



B-331564

November 25, 2019

The Honorable Mark T. Esper
Secretary of Defense
U.S. Department of Defense

The Honorable Paul C. Ney, Jr.
General Counsel
U.S. Department of Defense

Subject: *U.S. Department of Defense—Withholding of Ukraine Security Assistance*

According to numerous press reports, in July 2019, the Office of Management and Budget (OMB) instructed the Department of State (State) and the Department of Defense (DOD) to delay almost \$400 million in military and security assistance funds for Ukraine. It is our practice to investigate withholdings of budget authority and to report to Congress when an agency fails to comply with the Impoundment Control Act's requirements.

The Impoundment Control Act operates on the premise that when Congress appropriates money to the executive branch, the President is required to obligate the funds. Pub. L. No. 93-344, title X, §§ 1001–1017, 88 Stat. 297, 332 (July 12, 1974), *classified at* 2 U.S.C. §§ 681–688; B-329092, Dec. 12, 2017. The President may impound funds—that is, withhold them from obligation—only under specified circumstances and only if the President follows procedures set forth in the Act. See 2 U.S.C. §§ 683–684. These procedures require the President to transmit a “special message” to Congress concerning the impoundment. *Id.* If the Comptroller General becomes aware of a possible impoundment for which the President has not transmitted a special message, the Comptroller General must report the impoundment to Congress. *Id.* § 686(a).

In accordance with our regular practice, the purpose of this letter is to seek additional facts and your legal views. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP. We would appreciate your responses to the following questions, together with supporting documentation:

1. Confirm whether the Department of Defense (DOD) received a reapportionment or directive withholding amounts from obligation for

the Ukraine Security Assistance Initiative account, and, if so, on what dates DOD received the reappropriation or directive. Confirm whether DOD subsequently received a reappropriation or directive releasing the funds. Please include copies of the reappropriations or directives.

2. Confirm whether DOD withheld from obligation amounts in the Ukraine Security Assistance Initiative account, and, if so, identify the amount withheld and the dates for which such amounts were withheld.
3. Describe the actions required to obligate amounts under the Ukraine Security Assistance Initiative, and describe the steps DOD had taken to obligate amounts for Ukraine before the amounts were made unavailable for obligation.
4. In her deposition before three House committees, Deputy Assistant Secretary Laura Cooper described uncertainty within DOD regarding the legality of the withholding, and an agreement among a group of deputies to "look into the legalities."¹ Please provide any legal memoranda prepared by DOD regarding the withholding of the affected funds.
5. Confirm whether DOD was able to prudently obligate amounts before they expired on September 30, 2019, and if so, provide documentation to support that these amounts were obligated. Please state the amount of the unobligated balance in the account as of September 30, 2019.
6. Provide the historical rates of obligation by month for amounts appropriated in fiscal years 2016 through 2018 for the Ukraine Security Assistance Initiative.
7. On September 27, 2019, Congress enacted a continuing resolution that rescinded and reappropriated unobligated balances out of the amounts appropriated in fiscal year 2019 for the Ukraine Security Assistance Initiative account.² Please provide a copy of the current apportionment schedule and DOD's spend plan for these amounts.

¹ *Deposition of: Laura Katherine Cooper*, before the Permanent Select Committee on Intelligence, joint with the Committee on Oversight and Reform and the Committee on Foreign Affairs, U.S. House of Representatives, 116th Cong., at 47 (Oct. 23, 2019).

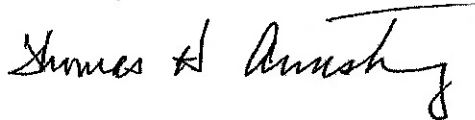
² Pub. L. No. 116-59, div. A, § 124, 133 Stat. 1093, 1098 (Sept. 27, 2019).

8. Confirm that DOD is currently taking steps to obligate the rescinded and reappropriated funds in the Ukraine Security Assistance Initiative account.

In order to fully consider your views, it is imperative that we receive your response to these questions, and any other information and documentation you believe to be relevant, by Monday, December 9, 2019.

If you have any questions, please contact Shirley A. Jones, Managing Associate General Counsel, at [REDACTED] or [REDACTED] or Omari Norman, Assistant General Counsel for Appropriations Law, at [REDACTED] or [REDACTED]. Thank you for your prompt attention to this matter.

Sincerely,



Thomas H. Armstrong
General Counsel