



**U.S. House of Representatives**  
COMMITTEE ON THE BUDGET  
Washington, DC 20515

March 8, 2019

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

Dear Acting Director Vought:

The President's announcement to spend up to \$6.725 billion in additional funding for construction of a border wall or barrier came at the end of bipartisan negotiations on an agreed-to funding level of \$1.375 billion for Fiscal Year (FY) 2019 for border security. The executive action plan further specified that the \$6.725 billion would be used sequentially as follows: \$601 million from the Treasury Forfeiture Fund, up to \$2.5 billion under the Department of Defense funds transferred for Support for Counterdrug Activities (10 U.S.C. § 284), and up to \$3.6 billion reallocated from Department of Defense military construction projects under the President's declaration of a national emergency (10 U.S.C. § 2808). However, important budgetary details of the plan have not yet been provided, including the specific funding sources and additional authorities that would be used and the programs, projects, and activities from which funds would be diverted.

As the Article I branch, it is essential that Congress remains at the center of funding decisions, especially decisions that Congress has spent considerable time debating and negotiating. We have significant concerns with the Administration's plan, and we are frustrated by the lack of transparency from the Administration. Congress should receive adequate information to consider the use of the \$6.725 billion referenced in the President's executive action plan. The executive action plan also needs to be considered in the context of fast-approaching deadlines for a budget resolution and decisions about the discretionary cap levels for the appropriations process, as well as for Article I equities more broadly. To that end, we request that you provide the following documents and information:

- (1) All documents prepared for or relating to meetings about or decisions by the Office of Management and Budget (OMB) Director, Acting Director, Deputy Director, Associate Director(s), Deputy Associate Director(s), or any other OMB or White House official or staff concerning the President's executive action plan to use up to \$6.725 billion to build a border wall, including statements of conclusions and background materials, received or produced by OMB in relation to interagency meetings or discussions relating to the President's executive action plan.

- (2) All documents relating to the budgetary details of the President's executive action plan to use up to \$6.725 billion to build a border wall, including information on all affected appropriations and Treasury Appropriation Fund Symbols (TAFS) by fiscal year and by program, project, or activity.
- (3) All documents since January 20, 2017 relating to any OMB Budget Data Request or any other OMB request to agencies to identify funding available to build a border wall or to otherwise fund border security or counterdrug activities at the border.
- (4) All documents relating to the authorized, planned, or intended use of the \$6.725 billion prior to any consideration or determination that such amounts may be used instead to build a border wall, including all documents relating to:
  - a. The authorized, planned, or intended use of the "first tranche" of approximately \$242 million to be expended under the Treasury Forfeiture Fund (TFF);
  - b. The authorized, planned, or intended use of the "second tranche" of approximately \$359 million to be expended under the TFF;
  - c. The authorized, planned, or intended use of the approximately \$2.5 billion under the Department of Defense funds transferred for Support for Counterdrug Activities under 10 U.S.C. § 284;
  - d. The authorized, planned, or intended use of the approximately \$3.6 billion reallocated from the Department of Defense military construction projects under the President's declaration of a national emergency pursuant to 10 U.S.C. § 2808.
- (5) Any documents, including any guidance or instructions to agencies, relating to the de-obligation of funds, delay in obligation or expenditure, or any other change in the rate of obligation and expenditure involving the potential or planned use of such funds to carry out the President's executive action plan.
- (6) All documents relating to any spend plan for any appropriation account affected or relevant to the President's executive action plan to use up to \$6.725 billion to build a border wall, including documents exchanged between or among OMB and the Department of Defense, the Department of Homeland Security, or the Department of the Treasury.
- (7) All documents relating to each apportionment and reapportionment for FY 2019, including department or agency requests to OMB, for each affected or relevant TAFS related to the President's executive action plan. This also includes all apportionment and reapportionment documentation for any TAFS from which funds would be contributed, to which funds would be contributed, from which transfers would be made, to which transfers would be made, in which transfers or reprogrammings would occur, or that is otherwise relevant in tallying (a) the "\$601 million" amount described by the Administration from the TFF; (b) the "up to \$2.5 billion" amount described by the Administration pursuant to 10 U.S.C. § 284; and (c) the "up to \$3.6 billion" amount described by the Administration pursuant to 10 U.S.C. § 2808.

Letter to the Honorable Russell Vought

- (8) All documents relating to the legal or programmatic basis upon which OMB apportsions or reapportsions any TAFS to carry out the President's executive action plan, including any Administration legal opinion(s) prepared in whole or in part by, or in consultation with, OMB, the Department of Defense, the Department of Homeland Security, the Department of the Treasury, the Department of Justice, the National Security Council, or the White House Counsel's Office.
- (9) All documents relating to the potential, planned, or completed obligations or outlays incurred for each appropriation and TAFS or any other budget execution steps to carry out the President's executive action plan or in anticipation of potential use related to the plan.
- (10) All other documents relating to the President's executive action plan, including documents relating to (a) the Department of Homeland Security's identification of priorities for potential construction of a border wall and the relation to supporting the use of the armed forces, in accordance with 10 U.S.C. § 2808; (b) the Department of Homeland Security's request of support from the Department of Defense pursuant to 10 U.S.C. § 284 and any response from the Department of Defense; and (c) any contractual awards or modifications or any other changes to contracting to carry out the President's executive action plan.

While the President has issued a national emergency proclamation, our committees are still responsible for performing their constitutional oversight responsibilities. As such, given the speed with which we believe the Administration may be acting in response to the emergency proclamation, we request that you produce the requested documents and information no later than March 22, 2019.

We appreciate your time and attention to this urgent matter.

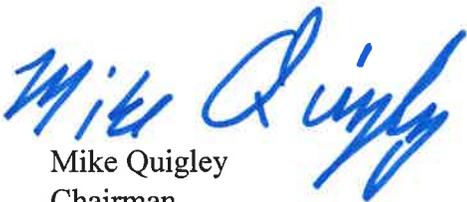
Sincerely,



John Yarmuth  
Chairman  
House Committee on the Budget



Nita M. Lowey  
Chairwoman  
House Appropriations Committee



Mike Quigley  
Chairman  
House Appropriations Committee  
Subcommittee on Financial Services  
and General Government



Lucille Roybal-Allard  
Chairwoman  
House Appropriations Committee  
Subcommittee on Homeland Security

## RESPONDING TO COMMITTEE DOCUMENT REQUESTS

*In responding to the document request, please apply the instructions and definitions set forth below:*

### INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committees' request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committees request electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committees' staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for above.
10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.
11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be Bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Four sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The Committee on the Budget majority set should be delivered to the majority staff in Room 204-E of the Cannon House Office Building, and the Committee on the Budget minority set should be delivered to the minority staff in Room 507 of the Cannon House Office Building. The Appropriations Committee majority set should be delivered to the majority staff in Room 2000 of the Rayburn House Office Building, and the Appropriations Committee minority set should be delivered to the minority staff in Room 1016 of the Longworth House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide a log containing the following information concerning every such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

- (a) Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
- (b) In complying with the request, be apprised that (unless otherwise determined by the Committees) the Committees do not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.

- (c) Any assertion by a request recipient of any such non-constitutional legal bases for withholding documents or other materials, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committees (or the chairs of the Committees, if authorized) has consented to recognize the assertion as valid.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committees or identified in a privilege log provided to the Committees.

### DEFINITIONS

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (“e-mail”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term “document” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto.

2. The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

3. The terms “referring” or “relating,” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

4. The term “border wall” means a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier along the contiguous land border between the United States and Mexico, including all points of entry, including the wall described in Executive Order 13767 (Jan. 25, 2017) and the Administration Fact Sheet entitled “President Donald J. Trump’s Border Security Victory.”

5. The term “President’s executive action plan” means and refers to the plan to build a border wall announced by the Administration involving up to approximately \$6.725 billion that would be used sequentially as follows: \$601 million from the Treasury Forfeiture Fund, up to \$2.5 billion under the Department of Defense funds transferred for Support for Counterdrug Activities (10 U.S.C. § 284), and up to \$3.6 billion reallocated from Department of Defense military construction projects under the President’s declaration of a national emergency (10 U.S.C. § 2808).

6. The term "Administration" means and refers to any department, agency, division, office, subdivision, entity, official, administrator, employee, attorney, agent, advisor, consultant, staff, or any other person acting on behalf or under the control or direction of the Executive Branch.

7. "You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, contractors, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.