



HOUSE BUDGET COMMITTEE

CHAIRMAN JOHN YARMUTH



On September 27, House Budget Chairman John Yarmuth (KY-03) and House Appropriations Chairwoman Nita Lowey (NY-17) sent a letter to the Trump administration expressing “**serious concerns**” that recent actions taken by the Office of Management and Budget (OMB) constitute unlawful [impoundments](#) and are an abuse of the authority delegated to OMB to apportion appropriations. As part of the committees’ efforts to ensure Congress maintains the power of the purse, as established in the Constitution, the Chairs requested documents and answers regarding OMB’s involvement in the withholding of foreign aid, including **nearly \$400 million in crucial security assistance funding for Ukraine**.

The committees received a partial production from OMB, however, OMB failed to meet the committees’ deadlines and has not provided the bulk of the documents.

SUMMARY

After careful review of the materials provided to the committees, the Chairs have become more concerned that the apportionment process has been abused to undermine Congress’s constitutional power of the purse. Specifically:

1. The timeline of actions taken by OMB (as seen in the provided apportionments, which are legally binding documents) suggest a pattern of abuse of the apportionment process, OMB’s authority, and current law.
2. OMB took the seemingly unprecedented step of stripping career officials of their normal role in the apportionment process and instead vesting a political appointee with that authority. This is a troubling deviation from long-standing procedures.
3. OMB’s actions may have hindered agencies’ ability to prudently obligate funds by the end of the fiscal year in violation of the [Impoundment Control Act of 1974 \(ICA\)](#), possibly creating backdoor rescissions.

TIMELINE

- **June 19, 2019**: OMB asserts in our documents that they first inquired with the Department of Defense about the Ukraine Security Assistance Initiative (USAI).
- **July 18, 2019**: OMB admits in our documents ([and it has been reported](#)) that they notified an interagency working group, which included DoD and the State Department, about an instruction to withhold all funds for Ukraine security assistance.
- **July 25, 2019 at 6:44pm ET**: the first apportionment withholding **\$250 million in DoD funding for USAI** until August 5, 2019, is signed by an OMB career official. OMB confirms in our documents that this is the first written apportionment action and states that USAI funds were not made available to DoD until September 12.
- **August 3, 2019**: a [letter apportionment](#) signed by Michael Duffey (the OMB political appointee) withholds State/USAID foreign aid, including **\$26.5 million in Foreign Military Financing (FMF) funding** from the FY18 appropriations act for assistance to Ukraine. The apportionment responsibility for these accounts is not returned to the career official for the remainder of the fiscal year.
- **August 6, 2019 at 2:22pm ET**: Michael Duffey (the OMB political appointee) signs an apportionment withholding the DoD funding for USAI until August 12, 2019. The apportionment responsibility for this account is not returned to the career official for the remainder of the fiscal year.



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- **August 9, 2019:** The House (majority) and Senate (minority) Appropriations Committees [write to OMB and the White House](#) warning the Trump administration that the [August 3 letter apportionment](#) for State/USAID foreign aid may constitute an illegal impoundment of funds and urging the administration to adhere to the law and obligate the withheld funding. Duffey signs another letter apportionment for State/USAID foreign aid, continuing to withhold the funding withheld by the August 3 Letter by releasing only about [2% of funds each day](#), preventing the normal spending of these funds. (DoD USAI funds continue to be withheld.)
- **August 19, 2019:** The House (majority) and Senate (minority) Budget Committees [write to OMB and the White House](#) urging the administration to respect Congress's constitutional authority and to comply with appropriations law and the ICA, in particular as it applies to the State/USAID foreign aid withheld by Duffey.
- **August 29, 2019:** Duffey signs another letter apportionment for the State/USAID foreign aid, continuing to withhold remaining funding previously withheld by the August 3 and August 9 letters by releasing [25% of the funds](#) each Sunday between September 1 and September 22, preventing the normal spending of these funds. (DoD USAI funds continue to be withheld.)
- **September 11, 2019:** A letter was sent to Congress (dated September 11, 2019) by the State Department notifying the agency's intent to obligate the **\$141.5 million in FMF** funding for Ukraine. Following notification, the funds were held for an additional period before being released by OMB on **September 27 (\$115 million from the FY19 appropriations act)** and **September 30 (\$26.5 million from the FY18 appropriations act)** through apportionments also signed by Duffey.
- **September 12, 2019:** Subsequent actions by Duffey extended the DoD USAI withholding until September 12.
- **September 18, 2019:** The House [Budget](#) and [Appropriations](#) Committees write to OMB expressing concerns over the agency's abuse of its apportionment authorities and questions its compliance with the Antideficiency Act and the Impoundment Control Act of 1974.
- **September 27, 2019:** The House [Budget](#) and [Appropriations](#) Committees write to OMB requesting answers and documents related to the withholding of Ukraine aid, State and USAID funds, and possible abuses of the apportionment process.
- **September 30, 2019:** The fiscal year ends. Preliminary and public reporting from State and USAID indicates that significant amounts of the withheld FMF funding were not obligated before that deadline. Additionally, a portion of the **\$250 million DoD USAI** funding was not obligated. The 2019 Continuing Resolution (P.L. 116-59) extended the deadline to obligate any and all of the remaining USAI funding by a full year; preliminary and public reporting from DoD indicates that amount totaled **\$35.2 million**.

NEXT STEPS

Although the committees only received a partial production of the requested materials, OMB's responses and documentation to date **confirm that the apportionment process has been misused to withhold Congressionally enacted appropriations**. Increased transparency and accountability for the apportionment process would serve both Congress and the public.

As the committees consider legislative proposals and reforms to rein in OMB's abuse of its apportionment responsibilities (especially in the context of the [Impoundment Control Act of 1974](#) and the annual appropriations acts), these findings – and the pending document requests – are key.