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## United States Senate

COMMITTEE ON APPROPRIATIONS  
WASHINGTON, DC 20510-6025  
<http://appropriations.senate.gov>

November 5, 2019

The Honorable Glenn A. Fine  
Acting Inspector General  
U.S. Department of Defense  
Office of Inspector General  
4800 Mark Center Drive  
Alexandria, VA 22350-1500

Dear Mr. Fine:

Thank you for the opportunity earlier this week to receive an update on your Office's consideration of our request of September 25<sup>th</sup> that you open an investigation into the Department of Defense (DoD) Ukraine Security Assistance Initiative funding, which was halted for a significant portion of calendar year 2019 despite being appropriated by Congress. We wish to impress upon you several additional points as you continue to evaluate our request, and we ask that you provide your written reply no later than November 12<sup>th</sup>.

As we discussed, investigations by Inspectors General (IGs) play a critical role in uncovering potential wrongdoing, ensuring accountability, and in the broadest sense maintaining trust in the various institutions of government through the steady application of independent judgment and respect for checks and balances. As you noted, IGs have worked to protect the whistleblower in this case from attack and retaliation by the White House, and we appreciate those steps. In light of the Department's role in the delay of execution of the Ukraine funds and concerns that political pressure is being applied by other parts of the Executive Branch to prevent scrutiny of this delay, we continue to believe that an impartial investigation by your Office is important to get to the truth and ensure appropriate accountability.

In addition to the concerns set out in the September 25<sup>th</sup> letter, there are a number of important substantive questions as to the Department's role in the delay of funds which are imperative for your office to investigate. For instance, as a result of the White House and DoD decision to withhold the \$250 million of military assistance for Ukraine for two months, DoD failed to obligate over \$30 million of the military aid approved by Congress. Absent the action by Congress to extend the availability of these funds in the first continuing resolution, these funds would have lapsed. The fact that the funds were not being spent was known by DoD officials, but was not communicated to Congress. As Senators responsible for the oversight of the Department of Defense, we believe it is appropriate to conduct an internal review as to why DoD officials chose not to disclose a policy decision that impacts the execution of appropriated funds.

An additional concern relates to the Department's handling of materials and information relating to the Ukraine Security Assistance Initiative in anticipating of information requests. As we discussed, DoD General Counsel Paul Ney, Jr., issued a memorandum on October 3<sup>rd</sup> directing that all such materials and documents be preserved, collected, and provided to the General Counsel's Office of Information Counsel, and requiring that all information requests be referred to the Office of the Information Counsel. This raises concerns about whether the General Counsel's memorandum was consistent with the legal and policy requirements for how the Department should handle information or whether this directive served to impede congressional oversight of DoD implementation of the program and funding.

Further, the IG's responsibilities are not limited to investigating misconduct but also to reviewing relevant policies and procedures to ensure that they were sufficient to protect DoD employees in this case from any improper White House intervention. There is no guarantee that answers to these questions, or more broadly the nature of the Department's role in efforts by other parts of the Executive Branch in leveraging the power of the federal government in the targeting of a political opponent, will come to light except through investigation by your Office.

We acknowledge that the delay of Ukraine funding is the subject of ongoing investigations occurring in the House of Representatives. However, we would note that there is no bar to IG investigations being initiated and conducted concurrent to congressional investigations or actions. For instance, your Office initiated an investigation of Navy Rear Adm. Ronny L. Jackson while his nomination was pending before the Senate, and the Department of Justice Inspector General's Office opened an investigation into Operation Fast and Furious even as Congress was investigating the issue. Each investigation ran in parallel pursuant to each Branch's constitutional and legal authorities. Further, in light of the Executive Branch's persistent refusal to provide documents and witnesses pursuant to Congressional oversight requests, investigation by your Office may be warranted in order to ensure a prompt and fair assessment of information that is currently being denied to the Legislative Branch.

We would also note that Inspectors General have not in the past been deterred from pursuing investigations involving claims of executive privilege. In this case, it is not clear that such claims are legitimately invoked. Regardless, such claims do not prevent Executive Branch IGs from obtaining documents, information, or access to pursue investigations. For instance, the Veterans Affairs IG just last year investigated Secretary David Shulkin despite such claims. We must ensure that such claims are not seen as an effective way to stymie independent investigation of potential wrongdoing. Establishing such a precedent would tarnish the mission, independence, and reputation of IGs in our system of government.

We recognize that these are difficult, high-profile, and potentially time-consuming issues. But we remain confident that you will pursue them with the same seriousness you have demonstrated with previous investigations. IGs must continue to play an important role in the effective operation of our system of government, and in the safeguarding of the interests of the people who government represents.

Thank you for your continued consideration of this urgent request, and we look forward to your timely reply in writing.

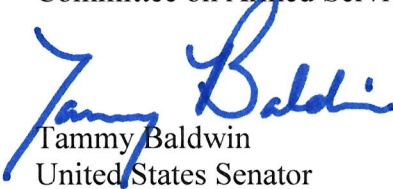
Sincerely,



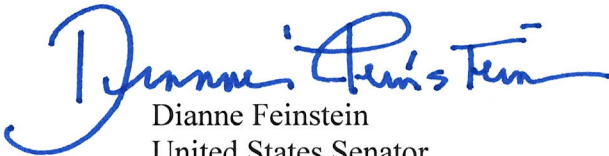
Richard J. Durbin  
Vice Chairman  
Subcommittee on Defense



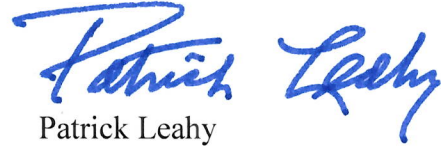
Jack Reed  
Ranking Member  
Committee on Armed Services



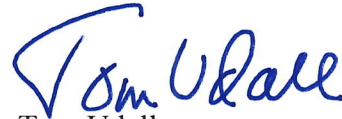
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United States Senator



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United States Senator



Patrick Leahy  
Vice Chairman  
Committee on Appropriations



Tom Udall  
United States Senator



Patty Murray  
United States Senator

cc: The Honorable Mark Esper, Secretary of Defense