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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 13, 2021

VIA ELECTRONIC TRANSMISSION

Lloyd Austin
Secretary
U.S. Department of Defense

Dear Secretary Austin:

I write to you today to express my concerns about the Department of Defense's (DoD) apparent lack of cooperation with my investigation into potential whistleblower reprisal against former U.S. Agency for International Development (USAID) employee, Dr. Mark Moyar. My office has made repeated requests for information to the Office of the Under Secretary of Defense for Intelligence & Security (OUSD (I&S)), seeking information with respect to DoD's potential involvement in the revocation of Dr. Mark Moyar's security clearance, after the DoD Consolidated Adjudications Facility (DoDCAF) reinstated Dr. Moyar's clearance in July 2020.¹ DoD has made repeated promises to be responsive to my staff's requests, but continues to fail to deliver on those promises.²

My concerns center around the revocation of Dr. Moyar's security clearance, delivered the same day that I sent letters to USAID and USAID Office of Inspector General, on December 23, 2020, after DoD had already reinstated Dr. Moyar's security clearance in July 2020. It is unclear who made the decision to revoke Dr. Moyar's security clearance, why it was revoked, and how DoD came to make the decision to revoke his clearance. It is further unclear whether the decision to revoke Dr. Moyar's security clearance originated from within DoD, or whether DoD made the decision at the behest of USAID staff. In a USAID response to my office, USAID alleged that an individual at DoD stated that Dr. Moyar's security clearance was reinstated "in error."³ It is perplexing to me that DoDCAF could reinstate someone's security clearance "in error" after that individual was alleged to have leaked classified information, and then without explanation, revoke that individual's security clearance for seemingly different or new reasons.

My office has provided the DoD a Privacy Act Waiver, signed by Dr. Moyar, and your office has concurred that this waiver is sufficient to satisfy my request for the below

¹ Email communications on file with Committee.

² Email communications on file with Committee.

³ Attached as Exhibit A.

information.⁴ This information is necessary to my investigation into potential whistleblower reprisal against Dr. Moyer. To that end, I reiterate the following request for information, and I ask that DoD respond to this request no later than April 21, 2021.

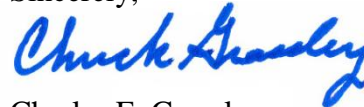
1. Please provide a timeline regarding DoD's decision-making process with respect to the adjudication of Dr. Moyer's security clearance, beginning with the initial suspension. Please include documents, communications, and memoranda from both DoDCAF and WHS that substantiate the timeline, if applicable.
2. Why did DoDCAF reinstate Dr. Moyer's security clearance in July 2020?
3. What additional information, if any, did DoDCAF consider, review, or receive that led to its decision to revoke Dr. Moyer's security clearance just months after reinstating it?
4. It is my understanding that DoDCAF has refused to provide its justification for reinstating Dr. Moyer's security clearance in July 2020 to Dr. Moyer's attorney. It is further my understanding that DoDCAF has refused to comply with Dr. Moyer's, and his attorney's, requests for information on the reinstatement, and Dr. Moyer's attorney has been told that DoD cannot communicate this information because it is internal WHS policy not to.
 - a. Please provide all communications, to include a timeline of communications, with Dr. Moyer's attorney.
 - b. Please provide the legal justification, if any, on which WHS or DoD is relying to not deliver information to Dr. Moyer or his attorney regarding the reinstatement and subsequent revocation of Dr. Moyer's security clearance.
5. Has any office in the Defense Counterintelligence and Security Agency (DCSA) or WHS ever been advised or instructed to "loss of jurisdiction" (LOJ) Dr. Moyer? Please provide all email communications between WHS and DCSA with respect to Dr. Moyer's security clearance status.
 - a. If DCSA, or WHS, was advised or instructed to LOJ Dr. Moyer, who advised or instructed DCSA, or WHS, to LOJ Dr. Moyer?
 - b. Is it DoD policy to ever LOJ an individual for any reason?
6. Did any component of WHS ever inform DoDCAF that Dr. Moyer was no longer being considered for appointment at the DoD?
 - a. If so, who made this assertion, and why was this assertion being made?

⁴ Email communications on file with Committee.

- b. Please describe the agency process and rationale to make the determination that Dr. Moyer was no longer in consideration for an appointment despite his appointment being made on December 16, 2020, and the supposed decision that he was no longer in consideration on or about January 21, 2021.
7. Did any individual from USAID ever advise or instruct DoD, WHS, or DoDCAF that Dr. Moyer's security clearance should be revoked? If so, who at USAID gave this advice or instruction?
8. Did any individual from USAID ever advise or instruct DoD, WHS, or DoDCAF that Dr. Moyer should be LOJ'd? If so, who at USAID gave this advice or instruction and to whom?
9. Did any individual at DoD ever advise or instruct either WHS or DoDCAF that Dr. Moyer should be LOJ'd? If so, who gave this advice or instruction and to whom?
 - a. How did DoD come to the decision to LOJ Dr. Moyer, and why?
10. Is it DoD's official position that Dr. Moyer's security clearance was reinstated "in error"?⁵
 - a. If so, who made this error to reinstate Dr. Moyer's security clearance? And based on what information, or lack thereof, was this error made?
 - b. If so, has DoD ever reinstated any other security clearance in error? How were these errors remedied?

I look forward to DoD's cooperation with my investigation into alleged whistleblower reprisal against Dr. Moyer. Should you have questions, please contact Quinton Brady of my Committee staff at (202) 224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

⁵ Attached as Exhibit A.

Exhibit A



January 26, 2021

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter, dated December 23, 2020, to the U.S. Agency for International Development (USAID) regarding our security-clearance policies and practices and your concerns about potential whistleblower reprisal against Dr. Mark Moyer.

The Office of the Director of National Intelligence (ODNI) and the U.S. Office of Personnel Management (OPM) jointly provide the authority for USAID to grant, suspend, and revoke security clearances for Agency employees. We continue to comply with all the requirements for security clearance outlined by both ODNI and OPM.

In the interest of protecting national security, USAID takes the responsibilities for granting, suspending, or revoking security clearances very seriously. The Agency uses established internal policies to ensure a standardized and consistent process for investigating and adjudicating investigations of security clearances. These policies also ensure we afford a fair and impartial process to employees whose clearances we have suspended.

Responses to your specific questions are attached. If I can be of further assistance, please do not hesitate to contact me at (202) 712-4300.

Sincerely,

Amy Paro
Acting Assistant Administrator
Bureau for Legislative and Public Affairs

Enclosures: a/s

**Response of the U.S. Agency for International Development (USAID)
to Senator Grassley's Questions on Security Clearances**

1. According to USAID policy, what allegations would lead to the suspension of security clearances? How does USAID investigate, review or investigate those allegations? Please include information regarding how USAID handles allegations from outside agencies or departments.

USAID assesses all allegations in accordance with Security Executive Agent Directive (SEAD) 4, "Adjudicative Guidelines," published by the Office of Director of National Intelligence (ODNI) to determine if a suspension is warranted. SEAD 4 provides guidelines to assess a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. USAID investigates allegations relevant to the 13 Adjudicative Guidelines listed in SEAD 4.

USAID has credentialed background investigators who investigate any allegations related to SEAD 4 in accordance with the Federal Investigative Standards of 2012. Once an investigation is completed, USAID's personnel-security adjudicators review the investigative facts against SEAD 4 guidelines to mitigate issues of concern and either grant, deny, reinstate, or suspend a security clearance.

USAID treats all allegations the same, regardless of where the information originated. Each allegation must be supported by documentation from a recognized organization within the U.S. Government, including Inspectors General, law enforcement, or trusted providers (*i.e.*, Human-Resource or Supervisory Officials, Facility-Security Officers, or Personnel-Security Officials).

2. In the last five years, how many USAID employees and contractors have had their security clearances suspended? Please indicate the number associated with its respective year.

In the last five Calendar Years (CY), USAID has suspended the security clearances of 34 staff, as follows:

CY 2016 - 0; CY 2017 – 8; CY 2018 – 8; CY 2019 – 14; CY 2020 - 4.

a. Of those that have had their security clearances suspended:

i. How many have had their security clearances properly adjudicated?

Note: USAID properly adjudicates all individual clearances. However, if an individual leaves the Agency prior to the completion of the adjudication process, USAID loses jurisdiction to finish the process.

Ten individuals who had their clearance suspended completed the full adjudication process between CY 2016 and CY 2020:

CY 2016 - 0; CY 2017 - 1; CY 2018 - 0; CY 2019 - 5; CY 2020 - 4.

ii. How many have had their security clearances reinstated?

USAID reinstated the clearances of ten individuals between CY 2016 and CY 2020:

CY 2016 - 0; CY 2017 - 1, CY 2018 - 0, CY 2019 - 5, CY 2020 - 4.

iii. How many have elected to voluntarily resign?

Twelve individuals who had their clearances suspended elected to voluntarily resign between CY 2016 and CY 2020:

CY 2016 - 0; CY 2017 - 3, CY 2018 - 1, CY 2019 - 6, CY 2020 - 2.

iv. Of those that have voluntarily resigned, how many have had their suspension investigated, either internally or by USAID OIG?

Twelve individuals who had elected to voluntarily resign had their suspension investigated between CY 2016 and CY 2020:

CY 2016 - 0; CY 2017 - 3, CY 2018 - 1, CY 2019 - 6, CY 2020 - 2.

Note: This response draws upon information available to USAID's Office of Security. The USAID Office of Inspector General (OIG) received a similar request from Senator Grassley and will provide a separate response.

v. In how many instances has USAID lost jurisdiction on adjudicating adverse security clearance actions because an employee elected to resign?

USAID lost jurisdiction to adjudicate adverse security-clearance actions on 12 individuals between CY 2016 and CY 2020:

CY 2016 - 0; CY 2017 - 3, CY 2018 - 1, CY 2019 - 6, CY 2020 - 2.

vi. Of those that have had their security clearances suspended, how many have claimed that their clearance was being suspended due to an act of reprisal?

Of the security clearances suspended, USAID is not aware of any claims of reprisal.

Note: This response draws on information available to USAID.

vii. How many reprisal investigations have occurred as a result of employees having their security clearances suspended? How many have been substantiated?

The Office of Security (SEC) has not had any reprisal investigations.

3. Was USAID aware that Dr. Moyer's security clearance has been reinstated?

USAID communicated directly with the U.S. Department of Defense (DoD) regarding this issue. Based on that conversation, we understand that DoD reinstated Dr. Moyer's clearance in error. To our further understanding, DoD has realized this error, has since taken action to correct it, and has suspended Dr. Moyer's clearance in the same way USAID suspended it.

4. Who at USAID is responsible for receiving allegations that could result in adverse security clearance actions, or suspensions of security clearances? What processes and procedures are in place to ensure a proper vetting of allegations and what, if any, safeguards are in place to properly wall off individuals with conflicts of interest from investigating certain allegations?

USAID's policy in [Chapter 566](#) of our Automated Directives System (ADS), "Personnel Security Investigations and Clearances," outlines the authorities and responsibilities for adverse security-clearance actions and the suspension of security clearances. USAID conducts all investigations in accordance with the Federal Investigative Standards of 2012, and Executive Orders that mandate the investigative requirement to resolve security concerns. SEC coordinates conflicts of interests through USAID's Office of General Counsel and the OIG when reported or identified.

5. How many officials at USAID viewed the classified information provided by SOCOM meant to substantiate SOCOM's allegation that Dr. Moyer had published classified information?

Please

indicate who at USAID viewed this information.

USAID's Director of Security and four staff members in SEC viewed the information: the Chief of the Information and Industrial Security Branch, the Chief of the Personal-Security Division, the Chief of Field Investigations and Periodic Reinvestigations, and the investigator assigned to the case. The Assistant General Counsel for Ethics and Administration, the senior lawyer who advises SEC, also viewed the information.

6. Approximately how much of Dr. Moyer's work involved accessing SOCOM facilities, documents, and interaction with SOCOM personnel?

The amount of interactions with the Special Operations Command (SOCOM) or other military counterparts by the Director of the Office of Civilian-Military Cooperation

(CMC) in the Bureau of Conflict Prevention and Stabilization (CPS) depends, in large part, on that particular Director. Dr. Moyar has no specific guidance on how much of his work required access to SOCOM's facilities or documents, and how much he should interact with SOCOM personnel. USAID does have personnel embedded at SOCOM who report to the Director of CPS/CMC.

7. Would it have been possible to reassign Dr. Moyar to a different post while the allegations which led to the suspension of his security clearance were adjudicated? If not, why not?

The political leadership of the Agency reassigns senior-level Administratively Determined (AD) staff in coordination with USAID's White House Liaison and the Office of Presidential Personnel. All senior-level AD positions at USAID require a security clearance. Former Deputy Administrator Glick understood that a reassignment was a possible alternative, but chose not to pursue one.

8. Was then-Deputy Administrator Glick advised that USAID would have to revoke Dr. Moyar's security clearance if he was not fired?

The Assistant General Counsel for Ethics and Administration, based on his years of experience in working with security clearances, advised Deputy Administrator Glick that there was a very low probability Dr. Moyar would have his clearance reinstated. The Assistant General Counsel for Ethics and Administration based this assessment was based on the fact that DoD had concluded that Dr. Moyar mishandled classified information, barred him from its facilities, and referred his case to the DoD Insider-Threat Team and to the U.S. Department of Justice (DOJ) for prosecution.

- a. Who advised DA Glick of this? Why did that person advise DA Glick that Dr. Moyar would have to be fired?

See the response above.

- b. What was USAID's understanding of the circumstances surrounding Dr. Moyar's security clearance suspension?

See the response above.

- c. Were officials at USAID aware of the allegations of retaliation being made by Dr. Moyar? If so, when was USAID made aware?

No one in SEC involved in adjudicating Mr. Moyar's security clearance was aware of any complaints he might have filed before the suspension of his security clearance.

9. Does Dr. Moyer's file with USAID still maintain a "please call" notification as part of Dr. Moyer's security file?

Yes. The Office of Personnel Management (OPM) maintains the "Please Call" notification in its Clearance-Verification System (CVS).

- a. If so, why does USAID maintain a "please call" notification on Dr. Moyer's security file after his security clearance has been reinstated?

Federal Departments and Agencies with investigative authorities use the "Please Call" notification widely to alert other parts of the Executive Branch that additional information is available in a security file. They do not use it to make a clearance determination.

10. Has any individual, company, or government agency contacted USAID to inquire as to Dr. Moyer's security file? If so, what information was given to the individual inquiring?

Yes. On May 5, 2020, a Facility-Security Officer (FSO) with Occam's Razor Technologies requested Dr. Moyer's file. Dr. Moyer consented to the release of his security file on May 6, 2020, and he also requested that USAID inform him if we released any classified information to the FSO. USAID sent the unclassified file to the FSO on May 8, 2020.

On September 14, 2020, USAID sent Dr. Moyer's security file in response to a request from the Consolidated Adjudications Facility in the DoD Defense Counterintelligence and Security Agency.

11. Would USAID have revoked Dr. Moyer's security clearance if he had not resigned?

This is an unknown, as Dr. Moyer did not complete the full due process after the suspension of his clearance. He left the Agency with his clearance in a suspended status.

12. Are you aware of the individual that allegedly contacted SOCOM to allege that Dr. Moyer had written and published a book without obtaining clearance from DoD? If so, when did you become aware of this? Who was this individual?

No. The first indication of SOCOM's concern with Dr. Moyer's ability to protect classified information came when the Agency received the letter that prohibited Dr. Moyer from going to and from SOCOM facilities or installations. This led USAID to request further detailed information into the nature of this letter, which SOCOM provided. This information is classified. USAID previously provided this classified information to the Senate Finance Committee. USAID can retransmit the information, which provides further insight into our decision to suspend Dr. Moyer's security clearance.