President's budget submissions.

**Notes:** In practice, budgetary submission and milestone dates for FY2022 may differ from statutory deadlines. Congressional action on the FY2022 budget extended beyond September 30, 2021, with enactment of a continuing resolution.

The President's budget generally initiates the congressional budget process, and Congress works to provide for appropriations for the fiscal year beginning October 1, 2021. If the 12 appropriations bills are not signed into law at this time, a CR may be enacted. While Congress deliberates

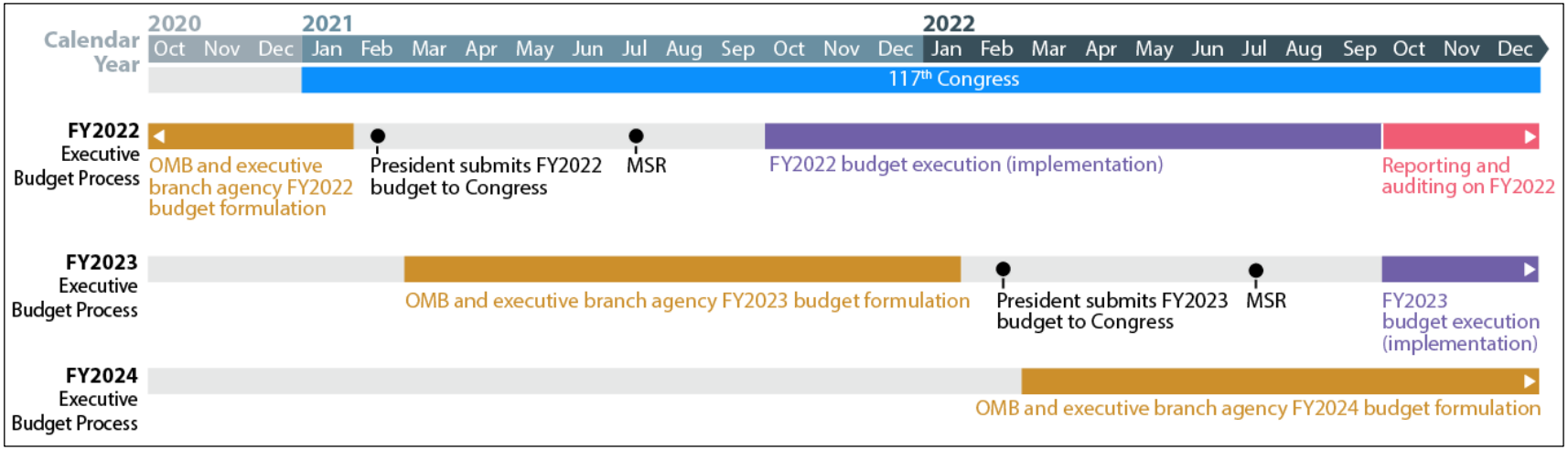
[136] OMB, *Budget of the United States, Fiscal Year 2022*, May 2021, https://www.govinfo.gov/app/collection/budget/2022. For additional information about the submission of the FY2022 budget request, see CRS Insight IN11655, *Budget Submission After a Presidential Transition: Contextualizing the Biden Administration's FY2022 Request*, by Taylor N. Riccard.

on the FY2022 budget, the President submits a supplemental summary of the budget, commonly referred to as the "Mid-Session Review" (MSR). By statute, this must be submitted before July 16 each year, but many such submissions are provided later than this date. The FY2022 MSR was submitted on August 27, 2021.[137]

FY2022 began on October 1, 2021, and ends on September 30, 2022. Obligations incurred during FY2022 may not result in outlays until after the end of the fiscal year. Additionally, budgetary and financial reporting associated with FY2022 continues after September 30, 2022.

As Congress begins action on appropriations bills and other budgetary legislation for FY2022, OMB and agencies have already begun planning for subsequent fiscal years. **Figure B-2** shows that budget-related activities for FY2022, FY2023, and FY2024 may occur simultaneously for agencies at a given point in time (e.g., during May 2022) and may provide opportunities for Congress to engage with agencies, OMB, and the President for all three of these fiscal years within the two years of the 117th Congress.

**Figure B-2. Concurrent Budget Planning for Multiple Fiscal Years**




**Sources:** CRS analysis of OMB guidance documents, President's budget submissions, and *U.S. Code*.

**Notes:** In practice, budgetary submission and milestone dates for FY2022, FY2023, and FY2024 may differ from statutory deadlines.

[137] OMB, *Budget of the United States, Fiscal Year 2022, Mid-Session Review*, August 2021, https://www.whitehouse.gov/wp-content/uploads/2021/08/msr_fy22.pdf.

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