

**Congress of the United States**  
**Washington, DC 20515**

September 27, 2019

The Honorable Mick Mulvaney  
Acting Chief of Staff  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

The Honorable Russell Vought  
Acting Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Mr. Mulvaney and Mr. Vought:

The Committees on the Budget and Appropriations are the primary committees charged with overseeing and writing federal budget and appropriation laws. Consistent with our authority, we are continuing our efforts in the 116th Congress to pursue productive improvements and reforms to the laws and authorities governing federal financial management to ensure that the Congress remains at the center of funding decisions. Specifically, our committees are considering legislative proposals related to the apportionment process and the withholding of funds, including in the context of the Impoundment Control Act of 1974 (ICA) and the annual appropriations acts.

As we stated in our September 18th letter, we have serious concerns that recent apportionment actions by the Office of Management and Budget (OMB) to withhold military aid for Ukraine and other foreign assistance constitute unlawful impoundments in violation of the ICA and are an abuse of the authority provided to the President to apportion appropriations. In the short time since we sent that letter, additional reports have emerged detailing the circumstances surrounding the withholding of funding for Ukraine and OMB's involvement in that withholding.<sup>1</sup>

According to those reports, at least a week prior to a July 25th phone call between President Trump and Ukrainian President Zelenskyy, President Trump told Mr. Mulvaney to withhold almost \$400 million in military aid and foreign assistance for Ukraine,<sup>2</sup> and “[o]fficials at the Office of Management and Budget relayed Trump’s order to the State Department and the Pentagon during an interagency meeting in mid-July.”<sup>3</sup> The reporting also indicates that “[t]here was concern within the administration that if they did not spend the money [appropriated for Ukraine], they would run afoul of the law” and that, eventually, Mr. Vought released the money.<sup>4</sup>

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<sup>1</sup> See *infra* notes 2-7, 9.

<sup>2</sup> The Washington Post, *Trump ordered hold on military aid days before calling Ukrainian president, officials say*, (Sept. 23, 2019), available at <https://wapo.st/2kYNju1> (“Washington Post, Sept. 23”); New York Times, *Trump Said to Have Frozen Aid to Ukraine Before Call With Its Leader*, (Sept. 23, 2019), available at <https://nyti.ms/2kBnT5k> (“New York Times, Sept. 23”).

<sup>3</sup> Washington Post, Sept. 23.

<sup>4</sup> Washington Post, Sept. 23.

On Tuesday, September 24, 2019, at the United Nations General Assembly, the President confirmed the withholding and added his reasoning, stating:

As far as withholding funds, those funds were paid. They were fully paid. But my complaint has always been — and I'd withhold again, and I'll continue to withhold until such time as Europe and other nations contribute to Ukraine. Because they're not doing it.<sup>5</sup>

The recently declassified complaint submitted to the Office of the Inspector General of the Intelligence Community (ICIG) on Monday, August 12, 2019 provided similar confirmation of OMB's withholding of appropriated funding for Ukraine. The complaint, which appeared credible according to a letter from the ICIG,<sup>6</sup> stated among other things:

On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President "earlier that month" had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it.<sup>7</sup>

As reports continue to emerge, we have deepening concerns that OMB continues to demonstrate a pattern of impeding agencies' ability to use their enacted appropriations; that recent apportionment actions taken by OMB to withhold military aid and foreign assistance funding administered by the Department of Defense, Department of State, and U.S. Agency for International Development constitute unlawful impoundments; and that OMB took the unusual and seemingly unprecedented step of delegating the authority to execute these apportionments to a political appointee, in lieu of career civil servants who have historically been the designated officials responsible for overseeing and executing these technical budget documents.<sup>8</sup> These actions have collectively undermined the longstanding application and predictability of federal

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<sup>5</sup> White House, *Remarks by President Trump Upon Arriving at the U.N. General Assembly*, <https://go.usa.gov/xVdPd> (Sept. 24, 2019); see also *The Washington Post*, *Trump says he has authorized release of transcript of call with the Ukrainian president*, (Sept. 24, 2019), available at [https://www.washingtonpost.com/politics/trump-confirms-he-withheld-military-aid-from-ukraine-says-he-wants-other-countries-to-help-pay/2019/09/24/42bdf66c-ded2-11e9-8dc8-498eabc129a0\\_story.html](https://www.washingtonpost.com/politics/trump-confirms-he-withheld-military-aid-from-ukraine-says-he-wants-other-countries-to-help-pay/2019/09/24/42bdf66c-ded2-11e9-8dc8-498eabc129a0_story.html).

<sup>6</sup> Letter from Michael K. Atkinson, Inspector General of the Intelligence Community to the Honorable Joseph Maguire, Director of National Intelligence (Acting) (Aug. 26, 2019), available at <https://go.usa.gov/xVwTU> (also describing in footnote 12 the Complainant's report regarding OMB officials).

<sup>7</sup> Declassified Whistleblower Complaint to the Honorable Richard Burr, Chairman, Select Committee on Intelligence, and the Honorable Adam Schiff, Chairman, Permanent Select Committee on Intelligence (Aug. 12, 2019), available at <https://go.usa.gov/xVwTE>.

<sup>8</sup> See, e.g., OMB Circular A-11 § 120 (describing that apportionments are legally-binding documents that are approved by an OMB Deputy Associate Director (DAD), which is a career position).

funds management processes and require closer examination by our committees to inform appropriate legislative responses and reforms.

Therefore, to support our committees' efforts, we request that OMB produce written responses to the committees, no later than Tuesday, October 1, 2019, to the following questions:

- (1) a. When did OMB first instruct agencies to withhold assistance for Ukraine, including amounts appropriated in section 9013 of the Department of Defense Appropriations Act, 2019 for the Ukraine Security Assistance Initiative and any applicable amounts provided in other appropriation acts for the Foreign Military Financing Program?
  - b. In which Treasury Appropriation Fund Symbol(s) (TAFS or account) were amounts withheld?
  - c. When was the first apportionment action executed for (each of) the relevant account(s) to withhold those funds?
  - d. Were the withheld funds made available for immediate use by the agencies during fiscal year 2019, and if so, when?
  
- (2) a. When did OMB first instruct agencies to withhold funding in the accounts referenced in the letter apportionment effective as of 11:59pm Eastern Daylight Time on Saturday, August 3, 2019 (“August 3, 2019 Letter Apportionment”)?<sup>9</sup>
  - b. When were the first apportionment actions executed to withhold those funds?
  - c. Were the withheld funds made available for immediate use by the agencies during fiscal year 2019, and if so, when?

No later than Tuesday, October 1, 2019, we also request that OMB produce the following documentation to the committees:

- (3) All apportionments or reapportionments for fiscal year 2019 that were executed in the last quarter of fiscal year 2019, including documentation of the approval date of each such apportionment action and any footnotes, for any applicable TAFS used for assistance for Ukraine or the Ukraine Security Assistance Initiative appropriation, including the Department of Defense, Operation and Maintenance, Defense-wide account, 97-0100/2019 and account(s) for any applicable amounts provided in other appropriation acts for the Foreign Military Financing Program.
  
- (4) All apportionments and reapportionments for fiscal year 2019 that were executed in the last quarter of fiscal year 2019, including documentation of the approval date of each such apportionment action and any footnotes, for each TAFS referenced in the August 3, 2019 Letter Apportionment and any applicable child accounts.

Finally, we request that OMB produce documentation to the committees, no later than Friday, October 11, 2019, on the following:

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<sup>9</sup> August 3, 2019 Letter Apportionment, *available at* <https://int.nyt.com/data/documenthelper/1613-letter-foreign-aid/00439a43706d0dbbe8b2/optimized/full.pdf>.

- (5) Documentation sufficient to show the obligational status of the relevant assistance funding to Ukraine by account, including all amounts appropriated in section 9013 of the Department of Defense Appropriations Act, 2019 and any applicable amounts provided in other appropriation acts for the Foreign Military Financing Program, as of June 30, 2019 and as of September 30, 2019, including the specific amounts that were (a) unobligated, (b) obligated but not expended, and (c) obligated and expended.
- (6) Documentation sufficient to show:
- a. when OMB first instructed agencies to withhold assistance for Ukraine, including amounts appropriated in section 9013 of the Department of Defense Appropriations Act, 2019 and any applicable amounts provided in other appropriation acts for the Foreign Military Financing Program;
  - b. the amount of funding that was withheld from obligation, and in which account(s);
  - c. when the first apportionment action was executed to withhold those funds;
  - d. the period over which the funds were withheld;
  - e. whether the funds were, subsequent to those withholdings, made available for immediate use by the agencies during fiscal year 2019, and if so, when;
  - f. the factual, legal, and policy bases upon which these actions were taken; and
  - g. whether requests were made by the affected agencies to reapportion the funding at issue, or to alter the conditions of the apportionments in effect, and if so, whether those requests were granted.
- (7) Documentation sufficient to show:
- a. whether there was an “interagency process” related to the withholding or use of amounts appropriated in section 9013 of the Department of Defense Appropriations Act, 2019, and the basis for initiating such interagency process, including its stated purposes and goals;<sup>10</sup>
  - b. what entities or agencies were involved in such interagency process;
  - c. when that process began; and
  - d. the conclusions reached through that process and when they were reached, including the outcomes of any interagency meetings that occurred on July 23, 2019 and July 26, 2019 related to the disposition of the funding.
- (8) Documentation sufficient to show the obligational status of all amounts apportioned as unavailable in the August 3, 2019 Letter Apportionment. This documentation should show the status of those funds as of June 30, 2019 and as of September 30, 2019, and should show, at a minimum, the specific amounts by account that were (a) unobligated, (b) obligated but not expended, and (c) obligated and expended.
- (9) Documentation sufficient to show:

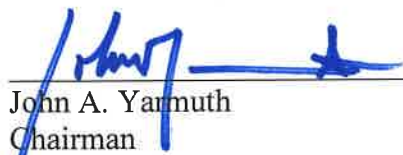
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<sup>10</sup> Washington Post, Sept. 23.

- a. when OMB first instructed agencies to withhold funding in the accounts referenced in the August 3, 2019 Letter Apportionment;
  - b. how much funding was withheld from obligation in each account, and over what period the amounts were withheld;
  - c. when the first apportionment actions were executed to withhold those funds;
  - d. whether the funds were, subsequent to those withholdings, made available for immediate use by the agencies during fiscal year 2019, and if so, when;
  - e. the factual, legal, and policy bases upon which these actions were taken; and
  - f. whether requests were made by the affected agencies to reapportion the funding at issue, or to alter the conditions of the apportionments in effect, if any, and whether those requests were granted.
- (10) Documentation sufficient to show the timeline and basis for the delegation of apportionment authority to the Associate Director for National Security Programs, any related delegation actions, and any other delegations of the apportionment authority to a political appointee during fiscal year 2019.
- (11) All apportionments and reapportionments for fiscal year 2019 that were executed in the first three quarters of fiscal year 2019, including documentation of the approval date of each such apportionment action and any footnotes, for any applicable TAFS used for assistance for Ukraine or the Ukraine Security Assistance Initiative appropriation, including the Department of Defense, Operation and Maintenance, Defense-wide account, 97-0100/2019 and account(s) for any applicable amounts provided in appropriation acts for the Foreign Military Financing Program.
- (12) All apportionments and reapportionments for fiscal year 2019 that were executed in the first three quarters of fiscal year 2019, including documentation of the approval date of each such apportionment action and any footnotes, for each TAFS referenced in the August 3, 2019 Letter Apportionment and any applicable child accounts.

Thank you for your prompt attention to this matter.

Sincerely,

  
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John A. Yarmuth  
Chairman  
House Committee on the Budget

  
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Nita M. Lowey  
Chairwoman  
House Committee on Appropriations