



## **Excerpts from Joint Deposition**

**Mark Sandy**  
**Deputy Associate Director for National Security**  
**Office of Management and Budget**

**Conducted on November 16, 2019**

**House Permanent Select Committee on Intelligence**  
**House Committee on Oversight and Reform**  
**House Committee on Foreign Affairs**

- Q: So this July 12<sup>th</sup> email from Mr. Blair, what did it say?*
- A: To the best of my recollection, that the President is directing a hold on military support funding for Ukraine.*
- Q: What else was in that email?*
- A: Nothing that I recall.*
- Q: Was any other country mentioned?*
- A: No.*
- Q: Any other security assistance package?*
- A: No.*
- Q: Any other aid of any sort?*
- A: Not to my recollection.*
- Q: Any other topic at all in this email?*
- A: No.*

**On June 19, 2019, President Trump requested information about Ukraine security assistance. (Pages 24-25)**

- Q: When did you hear that the President had seen a media report and had questions about the assistance?
- A: On June 19<sup>th</sup>.
- Q: Do you know what media report that was?
- A: I don't recall the specific article.
- Q: Who told you that the President had these concerns or these questions?
- A: Mike Duffey.
- Q: And what was the conversation that you had with Mr. Duffey on June 19<sup>th</sup>?
- A: I believe it was an email.
- Q: Okay. Can you describe what that email said?
- A: The email expressed an interest in getting more information from the Department of Defense.
- Q: And what kind of additional information?
- A: A description of the program.

**On July 12, 2019, the White House Office of Chief of Staff informed the Office of Management and Budget that the President was directing a hold on military support funding for Ukraine. (Page 39)**

- Q: So this July 12<sup>th</sup> email from Mr. Blair, what did it say?
- A: To the best of my recollection, that the President is directing a hold on military support funding for Ukraine.
- Q: What else was in that email?
- A: Nothing that I recall.
- Q: Was any other country mentioned?
- A: No.
- Q: Any other security assistance package?
- A: No.
- Q: Any other aid of any sort?
- A: Not to my recollection.
- Q: Any other topic at all in this email?
- A: No.
- Q: Who did Mr. Blair send this email to?
- A: Mr. Duffey.

**When asked by the Office of Management and Budget about the reason for the hold on Ukraine security assistance, the White House Office of Chief of Staff provided no explanation. (Pages 141-142)**

Q: Are you aware of any other communications, conversations, email, any discussions between Mr. Blair and anyone else at OMB during the pendency of the holds? So, in other words, from anytime in June through September 11<sup>th</sup>?

A: Yes. I'm aware of one other email exchange between Mike Duffey and Rob Blair.

Q: When was that email exchange?

A: As I recall, it was on or about July 17, 18.

...

Q: And what did this email say?

A: Mike was asking about the reason for the hold.

Q: So Mr. Duffey was asking Mr. Blair?

A: That's correct. Yeah. Sorry. Mike Duffey was asking Rob Blair about the reason for the hold.

Q: And what did Mr. Blair say?

A: He said – he didn't provide an explicit response on the reason. He simply said, we need to let the hold take place –and I'm paraphrasing here – and then revisit this issue with the President.

**When he first learned about the hold on July 18, 2019, Mr. Sandy immediately raised concerns about whether the hold would violate the Impoundment Control Act. (Pages 31, 33-34, 34-35)**

A: When I returned from leave July 18<sup>th</sup>, I was informed of the President's direction to hold military support funding for Ukraine.

Q: Who communicated that to you?

A: Mike Duffey.

...

Q: All right. And you indicated that Mr. Duffey said he wanted to create an apportionment that would implement the hold. Can you describe the conversation surrounding how to create this apportionment or what that apportionment might look like with Mr. Duffey on that day?

A: Right. So, on that day, I emphasized that that would raise a number of questions that we would need to address. And so I advised that we would want to consult with our office of General Counsel on those questions first.

Q: When you were speaking with Mr. Duffey, putting aside any subsequent conversations you might have with legal counsel, what were those questions that you raised with him?

A: I just made a general reference to the Impoundment Control Act –

Q: Okay.

A: -- and said that we would have to assess that with the advice of counsel before proceeding.

...

Q: -- when you raised the Impoundment Control Act with Mr. Duffey during this conversation on July 19<sup>th</sup>, why did you think that a modification to the apportionment to account for the hold might implicate the Impoundment Control Act?

A: Ah. Because these moneys are what we call 1-year funds, which means that their period of availability was expiring on September 30<sup>th</sup>. And consistent with a layman's understanding of the Impoundment Control Act, we need to ensure that agencies are able to obligate funds before they expire.

Q: And what is your understanding of, if those funds cannot be obligated before they expire, what happens?

A: Then they basically expire and they return to the Treasury.

Q: And there could be a violation of the Impoundment Control Act if they expire in that way?

A: Potentially.

Q: Okay. And that was your concern July 19<sup>th</sup> when you had this conversation with Mr. Duffey?

A: My concern was that there was -- I asked about the duration of the hold and was told that there was not clear guidance on that. So that's what prompted my concern

**The Office of Management and Budget implemented the hold through an apportionment footnote; Mr. Sandy did not recall ever seeing a hold after a congressional notification. (Pages 86-88)**

A: Yes. My staff was in contact with the Budget Review Division the week of July 22<sup>nd</sup>.

Q: Okay. And what was the nature of those conversations with the Budget Review Office?

A: It was similar to the conversations with Office of General Counsel.

...

Q: Well, let me interrupt you. Were these conversations solely to do with crafting the footnote?

A: Yes, they were.

Q: Okay. And, again, can you explain what the purpose of the footnote was?

A: So the purpose of the footnote was to preclude obligation for a limited period of time but enable planning and casework to continue. And the footnote explicitly referenced the concurrence of the Department of Defense that this would not impinge upon their ability to fully obligate by the end of the year.

Q: Okay. And the effect of the apportionment, an approved apportionment is to allow, in this case DOD, to actually put money on the contract, correct?

A: You mean a normal apportionment?

Q: Correct.

...

A: Correct. Normally apportionments enable departments and agencies to obligate their funding.

Q: Okay. When you first learned of this hold in mid-July, prior to that date, had you ever had to deal with adding a footnote to an apportionment to implement a hold of this sort?

A: I don't recall an example just like this.

Q: Have you ever worked on any holds that came after a congressional notification?

A: Not to my recollection.

Q: And you've been dealing with apportionments for how long in your career?

A: At this level since – well, since I took this position in terms of approving apportionments since December 2013. (p. 86)

...

Q: So is it fair to say that this was an unusual event for you?

A: Yes.

Q: A unique event?

A: I do not recall another event like it. (pp. 85-87)

**On July 25, 2019, the Office of Management and Budget began the process for implementing the hold. (Page 52, 94-95)**

Q: And OMB issued its first written apportionment with the USAI footnote restricting the obligations on July 25<sup>th</sup>, correct?

A: Correct.

Q: And, in effect, that is the technical terminology for implementing the hold, correct.

A: Correct.

...

Q: Okay. And it [the July 25<sup>th</sup> apportionment] reads: Amounts apportioned but not obligated as of the date of this reapportionment for the Ukraine Security Assistance Initiative are not available for the Ukraine Assistance Initiative are not available for obligation until August 5<sup>th</sup>, 2019, to allow for an interagency process to determine the best use of such funds. I will stop there. Where did that date come from?

A: That date reflected consultations with both Mike Duffey and Elaine McCusker about what a reasonable timeframe for an interagency process in hopes of getting clear guidance, number one. And, also, that date helped inform the very next sentence.

Q: So the interagency process is the second part of that sentence?

A: Right.

Q: And the interagency process, is that the July 18<sup>th</sup>, sub-PCC, the July 23<sup>rd</sup> PCC that we were just discussing, as well as the July 26 deputies committee meeting that you were talking about earlier with minority counsel?

A: Yes. I think our understanding of that is that it would be an NSC-led process.

Q: Okay. But that's what this footnote means by an interagency process.

A: That is correct.

Q: And that next sentence says, based on OMB's communications with DOD on July 25<sup>th</sup>, 2019, OMB understands from the Department this brief pause in obligations will not

preclude DOD's timely execution of the final policy direction. Explain what is meant by that sentence.

A: Well, that gets to the heart of that issue about ensuring that we don't run afoul of the Impoundment Control Act, which means that you have to allow for the timely execution. And this reflects my conversation with – conversations plural with Elaine McCusker that they can confirm that, during this brief period, they would not foresee any problem fully executing the program by the end of the fiscal year.

**On July 30, Michael Duffey, Associate Director for National Security Programs at OMB, notified Mr. Sandy that he was taking over responsibilities for apportionments because of “interest among the leadership in tracking the issues of moneys closely.” (Page 63-65, 108-109)**

Q: So any relevant facts between Friday, July 26<sup>th</sup>, and the August 2<sup>nd</sup>?

A: Yes. So, on Tuesday, July 30<sup>th</sup>, the delegation for approving apportionments made Mike Duffey the approver.

Q: Okay. And what can you tell us about that?

A: The delegation is from the President to the Acting Director, and then the Acting Director issued a change in delegation.

Q: Okay. And do you know why?

A: We met with Mike Duffey – sorry – “we” is my division – met with Mike Duffey on the 31<sup>st</sup>, in which he explained that there was interest among the leadership in tracking the issues of moneys closely. He had an interest – sorry – “he,” Mike Duffey, had an interest in being more involved in daily operations.

Q: Okay.

A: And he regarded this responsibility as a way for him to learn about more specific accounts within his area.

...

Q: Okay. And did you express any concern to him?

A: Yes.

Q: And what were those concerns?

A: The concerns that staff and I expressed included that it's a substantial workload, and we usually are very protective of the Associate Director's time, so we were concerned about how much time this would consume.

Q: Okay.

A: I think people were curious what he thought he would learned from apportionments about the accounts as opposed to the other, you know, sources of information. And staff wanted to ensure that this did not reflect any sort of loss of trust.

...

Q: And what was your reaction to – did you think that by taking over the approval of the apportionments that he [Duffey] would be able to learn more about the accounts and the programs in the most efficient way?

A: It would not be my choice, but –

Q: Why not?

A: Well, the associate director operates at a very – at a high level with a very broad purview. So I can think of other ways – other materials that I personally would find more informative. If this was his preference, that was his prerogative. I think we also thought, well, we'll wait and see. If he finds this useful, then okay. And if he doesn't then he had the ability to delegate it.

Q: What – you said that it takes a fair amount of time. Is that right?

A: Particularly in certain times of year, yes.

Q: So, certainly, if you wanted to learn more about the programs, there would be other ways that would be much more efficient and effective than doing that in your estimation. Is that right?

A: Again, it would not be my choice.

Q: It would not be your choice because there are other more efficient ways of doing it?

A: For me, yes.

**Prior to being removed from the apportionment approval process, Mr. Sandy raised concerns about the hold on Ukraine security assistance. (Page 103)**

Q: And prior to the change in delegation of the approval process for apportionments regarding USAI, which took that responsibility away from you, a career official, to Mr. Duffey, a political official, you had raised concerns about the hold on Ukraine security assistance with Mr. Duffey, correct? Prior to July 29<sup>th</sup>?

A: Yes. I had raised concerns about the implementation.

Q: And specifically how to implement it in light of the Impoundment Control Act?

A: That's correct. (pp. 101-102)

**An Office of Management and Budget memorandum dated August 7 to Acting Director Russell Vought recommended lifting the hold. (Page 58-60)**

Q: Okay. And what was included in the August 7<sup>th</sup> communication? Was it by email?

A: It was a memorandum.

Q: Okay. And who was the drafter of the memorandum?

A: It was a joint effort by National Security Division; International Affairs Division; which oversees State and USAID; and Office of Legal Counsel.

Q: Okay. And what was the recommendation?

...

A: The recommendation was to remove the hold on certain policy arguments.

Q: Okay. Do you remember what the policy arguments were?

A: One was that the assistance to Ukraine is consistent with the national security strategy --

Q: Okay.

A: -- in terms of supporting a stable, peaceful Europe. Second was the benefit from the program in terms of opposing Russian aggression. Another argument pertained to bipartisan support for the program.

...

Q: Okay. And the memo went on August 7<sup>th</sup> to Acting Director Vought, did he have an action item, or was it informational?

A: It was informational in anticipation of a principles-level discussion to address this topic.

**In mid-August, the Department of Defense could no longer guarantee fully obligating USAI funds by the end of the fiscal year. As a result, the apportionment footnote was changed. (Pages 127-128, 130-131)**

Q: Okay, I'm going to hand you exhibit 8, which is going to be a series of apportionments from August 20<sup>th</sup> through September 10<sup>th</sup>. It's going to be apportionments for August 20<sup>th</sup>, 27<sup>th</sup>, 31<sup>st</sup>; September 5<sup>th</sup>, 6<sup>th</sup>, and 10<sup>th</sup>. All of these apportionments were signed by Mr. Duffey as well. Is that right?

A: That's correct (p. 126)

...

Q: And the language of these footnotes, however, are different than the last three that we've looked at.

A: That's correct.

Q: How are they different?

A: They do not include the previously included sentence that stated: "Based on OMB's communication with DOD on" – date – "OMB understands from the Department that this brief pause in obligations will not preclude DOD's timely execution of the final policy direction," end quote.

Q: Why was that portion of the footnote omitted?

A: DOD stated that they could no longer support that sentence.

Q: When did DOD state that?

A: Middle of August, at some point prior to the August 20<sup>th</sup> apportionment.

Q: And did it explain why?

A: They were concerned about executive risk associated with an ongoing hold and how it might affect their ability to fully obligate by the end of the fiscal year.

Q: Which raised a potential violation of the Impoundment Control Act?

A: Which raises concerns, yes.

Q: So DOD, at some point prior to August – or between August 6<sup>th</sup> and August 20<sup>th</sup> – presumably –

A: Yes.

Q: -- took the position that there might be insufficient time for DOD to obligate the funds prior to the end of the fiscal year, which could result in a violation of the Impoundment Control Act if there were unobligated funds remaining on the table?

A: So DOD expressed concerns about its potential ability to fully execute.

...

Q: And maybe this would be a good opportunity for me to make a general statement about these apportionments. As the hold was extended, we continued to express concerns about the potential implications vis-à-vis the Impoundment Control Act. We expressed those



concerns to Mike Duffey, and, on every occasion, we advised him to speak to the general counsel. We take the general approach that, as I've mentioned before, we are not attorneys in my division, but we were flagging these concerns for Mike Duffey as the apportionment approval official.

**An Office of Management and Budget attorney resigned because, at least in part, of concerns with the hold on Ukraine Security Assistance. (Pages 151-152, 154)**

Q: Are you aware of any individual in the Legal Division resigning or leaving OMB –

A: Oh.

Q: At least in part because of Ukraine security assistance.

A: Oh. Yes, I am.

...

A: This person expressed to me concerns about actions vis-à-vis the Impoundment Control Act.

Q: In the context of Ukraine security assistance and the hold?

A: Yes. I never want to attribute that as the, you know, sole purpose for an individual's actions, but I am aware of their frustrations in that area, yes.

Q: Okay. So this person who worked at OMB Legal expressed concerns about the hold on Ukraine Security assistance and resigned from OMB. And did that person tell you that he or she resigned from OMB at least in part because of concerns with security assistance?

...

A: Yes, in terms of how – yes, in terms of that process, in part.

...

A: So the individual did note a disagreement on this topic.

Q: And "this topic" being the hold on Ukraine security assistance?

A: Correct.

**Mr. Sandy was provided no reason for the hold during the months of July and August. (Page 41, 47-48)**

Q: Okay. Between July 19<sup>th</sup> and July 22<sup>nd</sup>, including July 22<sup>nd</sup>, did Mr. Duffey provide you any explanation as to why the President wanted to place a hold on Ukraine security assistance?

A: No.

Q: Did you ask?

A: Yes.

Q: And what was the response?

A: He was not aware of the reason.

...

Q: Mr. Sandy, how many times did you follow up with Mr. Duffey to ask for a rationale on why the security assistance was being held?

A: It was an open question over the course of late July and pretty much all of August, as I recall.

**For the first time in early September, the President requested information from the Office of Management and Budget about other countries' contributions to Ukraine. Sometime thereafter, at around the time the hold was lifted, Mr. Sandy was for the first time provided a purported reason for the hold: the President's concerns that other countries provide insufficient aid to Ukraine as compared to the United States. (Page 42, 44-46, 49, 180)**

Q: Okay. At any point in time, from the moment that you walked into the SCIF to anytime in history, has Mr. Duffey ever provided you a reason why the President wanted to place a hold on security assistance?

A: I recall in early September an email that attributed the hold to the President's concern about other countries not contributing more to Ukraine.

Q: What was the date of this email? You said early September.

A: I don't recall the specific date.

Q: Who was the email from?

A: Mike Duffey.

...

A: I just want to clarify, I do recall in early September that we got requests for information on what additional countries were contributing to Ukraine. I would want to be accurate in recollecting the precise date of the email, so I'd like to amend my previous comment and say, I just don't want to provide someone false, because I don't remember the specific date.

...

Q: Okay. Did you or your staff diligently response to Mr. Duffey's requests?

A: Yes.

Q: Okay. And what were those responses?

A: Data on other countries' contributions to Ukraine.

...

Q: Can you recall another time in your duties at the Office of Management and Budget where a significant amount of assistance was being held up and you didn't have a rationale for as long as you didn't have a rationale in this case?

A: Not that I recall

...

Q: And you just don't remember it [when you provided a reason for the lifting of the hold], but it may have been right around September 11 when the aid was lifted?

A: It very well may have been. I think I was thinking early September for the request, and I know the other email came later. So I apologize that I don't recall the specific date.

**After the lifting of the hold on September 12, the Department of Defense was unable to fully obligate USAI funds prior to the end of the fiscal year. (Pages 146-147)**

- Q: Do you know whether DOD was able to put all the –or was able to obligate all the USAI funds between September 12<sup>th</sup> and the end of the fiscal year, September 30<sup>th</sup>?
- A: No. No, they were not able to do so.
- Q: Okay. How much was left unspent or unobligated?
- A: According to the data we received from DOD, approximately 36 million – sorry, 35.
- Q: And is it your understanding that that 35 – well, do you have an understanding as to why that 35 million was left unobligated?
- A: I do not, no. And in fact, I'd like to clarify my previous comment to say, I know that they did not fully obligate the full amount of the appropriations and that 35, roughly 35 million, was left unobligated by the end of the year.
- Q: And are you aware that Congress had to pass a law a part of the 2019 continuing resolution to extend the deadline so that the \$35 million could be obligated past September 30<sup>th</sup>?
- A: I'm aware that that was a provision within the continuing resolution.
- Q: Well, what would have happened if this provision had not been included in the continuing resolution with the \$35 million?
- A: Had that provision not been included, then any unobligated funds as of September 30<sup>th</sup> would have expired.

**Definitions/Key Terms/Process (Pages 14, 19)**

- Q: Okay. Generally, what is an apportionment?
- A: An apportionment is a legal document, consistent with provisions in Title XXXI of U.S. Code, which basically sets parameters on agencies' use of appropriated funds.
- Q: So, once funds are appropriated by Congress, is an apportionment required for those funds to be spent?
- A: Yes. With very few exceptions, for nearly all accounts, an apportionment is required.
- Q: And, just generally, what does an apportionment look like? It's a physical document, presumably?
- A: Well, when printed – most of our work is now electronic, of course, but when printed, it would have basically columns of information about budgetary sources and then the application or uses of those sources, as well as a number of accompanying – if you look at it as a spreadsheet, you would have accompanying tabs with footnotes, for example, a signature block, et cetera.