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November 25, 2019

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Executive Office of the President

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Subject: *Executive Office of the President—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).

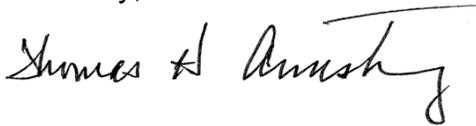
In accordance with our regular practice, the purpose of this letter is to seek additional facts and your legal views. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/products/GAO-06-1064SP. We would appreciate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

1. Confirm that the Office of Management and Budget (OMB) was directed to withhold security assistance funding from Ukraine, and, if so, provide the date on which this instruction was transmitted to OMB.
2. Please explain why the funds were withheld from obligation, and include documentation supporting this rationale. Provide your legal views on whether the withholding of funds was consistent with the Impoundment Control Act.
3. Please explain why the President did not transmit a special message regarding the withholding of funds, and provide your legal views on whether the President's failure to transmit a special message was consistent with the Impoundment Control Act.

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 (202) 512-8156 or JonesSA@gao.gov, or Omari Norman, Assistant General Counsel for Appropriations Law, at (202) 512-8272 or NormanO@gao.gov. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is written in a cursive style with a long horizontal line extending from the top of the "T".

Thomas H. Armstrong
General Counsel