



## U.S. House of Representatives

COMMITTEE ON THE BUDGET  
Washington, DC 20515

September 18, 2019

The Honorable Mick Mulvaney  
Acting Chief of Staff  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

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

Dear Mr. Mulvaney and Mr. Vought:

We write to express our deep concerns about the Office of Management and Budget's (OMB's) increasingly dubious and politicized applications of budget law, as well as the role they have played in impeding other agencies' ability to use their enacted appropriations. OMB's actions have already damaged important government programs, diminished our country's security and standing abroad, and if continued, threaten to permanently undermine fundamental checks and balances in our constitutional republic.

Specifically, during the last year, OMB has demonstrated a growing willingness to abuse its Presidentially-delegated apportionment authorities and impermissibly disrupt the balance of powers between the branches. The agency's apportionment authorities may not be used as a form of executive control or influence over agency functions. Rather, they may only be exercised in the manner and for the purposes prescribed in the Antideficiency Act (ADA) and in compliance with other appropriations and budget laws, including title X of the Congressional Budget and Impoundment Control Act of 1974 (Impoundment Control Act). None of those laws give the Executive Branch the unilateral power to invalidate duly enacted statutes through the apportionment process.

Nevertheless, OMB continues to abuse those authorities, and the apportionment process, to flout the Constitution's assignment of the power of the purse to Congress. OMB's inexplicable and unprecedented apportionment actions have withheld critical funding provided for the Department of State and United States Agency for International Development (USAID) in a manner inconsistent with long-standing policies and procedures. Those OMB actions are deleteriously impacting the prudent obligation of foreign assistance intended to support U.S. interests, and are hindering the efficient and effective management of U.S. funds and programs. Indeed, those actions seem to be specifically designed to obstruct the agencies' ability to use their appropriations for their Congressionally-approved purposes in the final weeks before they expire. We have serious legal concerns that those actions will result in *de facto* impoundments, and we are deeply troubled that this may be OMB's unstated goal.



The apportionment actions at issue also undermine important programs and policies that Congress funded, to among other things:

- Fulfill U.S. treaty obligations and support the nation's international allies and partners;
- Counter Russian aggression and Chinese influence across the globe;
- Respond to humanitarian crises all over the world, including in Venezuela, Syria, and Burma;
- Counter violent extremism in the Sahel, Yemen, and elsewhere; and
- Enable important initiatives such as the Indo-Pacific Strategy and Power Africa.

Withholding funds through the apportionment process until they can no longer be prudently obligated is a back-door rescission without Congressional approval. A year ago, OMB retreated from its plan to illegally impound State Department and USAID appropriations through a cynically-timed rescissions proposal—a misguided scheme that OMB threatened again this year, even after clear warning from the Government Accountability Office (GAO) that such attempts were in violation of the Impoundment Control Act. We are concerned that OMB's intransigence on these issues has led it to try to accomplish through the apportionment process what it had hoped to accomplish with a rescissions proposal.

OMB has continued to push this unlawful agenda and perniciously broadened its sights to target funding provided by the Congress to the Department of Defense to counter Russian aggression. In particular, OMB withheld funding provided for the Ukraine Security Assistance Initiative, a vital form of Congressionally-directed assistance that helps Ukraine defend its sovereign territory. As with the State and USAID funding, this funding also expires at the end of this month, and recent estimates indicate that at least tens of millions—and potentially over one hundred million—in funds will expire as a result of OMB's attempts to stifle the Department of Defense's access to this lawfully provided funding. This apparent impoundment has interrupted the Defense Department's work on security programs that have been in place with a partner nation for years.

OMB also took the unusual and perhaps unprecedented step of delegating the authority to execute these apportionments to a political appointee, in lieu of career civil servants who have historically been the designated officials responsible for overseeing and executing these technical budget documents. More than that, the apportionment actions taken by this political appointee have no justifiable policy, program, or funds management rationale.

We are deeply troubled by this pattern of OMB interference with agencies' use of appropriations for authorized purposes. All the funding for the programs and policies mentioned above was negotiated in good faith between, and subsequently approved by, bipartisan majorities in the Congress, and was signed into law by President Trump. Moreover, we are deeply concerned that OMB has intended that these actions take place without Congressional oversight or transparency to the public, given that OMB has been unwilling to provide apportionments even pursuant to written requests by our committees.

We assure you that our committees will remain focused on OMB's use of apportionments and that we will respond forcefully to Executive Branch actions that seek to override the Congress' most fundamental constitutional power. We are actively pursuing a range of options to ensure that OMB is held accountable for any improper apportionment actions and to ensure that the Congress remains at the center of funding decisions. In the meantime, we urge you in the

strongest possible terms to return OMB to its function of administering enacted laws, to immediately release for use all remaining expiring funds, and to cease further attempts to evade and invalidate the laws passed by the Congress. We sincerely hope you can be successful in restoring the trust that OMB has historically held as a valuable institution and good steward of federal funding.



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John A. Yarmuth  
Chairman  
House Committee on the Budget



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Nita M. Lowey  
Chairwoman  
House Committee on Appropriations