EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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July 23, 2020
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 7608 – State, Foreign Operations, Agriculture, Rural Development, Interior, Environment, Military Construction, and Veterans Affairs Appropriations Act, 2021

(Rep. Lowey, D-NY)

The Administration strongly opposes House passage of H.R. 7608, making appropriations for the Department of State, foreign operations, and related programs; Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs; Department of the Interior, environment, and related agencies; and military construction, the Department of Veterans Affairs, and related agencies for the fiscal year (FY) ending September 30, 2021 and for other purposes.

Throughout the summer of 2019, the Administration worked diligently with Congress to finalize a two-year budget agreement that set bipartisan spending limits for defense and non-defense expenditures, work that culminated in the Bipartisan Budget Act of 2019 (Public Law 116-37). This agreement included a proviso prohibiting "poison pills, additional new riders, additional changes in mandatory programs, or other changes in policy or conventions that allow for higher spending levels, or any non-appropriations measures unless agreed to on a bipartisan basis by the four leaders with the approval of the President." The agreement also included a provision maintaining "[c]urrent transfer funding levels and authorities" unless the four leaders and the President agreed on changes.

This compact was absolutely essential to the completion of all 12 appropriations bills in December 2019. These FY 2021 bills include a number of provisions that would blatantly violate both the letter and spirit of this agreement. Among these are attempts to require funding for international abortions, force the Peace Corps to remain in Communist China, stop historic welfare reforms at the Department of Agriculture, and carry out attacks on American history and the President's border wall. The Administration urges Congress to abide by the two-year agreement, and allow the essential work of funding the Federal Government to move forward.

If H.R. 7608 were presented to the President in its current form, his advisors would recommend that he veto it.

Division A—Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021

International Affairs Topline. The Administration opposes the topline funding level provided in the bill, which far exceeds the amount in the FY 2021 Budget Request and also includes $10 billion in unrequested emergency funding for COVID-19 pandemic preparedness and response. This funding level is counter to Administration efforts to rein in non-defense discretionary spending and to eliminate the use of Overseas Contingency Operations (OCO) funding for Function 150 programs. For example, excluding emergency funding, the Department of State and the U.S. Agency for International Development funding level is $11.3 billion, or 28 percent, above the FY 2021 Budget Request.

U.S. Development Finance Corporation (DFC). Despite the substantial overall increases in funding above the FY 2021 Budget Request, the Administration is concerned that the bill significantly underfunds DFC's credit, equity, and technical assistance programming. In particular, the bill provides $180 million for DFC programs. This level is $520 million, or 74 percent, below the FY 2021 Budget Request of $700 million for these activities. The level included by the Committee undermines an Administration and congressional priority to provide DFC with tools that would mobilize the private sector to catalyze investment for development and national security objectives, such as bringing new capital to emerging markets and providing an alternative to Chinese state-led investment.

Capital Investment Fund. The Administration opposes the severe reduction the bill provides to the FY 2021 Budget Request for the Capital Investment Fund. Combined with the drastic decline in collections from Expedited Passport Fee revenues, this reduction of more than 50 percent would adversely impact the Department of State's many ongoing information technology (IT) modernization initiatives as well as the agency's efforts to meet Federal mandates, including for cybersecurity, and electronic records management.

Women's Global Development and Prosperity (W-GDP) Fund. The Administration greatly appreciates the Committee's inclusion of funds for the W-GDP Fund in the base bill for the first time, but is concerned with the significant underfunding of the FY 2021 Budget Request for the W-GDP Fund. The W-GDP Initiative enables women in developing countries to participate in the economy at a time when their contributions are needed more than ever. The bill provides a maximum of $100 million, half of the amount requested, despite providing $2.1 billion above the overall FY 2021 Budget Request for economic and development assistance worldwide.

Middle East Assistance. The Administration appreciates that the Committee supports funding for key partners in the Middle East, including $3.3 billion in Foreign Military Financing for Israel in support of the 10-year Memorandum of Understanding; bilateral assistance to Jordan in support of the strong, strategic United States-Jordan relationship; and security and economic assistance to other key partners, including Egypt.

Global Fund for HIV/AIDS, Tuberculosis, and Malaria (Global Fund). The Administration is disappointed that the bill misses an opportunity to seek improved international burden sharing in support of the Global Fund. The bill provides more than $900 million above the FY 2021 Budget Request. While the Administration supports the work of the Global Fund, the proposal in the FY 2021 Budget Request would challenge other donors to do more, and use prior-year funds that other donors have not matched, rather than increasing United States funding unilaterally. In contrast, this bill would undermine the previous matching pledge and require the United States to play a larger role, even while the combination of United States bilateral and multilateral efforts already represent well above half of all worldwide funding to combat AIDS.

Economic and Development Assistance. The Administration opposes the high level of spending provided in the bill for economic and development assistance. The funding in the bill exceeds what is needed to support United States national security, promote United States prosperity and economic opportunities, and advance American interests and values around the world. The bill also would fail to consolidate this funding into one Economic Support and Development Fund appropriation, as was proposed in the FY 2021 Budget Request, and instead would maintain unnecessary accounts with specialized objectives and limiting flexibility.

International Organizations Contributions. The Administration opposes the significant increases for assessed and voluntary contributions to international organizations, including increased funding for the International Organizations and Programs account, which the FY 2021 Budget Request proposed to eliminate. The funding provided in the bill is counter to the goals of the FY 2021 Budget Request, which would fully fund international organizations that are critical to national security, while also signaling America's commitment to greater accountability, transparency, and more equitable cost sharing among members. In addition, the Administration is concerned that the bill would waive the 25 percent statutory cap on United States peacekeeping assessments for prior years, and require use of taxpayer funds to pay assessments in excess of the statutory cap despite the failure of the United Nations to act on United States cost-sharing proposals.

Program Eliminations and Reductions. The Administration is concerned that the bill increases or maintains funding that the Administration proposed to eliminate or substantially reduce in the FY 2021 Budget Request. This includes: Educational and Cultural Exchanges; the African Development Foundation; the Inter-American Foundation; the Asia Foundation; the International Fund for Agricultural Development; the U.S. Institute of Peace; and the U.S. Trade and Development Agency.

World Health Organization (WHO). The Administration strongly opposes language in titles I and III, which would effectively mandate contributions and/or grants to the WHO, from which the United States has formally notified its intent to withdraw. The bill's mandate that the United States contribute directly to the WHO undermines the President's standing as Head of State and his determination to withdraw the United States from the WHO. The bill also problematically mandates that not less than $200 million of USAID's Global Health Programs funding must be provided to the WHO for grants and contributions. This earmark eliminates USAID's ability to select implementers with demonstrated records of accountability and effectiveness, as well as flexibility to select implementers appropriately suited to implementing global health programs in specific contexts.

Mexico City Policy, Other Abortion Restrictions, and Family Planning. The Administration strongly opposes sections 7068(a) and 7069 of the bill, which would effectively block implementation of the Administration's Protecting Life in Global Health Assistance policy, which prohibits funding for foreign non-governmental organizations that perform or promote abortions. The Administration is also concerned that the bill restores unrequested funding for the United Nations Population Fund, an organization consistently determined by the Secretary of State to support or participate in the management of a program of coercive abortion or involuntary sterilization.

Green Climate Fund. The Administration strongly opposes the provision in section 7060 that appears to reinstitute a $500 million contribution to the Green Climate Fund. The President has withdrawn the United States from the unfair, jobs-killing Paris Agreement on greenhouse gases and halted all further contributions to the United Nations' Green Climate Fund at the beginning of this Administration. The Administration believes that resources should be invested in America and not in unproductive international arrangements that provide little benefit for hardworking American taxpayers.

Reduced Flexibility. The Administration strongly opposes provisions that would significantly reduce the Administration's flexibility to allocate funds to achieve foreign policy objectives. Section 7019 of the bill requires that allocations for assistance accounts conform to numerous detailed congressional funding directives. This section, however, goes significantly beyond restrictions in prior acts which had allowed the Administration to respond to changing conditions and apply exceptions on a case-by-case basis for urgent or unforeseen needs by both lowering the threshold for authorized deviations and—crucially—not allowing for exceptions permitted in prior years. In addition, the Administration opposes the revision of section 7011, which by limiting the amount of time funds are available for reprogramming, would significantly hamper the Administration's ability to ensure that taxpayer resources are being used most effectively to support programmatic needs in response to evolving circumstances on the ground and foreign policy priorities. In addition, limiting the period of availability of funding provided for embassy construction would nearly eliminate the Department of State's ability to reallocate cost savings from completed or nearly completed construction projects. Further, the Administration opposes the revision of section 7015(e), which restricts the longstanding waiver for notification requirements for cases of "substantial risk to human health or welfare" to apply only to Global Health Program funds for USAID's fully- or partially-managed accounts and the Peace Corps funds. This would reduce flexibility to respond quickly during global health emergencies.

West Bank and Gaza. The Administration opposes language in the Economic Support Fund heading under title III of the bill directing $225 million for humanitarian and development programs in the West Bank and Gaza. Billions of United States taxpayer dollars spent there on foreign assistance in recent decades has not created progress towards a political solution, without which the economic situation cannot be sustainably improved with any amount of assistance. The Administration remains opposed to providing such assistance until Palestinians are negotiating in good faith or a political solution for peace is in place.

U.S. Agency for Global Media (USAGM). The Administration strongly opposes language under the International Broadcasting Operations heading in title I of the bill, which requires use of USAGM funds to implement a definition contained in section 531 of title 22, Code of Federal Regulations, regarding the statutory firewall contained within the United States International Broadcasting Act of 1994, as amended. This language is unnecessary and redundant, as the Chief Executive Officer (CEO) of USAGM leads the Agency's journalistic standards policies and is responsible for managing United States international broadcasting. While the ostensible purpose of the language and the regulation it refers to is the protection of journalistic integrity, its practical effect is to preclude the CEO from exercising the authorities provided to the leadership position with strong bipartisan support in 2017. The President has been clear in his support for the Agency, its leader, and the needed reforms to ensure that it carries out USAGM's mission to inform and engage world audiences and Voice of America's mission to represent the United States, its people, and its policies worldwide and to be a reliable and authoritative source of news.

Peace Corps China Program. The Administration strongly opposes the requirement under the Peace Corps heading in title III to prevent closing the Peace Corps' operations in Communist China. While Beijing acknowledges that the People's Republic of China (PRC) is now a "mature economy," the PRC continues to argue falsely in its dealings with international bodies, including the World Trade Organization, that it is still a "developing" country. The provision is inconsistent with the Administration's intentions to graduate the Peace Corps China program, and to redirect limited resources to other country priorities. The Administration will no longer continue the policy of providing aid to America's global adversaries.

Foreign Military Financing (FMF) Loan Authority. The Administration is disappointed that the bill fails to include authority proposed in the FY 2021 Budget Request to provide FMF loans and guarantees to NATO and Major Non-NATO Allies. The Administration views FMF loan authority as an important tool for making United States defense equipment a more competitive and affordable option for America's closest international partners.

Overseas Humanitarian Assistance Reorganization. The Administration is concerned that the bill excludes provisions proposed in the FY 2021 Budget Request that would strengthen and improve outdated and fragmented overseas humanitarian assistance, including a new International Humanitarian Assistance account where spending could adjust flexibly to meet the needs of affected populations as crises drive populations back and forth across borders and within their own countries. In addition, section 7062 of the bill retains language enacted in the Further Consolidated Appropriations Act, 2020 that limits improvements to the United States humanitarian structure by unnecessarily micromanaging how bureaus are managed and funds are administered. The Administration believes that a stronger and seamlessly coherent Federal Government structure that elevates humanitarian assistance is needed to resolve conflicts underlying the largest crises while optimizing the outcomes for both beneficiaries and American taxpayers.

Secretary of State Travel Restriction. The Administration is concerned that the bill includes restrictions in the Diplomatic Programs appropriations language to limit the Secretary of State's travel expenses unless certain timelines and procedures are met for a fiscal year 2022 budget hearing. Such action could adversely affect the ability of the Secretary to support United States national security objectives. The Administration, therefore, urges Congress to delete the provision.

World Tourism Organization. The Administration appreciates the inclusion of language authorizing the United States to rejoin the United Nations World Tourism Organization (UNWTO). United States membership at the UNWTO would strengthen our competitive advantage and increase economic growth in the United States in the travel and tourism sectors, which have been particularly hard-hit by COVID-19.

Division B—Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2021

U.S. Department of Agriculture (USDA)

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The bill provides $5.8 billion for WIC and includes a $1 billion rescission of unobligated balances. The Administration appreciates the Committee's support to safeguard the health of women, infants, and children who are at nutrition risk, but is concerned that the bill provides an estimated $500 million more than the FY 2021 Budget Request. The requested amount is sufficient to serve all projected eligible participants given a decline in program costs and buildup of unobligated balances.

Supplemental Nutrition Assistance Program. The Administration strongly objects to language in sections 733 and 734 of the bill that would bar the implementation of priority Welfare Reform regulations on work requirements for Able-bodied Adults Without Dependents (ABAWDs) and the modernization of the Standard Utility Allowances (SUAs). Such provisions would degrade the ability of USDA to move more families forward, provide equitable treatment across State lines, and effectively target program resources to households most in need. This is particularly concerning as the ABAWD rule moves work-capable adults toward and into employment while providing appropriate flexibility based on local circumstances.

Public Law 480 Title II Food Aid (Title II). The Administration opposes providing food aid funding through use of Title II and prefers providing all food aid through the International Humanitarian Assistance account, as proposed in the FY 2021 Budget Request, which consolidates overseas humanitarian assistance programs and funding of the Department of State and U.S. Agency for International Development (USAID). While the United States is the world's largest donor of food aid, taxpayers expect such aid to be provided in the most cost-effective manner possible. Title II is cost-inefficient, slow, and limits USAID's ability to use the most appropriate food aid intervention for a particular crisis.

McGovern Dole International Food for Education. The Administration is disappointed that the bill provides $235 million in funding for the McGovern Dole International Food for Education program, which has been proposed for elimination in every budget request since FY 2018. McGovern-Dole has unaddressed oversight and performance-monitoring challenges and is duplicative of USAID programs.

Food Safety Inspection Service Modernization of Meat and Poultry Inspection. The Administration opposes section 751 because it would inhibit USDA's Food Safety and Inspection Service (FSIS) from using an important process of collecting science-based data and information to improve targeted risk-based inspection methods in meat and poultry plants.

National Bio- and Agro-Defense Facility. The Administration appreciates that the Committee provides increased funding for research at the new facility, but is disappointed that bill does not provide the full request for operations.

Rural Housing Loans and Grants. The Administration is disappointed that the bill misses an opportunity to more efficiently fund mortgage lending in a way that uses the private banking industry to provide home loans through USDA's single family housing loan guarantee program. In total, the bill provides $1.7 billion for USDA's housing programs, which is $73 million above the FY 2021 Budget Request. The bill diverges from the priorities in the FY 2021 Budget Request by funding the direct housing loans and grants program at historical levels.

Natural Resources Conservation Service (NRCS). The Administration opposes the $167 million in unrequested funding provided in the bill for private watershed infrastructure and rehabilitation efforts administered by the NRCS. While many of these watershed projects were initially constructed with Federal funding, maintenance and rehabilitation of these projects are more appropriately the responsibility of local entities.

Agricultural Marketing Service (AMS). The Administration is disappointed that the bill provides excessive funding for AMS without adopting the savings proposed in the FY 2021 Budget Request. The bill provides $40 million above the FY 2021 Budget Request for AMS, including unrequested funding for the National Organic Program.

USDA Research Programs. The Administration appreciates that the Committee redirects $35 million in agriculture research funding to "Industries of the Future," including artificial intelligence (AI) innovations for agriculture production. Unfortunately, the bill does not include the FY 2021 Budget Request for $100 million in the Agriculture and Food Research Initiative that would be targeted towards basic and applied research in AI.

<u>Department of Health and Human Services, Food and Drug Administration (FDA)</u>

FDA. The Administration appreciates the funding provided by the Committee to support a few agency initiatives, including increases requested in the FY 2021 Budget for medical devices, compounded drugs, and modernization of influenza vaccine development. However, the Administration is concerned that the bill does not fully fund increases for critical facility and laboratory needs requested in the FY 2021 Budget that are now even more essential to ensuring FDA's robust response to the global COVID-19 pandemic. The Administration urges Congress to support FDA's critical infrastructure needs in the final bill.

<u>**Division C—Department of the Interior, Environment, and Related Agencies Appropriations Act, 2021**</u>

<u>Department of the Interior (DOI)</u>

DOI Topline. The Administration is concerned that the bill would provide $13.9 billion for DOI, which is $2.3 billion above the FY 2021 Budget Request.

United States Park Police Funding. The Administration objects to language in title I of the bill, under the heading "National Park Service" that would impose an arbitrary daily reduction to the United States Park Police funding. The Park Police must continue in its highest operational status. These law enforcement officers put their lives on the line every day due to ongoing events, in order to ensure the protection of public safety and the Nation's icons and historic monuments.

Removal of Commemorative Works. The Administration strongly objects to section 442 of the bill, which directs the National Park Service to remove all Civil War commemorative works on National Park Service lands. This drive to edit history will not stop at the limits written into section 442. Section 442 is part of a sustained effort to erase from the history of the Nation those who do not meet an ever-shifting standard of conduct. Beyond section 442, loud voices in America are also demanding the destruction or renaming of monuments and memorials to former Presidents, including the our first President, George Washington; the author of the Declaration of Independence, Thomas Jefferson; and the Great Emancipator, Abraham Lincoln. President Trump has been clear in his opposition to politically motivated attempts like this to rewrite history and to displace the enduring legacy of the American Revolution with a new left-wing cultural revolution.

Land and Water Conservation Fund (LWCF). The Administration opposes the bill's premature allocation of funds from the LWCF. Consistent with H.R. 1957, the Great American Outdoors Act (GAOA), the Administration will submit to Congress its allocations of LWCF funds for FY 2021 within 90 days of GAOA's enactment.

Energy Development on Federal Lands and Waters. The Administration objects to the unjustified restrictions in sections 117 and 119 of the bill on the Administration's ability to safely develop the resources of a small portion of the coastal plain of the Arctic National Wildlife Refuge and carry out new environmentally responsible energy exploration on the Outer Continental Shelf.

<u>USDA Forest Service</u>

USDA Forest Service Topline. The Administration is concerned that the bill would provide $5.5 billion for the Forest Service, which is $196 million above the FY 2021 Budget Request.

Timber and Mineral Development on National Forest Lands. The Administration objects to restrictions in sections 434 and 435 of the bill that would prohibit the use of appropriated funds for road construction for timber harvest in the Tongass National Forest and on mine plan approval in the Rainy River Watershed. The Forest Service has complied with all aspects of the Administrative Procedures Act in promulgating a rulemaking to implement a preferred alternative to the 2001 Roadless Rule in Alaska. The Bureau of Land Management and the Forest Service are in full compliance with the National Environmental Policy Act with respect to analysis of the mine plan of operations in northern Minnesota.

<u>Environmental Protection Agency (EPA)</u>

EPA Topline. The Administration opposes funding EPA at the $9.4 billion provided in the bill, which is $2.7 billion above the FY 2021 Budget Request, as well as the additional $13 billion in emergency appropriations provided for infrastructure initiatives. The bill provides significant funding for additional activities and programs that go beyond EPA's core statutory and regulatory requirements and funds approximately 50 wasteful or duplicative programs that the FY 2021 Budget Request proposed for elimination.

EPA Categorical Grants. The Administration opposes the excessive funding level of $1.2 billion that the bill provides for categorical grants, which is $549 million above the FY 2021 Budget Request. These grants fund a wide variety of environmental programs more appropriately funded and implemented at the State level, including several that the FY 2021 Budget Request proposed to eliminate.

EPA Water Infrastructure Finance and Innovation Act (WIFIA). The Administration has serious concerns about two provisions in title II of the bill under the heading Water Infrastructure Finance and Innovation Program Fund that would significantly harm the WIFIA program. Since the bill rescinds all WIFIA unobligated funds appropriated before FY 2020 and provides the same amount in new budget authority, the impact to the existing loan pipeline is unclear. The bill also provides only a little more than $1 million, or about 25 percent of the funding needed, to cover WIFIA's administrative costs. This funding level would restrict EPA's ability to process and approve WIFIA loans that are vital tools for State, local, and tribal governments.

EPA Clean Water Act 401 Rule. The Administration opposes any language restricting EPA from developing rules that implement its CWA statutory authority. This rule is an Administration priority that directly responds to Executive Order 13868 on "Promoting Energy Infrastructure and Energy Growth," and establishes procedures that promote consistent implementation of CWA section 401 and regulatory certainty in the Federal licensing and permitting process.

EPA Limitations to finalize Oil and Gas New Source Performance Standards. The Administration opposes language in section 437 of the bill that would prohibit EPA from finalizing a regulation that is under the deliberative rulemaking process. The Administration is still considering how to best maintain health and environmental standards of methane emission on new, modified, or reconstructed oil and gas infrastructure while removing regulatory duplication and burdensome requirements.

EPA Consolidation and Moving Restrictions. The Administration is concerned that language in in the title II Administrative Provisions would prevent funding from being used to relocate, close, or consolidate any facility, which would hinder ongoing and planned space changes connected to long-term operating efficiencies. This provision could jeopardize planned office space reductions of up to 217,775 usable square feet in FY 2021 as identified in EPA's most recent Real Property Efficiency Plan and any additional postponed movements from FY 2020 due to the COVID-19 pandemic.

EPA Mercury and Air Toxics Standards. The Administration opposes language in the title II Administrative Provisions of the bill that directs the EPA Administrator to determine that it is appropriate and necessary to regulate mercury from power plants. EPA's May 2020 final rule clarified that power plants will emit no more mercury into the air than was previously emitted. EPA appropriately concluded in its 2020 final rule that it is not "appropriate and necessary" to regulate coal- and oil-fired electric utility steam generating units under section 112 of the Clean Air Act.

EPA Limitations to Finalize Strengthening Transparency in Regulatory Science Rule. The Administration opposes language in section 447 of the bill that limits any funds provided in this act from being used to finalize, implement, administer, or enforce the proposed rule entitled "Strengthening Transparency in Regulatory Science." This provision would prohibit EPA from finalizing a regulation that aims to make the science underlying regulatory actions more publicly available and is currently under the deliberative rulemaking process.

EPA Executive Management and Operations. The Administration strongly objects to language in the title II Administrative Provisions that conditions funding for the Executive Management and Operations program project on the Administrator's compliance with sections 438 and 439 of the bill with respect to Antideficiency Act violations determined to have been committed by EPA by the Comptroller General and requests made by the Comptroller General for access to records or interviews with EPA employees. As noted below, sections 438 and 439 reflect improper intrusions on the appropriate balance of powers between co-equal branches of Government.

<u>EPA and DOI</u>

Title V – Additional Infrastructure Investments. The Administration opposes designating as an emergency the significant unrequested funding for the DOI, EPA, and the Department of Health and Human Services programs. Congress should first consider other available sources of funding within the discretionary caps and whether agencies, tribes, and States would be able to obligate these funds within an appropriate amount of time.

<u>Other Independent Agencies and General Provisions</u>

National Endowment for the Arts (NEA), National Endowment for the Humanities (NEH), and the Woodrow Wilson International Center for Scholars (Wilson Center). The Administration is disappointed that the bill does not eliminate or reduce Federal funding for NEA, NEH, and the Wilson Center as proposed in the FY 2021 Budget Request. The Administration recognizes the positive effects the arts and humanities have on the Nation's communities. The FY 2021 Budget Request, however, proposed an orderly phase-out of Federal funding for these agencies, as the Administration does not consider their activities to be core Federal responsibilities.

Antideficiency Act Reporting Requirement. The Administration strongly objects to section 438, which requires the head of a Federal agency receiving funds under the Act to report any violation of the Antideficiency Act determined by the Comptroller General of the United States (Comptroller General) within 30 days of being so notified by the Comptroller General. A legal opinion by a Legislative Branch agency is not binding upon the executive branch. This provision reflects an improper intrusion on the appropriate balance of powers between co-equal branches of Government.

Informational Requests from the Comptroller General. The Administration strongly objects to section 439, which requires the head of a Federal agency to provide the Comptroller General access to records or interviews with agency employees within 30 days of request or by such date as otherwise specified by the Comptroller General. This provision impermissibly interferes with the executive branch's ability to efficiently and effectively carry out the laws and reflects an improper intrusion on the appropriate balance of powers between co-equal branches of the Federal Government.

Division D—Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2021

Department of Defense (DOD)

Border Security Funding and Authority. The Administration objects to language in sections 129 and 513 that prohibits the use of FY 2021 or prior-year military construction funding to design, construct, or carry out projects along the southern border. The situation at the border presents a humanitarian crisis that threatens homeland security. This funding is vital to build the border barriers needed to support the use of the Armed Forces who are currently assisting the Department of Homeland Security (DHS) to secure and manage the southern border. Physical barriers impede the flow of illegal crossings, drugs, and other contraband, and therefore make DHS efforts at the border more effective. In addition, sections 129 and 513 further restrict the use of FY 2021 or prior-year military construction funding from being used to execute any project that was deferred as a result of the February 15, 2019 declaration of a national emergency. The Administration is committed to continuous assessment of the military construction program so that deferred projects can be addressed as needed. These provisions prohibit any ability to execute priority projects in a timely manner.

Funding for Military Installations Named for Confederate Officers. The Administration strongly objects to section 130 of the bill, which would remove funding from the servicemen and women stationed on any base named for a Confederate officer. Over the years, these locations have taken on significance to the American story and those who have helped write it that far transcends their namesakes. The Administration respects the legacy of the millions of American servicemen and women who have served with honor at these military bases, and who from these locations have fought and died in two World Wars, Vietnam, the War on Terror, and other conflicts. Further, the drive to rename will not stop at the limits written into section 130. Section 130 is part of a sustained effort to erase from the history of the Nation those who do not meet an ever-shifting standard of conduct. Beyond section 130, loud voices in America are also demanding the destruction or renaming of monuments and memorials to former Presidents, including the our first President, George Washington; the author of the Declaration of Independence, Thomas Jefferson; and the Great Emancipator, Abraham Lincoln. President Trump has been clear in his opposition to politically motivated attempts like this to rewrite history and to displace the enduring legacy of the American Revolution with a new left-wing cultural revolution.

Reprioritization of Military Construction Funding to Unrequested Projects. The Administration opposes the bill’s proposed realignment of military construction funding from priority projects to other projects not included in the FY 2021 Budget Request. Contrary to the Administration’s fiscally responsible policy to fully fund projects, the bill proposes to incrementally fund or zero-out 11 military construction projects, effectively creating an unfunded obligation of $536 million needed to complete these projects over time.

Department of Veterans Affairs (VA)

Discretionary Funding. The Administration appreciates the Committee’s support for the requested funding level of $104.8 billion in discretionary appropriations for the VA. This funding level fully enables the Administration to deliver critical investments in high priority initiatives that ensure veterans receive top-quality care, benefits, and services—wherever they work or live. This funding level supports key Administration priorities such as veteran suicide and opioid abuse prevention programs, and continues to integrate the changes enshrined in the VA MISSION Act of 2018. The bill designates $12.5 billion across six accounts (including $10.8 billion in Medical Care) as emergency funding not subject to the non-defense budget cap, raising concerns about the programmatic rationale for this designation and impeding efficient budget execution. The Administration notes, however, that the FY 2021 Budget Request fully funds VA requirements without emergency funding by prioritizing funding within the non-defense cap.

Constitutional Concerns

Numerous provisions in division A of the bill, such as sections 7013(a), 7025(c), 7029, 7041(k)(2)(B), and 7047(b)(2)(A), would infringe upon the President's authority under Article II of the Constitution to conduct foreign diplomacy, including by recognizing foreign sovereigns, negotiating international agreements, and receiving foreign diplomats. In addition, a funding proviso in title I of division A, under the "International Organizations—Contributions for International Peacekeeping Activities" heading, would infringe upon the President's constitutional authority as Commander in Chief and over the conduct of foreign diplomacy by restricting his authority to place United States forces under the command of a foreign national in certain circumstances.

Section 715 of division B would bar use of funds for budget submissions that assume a certain reduction in revenues from user fees unless they include a proposal to reduce spending elsewhere. This provision could contravene the President's constitutional authority to recommend to Congress "such Measures as he shall judge necessary and expedient," U.S. Const. art. II, § 3.

Sections 438 and 439 of division C would raise separation of powers concerns. Section 438 purports to require a response from an agency funded by this appropriation to a Comptroller General determination that the agency has violated certain statutes. Section 439 purports to require an agency to "respond timely and completely" to a request by the Comptroller General for access to agency records and for interviews with employees. Because Congress may not empower a congressional agent to direct executive action, the Administration would understand these provisions to require the production of information already available to the agencies. The Administration would also understand them not to pretermit the constitutionally required accommodation process for the production of information protected by executive privilege.

Sections 107 and 113 of division D would require advance notice to certain congressional committees of proposed military exercises. Consistent with understandings expressed by past Presidents upon signing bills providing appropriations for military construction, the Administration would construe these provisions to encompass only exercises for which providing advance notice is feasible and consistent with the President's constitutional authority and duty to protect national security. Section 241 of division D would obstruct presidential supervision of the executive branch and the exercise of executive privilege by prohibiting the Secretary of Veterans Affairs from entering into agreements with any individual, including employees of the VA, that "would restrict in any way the individual from speaking to members of Congress or their staff" on topics not otherwise prohibited from disclosure by Federal law or required by executive order to be kept secret in the interest of national defense or the conduct of foreign affairs. This provision would fail to cover other components of constitutionally based executive privilege, such as presidential communications, deliberative process information, or law enforcement files. The provision would also unconstitutionally limit the President's ability to supervise and control the work of subordinate officers and employees of the executive branch.

In addition, a number of provisions throughout the entire bill would condition the authority of the executive to take certain actions, such as obligating or transferring funds, on prior approval of the House and Senate Committees on Appropriations. These provisions would contravene the constitutional separation of powers between the executive branch and Congress, as articulated in *INS v. Chadha*, 462 U.S. 919 (1983), and *Bowsher v. Synar*, 478 U.S. 714 (1986).

The Administration looks forward to working with Congress to address these concerns as the FY21 appropriations process moves forward.

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