

United States Senate

WASHINGTON, DC 20510

October 29, 2019

The Honorable Mark Esper
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Esper:

United States support to Ukraine has been vital to enabling Ukraine to defend its sovereignty and territorial integrity against Russian aggression. The Ukraine Security Assistance Initiative (USAI) has been essential for building the capacity of the Ukrainian security forces to counter Russia and Russian-backed separatists and encourage the Ukrainian Government to institute necessary defense reforms. The withholding of those funds raises serious concerns about the Department's management of security assistance and the Administration's compliance with its statutory obligations, potentially including the Impoundment Control Act of 1974.

For fiscal year 2019, Congress authorized and appropriated \$250 million for the USAI. On February 28th and May 23rd, 2019, the Department of Defense (DOD) notified the relevant congressional oversight committees of its plans for delivering this military assistance to Ukraine in two tranches, each estimated at \$125 million. DOD officials briefed committee staff on the details of each of those tranches within weeks and the committees approved release of those funds promptly following each briefing.

Given the expeditious process between the Department and the congressional committees in approving the tranches of USAI funding, we are deeply concerned that the Administration decided to delay execution of this critical military aid to Ukraine and failed to inform the committees of this decision or provide a reason for the delay. It has been reported that around July 18th the Office of Management and Budget (OMB), at the direction of the President, directed the Departments of Defense and State to withhold security assistance funds for Ukraine. Yet, it was not until mid-August that in response to congressional inquiries, Defense and State officials told congressional staff that OMB had directed the funds be held up pending an "interagency review," without providing any explanation of the purpose of that review. These funds were not released until mid-September, resulting in the expiration of \$34 million in DOD assistance to Ukraine –

funds that would have been returned to the Treasury unspent had not Congress intervened to preserve the funding in the current continuing resolution.

In light of these events, we request that you provide us the following information in writing, no later than November 11th, 2019:

- 1) Provide a timeline of the Department of Defense's execution of the February 28 and May 23 tranches of USAI, starting on the date of submittal of the notifications to Congress and including:
 - a. The date the Department received approval from all the relevant committees of jurisdiction;
 - b. The date by which the Department had completed its efforts to execute the funding for each of the tranches;
 - c. The date and process by which the Department was directed to hold the execution of the USAI funds;
 - d. The date or dates of any meetings as part of the interagency review of the USAI funds;
 - e. The date and process by which the Department was informed of the release of the USAI funds for execution;
 - f. The date by which the Department was able to complete execution of the USAI funds in both tranches.
- 2) Who directed the Department to hold up execution of the USAI funds? Was this direction provided directly to the Comptroller's office from the Office of Management and Budget? How did the Comptroller inform other offices within the Department of the hold on USAI funds? What was the understanding of Department officials as to why the USAI funds were being held up?
- 3) Did the Department review military assistance to Ukraine in the summer of 2019, as indicated by press reports? What issues were examined, and what were the Department's recommendations?
- 4) Did any Department officials raise concerns with the OMB, the White House, or other Administration officials about the decision to hold up execution of the USAI funds? If so, what was the nature of those concerns, to whom were they conveyed, and what answers did the Department receive in response to these concerns?
- 5) Did Department officials ever raise concerns over the delay in execution of the USAI funds with the DOD Office of the General Counsel (DOD/GC)? If so, what was the nature of those concerns and what was the advice of the DOD/GC in this regard?

- 6) Why did it take so long for the Department to inform congressional oversight committees of the delay in the execution of the Ukraine security assistance? Was the Department directed not to immediately inform Congress of the delay?
- 7) At the time of the hold up, had the Department negotiated contracts with suppliers for the equipment to be provided under the two tranches of USAI funds? When did the Department inform suppliers of the delay in the contracts for this equipment?
- 8) Who informed the Department that the hold on the execution of USAI funds had been released? What was the understanding of Department officials as to why the USAI funds were released at that time?
- 9) Please provide any written documents relating to the hold, any policy reviews, and subsequent release of the USAI funds.

Thank you for your prompt attention to this request.

Sincerely,



Richard J. Durbin
Vice Chairman
Subcommittee on Defense
Committee on Appropriations



Jack Reed
Ranking Member
Committee on Armed Services