

Congress of the United States
Washington, DC 20515

August 09, 2019

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

Mr. Russell Vought
Acting Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Mulvaney and Mr. Vought:

We are writing regarding an August 3, 2019, letter from Michael P. Duffey, OMB's Associate Director for National Security Policy, to the Deputy Secretary of State and the Deputy USAID Administrator, which states that the letter "constitutes a reapportionment of all previously approved apportionments" of Fiscal Year 2018 and 2019 funds from specified State, Foreign Operations accounts. The letter improperly withholds these funds from obligation, with a limited exception for certain salaries expenses. We are informed that the total unobligated funds impacted by this decision may be more than \$4 billion, and that the suspension of obligations may be in preparation of a rescissions package for submission to Congress in the waning days of the fiscal year.

These funds were appropriated by overwhelming bipartisan majorities and after lengthy negotiations between the House and Senate, and including the White House. They were signed into law by President Trump. They are intended to implement policies and programs which, among other things, fulfill U.S. treaty obligations, support our allies and partners, protect the public against Ebola and other infectious diseases, counter-Russian aggression and Chinese influence, respond to humanitarian crises in Venezuela, Syria, Burma, and elsewhere, counter violent extremism in the Sahel, Yemen, and elsewhere, and support such initiatives as the Indo-Pacific Strategy, Power Africa, and the Women's Global Development and Prosperity Initiative. In short, these funds, which the agencies have plans to obligate for their intended purposes before the end of the fiscal year, are essential to promoting U.S. global leadership and protecting the security of the American people.

Your action is reminiscent of a reported attempt by OMB last year to improperly withhold State, Foreign Operations funds, which was widely opposed in Congress and triggered a GAO legal opinion, dated December 10, 2018, on whether the Impoundment Control Act of 1974 (ICA) allows a withholding of appropriations scheduled to expire within the prescribed 45-day period to continue through the date on which the funds would expire. The GAO concluded that "the statutory text and legislative history of the Impoundment Control Act (ICA), Supreme Court case

law, and the overarching constitutional framework of executive and legislative powers provide no basis to construe the ICA as a mechanism by which the President may, in effect, unilaterally shorten the availability of budget authority by transmitting rescission proposals shortly before amounts are due to expire.” GAO further concluded, “amounts proposed for rescission must be made available for prudent obligation before the amounts expire, even where the 45-day period for congressional consideration in the ICA approaches or spans the date on which the funds would expire.” (emphasis added).

If a rescissions package is sent to Congress in the coming weeks the 45-day period would extend to late September, leaving only days before the end of the fiscal year for the Department of State and USAID to obligate the funds, assuming Congress rejects the rescissions or takes no action. This is too little time to prudently obligate such a large amount of funds for such a diverse array of purposes before they expire, and would constitute another attempt to circumvent Congress’s constitutional spending authority.

We are deeply concerned by the apportionment action in the August 3, 2019, letter to withhold budget authority from 15 expiring appropriation accounts. Absent the President sending Congress a special message, any funding withheld by OMB in anticipation of a rescission proposal would constitute an illegal impoundment of funds. OMB should release the funding identified in the letter immediately to enable it to be obligated in accordance with current law, and immediately transmit to the Congress the legal justification OMB relied upon for withholding these funds, including an explanation of how such withholding is consistent with the ICA.

There is no ambiguity with regard to the ICA or the Appropriations bills passed by Congress and affirmed by the President when the Fiscal Year 2018 and 2019 State, Foreign Operations appropriations acts were signed into law. We urge OMB, the Department of State, and USAID to adhere to the law and use these funds for their intended purposes on behalf of the American people and the Nation.

Sincerely,



Senator Patrick Leahy
Vice Chairman
Committee on Appropriations
United States Senate



Representative Nita M. Lowey
Chairwoman
Committee on Appropriations
U.S. House of Representatives

The Honorable Mike Pompeo, Secretary, U.S. Department of State
The Honorable Mark Green, Administrator, U.S. Agency for International Development