

RON JOHNSON, WISCONSIN, CHAIRMAN

ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
JAMES LANKFORD, OKLAHOMA
MITT ROMNEY, UTAH
RICK SCOTT, FLORIDA
MICHAEL B. ENZI, WYOMING
JOSH HAWLEY, MISSOURI

GARY C. PETERS, MICHIGAN
THOMAS R. CARPER, DELAWARE
MAGGIE HASSAN, NEW HAMPSHIRE
KAMALA D. HARRIS, CALIFORNIA
KYRSTEN SINEMA, ARIZONA
JACKY ROSEN, NEVADA

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

GABRIELLE D'ADAMO SINGER, STAFF DIRECTOR
DAVID M. WEINBERG, MINORITY STAFF DIRECTOR

September 27, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Director Mulvaney:

I am writing to request additional information regarding the apparent delay in the payment of approximately \$391 million in military and security aid for Ukraine. As you know, Ukraine is an important ally in Eastern Europe and the target of continued Russian aggression, and I am concerned by reports that the Office of Management and Budget (OMB) may have purposefully delayed the payment of these critical, Congressionally-appropriated funds. On August 12, 2019, the Intelligence Community Inspector General (IG) received a whistleblower disclosure, which the IG subsequently determined was credible and met the definition of an "urgent concern."¹ That whistleblower disclosure, released publicly on September 26, 2019, states that "the instruction to suspend this assistance [to Ukraine] had come directly from the President" shortly prior to the President's phone call with the President of Ukraine.²

In 2018 and early 2019, Congress appropriated \$391.5 million in security and military aid for Ukraine, including \$250 million from the Department of Defense (DOD) and \$141.5 million from the Department of State.³ On February 28, 2019 and May 23, 2019, the Secretary of Defense notified Congress that DOD was planning to provide approximately \$125 million (\$250 million total) for Ukraine's defense.⁴ In contrast to these notifications, it appears that this funding

¹ Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Chairman Adam Schiff and Ranking Member Devin Nunes, House Permanent Select Committee on Intelligence (Sept. 9, 2019); Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Chairman Adam Schiff and Ranking Member Devin Nunes, House Permanent Select Committee on Intelligence (Sept. 17, 2019).

² Letter to Chairman Richard Burr, Senate Select Committee on Intelligence, and Chairman Adam Schiff, House Permanent Select Committee on Intelligence (Aug. 12, 2019) (https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf).

³ Pub. L. No. 115-141 (2018); Pub. L. No. 115-245 (2018); Pub. L. No. 116-6 (2019). Congressional Notification Transmittal from Assistant Secretary Mary Elizabeth Taylor, Bureau of Legislative Affairs, U.S. Department of State (19-286) (Sept. 11, 2019).

⁴ Letter from Undersecretary of Defense John Rood, DOD, to the Chairmen of the Senate and House Committees on Appropriations, Subcommittees on Defense of the Committees on Appropriations, Committees on Armed Services, Senate Committee on Foreign Relations, and House Committee on Foreign Affairs (Feb. 28, 2019); Letter from Undersecretary of Defense John Rood, DOD, to the Chairmen of the Senate and House Committees on Appropriations, Subcommittees on Defense of the Committees on Appropriations, Committees on Armed Services, Senate Committee on Foreign Relations, and House Committee on Foreign Affairs (May 23, 2019).

was not released, and was instead reportedly held by OMB at the direct request of the President.⁵ Members of Congress were provided conflicting information regarding the delay before the Administration finally released the funds on September 11, 2019—nearly a year after the President signed the Defense appropriations bill into law.⁶

I am deeply concerned with both the delay in critically needed funds for Ukraine, as well as the fact that this hold appears to have been directed by the President just prior to a phone call with President Zelensky.⁷ According to a summary of the call recently released by the White House, immediately after President Zelensky expressed thanks for the United States’ “great support in the area of defense” and inquired about purchasing additional Javelin anti-tank missiles, President Trump told President Zelensky, “I would like you to do us a favor.”⁸ The President made several requests—first, for an investigation related to CrowdStrike, seemingly in reference to an email server hacked during the 2016 presidential race, and, second, to initiate an investigation into allegations involving Vice President Joe Biden, a potential candidate for President in 2020. No President should attempt to leverage the power of his office and the relationship of the United States with a foreign power for his own personal and political gain.

The U.S. Constitution vests Congress with the “power of the purse”—the authority to authorize and appropriate funds, which the executive branch is expected to spend consistent with the law. Although legislation has provided the executive branch with certain flexibility on how to apportion and request adjustments in how appropriated funds may be spent, the executive branch may not unilaterally choose to withhold appropriated funds for objectives not approved by Congress.⁹ Further, as indicated in a bipartisan letter from my colleagues, dated September 3, 2019, the security assistance program for Ukraine has strong Congressional support as Ukraine continues to defend itself against Russian aggression.¹⁰

In order to better understand the Administration’s reported delay in obligating funding for Ukraine, please provide the following as soon as possible but no later than October 11, 2019:

⁵ *Trump ordered hold on military aid days before calling Ukrainian president, officials say*, Washington Post (Sept. 23, 2019) (https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/d193a6ca-de38-11e9-8dc8-498eabc129a0_story.html); Letter, *supra* note 2.

⁶ *Delay in Military Aid for Ukraine Stymied Lawmakers for Weeks*, Wall Street Journal (Sept. 23, 2019) (<https://www.wsj.com/articles/delay-in-military-aid-for-ukraine-stymied-lawmakers-for-weeks-11569252417>); Pub. L. No. 115-245 (2018).

⁷ Letter, *supra* note 2; Washington Post, *supra* note 5.

⁸ Memorandum of Telephone Conversation, Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019) (Declassified by order of the President, Sept. 24, 2019).

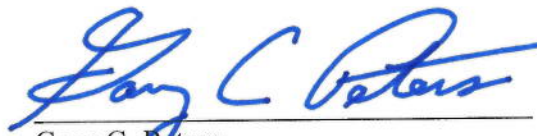
⁹ E.g. The Impoundment Control Act of 1974, as amended (Pub. L. 93-344) and the Antideficiency Act, as amended (Pub. L. 97-258).

¹⁰ Letter from Senators Shaheen, Portman, Durbin, Johnson, and Blumenthal to OMB Director Mick Mulvaney (Sept. 3, 2019) (<https://www.shaheen.senate.gov/imo/media/doc/Ukraine%20Security%20Letter%209.3.2019.pdf>).

1. Please confirm if OMB placed a “hold” on aid for Ukraine from the Departments of Defense or State, or otherwise directed these agencies to suspend or delay the obligation of these funds.
 - a. Please identify who directed OMB to place such a hold and the date of any such direction.
 - b. Please provide the date of any such communication by OMB to the agencies, and identify any employees or officials who participated in such communications.
 - c. Please provide all written communications within OMB and between OMB and DOD, the State Department, other entities within the Executive Office of the President, and any private individuals regarding Ukrainian aid during fiscal year 2019 until the aid’s obligation, including all emails, letters, and memorandums, as well as all relevant meeting notes.
2. Please explain the rationale for any delay in obligating Congressionally-appropriated aid for Ukraine from the Departments of Defense and State.
3. Please identify the officers or employees at OMB responsible for handling the accounts containing the DOD and State Department aid for Ukraine, including the applicable program examiner(s) and their superiors.
4. Please identify the statutory authority under which OMB held, suspended, or otherwise delayed aid for Ukraine.
5. Please explain the discrepancy between when DOD provided notification that Ukrainian aid funds would be provided and the actual obligation of these funds in September.
6. Please provide all signed or approved apportionment forms, with footnotes, regarding the Ukrainian aid.

I appreciate your prompt attention to this matter.

Sincerely,



Gary C. Peters
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs