GOVERNING FOR IMPACT

Seeking Remedies in Impoundment Cases When Funding Is Poised to Expire

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Issue Brief

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I. INTRODUCTION

The onslaught of litigation challenging the Trump administration's funding actions is set to enter a new phase with the impending end of the fiscal year on September 30, 2025. Substantial sums of money that Congress appropriated in the March 2025 Continuing Resolution or in earlier years will expire at the end of the fiscal year unless obligated by the relevant agency before then. Appropriations might be not obligated by their expiration date for a variety of improper reasons, including because an agency has mass terminated awards that had previously obligated the funds or has refused to obligate the funds in the first instance, or because the Trump administration will attempt a "pocket rescission" of the funds by sending a rescission proposal to Congress shortly before the money expires. The administration's intent not to obligate funds before their expiration date has only been confirmed by agencies' failure to post funding opportunities for appropriations set to soon expire and agencies' elimination of staff required to carry out the award process.

Because the Constitution's Appropriations Clause prohibits the spending of federal funds except as authorized by Congress, courts generally may not order agencies to obligate funds after their congressionally designated expiration date, even if the agency broke the law in not obligating the funds in time. Litigants therefore may not be able to access expired funds even if they succeed on the merits of their claims if they prevail too late.

However, courts and the Government Accountability Office have recognized at least three exceptions to the rule against obligating funds after their expiration date: (1) courts may "extend" the period of availability pursuant to the court's equitable authority; (2) courts may order agencies to obligate funds to a plaintiff that had "the right to" the money, 31 U.S.C. § 1502(b); and (3) agencies may issue a "replacement grant" using expired money if, among other things, the replacement grant is of the same nature and purpose as a terminated grant that was awarded before the funds expired, and is issued without undue delay.

This Issue Brief discusses these exceptions and how and when litigants might invoke them to receive redress from unlawful impoundments in the face of those funds' potential expiration at the end of the fiscal year. As further explained below, to invoke these exceptions litigants might take care to file suit and seek relief before

the fiscal year ends on September 30. Indeed, the impending end of the fiscal year might also present an opportunity for litigants, in that it might strengthen their showing that irreparable harm is likely if relief is not granted.

II. THE TRUMP ADMINISTRATION'S END-OF-FISCAL-YEAR IMPOUNDMENT STRATEGIES

The Trump administration has undertaken an extraordinary campaign to refuse to spend federal funds appropriated by Congress. Its strategies have varied, including executive actions to freeze federal funding governmentwide,[1] mass terminating federal grants and contracts across many agencies,[2] having the Office of Management and Budget refuse to apportion funds to agencies or placing conditions on the apportionments that effectively prohibit the agency from spending the funds,[3] claiming that it is conducting a "review" of funds even where their disbursement is prescribed by statutory formulas,[4] and refusing to spend funds even in the face of court orders requiring them to do so.[5] Now, as the end of the fiscal year on September 30 approaches, the administration is seeking to permanently (and unlawfully) impound appropriations by refusing to obligate the funds before they expire.

When Congress appropriates funds, it typically designates an expiration date by providing that the funds are "available until" a specific date, usually the end of the

[1] Memorandum from Matthew J. Vaeth, Acting Dir., Off. of Mgmt. & Budget for Heads of Exec. Dep'ts & Agencies, *M-25-13: Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs* (Jan. 27, 2025), *rescinded*, Memorandum from Matthew J. Vaeth, Acting Dir., Off. of Mgmt. & Budget for Heads of Exec. Dep'ts & Agencies, *M-25-14: Rescission of M-25-13* (Jan. 29, 2025).

[2] *Savings*, Dep't of Gov't Efficiency (last visited Aug. 11, 2025).

[3] Liz Essley White et al., *Trump Administration Scraps Effort to Pause Health-Research Funding*, Wall St. J. (July 30, 2025).

[4] Compl. at 3, *Anchorage Sch. Dist. v. U.S. Dep't of Educ.*, No. 1:25-cv-00347 (D.R.I. July 21, 2025), ECF No. 1.

[5] *See* Pls.' Mot. to Enforce Prelim. Inj., *Glob. Health Council v. Trump*, 1:25-cv-00402, (D.D.C. June 24, 2025), ECF No. 97-1.

fiscal year in which the money is appropriated.[6] The general rule is that agencies must "obligate"—meaning create legally binding commitments to spend—appropriations before they expire.[7] The period between when Congress appropriates money and when it expires is known as the "period of availability."[8] If an agency does not obligate funds within their period of availability, the money reverts to the Treasury.[9]

The Trump administration has previewed that one method by which it intends to permanently impound funds is a "pocket rescission." Under the Impoundment Control Act (ICA), when the President proposes that Congress rescind unspent appropriations, Congress must complete action on the proposal within 45 days.[10] With a "pocket rescission," the administration will wait until fewer than 45 days before funds expire on September 30, submit a rescission proposal at that point, and then claim that the money expired during the 45-day period, even if Congress takes no action on the proposal.[11] OMB Director Russell Vought has openly stated the Administration's intent to pursue this tactic.[12]

Another strategy for impounding funds may be for the administration to wait until after the fiscal year ends to "close out" awards terminated before the end of the fiscal year. Upon the termination of a contract, grant, or cooperative agreement, agencies do not "de-obligate" the funds that were awarded until completing a "close out" process that can take months or longer.[13] Thus, if the appropriation underlying a terminated grant expires on September 30, 2025, and the agency de-obligates the

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[6] *See, e.g.*, Consolidated Appropriations Act, 2024, Pub. Law No. 118-42, 138 Stat. 25, 43 (appropriating $943 million for programs of medical and prosthetic research and development and making them "available until September 30, 2025").

[7] 31 U.S.C. § 1502(b).

[8] *Id.*; *see generally* Off. of the Gen. Counsel, U.S. Gov't Accountability Off., 1 Principles of Federal Appropriations Law 5-81 to -89 (3d ed. 2004).

[9] Principles of Federal Appropriations Law, *supra* note 8, at 5-81.

[10] 2 U.S.C. § 683(b).

[11] *See* Jennifer Scholtes et al., *Congress Finally Gets Trump's Request to Codify DOGE Cuts to NPR, PBS, Foreign Aid*, Politico (June 3, 2025).

[12] *See, e.g.*, Jennifer Scholtes, *White House Floats a New Funding Trick — and GOP Lawmakers Grimace*, Politico (June 20, 2025); Tony Romm, *White House Eyes Rarely Used Power to Override Congress on Spending*, N.Y. Times (June 17, 2025).

[13] *See* 2 C.F.R. § 200.344.

funds for the grant after September 30, the money will revert to the Treasury because the period of availability will have expired at the time of de-obligation.

Finally, the administration may simply allow funds to expire without taking any action to award the grants or contracts for which Congress appropriated funds. Awarding grants and contracts is a time-consuming process even for agencies that are faithfully carrying out Congress's instructions. For any appropriations that Congress provided for competitive grant programs, if the agency has not even begun the process of awarding grants, it is highly unlikely it could start now and complete the process before September 30. Regulatory requirements, including OMB's Guidance for Federal Financial Assistance, require federal agencies to go through a multi-step process before obligating appropriated funds for grants and cooperative agreements.[14] For instance, that guidance requires that agencies issue a public notice of funding opportunity (NOFO), which agencies generally must make available for at least 60 days and may not make available for less than 30 days absent exigent circumstances.[15] Once a NOFO closes, the agency must take time to review the applications it received, a process that also generally takes "1-3 months."[16] Finally, at the conclusion of this process, the agency will issue the award, which itself can take additional weeks or months.

The process for awarding government contracts can be even more complex and time-consuming.[17] A more than 2,000-page Federal Acquisition Regulation governs that process, which typically begins with the agency transmitting a "notice of proposed contract action" to the "governmentwide point of entry," which must generally be published at least 15 days before issuing the solicitation.[18] The contracting officer then establishes a solicitation response time that will afford potential contractors a "reasonable opportunity" to submit their proposals, and contractors are given several weeks to submit proposals.[19] Once those proposals are submitted, the agency then reviews the proposals using the "source selection methods" — usually either sealed bidding or negotiated contracting — and for negotiated contracts, the agency may

[14] *See id.* §§ 200.201–.211.

[15] *Id.* § 200.204.

[16] *See* *What Is the Grant Lifecycle?*, Grants.gov: Community Blog, (Sept. 19, 2016).

[17] *See* Dominick A. Fiorentino, Cong. Rsch. Serv., RS22536, Overview of the Federal Procurement Process and Resources (2023).

[18] *See* 48 C.F.R. §§ 5.203(a), 5.003, 5.203(a).

[19] *Id.* §§ 5.203(b), (c)–(e).

further discuss and negotiate with prospective contractors, which can take additional time. At the conclusion of this process, bidders can protest the award, causing further delay.[20]

These regulatory hurdles to issuing new grants and contracts make clear that, if money appropriated for grants or contracts expires on September 30, and the agency has not begun the process of issuing new awards by this late in the fiscal year, the agency almost surely intends to impound the money.

III. PLAINTIFFS CAN CHALLENGE UNLAWFUL IMPOUNDMENTS NOTWITHSTANDING THE EXPIRATION OF APPROPRIATIONS

In a prior Issue Brief, we identified strategies that litigants might use to challenge the Trump administration's refusal to spend appropriated funds.[21] If the administration attempts "pocket rescissions" over the coming months, litigants might challenge those actions as unlawful as well. A full discussion of the legal arguments against pocket rescissions is beyond the scope of this paper. But in short, the ICA's text does not allow pocket rescissions,[22] and even if there were ambiguity in the text, the major questions doctrine and constitutional avoidance would require reading the ICA to not authorize the practice. With respect to constitutional avoidance, a pocket recission would be a near replica of the line-item veto procedures that the Supreme Court held to be unconstitutional in *Clinton v. City of*

[20] *See* 4 C.F.R. §§ 21.1(a), 21.6.

[21] Challenging Unlawful Impoundments, Governing for Impact (2025).

[22] U.S. Gov't Accountability Off., B-330330, Impoundment Control Act—Withholding of Funds Through Their Date of Expiration (2018).

New York, 524 U.S. 417 (1998). For a more comprehensive explanation of why pocket rescissions are unlawful, see the plaintiffs' brief in support of their motion to enforce the preliminary injunction in *Global Health Council v. Trump*.[23]

As a threshold issue, a plaintiff may challenge the imminent impoundment of funds where it can credibly attest that it would *compete* for the funds if they were made available, regardless of whether the plaintiff previously held a grant or other award with the funds in question. Plaintiffs might demonstrate standing in these instances based on a lost opportunity to compete for business. The D.C. Circuit has held that a plaintiff has Article III standing where "it has been walled off from an entire category of projects for which it is qualified, prepared, and eager to compete."[24] The D.C. Circuit has applied this doctrine to government contracts and grant awards,[25] and other circuits have also recognized lost opportunity to compete as cognizable injury.[26] The Supreme Court has found standing for government contractors based on lost opportunity to compete where the government employs racial preferences in contracting,[27] and the Court recently suggested that denial of "the opportunity to compete in the marketplace" more generally suffices to show standing, although the Court ultimately found standing in the case on another ground.[28]

However, with the end of the fiscal year now approaching, time is short to bring litigation relating to funds that are set to expire. That presents both an opportunity and a challenge for litigation. This impending expiration provides a hook for seeking immediate injunctive relief: the impending lapse of the appropriations means that

[23] *See* Pls.' Mot. to Enforce Prelim. Inj. at 17–19, *Glob. Health Council v. Trump*, 1:25-cv-00402, (D.D.C. June 24, 2025), ECF No. 97-1; *see also* David Super & Sam Berger, *"Pocket Rescissions" Are Illegal*, Ctr. on Budget & Pol'y Priorities (July 30, 2025).

[24] *Coal. of MISO Transmission Customers v. FERC*, 45 F.4th 1004, 1016 (D.C. Cir. 2022).

[25] *Teton Historic Aviation Found. v. U.S. Dep't of Def.*, 785 F.3d 719, 724 (D.C. Cir. 2015); *CC Distribs., Inc. v. United States*, 883 F.2d 146, 150–51 (D.C. Cir. 1989).

[26] *See, e.g.*, *Int'l Longshoremen's & Warehousemen's Union v. Meese*, 891 F.2d 1374, 1379 (9th Cir. 1989); *Alix v. McKinsey & Co.*, 23 F.4th 196, 209–10 (2d Cir. 2022).

[27] *Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 663–68 (1993) (finding standing based on petitioner's allegations "that its members regularly bid on construction contracts in Jacksonville, and that they would have bid on contracts set aside pursuant to the city's ordinance were they so able").

[28] *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2136 (2025).

plaintiffs challenging failures to obligate might establish the required element of the likelihood of "irreparable harm" in the absence of preliminary relief.[29]

But an upcoming expiration date also creates a potential obstacle to obtaining effective relief, because as a general rule, courts cannot order agencies to obligate funds after they have expired, even if the agency violated a legal requirement to spend them. Courts recognize as "a well-settled matter of constitutional law that when an appropriation has lapsed or has been fully obligated, federal courts cannot order the expenditure of funds that were covered by that appropriation."[30] The moment that the funds expire, the government will argue that a court cannot order an agency to obligate the funds, even if the agency was legally obligated to do so.

There are at least three potential exceptions, however, to the general rule that agencies may not be compelled to obligate funds after their expiration. We discuss these exceptions below.

A. The *Costle / City of Houston* Exception

The D.C. Circuit has established an exception that allows a court to exercise its equity powers to preserve the status quo where a plaintiff has filed suit before the expiration of the funds. Under this exception, as long as the suit is filed and relevant relief is sought prior to the funds' expiration date, the court acquires the necessary jurisdiction and has the equitable power to "revive" expired budget authority.

The D.C. Circuit first provided an overview of this exception in *National Association of Regional Councils v. Costle*, where it held that "a court may act to prevent the expiration of budget authority which has not terminated at the time suit is filed" by "simply suspend[ing] the operation of a lapse provision and extend[ing] the term of already existing budget authority."[31] Courts possess "equity powers" to take such action "to preserve the status quo of a dispute and to protect [courts'] ability to decide a case properly before them."[32]

[29] *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008).

[30] *City of Houston v. Dep't of Hous. and Urb. Dev.*, 24 F.3d 1421, 1426 (D.C. Cir. 1994).

[31] 564 F.2d 583, 588 (D.C. Cir. 1977).

[32] *Id.*

As recently as 2021, the D.C. Circuit has held that a court of appeals can even *revive* expired funds where the district court incorrectly did not grant a preliminary injunction before expiration. In *Shawnee Tribe v. Mnuchin*, a recipient challenged the methodology used to allocate funds to tribal governments under the Coronavirus Aid, Relief, and Economic Security Act.[33] The district court had denied a preliminary injunction and the expiration date for the funds then came and went, but the D.C. Circuit reversed and ordered the district court to enter a preliminary injunction. Holding that there were "no mootness concerns," the D.C. Circuit quoted from the GAO Redbook that, "[a]s long as the suit is filed prior to the expiration date, the court acquires the necessary jurisdiction and has the equitable power to 'revive' expired budget authority, even where preservation is first directed at the appellate level."[34]

Numerous courts have applied *Costle* over the years, recognizing courts' equitable authority to extend the period of availability of funds.[35] For instance, the Ninth Circuit has joined the D.C. Circuit, reversing a district court's denial of preliminary injunction after the lapse of an appropriation and directing preservation of funds as necessary to implement the preliminary injunction.[36] The Sixth Circuit similarly cited *Costle* in holding that a district court had authority to enter an injunction requiring HUD to preserve expired funds pending the outcome of plaintiffs' appeal.[37] Accordingly, litigants might invoke the *Costle* exception in the D.C. Circuit and other jurisdictions to preserve expired funds where equitable relief is warranted.

The D.C. Circuit clarified limitations on the *Costle* doctrine, however, in *City of Houston v. Department of Housing and Urban Development*.[38] There, HUD reduced a Community Development Block Grant that it had made to Houston for the fiscal year of 1986 because of the city's failure to meet spending targets. The congressional appropriation covering the disputed funds expired on September 30, 1988, and the city did not sue until April 1989. The D.C. Circuit held that the case was moot on two

[33] 984 F.3d 94 (D.C. Cir. 2021) (quoting 42 U.S.C. §§ 801(a)(2)(B), 801(d)(1)).

[34] *Id.* at 98–99; *see also Jacksonville Port Auth. v. Adams*, 556 F.2d 52 (D.C. Cir. 1977).

[35] *See Connecticut v. Schweiker*, 684 F.2d 979 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1207 (1983); *United States v. Michigan*, 781 F. Supp. 492 (E.D. Mich. 1991); *Burton v. Thornburgh*, 541 F. Supp. 168 (E.D. Pa. 1982); *Grueschow v. Harris*, 492 F. Supp. 419 (D.S.D. 1980), *aff'd*, 633 F.2d 1264 (8th Cir. 1980); *Sodus Cent. Sch. Dist. v. Kreps*, 468 F. Supp. 884 (W.D.N.Y. 1978); *see also Dotson v. Dep't of Hous. & Urb. Dev.*, 731 F.2d 313, 317 n.2 (6th Cir. 1984); *Multnomah County v. Azar*, 340 F. Supp. 3d 1046, 1055 (D. Or. 2018).

[36] *Wilson v. Watt*, 703 F.2d 395 (9th Cir. 1983).

[37] *See Dotson*, 731 F.2d at 317 n.2.

[38] 24 F.3d 1421, 1426 (D.C. Cir. 1994).

independent grounds. First, the city did not sue and seek a stay of the funds' expiration until after the date that they expired. The Court held that the *Costle* exception may be applied only where "the lawsuit was instituted *on or before [the] date*" that the relevant appropriations expire, and the court further suggested that the plaintiff may need to also move to enjoin the expiration prior to that date.[39] The court held that "if . . . budget authority has lapsed before suit is brought, there is no underlying congressional authority for the court to preserve."[40] In that circumstance, "any order of the court to obligate public money" would "conflict[] with the constitutional provision vesting sole power to make such authorization in the Congress."[41]

Second, the *Houston* court held that the case was moot because the agency had obligated all of the relevant funds to other recipients before the plaintiff filed suit. The court explained that "once the relevant funds have been obligated, a court cannot reach them in order to award relief."[42] The D.C. Circuit discussed this limitation more fully in *West Virginia Association of Community Health Centers v. Heckler*, where the court determined that the exception did not apply because HHS had awarded the contested funds to other recipients, making them unavailable.[43] In doing so, the *West Virginia* court added a caveat that "we do not mean to suggest our approval, in every case, of government decisions to expend funds over which a legal controversy exists."[44] This suggests that a court may still apply the equitable exception if the funds have been expended in bad faith, but no court appears to have found this in practice.

In summary, under this well-established equitable exception, current or prospective litigants whose cases involve expiring funds might ask the court to extend the funds' period of availability. Litigants seeking to invoke the *Costle* doctrine should ensure to both file suit and seek a preliminary injunction to extend the period of availability

[39] *Id.* at 1426 (emphasis in the original) (quoting *W. Va. Ass'n of Cmty. Health Ctrs. v. Heckler*, 734 F.2d 1570, 1576 (D.C. Cir. 1984)).

[40] *Id.* at 1426.

[41] *Id.*

[42] *Id.*

[43] 734 F.2d 1570, 1577 (D.C. Cir. 1984); *see also County of Suffolk v. Sebelius*, 605 F.3d 135 (2d Cir. 2010).

[44] *W. Va. Ass'n of Cmty. Health Ctrs.*, 734 F.2d at 1577 n.8.

before September 30, or before the funds will be disbursed to others if that may be sooner.

However, the Supreme Court has never opined on the *Costle* doctrine and whether it is a permissible use of a court's equitable authority. And *Costle* has come under some criticism recently. In *Goodluck v. Biden*, the D.C. Circuit declined to extend *Costle* outside the appropriations context, where the plaintiffs requested equitable relief requiring the State Department to process and issue certain visas to diversity-visa lottery selectees beyond the end of the fiscal year in which Congress made those selectees eligible to receive them.[45] The court determined that the district court lacked authority to craft an equitable remedy requiring the State Department to expeditiously process and adjudicate visa applications. In *dicta*, Judge Katsas, writing for the court, described *Costle* and its progeny as having been decided "during the '*ancien regime*' when courts took a much more freewheeling approach to the law of remedies,"[46] and asserted that the Supreme Court has since "repeatedly stressed the limits" on federal courts' equitable powers.[47] However, *Goodluck* still recognized *Costle* as good law in the D.C. Circuit, and litigants can distinguish *Goodluck* on the grounds that it merely declined to extend the doctrine's application to the immigration context.[48]

B. 31 U.S.C. § 1502(b)

Separate from *Costle*, litigants that can claim "the right to an amount" from a particular appropriation might invoke statutory authority under 31 U.S.C. § 1502(b) for courts to order agencies to spend funds even if they have expired. Under § 1502(b):

> A provision of law requiring that the balance of an appropriation or fund be returned to the general fund of the Treasury at the end of a definite period does not affect the status of lawsuits or rights of action involving the right to an amount payable from the balance.[49]

[45] 104 F.4th 920, 925 (D.C. Cir. 2024).
[46] *Id.* at 928.
[47] *Id.*
[48] *Id.*
[49] 31 U.S.C. § 1502(b).

Thus, where a litigant can claim "the right to an amount" from particular appropriations the litigant might be well-served to invoke § 1502(b), in addition or alternatively to *Costle*. Where applicable, § 1502 may provide even stronger footing than *Costle* for obtaining expired funds, since Congress has authority to specify the availability of funds and § 1502(b) reflects congressional authorization to extend the period of availability in certain circumstances. Indeed, in *Goodluck*, the D.C. Circuit approvingly cited to § 1502(b) while critiquing the attempted application of *Costle*'s equitable remedy outside of the appropriations context, reasoning that, through § 1502(b), "Congress has expressly authorized courts to suspend the lapse of budget authority while lawsuits play out."[50]

There is little precedent or guidance, however, on when litigants have "the right to an amount" for purposes of § 1502(b). Enacted as part of a continuing resolution in 1973, this provision's "scant" legislative history suggests that it was motivated by certain impoundment litigation then in process.[51] Courts have generally relied on their equitable powers and "made little use of 31 U.S.C. § 1502(b)," citing it in passing or as additional support for the assertion of the equitable exception.[52]

There are some circumstances where a plaintiff would seem to clearly have "the right to an amount" under § 1502(b). For instance, the designated recipients of formula grant funds have a statutory right to the funds. Discretionary grantees whose grants were unlawfully terminated might be able to claim a right to funds as well. But where a plaintiff bases its standing only on the lost opportunity to compete for funds, the plaintiffs may not be able to invoke § 1502(b).

[50] 104 F.4th at 928.

[51] Principles of Federal Appropriations Law, *supra* note 8, at 5-87; *see* Act of July 1, 1973, Pub. L. No. 93-52, § 111, 87 Stat. 130, 134; 119 Cong. Rec. 22326 (1973) (providing the very little legislative history).

[52] Principles of Federal Appropriations Law, *supra* note 8, at 5-87; *see Connecticut v. Schweiker*, 684 F.2d 979, 996 n.29 (D.C. Cir. 1982) (citing the statute in passing in a footnote), *cert. denied*, 459 U.S. 1207 (1983); *Population Inst. v. McPherson,* 797 F.2d 1062, 1081 (D.C. Cir. 1986) (citing § 1502(b) as support for the proposition that "it is well settled that federal courts may award appropriated funds to a successful litigant even after the statutory lapse date if, as here, the suit was initiated on or before that date"); *Int'l Union, UAW v. Donovan*, 570 F. Supp. 210, 220 (D.D.C. 1983) (citing § 1502(b) as additional support for the rule that courts have the equitable power to prevent the expiration of budget authority in appropriate cases).

C. Replacement Grants and Contracts

GAO has recognized a third exception to the rule that obligations must be made before funds expire, for "replacement grants." In limited circumstances, where an agency terminates a grant that was issued with one fiscal year's money, the agency may issue a replacement grant using the same fiscal year's money even if that money has expired.[53] Although no court appears to have applied this theory, litigants alleging that their grants have been unlawfully terminated might consider citing GAO's adoption of the exception as persuasive authority.

GAO has set forth three conditions to issuing a replacement grant: "(1) the need for the object of the grant continue[s] to exist; (2) the nature and purpose of the replacement grant are the same as the original grant; and (3) the replacement grant [is] executed without undue delay."[54] When these conditions are met, "replacement grants . . . represent a continuation of the original obligation rather than a new obligation."[55] GAO has found replacement grants to be permissible where, for example, there was a problem in the original grant selection process,[56] or where the original grantee could not complete the funded project but an alternate grantee could.[57]

Organizations whose grants have been terminated might ask that courts apply this doctrine to order agencies to restore the grants. Say, for example, that a grantee received a grant with funds appropriated for fiscal year 2025, the agency terminated the grant in June 2025, and then the funds expired on September 30, 2025. If the termination was unlawful, or if the agency violated the appropriations statute by not re-obligating the funds before they expired, the grantee might ask a court to compel the agency to issue a "replacement grant" that is identical in material respects to the original grant. Indeed, a replacement grant may be the *only* way for the agency to re-obligate the funds to prevent them from being impounded, because the agency could not issue a new award using expired funds.

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[53] Principles of Federal Appropriations Law, *supra* note 8, at 10-6 (3d ed., ann. update 2015).

[54] *Id.* at 10-7.

[55] *Id.*

[56] U.S. Gov't Accountability Off., B-322628, Department of Labor — Replacement Grants 1 (2012).

[57] U.S. Gov't Accountability Off., B-157179 (1970).

The first two of GAO's criteria for replacement grants would be met: the need for the grant would remain and the replacement grant would be of the same nature and purpose. Whether there has been "undue delay" may present a more challenging question, but perhaps litigants might argue that this factor should be relaxed or not required where the agency is being forced to make the replacement grant against its will. Alternately, a litigant might argue that the replacement grant would not be unduly delayed because the agency would issue it shortly after the impetus of the court decision requiring it.

Although courts do not appear to have previously considered the availability of replacement grants and contracts after the relevant funds have expired, this approach might be worth considering as an alternate theory or if a terminated grantee lacks other options where the funds underlying their award have expired. Ideally, the plaintiff would sue before any funds lapse so that both the *Costle* doctrine and the replacement grant theory would be available.

IV. CONCLUSION

Despite the general rule that courts cannot compel agencies to obligate funds after their expiration, several doctrines and sources of authority—including the *Costle* equitable exception, 31 U.S.C. § 1502(b), and the availability of replacement grants—offer potential avenues for relief. Litigants that plan to challenge unlawfully impounded funds or terminated grants should consider invoking these exceptions as critical tools to preserve the availability of appropriations.