

Congress of the United States
Washington, DC 20515

August 11, 2020

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

Dear Mr. Vought:

As the Chairs of the primary committees charged with writing laws governing federal financial management and overseeing the proper execution of those laws by the Executive Branch, we are engaged in ongoing efforts to improve and reform those statutes to protect Congress' power of the purse. To that end, our committees seek information from the Office of Management and Budget ("OMB") about the current apportionment of appropriations.

On June 22, 2020, Chairman Yarmuth requested your confirmation that (1) the Administration will not submit a special message requesting rescissions late this fiscal year and (2) OMB will not hinder agencies' use of their expiring adaappropriations by withholding funding from the agencies through the apportionment process or other means.¹ You responded that the Administration has no present plan to pursue an end-of-year rescissions proposal, but you gave no assurance that OMB would release expiring appropriations to agencies for use even as the fiscal year comes to a close—as you are required to do by law.²

The Constitution invests Congress with the power of the purse. Your response reflects a serious misunderstanding of the President's role in apportioning funds. That role comes from Congress, who assigned it to the President under the Antideficiency Act to prevent deficiencies. Congress assigned this responsibility to the President to protect Congress's power of the purse against coercive deficiencies, not to cede it to the Executive Branch.

Forty-six years ago, Congress made this point unmistakably clear with the enactment of the Impoundment Control Act of 1974 ("ICA"). An amendment to the apportionment authority was included in that Act to preclude the President from using apportionments to withhold appropriations for policy reasons. The ICA also established procedures to prevent the President and other government officials from unilaterally substituting their own funding decisions for

¹ Letter from John Yarmuth, Chairman of the House Committee on the Budget (June 22, 2020), *available at* <https://go.usa.gov/xfGQY>.

² Letter from Russell T. Vought, Director of the Office of Management and Budget (July 21, 2020), *available at* <https://go.usa.gov/xfGQr>.

those of Congress. OMB violated the ICA last year when it held up security assistance funding to Ukraine at the direction of the President.³ Your failure to assure us that OMB will not impermissibly withhold funds from agencies again this year raises concerns about whether OMB’s implementation of the apportionment authority will be in compliance with the law and whether legislative reforms are needed.

Therefore, to support our Committees’ legislative efforts, we request that OMB produce the following documentation, no later than August 18, 2020, for all apportionments or reappropriations described below that are approved on or before August 16, 2020, and no later than two business days after the date on which an apportionment or reappropriation described below is approved through the remainder of this fiscal year for all such apportionments or reappropriations approved after August 16, 2020:

- (1) All apportionments or reappropriations for fiscal year 2020 that are in effect in, or that are executed in, the last quarter of fiscal year 2020, including documentation of the approval date of each such apportionment action and any footnotes, for any applicable Treasury Appropriation Fund Symbol (“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 2019/2020, 97-0100 2020 and 97-0100 2020/2021), and all account(s) covering applicable amounts provided in any appropriation act for the Foreign Military Financing Program.
- (2) All apportionments and reappropriations for fiscal year 2020 that are in effect in, or that are executed in, the last quarter of fiscal year 2020, including documentation of the approval date of each such apportionment action and any footnotes, for each listed TAFS and any applicable child accounts:
 - Global Health Programs (72-19-1031 2019/2020)
 - Contributions to International Organizations (19-1126 2019/2020)
 - Contributions to International Organizations (19-1126 2020)
 - Contributions for International Peacekeeping Activities (19-1124 2019/2020)
 - Contributions for International Peacekeeping Activities (19-1124 2020)
 - International Narcotics Control and Law Enforcement (11-1022 2019/2020)
 - International Narcotics Control and Law Enforcement (19-11-1022 2019/2020)
 - Development Assistance (72-1021 2019/2020)
 - Development Assistance (19-72-1021 2019/2020)
 - Assistance for Europe, Eurasia and Central Asia (72-0306 2019/2020)
 - Assistance for Europe, Eurasia and Central Asia (19-72-0306 2019/2020)
 - Peacekeeping Operations (11-1032 2019/2020)

³ Government Accountability Office, B-331564, *Office of Management and Budget—Withholding of Ukraine Security Assistance* (Jan. 16, 2020), available at <https://www.gao.gov/assets/710/703909.pdf>.

- Peacekeeping Operations (19-11-1032 2019/2020)
 - Peacekeeping Operations (11-1032 2020)
 - Peacekeeping Operations (19-11-1032 2020)
 - Economic Support Fund (72-1037 2019/2020)
 - Economic Support Fund (19-72-1037 2019/2020)
 - Foreign Military Financing Program (11-1082 2019/2020)
 - Foreign Military Financing Program (97-11-1082 2019/2020)
 - Foreign Military Financing Program (11-1082 2020)
 - Foreign Military Financing Program (97-11-1082 2020)
 - International Organizations and Programs (19-1005 2019/2020)
 - International Organizations and Programs (19-1005 2020)
- (3) For any applicable TAFS used for an appropriation available until September 30, 2020, all apportionments or reapportionments for fiscal year 2020 that are in effect in, or that are executed in, the last quarter of fiscal year 2020, including documentation of the approval date of each such apportionment action and any footnotes, that make or made unavailable for obligation any budget authority in any manner for any period during the last quarter of fiscal year 2020.
- (4) For any applicable TAFS, all apportionments or reapportionments for fiscal year 2020 that are in effect in, or that are executed in, the last quarter of fiscal year 2020, including documentation of the approval date of each such apportionment action and any footnotes, that make or made unavailable for obligation any budget authority through a footnote for any period during the last quarter of fiscal year 2020.
- (5) For any applicable TAFS, all apportionments or reapportionments for fiscal year 2020 that are in effect in, or that are executed in, the last quarter of fiscal year 2020, including documentation of the approval date of each such apportionment action and any footnotes, that are letter apportionments (as such term is used in OMB Circular No. A-11).

No later than August 21, 2020, for any applicable apportionments or reapportionments described above that are approved on or before August 16, 2020, and on a rolling basis thereafter, but in any case, no later than October 2, 2020, we also request that your office produce the following documentation to the Committees:

- (6) For any apportionment or reapportionment described in items (1) through (5), documentation sufficient to show:
- a. the amount of funding that was withheld from obligation, and in which account(s);
 - b. when the first apportionment action was executed to withhold those funds;
 - c. the period over which the funds were withheld;

- d. whether the funds were, subsequent to those withholdings, made available for immediate use by the agencies during fiscal year 2020, and if so, when the funds were made available;
- e. the factual, legal, and policy bases upon which these actions were taken; and
- f. whether requests were made by the affected agencies to reappropriation the funding at issue, or to alter the conditions of the apportionments in effect, and if so, whether those requests were granted.

Thank you for your prompt attention to this matter.

Sincerely,

John Yarmuth
Chairman
House Committee on
the Budget

Nita M. Lowey
Chairwoman
House Committee on
Appropriations

Carolyn B. Maloney
Chairwoman
House Committee on
Oversight and Reform