

# CONGRESSIONAL POWER OF THE PURSE ACT



## Section-by-Section Analysis

### Congressional Power of the Purse Act

#### Title I — Strengthening Congressional Control and Review to Prevent Impoundment

**Sec. 101. Strengthening congressional control.** This section expands upon the existing requirements under the Impoundment Control Act to make budget authority prudently available for obligation. This section requires that budget authority proposed for rescission or deferral pursuant to sections 1012 or 1013 of the Impoundment Control Act of 1974 (ICA) be made available in time to be prudently obligated (as is already required under the ICA), but in any case, no later than 90 calendar days before such budget authority would expire. This section would include a corresponding requirement that appropriations be released to agencies through administrative apportionment processes in time for the agencies to prudently obligate their appropriations (as is already required under current law), but in any case, no later than 90 calendar days before such appropriation would expire.

**Sec. 102. Strengthening congressional review.** This section requires the Executive Branch to make publicly available, in an automated fashion, all documents apportioning an appropriation, as these documents are final, decisional, and legally binding on agencies. It would also require that such documentation include a contemporaneous written explanation for the apportionment schedule to prevent arbitrary decision making and promote legal compliance. This section would also require agencies with apportioned funding to notify appropriate congressional committees if an apportionment of an appropriation is not made within the required statutory time period, or if the approved apportionment conditions the availability of an appropriation on further action or may otherwise hinder the agency's ability to prudently obligate its appropriations or carry out its program, project, or activity. Finally, this section would require that delegations of the apportionment authority be published in the Federal Register and require that a continuously updated list of the positions of the approving officials be posted on a publicly-available website, with an explanation of any changes in delegations to approving officials transmitted to the Congress within 5 days after the change is made.

**Sec. 103. Updated authorities for and reporting by the Comptroller General.** This section requires that GAO shall review and report on compliance with the ICA without regard to whether a withholding or deferral is ongoing and extends GAO's review and compliance monitoring to the new congressional control provisions added to the ICA in section 101. This section also requires the Executive Branch to timely provide GAO with information, documentation, views, and access to employees for interview, if requested by the Comptroller General. Finally, this section eliminates the treatment of GAO's report on the Executive Branch failing to issue a special message as a "substitute" special message for the Executive Branch.

**Sec. 104. Advance congressional notification and litigation.** This section shortens the waiting period for a GAO-initiated action to release withheld budget authority from 25 session days following congressional notification to 15 calendar days following congressional notification and also creates an exception to the required 15-calendar day

wait for appropriate circumstances. This section also expands the suits that may be brought by the Comptroller General under the ICA to include suits to compel the production of information, documentation, views, or access to interview employees withheld by a department, agency, or office in violation of the requirements of the ICA.

**Sec. 105. Penalties for failure to comply with the Impoundment Control Act of 1974.** This section requires the Executive Branch to provide a report to the Congress and the Comptroller General in the event of any violations of the ICA, including in response to any reports by GAO that identify a failure to transmit a special message under section 1015 and legal decisions by GAO that find the Executive Branch has violated the ICA. This section would also explicitly authorize administrative discipline for responsible officials. This reporting requirement and the authorization of administrative discipline are modeled on the reporting requirement and non-criminal penalties for certain violations of the Antideficiency Act, another bedrock statute of fiscal law and congressional control.

## **Title II — Strengthening Transparency and Reporting**

### **Subtitle A — Funds Management and Reporting to the Congress**

**Sec. 201. Expired balance reporting in the President's budget.** This section requires the Executive Branch to report as part of the President's budget submission expired balances by appropriation for the preceding 3 years with explanations for balances that exceed certain thresholds.

**Sec. 202. Cancelled balance reporting in the President's budget.** This section requires the Executive Branch to report as part of the President's budget submission cancelled balances by appropriation for the preceding 3 years with explanations for balances that exceed certain thresholds. This section also requires certain reporting on expenditures from appropriations available for an indefinite time period.

**Sec. 203. Lapse in appropriations reporting in the President's budget.** This section requires agencies to maintain a detailed accounting of their funding actions taken during a lapse in appropriations and report this information to Congress for any lapses in appropriations lasting 5 or more days. The report required by this section provides information on obligations by program, project, and activity and an explanation of the agency's legal judgment that an Antideficiency Act exception authorized the obligations during the lapse. This section also requires disclosure to Congress of any disbursements made during a lapse in appropriations.

**Sec. 204. Transfer and other repurposing authority reporting in the President's budget.** This section adds a one-time reporting requirement for the Executive Branch for the budget for fiscal year 2022 to provide a compilation of transfer authorities and authorities to repurpose funding that are provided in laws other than appropriations acts, as well as an explanation of any use of such authorities in the 3 preceding fiscal years.

**Sec. 205. Authorizing cancellations in indefinite accounts by appropriation.** This section adds authority to allow for cancellation by appropriation within an indefinite Treasury account in the event such appropriation has not been used for two years and the agency head determines they are no longer needed to fulfill their statutory purpose (which is the existing standard for cancellations of indefinite funding at the account level). This section applies only to appropriations that are available without fiscal year limitation.

## **Subtitle B — Empowering Congressional Review Through Nonpartisan Congressional Agencies and Transparency Initiatives**

### **Sec. 211. Requirement to respond to requests for information from the Government Accountability Office for budget and appropriations law decisions.**

This section requires executive agencies and the D.C. government to respond to GAO's written requests for information, documentation, and views relating to a decision or opinion on budget or appropriations law not later than 20 days after the agency receives the request, unless such request provides a later deadline. This section requires the Executive Branch and the D.C. government to notify Congress and GAO of any failure to provide GAO with the information it requests, and it authorizes the Comptroller General to bring suit to compel production of information, documentation, or views withheld in violation of this section.

**Sec. 212. Reporting requirements in the Antideficiency Act.** Section 145 of OMB Circular A-11 sets out reporting requirements for Antideficiency Act violation reports, which includes a summary of the cause of the violation, identification of the position of the officials responsible for the violation, and descriptions of the actions the agency will take to prevent the recurrence of such violation. This section amends the reporting requirements in the Antideficiency Act to codify and mandate compliance with this existing practice. This section also restores the long-standing requirement that Antideficiency Act violation reports are required when GAO finds that a violation occurred.

**Sec. 213. Department of Justice reporting to the Congress for Antideficiency Act violations.** This section amends the reporting requirements in the Antideficiency Act to ensure that the Department of Justice is appropriately reviewing all reports of Antideficiency Act violations and investigating to the extent necessary to determine whether there are reasonable grounds to believe that the responsible officer or employee knowingly and willfully violated the Antideficiency Act. This section further requires the Department of Justice to provide annual updates to Congress and the Comptroller General on the number of reports the Department has reviewed by agency as well as the status of investigations undertaken.

**Sec. 214. Publication of budget or appropriations law opinions of the Department of Justice Office of Legal Counsel.** This section requires prompt public disclosure of OLC opinions relating to budget and appropriations law, subject to certain exceptions. This section sets a schedule for public disclosure, pursuant to which new opinions must be published within 30 days of their issuance and pre-existing opinions must be published within 1 year (for decisions issued since 1993), 2 years (for decisions issued between 1981 and 1993), 3 years (for decisions issued between 1969 and 1981), or 4 years (for all other opinions). This section also provides exceptions pursuant to which OLC may withhold opinions containing classified information, opinions relating to the appointment of a specific individual not confirmed to office, and opinions exempted from disclosure by statute.

## **Title III — Strengthening Congressional Role in and Oversight of Emergency Declarations and Designations**

**Sec. 301. Improving checks and balances on the use of the National Emergencies Act.** This section amends section 201 et seq. of the National Emergencies Act to limit the President's ability to exercise statutory emergency authorities indefinitely, without meaningful review or approval by the House of Representatives and Senate. It provides

that, with the exception of emergencies under the International Emergency Economic Powers Act (IEEPA), an emergency declared by the President shall automatically cease after 30 days unless Congress expressly approves the declaration. This will require both Houses affirmatively to approve of an emergency, flipping the current default that resulted from the Supreme Court's decision in *INS v. Chadha* in which both Houses must affirmatively disapprove of an emergency with sufficient votes to override a veto. This section also provides that individual statutory emergency authorities associated with a non-IEEPA emergency declaration shall cease unless approved by Congress during the 30-day period, even if Congress approves the underlying declaration. This would enable Congress to approve of an emergency and the exercise of some but not all of the statutory emergency authorities sought by the President in addressing it. Finally, this section requires reporting related to the exercise of statutory emergency authorities.

**Sec. 302. National Emergencies Act declaration spending reporting in the President's budget.** This section requires the President to include, as part of the annual budget submission to Congress, a report on the proposed, planned, or actual obligations and expenditures of funds attributable to the exercise of powers and authorities made available by statute by declarations of a national emergency. These obligations and expenditures shall be reported by appropriations account and by program, project, and activity, including a description of each such program, project, and activity, the authorities under which such actions are taken, and their purpose and progress toward addressing the national emergency. Further, the report shall include the amount of each transfer, repurposing, and reprogramming to address the emergency; the authority authorizing each; and a description of programs, projects, and activities affected, including by a reduction in funding. The report shall cover obligations and expenditures anticipated for the fiscal year for which the budget is submitted and actual and estimated obligations and expenditures for the prior and the current fiscal year, respectively, for each Presidentially declared national emergency currently active or in effect during applicable fiscal years for which funding actions are proposed, planned, or have taken place for the covered fiscal years.

**Sec. 303. Emergency and overseas contingency operations designations by Congress in statute.** This section eliminates the requirement for the President to subsequently designate appropriations provided through duly-enacted statutes as being for an emergency or for overseas contingency operations after the enactment of the Act providing such appropriations.