

Congress of the United States
Washington, DC 20515

October 7, 2019

VIA U.S. AND ELECTRONIC MAIL

The Honorable Mark T. Esper
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Esper:

Pursuant to the House of Representatives' impeachment inquiry, we are hereby transmitting a subpoena that compels you to produce the documents set forth in the accompanying schedule by **October 15, 2019**.

This subpoena is being issued by the Permanent Select Committee on Intelligence under the Rules of the House of Representatives in exercise of its oversight and legislative jurisdiction and after consultation with the Committee on Foreign Affairs and the Committee on Oversight and Reform. The subpoenaed documents shall be collected as part of the House's impeachment inquiry and shared among the Committees, as well as with the Committee on the Judiciary as appropriate.¹ Your failure or refusal to comply with the subpoena, including at the direction or behest of the President or the White House, shall constitute evidence of obstruction of the House's impeachment inquiry and may be used as an adverse inference against you and the President.

The Committees are investigating the extent to which President Trump jeopardized U.S. national security by pressing Ukraine to interfere with our 2020 election and by withholding military assistance provided by Congress to help Ukraine counter Russian aggression, as well as any efforts to cover up these matters.

In September 2018, Congress appropriated \$250 million to the Department of Defense for the Ukraine Security Assistance Initiative for fiscal year 2019.² In its Committee report authorizing the appropriation, the Senate Committee on Armed Services wrote:

The committee remains deeply concerned by the continuing aggression of Russia and Russian-led separatist forces in Ukraine. The committee welcomes the delivery of

¹ See Letter from Jerrold Nadler, Chairman, Committee on the Judiciary, to Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence; Maxine Waters, Chairwoman, Committee on Financial Services; Elijah E. Cummings, Chairman, Committee on Oversight and Reform; and Eliot L. Engel, Chairman, Committee on Foreign Affairs (Aug. 22, 2019) (online at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/FiveChairsLetter8.22.pdf>).

² Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245 at § 9013(2018).

Javelin Missiles and Javelin Command Launch Units to Ukraine, which sends a strong signal of the United States' commitment to the defense of allies and partners. The committee continues to emphasize the importance of providing security assistance and intelligence support, including defensive lethal assistance, to the Government of Ukraine to build its capacity to defend its sovereignty and territorial integrity.³

On February 28 and May 23, 2019, Under Secretary of Defense for Policy John C. Rood notified Congressional chairs that the Department of Defense intended to release large tranches of this military aid to Ukraine.⁴ The Congressional committees approved the defense assistance shortly after each notification. On June 18, 2019, the Defense Department announced that it was finalizing \$250 million in security cooperation funds to Ukraine.⁵

According to multiple press reports, at some point in July 2019, President Trump ordered Acting Chief of Staff and Office of Management and Budget (OMB) Director Mick Mulvaney to freeze the military aid to Ukraine, and Mr. Mulvaney reportedly conveyed the President's order "through the budget office to the Pentagon and the State Department, which were told only that the administration was looking at whether the spending was necessary."⁶

According to press reports, "Administration officials were instructed to tell lawmakers that the delays were part of an 'interagency process' but to give them no additional information."⁷ Officials at the Departments of State and Defense reportedly were "puzzled and alarmed" after learning about the White House's directive. Defense Department officials reportedly "tried to make a case to the White House that the Ukraine aid was effective and should not be looked at in the same manner as other aid," but "those arguments were ignored." State and Defense Department officials reportedly contacted Congress to inform them of the freeze imposed by the White House.⁸

³ Senate Committee on Armed Services, *Report to Authorize Appropriations for Fiscal Year 2019 for Military Activities of the Department of Defense and for Military Construction, to Prescribe Military Personnel Strengths for Such Fiscal Year, and for Other Purposes* (Sen. Rpt. 115-262) (June 5, 2018) (online at www.govinfo.gov/content/pkg/CRPT-115srpt262/html/CRPT-115srpt262.htm).

⁴ Letter from John C. Rood, Under Secretary for Policy, Department of Defense, to Congressional Chairmen (May 23, 2019) (online at <https://assets.documentcloud.org/documents/6430088/Pentagon-Letter-On-Ukraine-Aid.pdf>).

⁵ Department of Defense, *Press Release: DOD Announces \$250M to Ukraine* (June 18, 2019) (online at www.defense.gov/Newsroom/Releases/Release/Article/1879340/dod-announces-250m-to-ukraine/).

⁶ *Trump Said to Have Frozen Aid to Ukraine Before Call with Its Leader*, New York Times (Sept. 23, 2019) (online at www.nytimes.com/2019/09/23/us/politics/trump-un-biden-ukraine.html).

⁷ *Trump Ordered Hold on Military Aid Days Before Calling Ukrainian President, Officials Say*, Washington Post (Sept. 23, 2019) (online at www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html).

⁸ *Trump Said to Have Frozen Aid to Ukraine Before Call with Its Leader*, New York Times (Sept. 23, 2019) (online at www.nytimes.com/2019/09/23/us/politics/trump-un-biden-ukraine.html).

On July 25, 2019, President Trump had a telephone call with President Volodymyr Zelensky of Ukraine. According to the record of the call that has now been made public, President Trump urged the Ukrainian President to launch an investigation into former Vice President Biden immediately after the Ukrainian President inquired about the status of the U.S. military assistance, including his desire to procure U.S.-manufactured Javelin missiles.⁹

According to the record, immediately after President Zelensky mentioned his desire to obtain Javelin missiles, President Trump stated, "I would like you to do us a favor though." He also stated, "I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it." He also said:

There's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it... It sounds horrible to me.¹⁰

In August 2019, Senator Ron Johnson was informed by Gordon Sondland, the U.S. Ambassador to the European Union, that if Ukraine would "get to the bottom of what happened in 2016—if President Trump has that confidence, then he'll release the military spending." Senator Johnson stated: "At that suggestion, I winced." He also stated: "My reaction was: Oh, God. I don't want to see those two things combined."¹¹

As you are aware, the Impoundment Control Act of 1974 authorizes the President to withhold the obligation of funds only "(1) to provide for contingencies; (2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or (3) as specifically provided by law." The President is required to submit a special message to Congress with information about the proposed deferral of funds.¹²

On August 30, 2019, Chairman Adam Smith and Ranking Member Mac Thornberry of the House Committee on Armed Services wrote a letter to Mr. Mulvaney requesting information regarding why military assistance to Ukraine was being withheld and when it would be released. They wrote: "This funding is critical to the accomplishment of U.S. national security objectives in Europe."¹³

⁹ The White House, *Memorandum of Telephone Conversation* (July 25, 2019) (online at www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf).

¹⁰ *Id.*

¹¹ *Trump, in August Call with GOP Senator, Denied Official's Claim on Ukraine Aid*, Wall Street Journal (Oct. 4, 2019) (online at www.wsj.com/articles/trump-administration-used-potential-meeting-to-pressure-ukraine-on-biden-texts-indicate-11570205661).

¹² 2 U.S.C. § 684.

¹³ Letter from Chairman Adam Smith and Ranking Member Mac Thornberry, House Committee on Armed Services, to Mick Mulvaney, Director, Office of Management and Budget (Aug. 30, 2019).

On September 3, 2019, a bipartisan group of Senators—including Senators Rob Portman, Jeanne Shaheen, Dick Durbin, Richard Blumenthal, and Ron Johnson—wrote a letter requesting that OMB release the military assistance to Ukraine that the Trump Administration was withholding:

The funds designated for the Ukraine Security Assistance Initiative are vital to the long term viability of the Ukrainian military. It has helped Ukraine develop the independent military capabilities and skills necessary to fend off the Kremlin's continued onslaughts within its territory. In fact, Ukraine continues to fight daily on its eastern border against Russia-backed separatists in the provinces of Donetsk and Luhansk, and over 10,000 Ukrainian soldiers and civilians have lost their lives in this war. U.S.-funded security assistance has already helped turn the tide in this conflict, and it is necessary to ensure the protection of the sovereign territory of this young country, going forward.¹⁴

On September 5, 2019, Chairman Eliot L. Engel and Ranking Member Michael McCaul of the House Committee on Foreign Affairs wrote a letter to OMB urging the Trump Administration to lift its hold on security assistance funds to support Ukraine, writing: "These funds, which were appropriated by Congress as Foreign Military Financing and as part of the Ukraine Security Assistance Initiative and signed into law by the President, are essential to advancing U.S. national security interests."¹⁵

On September 9, 2019, the Committees on Intelligence, Foreign Affairs, and Oversight wrote to the White House requesting documents related to "the actual or potential suspension of security assistance to Ukraine."¹⁶ The White House never responded this request. However, two days later, on September 11, 2019, the White House released its hold on the military assistance to Ukraine.¹⁷

On September 24, 2019, Senate Majority Leader Mitch McConnell stated that, although he was "very actively involved in advocating the aid," he "was not given an explanation" about

¹⁴ Letter from Senators Rob Portman, Jeanne Shaheen, Dick Durbin, Richard Blumenthal, and Ron Johnson, to Mick Mulvaney, Director, Office of Management and Budget (Sept. 3, 2019) (online at www.portman.senate.gov/newsroom/press-releases/portman-shaheen-lead-bipartisan-ukraine-caucus-leadership-letter-urging).

¹⁵ Letter from Chairman Eliot L. Engel and Ranking Member Michael McCaul, House Committee on Foreign Affairs, to Mick Mulvaney, Director, and Russell Vought, Acting Director, Office of Management and Budget (Sept. 5, 2019).

¹⁶ Letter from Chairman Eliot L. Engel, House Committee on Foreign Affairs, Chairman Adam Schiff, House Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, House Committee on Oversight and Reform, to Secretary Mike Pompeo, Department of State (Sept. 9, 2019) (online at https://foreignaffairs.house.gov/_cache/files/a/d/ad1e0561-2252-4f7c-97ad-f649db558c83/1F587BDDA9087BEDDEE8D45A8F92C370.test.ele-schiff-cummings-letter-to-sec-pompeo-on-ukraine-002-.pdf).


¹⁷ *Trump Administration Backs Off Hold on Ukraine Military Aid*, Politico (Sept. 12, 2019) (online at www.politico.com/story/2019/09/12/trump-administration-ukraine-military-aid-3825755).

why it was being withheld, even though he talked to the Secretary of Defense and the Secretary of State. He stated: "I have no idea what precipitated the delay."¹⁸

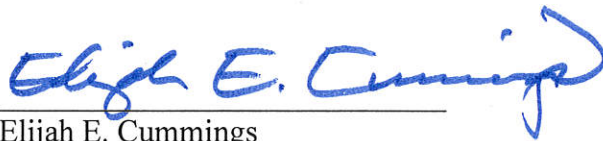
The enclosed subpoena demands documents that are necessary for the Committees to examine this sequence of these events and the reasons behind the White House's decision to withhold critical military assistance to Ukraine that was appropriated by Congress to counter Russian aggression.

Please contact staff for the Permanent Select Committee on Intelligence at (202) 225-7690 to arrange for the production of documents.

Sincerely,


Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Eliot L. Engel
Chairman
House Committee on Foreign Affairs


Elijah E. Cummings
Chairman
House Committee on Oversight and Reform

Enclosures

cc: The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Michael McCaul, Ranking Member
House Committee on Foreign Affairs

The Honorable Jim Jordan, Ranking Member
House Committee on Oversight and Reform

¹⁸ McConnell: 'I Was Not Given an Explanation' for Ukraine Aid Delay, The Hill (Sept. 24, 2019) (online at <https://thehill.com/homenews/senate/462828-mcconnell-i-was-not-given-an-explanation-for-ukraine-aid-delay>).

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To THE HONORABLE MARK T. ESPER, SECRETARY OF DEFENSE

You are hereby commanded to be and appear before the
House Permanent Select Committee on Intelligence

of the House of Representatives of the United States at the place, date, and time specified below.

- ☒ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: PERMANENT SELECT COMMITTEE ON INTELLIGENCE, HVC-304, U.S. CAPITOL

Date: OCTOBER 15, 2019

Time: 5:00 PM

- ☐ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- ☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 7th day of October, 2019.

Attest:

Robert F. Harris, Deputy Clerk
Clerk

[Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for

THE HONORABLE MARK T. ESPER, SECRETARY OF DEFENSE

Address _____

before the Permanent Select Committee on Intelligence

*U.S. House of Representatives
116th Congress*

Served by (print name) MATHEW BITAR

Title GENERAL COUNSEL

Manner of service ELECTRONIC MAIL

Date OCTOBER 7, 2019

Signature of Server [Signature]

Address Permanent Select Committee on Intelligence, HVC-304, U.S. Capitol

SCHEDULE

In accordance with the attached Definitions and Instructions, you, Mark T. Esper, in your capacity as Secretary of Defense, are hereby required to produce, for the time period from January 1, 2019, to the present, all documents and communications in your custody, possession or control referring or relating to:

1. President Trump's April 21, 2019, and July 25, 2019, telephone conversations with Ukrainian President Volodymyr Zelensky, including but not limited to:
 - a. Any recordings, transcripts, notes (including electronic and hand-written notes), summaries, and draft versions of the official "Memorandum of Telephone Conversation";
 - b. All preparatory memoranda and materials including the full presidential call package and any addenda; and
 - c. The identity of all individuals who listened to, participated in, assisted in preparation for, transcribed, took notes during, reviewed the call record or transcript, or received information about the April 21, 2019, and July 25, 2019, telephone conversations;
2. Communications between or among current or former officials of the following entities relating to the July 25, 2019, telephone conversation:
 - a. The White House, including the White House Counsel's Office, the National Security Council (NSC), the Office of the Vice President (OVP), the Office of Management and Budget (OMB), or the White House Situation Room;
 - b. The Department of Justice (DOJ);
 - c. The Department of State (DOS);
 - d. The Department of Energy (DOE);
 - e. Agencies in the Intelligence Community (IC); and
 - f. The Department of Defense (DOD).
3. Any of the following meetings or potential meetings:
 - a. Any request, suggestion, or proposal for a telephone call, meeting, visit, or other communication involving President Trump and President Zelensky;

- b. A meeting at the White House on May 23, 2019, involving President Trump, Energy Secretary Rick Perry, former Ambassador Kurt Volker, and/or Ambassador Gordon Sondland;
 - c. President Zelensky's inauguration on May 20, 2019, in Kyiv, Ukraine, including but not limited to President Trump's decision not to attend and to send Energy Secretary Rick Perry to lead the U.S. delegation instead of Vice President Pence;
 - d. A meeting on or about July 10, 2019, at the White House between Ukrainian officials Andriy Yermak and Oleksander Danylyuk and U.S. government officials, including Energy Secretary Rick Perry, former National Security Advisor John Bolton, former Ambassador Kurt Volker, and Ambassador Gordon Sondland, including the proposed or actual participation of Vice President Mike Pence and/or President Trump in the meeting, and any notes or memoranda related to the meeting that were provided to you or your office;
 - e. A potential meeting between President Trump and President Zelensky in Warsaw, Poland on about September 1, 2019, including President Trump's decision to cancel his attendance;
 - f. Meetings and communications between U.S. officials, including but not limited to Vice President Mike Pence, Energy Secretary Rick Perry, and Senior Advisor Jared Kushner, and President Zelensky and other Ukrainian government officials in Warsaw, Poland on or about September 1, 2019;
 - g. Secretary Pompeo's September 17, 2019, call with the Ukrainian Foreign Minister Prystayko;
 - h. Vice President Pence's September 18, 2019, call with President Zelensky; and
 - i. A meeting between President Trump and President Zelensky during the United Nations General Assembly on or about September 25 2019, including but not limited to any discussion of their July 25, 2019, phone call, as well as any preparatory memoranda and materials generated for the meeting; any notes, readouts, summaries of the same; and any follow-up directives and guidance formally or informally issued to NSC staff, as well as relevant departments and agencies, either formally or informally;
4. Efforts by any current or former member of the Trump Administration or Rudolph ("Rudy") W. Giuliani, Igor Fruman, Lev Parnas, Semyon ("Sam") Kislin, Joseph DiGenova, Victoria Toensing, Vitaly Pruss, or any of their associates, to induce, compel, petition, press, solicit, request, or suggest that current or former Ukrainian government officials, politicians, or other persons or entities associated with or acting in any capacity as a representative, agent, or proxy for any such individuals, investigate matters related to Burisma Holdings Ltd., Paul Manafort, Hunter Biden, Joseph Biden, the Democratic National Committee, Hillary Clinton, and/or any U.S. persons or entities;

5. The actual or potential withholding, freezing, reviewing, delaying, deferring, directing, impounding, or releasing of foreign assistance of any kind, including security assistance, to Ukraine for fiscal year 2019, including communications among or between individuals in the White House, OMB, OVP, DOD, DOS , DOE, United States Agency for International Development (USAID), ODNI, or agencies in the IC;
6. The timing, content, and manner for communicating to Congress information regarding the status of foreign assistance of any kind, including security assistance, to Ukraine, including but not limited to written Congressional notifications of foreign assistance, briefings, or any communications referring or relating to information that should or should not be conveyed and any reasons for the decision;
7. Proposed or actual apportionments or re-apportionments, including footnotes, specifically withholding obligation of foreign assistance of any kind to Ukraine by DOD, DOS , DOE, USAID, ODNI or the IC, including funds appropriated for the Ukraine Security Assistance Initiative by section 9013 of the Department of Defense Appropriations Act, 2019 (Division A of Public Law 115-245), and for amounts available during fiscal year 2019 within the Foreign Military Financing Program account(s);
8. Deferrals or rescissions of any funding appropriated for foreign aid to Ukraine, including transmitting a “special message” to the House of Representatives, the Senate, and the Comptroller General as required by the Impoundment Control Act of 1974;
9. Opinions, advice, counsel, approvals, or concurrences provided by OMB, NSC, the White House, DOJ, DOD, or DOS on the legality of using apportionments to withhold or defer the obligation of congressionally appropriated funds to Ukraine;
10. The rate of obligations or expenditure for foreign assistance of any kind provided by DOD, DOS, DOE, USAID, or IC agencies to Ukraine, including the obligational status and agency capacity for timely execution under all proposed policy options of all such assistance;
11. Any delegation or revocation of apportionment authority involving OMB political or career officials;
12. Planned or actual interagency meetings related to foreign assistance of any kind, including security assistance, to Ukraine, including but not limited to documents sufficient to show the identities of all officials who attended interagency meetings on July 18, 2019, July 23, 2019, July 26, 2019, and July 31, 2019, among others;
13. The decision announced on or about September 11, 2019, to provide appropriated foreign aid to Ukraine for fiscal year 2019, including but not limited to any notes, memoranda, documentation or correspondence related to the decision; and

14. Meetings, calls, or other engagements with Ukrainian officials regarding potential or actual delays in the provision of funding or implementation of U.S. foreign assistance, including security assistance, to Ukraine.

RESPONDING TO COMMITTEE SUBPOENAS

In responding to the subpoena, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you. To expedite our review, we request that you produce any responsive materials immediately upon being identified, rather than waiting to submit all documents at one time.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's subpoena to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced. Documents produced on paper (those from paper files that you choose to produce as such) shall not contain any permanent fasteners (i.e., staples), but shall be separated based on the divisions between documents as it is maintained in the custodian's files by non-permanent fasteners (e.g., paper clips, binder clips, rubber bands) or a non-white slip sheet.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as

thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be Bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide a log containing the following information concerning every

such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author and addressee; (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

- (a) Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
- (b) In complying with the request, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
- (c) Any assertion by a request recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request; and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

20. When representing a witness or entity before the Committee in response to a document request or request for transcribed interview, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel

in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

DEFINITIONS

1. The term “documents in your possession, custody or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
2. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: agreements; papers; memoranda; correspondence; reports; studies; reviews; analyses; graphs; diagrams; photographs; charts; tabulations; presentations; marketing materials; working papers; records; records of interviews; desk files; notes; letters; notices; confirmations; telegrams; faxes, telexes, receipts; appraisals; interoffice and intra office communications; electronic mail (e-mail) and attachments; electronic messages; text messages; contracts; cables; recordings, notations or logs of any type of conversation, telephone call, meeting or other communication; bulletins; printed matter; computer printouts; teletype; invoices; transcripts; audio or video recordings; statistical or informational accumulations; data processing cards or worksheets; computer stored and/or generated documents; computer databases; computer disks and formats; machine readable electronic files, data or records maintained on a computer; instant messages; diaries; questionnaires and responses; data sheets; summaries; minutes; bills; accounts; estimates; projections; comparisons; messages; correspondence; electronically stored information and similar or related materials. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
3. The term “entity” means a corporation, partnership, limited partnership, limited liability company, joint venture, business trust, or any other form or organization by which business or financial transactions are carried out.
4. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, smartphone, mail, telex, facsimile, computer, encrypted app, in-person discussions, releases, delivery, or otherwise.
5. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

6. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
7. The terms or “relating” “concerning” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.