

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S. OFFICE OF MANAGEMENT AND
BUDGET, et al.,

Defendants.

Case No. 1:25-cv-1051

**PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR COURT TO SET
COMPLIANCE DEADLINES**

INTRODUCTION

On January 28, 2026, this Court ordered Defendants Office of Management and Budget and its Director (collectively, OMB) to “post[] in the Public Apportionments Database, for all apportionments approved since March 24, 2025, and for all future apportionments, spend plans whose terms are incorporated by reference in legally binding apportionment documents.” Mem. Op. & Order at 13–14, ECF No. 46. Although more than four months have passed since the Court’s Order, OMB has not yet complied: It has not posted all the spend plans incorporated by reference since March 24, 2025, and it has not been posting spend plans within two days of when they become binding apportionment documents. Moreover, OMB has not provided a timeline for coming into compliance with this Court’s order—and thus with the 2022 and 2023 Consolidated Appropriations Acts (2022 and 2023 Acts).

Accordingly, this Court should grant Plaintiff’s motion to set compliance deadlines, ECF No. 47, and require OMB to comply with the January 28 Order by the deadlines set forth in that motion.

ARGUMENT

I. The Court should set deadlines by which OMB must post spend plans that have been incorporated by reference into legally binding apportionment documents.

With respect to spend plans that have already been incorporated by reference, OMB states that it has posted “a significant percentage of the incorporated spend plans identified for the relevant period”—specifically, 121 of the 161 agreed-upon spend plans that it has identified. Opp. at 3, ECF No. 48. Notably, OMB posted approximately one-third of those spend plans the week its opposition was due, including 28 on the day it filed the opposition. *See* Supp. Decl. of Cerin Lindgrensavage ¶¶ 3–4 (Supp. Lindgrensavage Decl.) (explaining that OMB did not post any spend plans between May 2 and May 28, but then posted 48 between May 28 and June 6); *see also*

Decl. of Cerin Lindgrensavage ¶ 5, ECF No. 47-1 (Lindgrensavage Decl.) (noting that, as of May 22, OMB had posted only 81 spend plans). Yet even with its last-minute flurry of postings, OMB *still* has not posted all the spend plans that this Court’s January 28 Order requires it to post and *still* has not provided a date by which it intends to be in full compliance with that order. *See* Opp. at 3 (noting that OMB intends to be in “substantial compliance” by June 30, 2026, without providing a date for full compliance).

OMB attempts to minimize its non-compliance by criticizing Plaintiff’s motion for discussing the number of apportionments apportioning funds in accordance with an agreed-upon spend plan, rather than the number of incorporated-by-reference spend plans that have been agreed upon. *Id.* Plaintiff agrees that, where an apportionment incorporates by reference an agreed-upon spend plan, a spend plan does not need to be posted until it is agreed upon and, thus, made legally binding. However, because OMB is not posting the agreed-upon spend plans as required by this Court’s order (and the 2022 and 2023 Acts), Plaintiff and the public *cannot know* which spend plans have been agreed upon, let alone know the legally binding terms of those spend plans. *See* Supp. Lindgrensavage Decl. ¶ 2. They therefore cannot know important details about how funds are being apportioned—details vital to understanding and monitoring the government’s allocation and use of those funds, the core purposes of the 2022 and 2023 Acts. This problem is exacerbated by OMB’s posting of many spend plans without the dates on which they were agreed to and became legally binding apportionment documents or without information about the Treasury Appropriation Funds Symbol or “TAFS” account number with which they are associated—that is, information that would make clear what funds are being apportioned through that spend plan. *See* Lindgrensavage Decl. ¶ 6(e). In any event, OMB’s discussion of the number of spend plans that have been agreed upon but not posted only underscores the crucial point: More than four months

after the Court’s enforcement order, OMB still has not posted all the spend plans that the Court’s order, and the 2022 and 2023 Acts, require it to post.

OMB tries to justify its lack of compliance by referring to the “technical difficulties of the task at hand” and stating that it has had to “re-assess and re-structure its apportionment system to facilitate” publication of the spend plans. Opp. at 2. As OMB admits, however, it is posting all spend plans in PDF format. *Id.* at 4. And it is doing so on one page of its Database, without an index, without links to the apportionment associated with the spend plan, and without placing the spend plans in any apparent order. *See* Supp. Lindgrensavage Decl. ¶¶ 9–10. It is not technologically difficult to click “Print to PDF” and create a link.

Indeed, OMB states that the reason it is posting the spend plans in PDF format, rather than in “a more machine-readable format,” is to “satisfy[] the immediate demands for publication.” Opp. at 4, 5. But OMB cannot have it both ways: It cannot justify using a non-machine-readable format because that format allows for immediate posting, but then fail to post the spend plans for more than four months because of the supposed “technical difficulties” in doing so. *Id.* at 2.

OMB also seeks to excuse its compliance delays based on a purported need to review the spend plans before posting them, “in part, to avoid the inadvertent disclosure of protected information or other information requiring specific procedures before disclosure.” *Id.* at 4. But aside from a single reference to classified information in the Introduction to its opposition, *see id.* at 2, OMB identifies no law that might bar disclosure. And if the spend plans contain classified information—though OMB offers no basis for believing they might—that information would already be marked as such. *See* 32 C.F.R. § 2001.20. Identifying it thus could be done quickly and easily—which is the reason the marking is required in the first instance. *See id.* (requiring the classified marking to be “uniformly and conspicuously applied to leave no doubt about the

classified status of the information”). Perhaps for that reason, Congress, while recognizing that apportionment documents might reference classified documentation, nonetheless required posting within 2 days. *See* Pub. L. 117-103, div. E, tit. II, § 204(c), 136 Stat. 49, 257 (2022) (providing that classified documentation referenced in an apportionment will be made separately available to Congress). The law thus makes clear that the need to protect classified information does not justify delays in posting apportionment documents.

In any event, by OMB’s count, OMB has, at most, only 40 agreed-upon, incorporated-by-reference spend plans left to post—approximately the same number it posted in the days leading up to its recent filing.¹ Particularly given that the majority of the posted spend plans are only a single page, *see* Supp. Lindgrensavage Dec. ¶ 5, OMB’s decision to review documents before posting them should not prevent it from being able to post the remaining spend plans within two weeks of this Court’s order on Plaintiff’s motion.

II. The Court should require OMB to immediately start posting incorporated-by-reference spend plans within two days of when they become legally binding.

With respect to posting going forward, the Court should order OMB to immediately start posting incorporated-by-reference spend plans within two days of when they become binding on the agency. Again, OMB makes excuses for failing to comply that cannot bear their weight. OMB states that it is “creating an entirely new system for clearance and publication of incorporated

¹ It is somewhat unclear from OMB’s filing how many agreed-upon and incorporated-by-reference spend plans are left to post. Its declaration refers to 161 agreed-upon spend plans, but then states that 28 of them “have not yet been received from the relevant agency.” Decl. of David Rowe ¶ 10, ECF No. 48-1 (Rowe Decl.). It is unclear whether that means that OMB does not have a copy of 28 incorporated-by-reference agreed-upon spend plans—even though those spend plans contain binding obligations that OMB has imposed on agencies under threat of criminal penalties, *see* 31 U.S.C. §§ 1517(a)(1), 1519—or whether OMB and the agency have not in fact agreed upon those spend plans, even though OMB says they are “agreed-upon spend plans,” Rowe Decl. ¶ 10. If the former, OMB has 40 spend plans left to post; if the latter, only 12.

spend plans prospectively.” Opp. at 4. Congress, however, gave OMB only 120 days after the enactment of the 2022 Act to create the *entire* Public Apportionments Database. *See* Pub. L. 117-103, div. E, tit. II, § 204(b), 136 Stat. at 257. And the Database has already been created; spend plans need only be added. Yet more than 130 days have passed since this Court ordered OMB to include incorporated-by-reference spend plans within the Database. The agency should not be given longer to include spend plans in the Database than it was given to establish the Database in the first place.

Moreover, more than 130 days after this Court’s January 28 Order, OMB does not indicate that it is even close to implementing its new system. Indeed, OMB discusses what features the process will “likely include,” suggesting that it does not yet know what functionalities the system will have. Opp. at 2. Even more troubling, OMB does not express an intent to comply fully with the law even after the system is in place. Instead, OMB states that its “goal” will be publication within two days “where possible.” *Id.*

Regardless, OMB can comply with the Court’s order and post the required spend plans in the Database while it is developing its new system. This Court should require it to start complying immediately.

III. The presumption of regularity is not implicated here.

Contrary to OMB’s claims, setting deadlines for it to comply with the Court’s January 28 Order would not constitute “micro-manag[ing]” of the Executive Branch. Opp. at 6. The problem here is not how OMB is exercising its “discretion in the development and deployment of apportionment data systems.” *Id.* The problem is that OMB has not done—and is not doing—what the Court ordered it to do more than four months ago. OMB has no discretion not to comply with

this Court's order, and the presumption of regularity does not require the Court to presume, counterfactually, that OMB is in compliance.

Stated differently, Plaintiff is not asking this Court to "prescribe the specific steps" that OMB must take to comply with its legal obligations. *Id.* (quoting *Cobell v. Norton*, 392 F.3d 461, 476 (D.C. Cir. 2004)). Plaintiff is asking the Court to set deadlines by which OMB must comply, however OMB chooses to do so. As was true last July, when the Court denied a stay of its summary judgment order, Plaintiff and the public should not be "further delay[ed]" in obtaining "information they are entitled to know as a matter of federal law!!" July 23, 2025 Minute Order.

CONCLUSION

This Court should order OMB to post spend plans incorporated by reference into apportionment documents by the deadlines set forth in Plaintiff's Motion.

Dated: June 12, 2026

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