



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

July 30, 2020  
(House)

**STATEMENT OF ADMINISTRATION POLICY**  
**H.R. 7617—Defense, Commerce, Justice, Science, Energy and Water Development,**  
**Financial Services and General Government, Homeland Security, Labor, Health**  
**and Human Services, Education, Transportation, Housing, and Urban Development**  
**Appropriations Act, 2021**  
(Rep. Lowey, D-NY)

The Administration strongly opposes passage of H.R. 7617. Throughout the summer of last year, 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 – new riders, changes in mandatory programs, other changes in policy or conventions that allow for higher spending levels, or 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.

H.R. 7617, however, includes a number of provisions that would blatantly violate both the letter and spirit of this agreement. These include provisions that, for example, restrict needed transfer authorities, undermine President Trump’s policies to protect the unborn, and hurt the ability of the police to protect communities. The Administration urges the House to reject H.R. 7617 and to abide by the two-year budget.

If H.R. 7617 were presented to the President in its current form, his advisors would recommend that he veto it.

**Division A—Department of Defense Appropriations Act, 2021**

Department of Defense (DOD)

*Transfer Authority.* The Administration strongly objects to language in sections 8005 and 9002 of the bill that would significantly decrease DOD’s general and special transfer authorities. Specifically, section 8005 of the bill would limit DOD’s general transfer authority to \$1 billion in FY 2021, \$4 billion below the level in the FY 2021 Budget Request and \$3 billion below the FY 2020 enacted level. Section 9002 of the bill would limit Overseas Contingency Operations (OCO) special transfer authority to \$0.9 billion in FY 2021, \$3.6 billion below the level in the FY 2021 Budget Request and \$1.1 billion below the FY 2020 enacted level. Limiting DOD’s transfer authorities would

severely constrain its ability to shift funds between accounts to meet unforeseen or emerging military requirements.

*Nuclear Modernization.* The Administration strongly objects to reductions in the bill for critical nuclear modernization and sustainment programs in all three legs of the nuclear triad, which underwrites our national security and that of our allies. Reductions to the Long Range Stand Off cruise missile, the Ground Based Strategic Deterrent ballistic missiles, the *Columbia* class ballistic missile submarine, B-52, and the Trident II D5 Life Extension Program ballistic missile modifications would not reflect the urgency of nuclear modernization. Any delay in funding for replacement systems would adversely impact the nuclear triad and the deterrence mission.

*Nuclear Weapons Council Coordination.* The Administration has concerns regarding section 8138 of the bill, which would completely prohibit DOD from coordinating the National Nuclear Security Administration (NNSA) budget within the Nuclear Weapons Council. While respecting the independence of each department is important, ensuring the proper degree of coordination in the nuclear modernization efforts of both departments is also important.

*Nuclear Test Readiness.* The Administration objects to section 8133 of the bill, which would prohibit DOD from making specific preparations to conduct a nuclear explosive test that produces any yield. NNSA is responsible for maintaining readiness to conduct an underground nuclear test if a technical need arises or if otherwise directed by the President. NNSA cannot execute that requirement without input from DOD.

*Border Construction.* The Administration strongly objects to language in section 8134 of the bill that would prohibit the use of FY 2021 or prior-year defense appropriations to construct barriers or security infrastructure along the Southern Border. The Administration also objects to language in section 8135 of the bill that would require DOD to return certain unobligated funds that were transferred by DOD for Southern Border barrier construction to their original accounts. The use of prior-year appropriations and transfer authority are critical to DOD's support of Department of Homeland Security (DHS) efforts to secure the Southern Border.

*Border Support.* The Administration objects to language in section 8136 of the bill that would place limits on the use of Armed Forces serving on active duty in support of civil authorities at the Southern Border. The use of Armed Forces serving on active duty on a non-reimbursable basis is critical to DOD's support of DHS efforts to secure the Southern Border.

*Funds for Army to Rename Confederate References.* The Administration strongly objects to section 8139 of the bill, which would require Army operation and maintenance funding to be used to rename installations, facilities, roads, and streets named after Confederate leaders and officers. 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 8139. Section 8139 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.

*Authorization for Use of Military Force (AUMF).* The Administration strongly objects to sections 9028 and 9029 of the bill, which would repeal the current AUMFs. The 2001 and 2002 AUMFs grant the United States the legal authority to fight the counter-terrorism campaign against the Taliban, al Qaeda, and associated forces, including the Islamic State of Iraq and Syria. Arbitrarily repealing the AUMFs would risk the military's ability to pursue and defeat terrorists who seek to harm the United States and our interests at home and abroad and would also cast doubt on the continued authority of the United States to use force against terrorist groups, including its detention authority. Repeal of these authorizations would create substantial, avoidable, and unnecessary litigation risk by potentially unsettling the existing legal framework as to current detainees, generating a new wave of litigation challenging their detention. Repeal would also raise difficult new questions about the scope of future operational and detention authority by undermining the legal justifications that have been relied upon for years.

*Prohibition of Funds for Military Force Related to Iran.* The Administration strongly opposes section 9030 of the bill, which would restrict the use of military force in or against Iran, except with congressional consent. This section purports to limit the President's authority as Commander in Chief. The provision could endanger the President's ability to defend United States forces and interests in the region against ongoing threats from Iran and its proxies.

*Counter-Drug Funding.* The Administration objects to the \$125 million reduction in the bill from the level in the FY 2021 Budget Request for the Counter-Narcotics Support budget activity of the Drug Interdiction and Counter Drug, Defense account. The \$546 million requested for the Counter-Drug Support budget activity in the FY 2021 Budget Request would fully fund programs to detect and monitor the aerial and maritime transit of illegal drugs into the United States and would support intelligence and technology programs to collect, process, analyze, and disseminate information required for counterdrug operations. The funding level in the bill would significantly hinder DOD's ability to fulfill its statutory counter-drug missions.

*Rapid Prototyping Program (RPP).* The Administration objects to the \$20 million reduction in the bill from the level in the FY 2021 Budget Request for RPP. The level provided in the bill would severely impact prototype efforts in precision long-range fires and targeting; fully networked command and control, and communications; and autonomous air dominance capabilities by halting new cooperative prototyping projects with key allies and partners. DOD requires these prototyping partnerships with allies in the Indo-Pacific region and other strategic areas to more rapidly build the military strength required to maintain key regional balances of power. This reduction would stop an ongoing United States and Australia air dominance capability that combines artificial intelligence-generated tactics and machine-precision execution with a production-ready attritable aircraft, and would delay the initiation of additional modernization capabilities.

*Standard Missile (SM) 6.* The Administration strongly objects to the reductions of \$91 million in procurement and \$43 million in Research, Development & Evaluation (RDT&E) for the Standard Missile-6 (SM-6) program and urges Congress to fully fund the program at the level in the FY 2021 Budget Request. The proposed reductions would result in a breach of the current multi-year procurement contract, leading to a renegotiation and probable loss of savings. The proposed reductions would also add significant and unacceptable schedule risk by delaying the delivery of the SM-6 Block IB capability by one year and, in the process, would also delay the Navy's ability to start addressing the DOD capability gap for long-range, hypersonic offensive strike weapons needed for near-peer adversaries.

*Next Generation Interceptor (NGI).* The Administration strongly objects to the \$159 million reduction to the NGI program and urges Congress to fully fund the program at the level in the FY 2021 Budget Request. This significant reduction of nearly 25 percent would limit DOD's ability to effectively execute this critical program following the contract award and would impose additional challenges on an already tight development schedule. In addition, when combined with the \$302 million rescission of FY 2020 funds in section 8041 of the bill, DOD would be unable to award two competitive contracts through Preliminary Design Review, thus removing the advantages of competition and significantly increasing program execution risk.

*Aegis Ballistic Missile Defense (Aegis BMD) Programs.* The Administration strongly objects to the combined \$80 million in reductions to Aegis BMD Programs, Aegis BMD Test, and Aegis Ashore Poland and urges Congress to fully fund these programs at the level in the FY 2021 Budget Request. The reductions in the bill would delay Standard Missile-3 Block IIA missile and Aegis Weapon System modernization and upgrade efforts, as well as critical ground and flight tests required to implement the Administration's priority of achieving Layered Homeland Defense. The reductions would also risk the Missile Defense Agency's participation in Formidable Shield-21, a key cooperative event with NATO and other international partners that would demonstrate interoperability between the Ballistic Missile Defense System and allied air and missile defense systems. The reduction to Aegis Ashore Poland would significantly impact the onsite engineering effort required to install arrays and would delay Navy acceptance and European Command operational capability achievement.

*Next Generation Air Dominance (NGAD).* The Administration strongly objects to the \$507 million reduction in the bill from the level requested in the FY 2021 Budget for the NGAD program. This 50 percent reduction from the level in the FY 2021 Budget Request would severely impact the program's ability to field NGAD capabilities needed in the 2030 timeframe to meet the growing challenges of peer adversaries. Providing the level in the FY 2021 Budget Request for NGAD is critical for maintaining a strong United States industrial base capable of building the world's most advanced aircraft.

*Domestic Manufacturing Requirements for Navy Shipbuilding.* The Administration strongly objects to the proposed limitations in section 8129 of the bill on the design and development of many future naval ships. While the Administration believes strongly that a healthy and resilient shipbuilding industrial base is essential to national security, this provision would undermine the Navy's ability to ensure that United States ships are procured in a cost-effective and timely manner by imposing restrictions on nearly all components for the covered shipbuilding programs. The scope of the proposed

restriction could require establishing and qualifying new domestic vendors for various components, which can take several years to complete. Implementing this requirement would result in significant schedule delays and cost increases, delay delivery of critical capabilities to the warfighters, and potentially make some of the covered programs unaffordable.

*Littoral Combat Ships (LCS).* The Administration strongly objects to section 8130 of the bill, which would prohibit DOD from decommissioning LCS one through four. These hulls have different configurations from those of the rest of the LCS fleet, and it is cost prohibitive to convert these hulls into operational and deployable warships. Decommissioning these ships would significantly bolster new ship procurement and maintenance of the current fleet by reinvesting \$1.8 billion into the Future Years Defense Program.

*Afghanistan Security Forces Fund (ASFF).* The Administration is concerned with the \$968 million reduction from the level in the FY 2021 Budget Request for the ASFF. The reduction would pose significant risk to DOD's mission given uncertainties associated with the Afghanistan peace process and continued high levels of violence by the Taliban against the Afghan National Defense and Security Forces (ANDSF) and the Government of Afghanistan. The level provided in the bill at this critical juncture would hamper the ANDSF's ability to sustain its full range of missions to provide security for the population, key lines of communication, and government centers.

*BMD Terminal Defense Segment.* The Administration strongly objects to the combined \$116 million reduction to BMD Terminal Defense and Terminal High Altitude Area Defense (THAAD) System procurement. The reductions would significantly impact the development and demonstrations of enhanced interceptor components and alternate booster options for the THAAD Layered Homeland Defense. The reduction would also disrupt interceptor procurement with our international partners and result in increased cost for future procurement purchases.

## **Division B— Commerce, Justice, Science, and Related Agencies Appropriations Act, 2021**

### Department of Commerce (DOC)

*Trade Enforcement.* The Administration appreciates the Committee's continued support for DOC's International Trade Administration and Bureau of Industry and Security trade enforcement programs. These programs are key parts of the Administration's efforts to address unfair trade practices impacting United States businesses and national security.

*DOC Departmental Management.* The Administration is concerned that the bill does not adopt the Administration's proposal included in the FY 2021 Budget Request to elevate and expand the Office of Space Commerce. Failing to adopt this proposal further delays the Administration's efforts to improve space traffic management and situational awareness and weakens the ability of commercial satellites to operate safely in a congested space environment.

*DOC Program Eliminations and Savings.* The Administration is disappointed that the bill continues to fund DOC bureaus and programs proposed for elimination in the FY

2021 Budget Request, such as the National Oceanic and Atmospheric Administration's Office of Education and Coastal Zone Management grants. The Administration urges Congress to discontinue funding for these duplicative, unauthorized, and lower-priority programs.

### Department of Justice (DOJ)

*Federal Law Enforcement.* The bill provides \$15.6 billion for DOJ law enforcement components, which is \$265 million below the FY 2021 Budget request. The bill fails to fund requested enhancements for law enforcement agencies, including enhancements that would address violent crime. The Administration urges Congress to provide the full FY 2021 Budget Request.

*First Step Act (FSA) of 2018.* The Administration objects to the funding level for FSA implementation, which is \$244 million below the FY 2021 Budget Request. This funding level fails to provide resources to fully support the requested 8,700 Residential Reentry Center (RRC) beds. RRC beds are a priority because they meet demands related to FSA's expanded pre-release custody provisions.

*Executive Office of Immigration Review (EOIR).* The Administration objects to the funding level for EOIR, \$734 million, which is \$149 million below the FY 2021 Budget Request. This funding level would not support current services and would impede the hiring of 100 additional Immigration Judges, delay the deployment of enhancements of EOIR's information technology systems, and contribute to an increased backlog in cases before EOIR's courts.

*Legal Representation Funding.* The Administration strongly opposes the establishment of an Immigration Representation Pilot grant program. Such a program may be inconsistent with the policy directive in section 292 of the Immigration and Nationality Act that aliens in removal hearings are not entitled to government-funded representation.

*Federal Prisoner Detention (FPD).* The bill provides \$1.9 billion for FPD, which is \$179 million below the FY 2021 Budget Request. The funding level provided in the bill would leave DOJ unable to meet its statutory requirements. The underfunding of FPD is a life and safety issue for everyday Americans, as this account ensures those arrested for violent crimes are properly detained. DOJ projects increases in the detention population due to increased enforcement of gun, drug, and immigration crimes.

*State and Local Grants.* The bill provides \$3.6 billion for DOJ State and local grants, which is \$1.9 billion above the FY 2021 Budget request. This funding level supports several Administration priorities, such as school safety, mental health courts, elder initiatives, prisoner re-entry programs, background checks, victims of human trafficking, and efforts to address the opioid crisis. However, the Administration is disappointed that the bill fails to provide the full \$40 million requested for the Project Safe Neighborhoods program, which brings together law enforcement and their communities to develop effective, locally-based strategies to reduce violent crime. In addition, the Administration is disappointed the bill fails to provide the full \$15 million requested in the FY 2021 Budget for the VALOR initiative to support the safety and wellness of law enforcement. The Administration, however, urges Congress to deprioritize funding for programs that are that are not well-targeted to achieve public safety outcomes.

*Police Reform.* The bill includes funding and language to impose implementation of H.R. 7120, the George Floyd Justice in Policing Act of 2020—legislation which the Administration has opposed. These policies would deter good candidates from pursuing careers in law enforcement, weaken the ability of law enforcement agencies to reduce crime and keep America’s communities safe, and fail to bring law enforcement and the communities they serve closer together. The Administration favors a targeted approach, including support for mental health services and co-responder programs, which would improve the quality of police services provided to every American community, instead of using an excessive approach such as the one taken by H.R. 7120.

*Bureau of Prisons (BOP).* The Administration is disappointed that the bill fails to cancel funding for an unnecessary prison project in Letcher County, Kentucky, as proposed in the FY 2021 Budget Request. After years of declining inmate populations nationwide, it is wasteful to pursue a facility that is estimated to cost the taxpayers more than \$500 million and continues to be plagued by delays and cost overruns. While enhanced immigration enforcement activity contributed to increasing demand for services such as Federal Prisoner Detention (FPD), FPD population growth does not translate into BOP population growth. This is because the growing immigrant offender population receives pretrial detention services from FPD but frequently receives “time served” upon conviction and therefore does not enter BOP custody to serve additional time. The lack of pipeline between FPD and BOP enables BOP to continue to decrease its inmate population through the provision of community-based services. The construction of a new BOP facility is simply incompatible with this existing dynamic.

*Sanctuary Jurisdictions.* The Administration urges Congress to adopt the amendments requested in section 221 of the DOJ general provisions in the FY 2021 Budget request. These amendments would clarify that Federal, State, and local governments must comply with immigration detainer requests and authorize the Department of Homeland Security and DOJ to condition financial assistance on cooperation with Federal immigration enforcement activities and requests. The Administration is also concerned with the addition of language attempting to restrict the Attorney General’s authority to impose certain conditions on Byrne-JAG grant funds for dangerous sanctuary jurisdictions. Such a restriction unduly interferes with the administration of those grant programs as well as the enforcement of Federal immigration law.

*Department of Justice Transfer Authority.* The Administration opposes the elimination of the Attorney General’s limited transfer authority between appropriations accounts, authority that has been standard for years across Republican and Democratic administrations. The lack of transfer authority, which is provided in this bill to other agencies, would severely limit the executive branch’s flexibility to respond appropriately to a crisis, including threats to life and property, and other inevitable exigencies inherent in the execution of the laws during FY 2021.

*Firearm Protections.* The Administration is concerned that the bill excludes certain Second Amendment-related protections that have been included in prior appropriations acts, such as those related to the import and export of certain firearms. The Administration urges Congress to include these provisions, such as section 537 in the Consolidated Appropriations Act, 2020.

*Crime Victims Fund (CVF).* The Administration encourages Congress to minimize the use of budget gimmicks such as the CVF change in a mandatory program—or CHIMP. The Administration looks forward to working with Congress to reform the CVF in a manner that would end the gimmick and provide a predictable funding stream for crime victims and victim services.

*Working Capital Fund and Assets Forfeiture Fund Provisions.* The bill retains outmoded and impractical limitations on the use of funds from the Working Capital Fund and Assets Forfeiture Fund that would restrict the Attorney General’s ability to respond to law enforcement crises. Without greater flexibility, the Department would be hobbled in its efforts to meet emerging national needs, including capital equipment needs and support for the Attorney General’s law enforcement priorities.

*Additional Provisions.* The Administration is concerned with restrictions that the bill places on the Attorney General. Section 541 of the bill restricts official travel to a 50-mile radius of the Robert F. Kennedy Main Justice Building. In addition, no reception and representation funds are provided to the Attorney General, which would prevent the Attorney General from hosting foreign and law enforcement leaders. The Administration believes these restrictions are capricious and do not advance any valid policy or oversight purpose.

#### National Aeronautics and Space Administration (NASA)

*NASA Exploration.* The Administration objects to the insufficient level of funding for NASA Exploration, which is \$2.6 billion less than the level in the FY 2021 Budget Request. The Administration strongly urges Congress to fund the Administration’s request, including \$3.4 billion for the Human Lander System, which would enable the United States to demonstrate leadership in sending the first woman and the next man to the Moon as we prove the technologies, expertise, and partnerships that will be needed for the first crewed mission to Mars.

*NASA Exploration Technology.* The Administration is disappointed that the bill funds Exploration Technology at nearly \$500 million less than the FY 2021 Budget Request, and urges Congress to fund the Administration’s request, which would enable technology research and development (R&D) needs for near-term sustainable human lunar exploration and longer-term human exploration of Mars.

#### National Science Foundation (NSF)

*NSF Topline.* The Administration is concerned that the bill funds NSF at \$807 million above the level in the FY 2021 Budget Request. This unrequested funding undermines the Administration’s efforts to rein in non-defense discretionary funding.

#### Legal Services Corporation (LSC)

*LSC Topline.* The Administration is disappointed that the bill fails to eliminate Federal funding for LSC, which would save the American taxpayer more than \$450 million per year. The Administration seeks to end the one-size-fits-all model of providing legal services through a single grant program by putting more control in the hands of State and local governments, which better understand the needs of their communities.

## **Division C—Energy and Water Development, and Related Agencies Appropriations Act, 2021**

### **Corps of Engineers (Corps)**

*Agency Topline.* Title I of the bill provides \$7.6 billion in funding for the Corps Civil Works program, which is \$1.7 billion, or 30 percent, above the FY 2021 Budget Request level. The Administration appreciates the Committee’s investments in the Nation’s water resources infrastructure, but believes that funding should be limited to the amounts in the FY 2021 Budget Request. The Administration is also disappointed that the bill fails to reform and improve how the Nation invests in water resources. It could do so by enacting reforms to empower State and local communities to accelerate investments they deem priorities, to increase flexibility to respond to future natural disasters, or to improve transparency in how taxpayer dollars are spent.

*Corps “Emergency” Funding.* The Administration opposes the inclusion of \$17 billion provided in title VI of the bill for the Corps that is designated as emergency funding pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985. These funds are not necessary to address the impacts of COVID-19. The Administration believes funding for water resources investments should be subject to discretionary spending limits.

*Inland Navigation.* The Administration objects to the requirement in title VI of the bill under the Construction account heading that the Corps allocate no less than \$3 billion of the \$10 billion in construction funds to inland waterways projects. The Administration also objects to language under this heading that would require taxpayers to assume all of these costs. As the Administration has previously noted, there is insufficient revenue going to the inland waterways trust fund to support this level of investment in inland waterways projects. The Administration believes the users’ share of capital investments on the inland waterways should continue to be 50 percent.

*Infrastructure.* The Administration is disappointed that the bill fails to fully fund the level requested in the FY 2021 Budget Request for the program created by section 1043 of the Water Resources and Development Act of 2014 (WRDA). Given the bipartisan support for the program and its inclusion in both of the House and Senate WRDA bills, we strongly encourage the Committee to include robust funding for this important program consistent with the President’s FY 2021 Budget Request that is a tool for reforming and improving investment in water resources.

*Transparency.* The Administration is disappointed that the bill fails to revise appropriations language in five accounts as proposed in the FY 2021 Budget Request to enable greater transparency in how funds are spent. Establishing separate appropriations accounts for the navigation trust funds would improve accountability, ensure appropriations are used in a manner consistent with statutory requirements, and increase transparency for the public, including the users that pay fees to finance some of these costs.

*Southern Border Wall Construction.* The Administration objects to the inclusion of section 108 in the bill. This section would preclude the use of funds provided by the bill,

or any prior Act, for the Civil Works program, for use on the design or construction of any border security infrastructure along the Southern Border.

*Government Reform.* The Administration objects to the inclusion of language in section 106 of the bill, which prohibits use of funds provided in the bill or any other acts to reorganize or to transfer Civil Works functions or authority of the Corps or Secretary of the Army to another department or agency. Consolidating and aligning the Corps civil works missions with the Department of Transportation and the Department of the Interior, as proposed in the Administration's *Delivering Government Solutions in the 21<sup>st</sup> Century* plan, would increase consistency of Federal policy and actions in both transportation and natural resources management, resulting in more rational public policy outcomes.

#### Department of Energy (DOE)

*DOE "Emergency" Funding:* The Administration strongly opposes the \$23.5 billion in emergency funding included in the bill. The Administration opposes emergency spending on non-emergency infrastructure, R&D, and accelerated cleanup items, and instead urges fiscal restraint and funding levels commensurate with the FY 2021 Budget Request.

*Nuclear Modernization.* The Administration strongly objects to the proposed \$1.9 billion reduction from the level in the FY 2021 Budget Request for the National Nuclear Security Administration (NNSA) for critical nuclear modernization programs, including the W93 warhead. The nuclear deterrent underwrites United States national security and its allies. These reductions place the ability of NNSA to meet the DOD warhead requirements at risk, and could disrupt DOD's nuclear triad modernization programs.

*Nuclear Weapons Council Coordination.* The Administration has concerns regarding section 309 of the bill, which would completely prohibit DOE from coordinating the NNSA budget with the Nuclear Weapons Council. While respecting the independence of each department is important, ensuring the proper degree of coordination in the nuclear modernization efforts of both departments is also important.

*Notification Prior to Nuclear Weapons Development and Modification.* The Administration objects to section 307 of the bill, which would require the Secretary of Energy to make burdensome notifications to Congress before making decisions to initiate or change nuclear warhead modernization programs. Placing Congress within the executive branch decision-making cycle in this manner unduly impedes the Secretary's ability to carry out these programs.

*Nuclear Test Readiness.* The Administration objects to section 308 of the bill, which would prohibit NNSA from making specific preparations to conduct a nuclear explosive test that produces any yield. NNSA is responsible for maintaining readiness to conduct an underground nuclear test if a technical need arises or if otherwise directed by the President.

*Nonproliferation Fuels Development.* The Administration objects to the \$20 million provided in the bill for development of low-enriched fuels that could replace highly enriched uranium for naval applications. In 2018, the Secretaries of Energy and the Navy

jointly determined that the United States should not pursue R&D of an advanced naval nuclear fuel system based on low-enriched uranium, since such a system would result in a reactor design that is inherently less capable, more expensive, and unlikely to support the significant cost savings associated with life-of-ship submarine reactors. Fully executing a development effort of this magnitude would also lead to costs of approximately \$1 billion, significant risk, and enormous resource tradeoffs in other defense priorities.

*Applied Energy Programs.* The Administration believes the bill provides excessive funding for DOE's applied energy programs. The bill provides \$5.3 billion for these programs, \$2.3 billion more than the level in the FY 2021 Budget Request. The Administration encourages Congress to restrain funding levels in these programs and focus resources on early-stage R&D across the applied energy technology spectrum rather than late-stage or near commercial ready technology.

*Loan Programs.* The Administration is disappointed that the bill maintains the Title XVII Innovative Technology Loan Guarantee Program, the Advanced Technology Vehicle Manufacturing Loan Program, and the Tribal Energy Loan Guarantee Program. In the FY 2021 Budget Request, the Administration proposed eliminating these programs and funding only the minimum administrative expenses necessary to monitor the existing portfolio. The Administration encourages Congress to adopt the elimination proposals to recognize the private sector's primary role in taking risks to finance projects in the energy and automobile manufacturing sectors.

*Advanced Research Projects Agency–Energy (ARPA-E).* The Administration believes that the continued funding of ARPA-E at \$435 million makes little strategic sense given the existence of applied energy research elsewhere within DOE. The Administration urges Congress to eliminate ARPA-E and incorporate its more successful elements, such as coordination with industry and cross-cutting research, into DOE's applied energy programs through reforms to the Small Business Innovation Research and Small Business Technology Transfer Research programs.

*Environmental Management.* The Administration strongly opposes the \$1.4 billion increase, \$1.3 billion of which is defense funding, from the level in the FY 2021 Budget Request for the Environmental Management program. The FY 2021 Budget Request prioritizes funding to revitalize and modernize America's nuclear security, including investments to improve the infrastructure comprising the nuclear weapons complex. The Administration urges Congress to reallocate these defense funds to higher national security priorities to maintain a credible nuclear deterrent.

*Other Defense Activities.* The Administration opposes the \$150 million decrease from the level in the FY 2021 Budget Request for the Office of Legacy Management together with the bill's rejection of the proposal to return administration of the Formerly Utilized Sites Remedial Action Program to DOE from the Corps. Transferring responsibility for the administration and execution of this program to DOE would facilitate more efficient cleanup of these contaminated sites and allow DOE to consider the full range of cleanup responsibilities in prioritizing work each fiscal year. It would also reduce the costs of activities now undertaken by both agencies, and simplify the process for transferring these sites back to DOE for long-term surveillance and maintenance. The Administration urges Congress to implement these program efficiencies.

*Office of Science.* The bill provides \$7.1 billion, which is \$1.2 billion above the level in the FY 2021 Budget Request for the Office of Science. While the Administration appreciates the Committee's support for basic R&D in the Office of Science, the Administration urges congressional restraint in funding these programs and infrastructure projects.

*Versatile Test Reactor.* The Administration is disappointed that the bill provides only \$65 million in Other Project Costs for the Versatile Test Reactor Project and no funding for VTR construction, which is \$230 million below the level in the FY 2021 Budget Request. A fast spectrum test reactor would be an essential experimental tool for America to regain its global leadership role in the development of the next generation of advanced reactors. This funding level significantly hinders the Administration from completing construction and starting operations by the congressionally mandated deadline of December 31, 2025.

*Uranium Reserve.* The Administration is disappointed that the bill provides no funding for the new Uranium Reserve (UR) program, which is \$150 million below the FY 2021 Budget Request. The Administration also objects to language in the bill that prohibits the use of funds for activities relating to establishing the UR for purposes other than to develop a plan to establish the UR. The establishment of the UR is a critical recommendation of the United States Nuclear Fuel Working Group to support domestic uranium and conversion capability.

*Nuclear Waste Disposal.* The Administration appreciates that the bill provides \$28 million to develop and implement a robust interim storage program. The Administration looks forward to working with Congress to provide greater access to the Nuclear Waste Fund.

#### Department of the Interior (DOI), Bureau of Reclamation

*DOI "Emergency" Funding.* The Administration opposes the bill's inclusion of \$3 billion in emergency funding for the Water and Related Resources account in title VI of the bill. The Administration continues to stand ready to work with Congress to pass much-needed bipartisan infrastructure legislation that is not heavily debt-financed.

*Bureau of Reclamation Topline.* Title II of the bill provides \$1.7 billion for the Bureau of Reclamation and the Central Utah Project Completion Act, which is \$539 million, or nearly 50percent, above the level in the FY 2021 Budget Request. The Administration appreciates the Committee's investment in water resources through the Bureau of Reclamation and the Central Utah Project Completion Act, but believes funding should be limited to the amounts in the FY 2021 Budget Request and should be focused on the national economy's highest priority needs.

*Shasta Prohibition.* The Administration opposes section 209 of the bill and language under the Water and Related Resources heading in title VI of the bill, which prohibit funding for the Shasta Dam and Reservoir Enlargement Project. Enlarging the reservoir would improve water supply reliability, reduce flood damages, and improve water temperatures in the Sacramento River below the dam for anadromous fish survival. Further, the Administration opposes the omission of Shasta Dam as a named project in the bill, as recommended by the Administration. The decision to withhold an individual

project by name would have long-term consequences on the historically bipartisan process for water project construction.

*Water Storage Project Constraints.* The Administration strongly opposes the provision under the Water and Related Resources heading in title II of the bill that seeks to condition the authority to obligate and spend funds on named water storage projects until the Secretary of the Interior transmits separate recommendations to Congress for projects authorized under sections 4009(a) and 4009(c) of the Water Infrastructure Improvements for the Nation Act (Public Law 114-322). This language impinges on the authority of the executive branch to manage and carry out its own functions.

## **Division D—Financial Services and General Government Appropriations Act, 2021**

### Department of the Treasury

*Treasury Forfeiture Fund.* The Administration strongly opposes language in sections 124 and 633 of the bill. The Administration believes that it is essential to fully secure the border, which is the bedrock of a functioning immigration system. Section 124 of the bill would severely undermine the Administration's efforts to do so by restricting the use of certain amounts in the Treasury Forfeiture Fund. Section 633 would permanently rescind \$250 million from the Treasury Forfeiture Fund. This level of rescission exceeds the estimated amounts available after accounting for known liabilities related to ongoing investigations and settled cases and could undermine the general operation of activities aimed at disrupting criminal enterprises.

*Community Development Financial Institutions (CDFI) Fund.* The Administration is disappointed that the bill provides \$260 million above the level in the FY 2021 Budget Request for the CDFI Fund. The Federal Government should not be allocating scarce taxpayer funds to the mature CDFI industry. This is separate and apart from the Federal Government's engagement in constructive public-private partnerships that encourage growth opportunities for CDFIs and the communities they serve.

*Internal Revenue Service (IRS).* The Administration appreciates the Committee's support for the IRS, in particular the resources provided for tax enforcement. Investments in enforcement help to lower the deficit and increase compliance with the Nation's tax laws. The Administration also looks forward to working with Congress to ensure that IRS resources are allocated appropriately so that core operating systems and modernization efforts have the resources necessary to support IRS taxpayer service and enforcement activities.

### Executive Office of the President

*Poverty Measure.* The Administration opposes language in section 632 of the bill that would preclude funds from being used to make changes to the Official Poverty Measure. This provision would prevent the Office of Management and Budget (OMB) from completing its statutory responsibilities under the Paperwork Reduction Act of 1995 and would also undermine the established process for reviewing and updating these standards, which is intended to ensure the objectivity and relevance of Federal statistical data.

*Supervision of the Executive Branch.* The Administration is disappointed that the bill includes certain provisions that seek to interfere with the President's supervision of the executive branch, such as one purporting to bar OMB from expending funds to alter the annual work plan of the Army Corps of Engineers. Provisions such as this one impinge on the President's ability to manage executive branch functions.

*Restrictions on Contracting with Certain Private Corporate Entities.* The Administration opposes section 634 of the bill which would restrict certain businesses from receiving Federal contracts or grants if the President, the Vice President, or their families have in excess of 20 percent ownership of or control over a covered entity. This provision is unnecessary and would interfere with normal contracting and grant procedures. Those rules award Federal grant and contract dollars based on eligibility, procurement, and financial standards and should not prevent any company from receiving Federal grants or contracts solely based on their ownership.

#### General Services Administration (GSA)

*Federal Buildings Fund (FBF).* The Administration is disappointed that the bill continues to underfund the GSA's capital program by \$1.3 billion below the level in the FY 2021 Budget Request. The bill fails to fund critical construction, renovation, and consolidation priorities within the FBF capital program, including only partially funding the next phase of construction at the Department of Homeland Security's (DHS) consolidated headquarters at St. Elizabeths and not funding critical construction or purchases of two Federal Bureau of Investigation (FBI) field office locations, the result of which would be continued reliance on costly leases. Since FY 2011, Congress has redirected approximately \$9.3 billion in GSA rent receipts to other congressional priorities. The Administration urges Congress to end the diversion of FBF receipts in this bill so that Federal agencies would receive the benefits they are promised when they pay GSA rent. Congress should also fully fund the requested level for Building Operations and Rental of Space to ensure GSA can accomplish its real property objectives.

*Payroll Shared Services.* The Administration urges Congress to fund GSA's Working Capital Fund at the \$20 million level in the FY 2021 Budget Request to support the Government-wide transition to NewPay. Over the last decade, there have been no significant investments to modernize the Federal legacy payroll systems and applications, some of which are in their fourth decade of operation. Migration funding is needed to move the Federal Government from legacy payroll processing technology to cloud-based software-as-a-service technology, which would reduce costs, improve the security posture, increase user experience and service, and allow for better management of overall resources related to payroll processing.

*Federal Information Technology (IT) Modernization* The Administration is disappointed that the bill fails to provide the full \$150 million level in the FY 2021 Budget Request for the Technology Modernization Fund, which would allow the model to operate at a greater scale to improve service delivery to the public by investing in modern technology solutions that replace or improve legacy systems.

*Asset Proceeds and Space Management Fund (APSMF).* The Administration urges Congress to fund APSMF at the \$31 million level in the FY 2021 Budget Request. The APSMF is necessary to implement the actions recommended by the Public Buildings

Reform Board and approved by OMB in accordance with the Federal Asset Sales and Transfer Act of 2016 (FASTA). The Administration also encourages Congress to enact the language proposed in the FY 2021 Budget Request allowing for use of the retained proceeds of sales deposited in FY 2021 to facilitate the activities outlined in FASTA. Without the use of proceeds to fund FASTA transactions, GSA will be unable to fully support the Public Buildings Reform Board in meeting its legislative mandate to dispose of the recent OMB-approved projects, and the next round of transactions totaling \$2.5 billion by January 2022.

*Federal Capital Revolving Fund (FCRF).* The Administration continues to support the establishment of a FCRF, a new budgetary mechanism for large civilian real property projects. The Administration transmitted legislative language in June 2018 and looks forward to working with Congress to enact the FCRF proposal.

#### Small Business Administration (SBA)

*Entrepreneurial Development Programs.* The Administration is concerned that the bill provides \$277 million for the SBA's entrepreneurial development programs, which is \$109 million above the FY 2021 Budget Request.

*Business Loan Programs.* The Administration is disappointed that the Committee did not adopt the FY 2021 Budget Request to amend the 7(a) loan program fee structure and to offset a portion of the business loan program administrative costs. These proposals would minimize the cost to taxpayers.

*Disaster Loan Program Administration.* The Administration is disappointed that the bill provides \$143 million for Disaster Loan Program Administration as disaster funding, rather than providing regular appropriations as included in the FY 2021 Budget Request. This language would also limit SBA's flexibility in addressing both SBA and Robert T. Stafford Disaster Relief and Emergency Assistance Act disasters at a time when the agency is experiencing an unprecedented workload.

#### District of Columbia (D.C.)

*D.C. Restrictions.* The Administration strongly objects to section 802 of the bill which would amend a previously-enacted provision and would allow for Government-funded abortion in D.C. In addition, the bill excludes requested language that would restrict needle exchanges and physician-assisted suicide in D.C. The bill also excludes previously enacted provisions relating to D.C.'s funding, including the explicit appropriation of local funds. Further, section 809 of the bill prohibits Federal use of the D.C. Metropolitan Police force as contemplated by the Home Rule Act, a key provision in the law that ensures that local officials are not able to hinder or obstruct the operation the Federal Government's operation through their policy decisions.

*School Improvement.* The Administration is disappointed that the bill provides \$37 million less than the level in FY 2021 Budget Request for School Improvement. The requested funding is needed to meet family demand for the D.C. Opportunity Scholarship Program (OSP) and provide additional support for D.C. public schools and public charter schools. Instead, the bill would continue to provide funding for the poorly-targeted Tuition Assistance Grants program. In addition, the Administration is concerned that the

bill requires private schools participating in the OSP to certify with the Department of Education that they comply with Federal requirements for which they do not receive funds to implement.

### Other Independent Agencies

*National Archives and Records Administration (NARA).* The Administration is disappointed that the Committee did not fund NARA's veterans' records initiative, which would support veterans' access to records necessary to obtain military benefits. The Administration encourages Congress to fully fund NARA's electronic records initiative, which would improve citizen and Government services and modernize Federal records management.

*Election Assistance Commission.* The Administration is disappointed that the bill includes \$500 million in unrequested funds for additional election security grants to States. Additional funding provided in FY 2021 would come too late to ensure voting equipment integrity for the 2020 election cycle, and States have only spent a small fraction of the \$380 million received for election security grants in FY 2018 and the \$825 million provided in FY 2020.

*Securities and Exchange Commission (SEC).* The Administration opposes policy provisions that impinge on deliberative rulemaking processes. Sections 540 and 541 of the bill would prohibit the SEC's use of funds to finalize, issue, or implement rulemakings regarding shareholder proposals and exempt offerings.

*Federal Communications Commission "Emergency" Spending.* The Administration opposes the bill's inclusion of \$61 billion in emergency spending for several FCC infrastructure programs. This spending appears to be classified as "emergency spending" solely to evade discretionary spending caps. The Administration supports additional investment in infrastructure that is reasonable and well-targeted, but it opposes the use of budget gimmicks to achieve this goal.

### Other Issues

*Office of Personnel Management (OPM) Reorganization.* The Administration continues to stress the need for structural and organizational reform at OPM, and strongly opposes the inclusion of language in sections 635 and 636 of the bill. Legislative and administrative reforms are needed to better align resources with the agency's mission and create long-term stability, sustainability, and increased operational excellence.

*Apportionment Reporting.* The Administration strongly objects to section 204 of the bill, which would require OMB to create an automated system and website through which each OMB-approved apportionment would be publicly posted, as well as publish information on delegation of apportionment authority. These reporting requirements are unnecessarily onerous and would require thousands of documents to be posted online each year detailing ongoing real-time executive branch management. In addition, the Administration strongly objects to section 750 of the bill, which would require agencies to report to congressional committees regarding apportionment actions. This provision would impermissibly interfere with the executive branch's ability to execute the laws

efficiently and effectively and reflects an improper intrusion on the appropriate balance of powers between co-equal branches of the Federal Government.

*Informational Requests from the Comptroller General.* The Administration strongly objects to section 749 of the bill. This section would require the head of an agency to respond to a written request from the Government Accountability Office (GAO) for information regarding a decision or opinion on a budget or appropriations law within 20 days of a request, and empowers the Comptroller General to bring a civil action to require such a response. Section 749 would also require the head of an agency to report any violation of the Antideficiency Act found by the GAO to the President, Congress, and the Comptroller General immediately. This provision reflects an improper intrusion on the appropriate balance of powers between co-equal branches of the Federal Government.

*Restrictions on Withholding under the Impoundment Control Act of 1974 (ICA).* The Administration strongly objects to section 748 of the bill, which would prohibit withholding from obligation any budget authority proposed for rescission or deferral pursuant to the ICA within 90 days of the expiration of that budget authority. In addition, this provision purports to prescribe specific conditions for apportionments of appropriations and requires the head of a Federal agency to provide the Comptroller General access to records or interviews with agency employees within 20 days of a request or by such date as otherwise specified by the Comptroller General. This provision would undermine long-standing budget law and impinge on the President's ability to exercise fiscal management of the executive branch, which include his authority to propose rescissions.

*Collective Bargaining Agreements (CBA).* The Administration strongly opposes section 751 of the bill, which would prevent agencies from addressing language in their CBAs that violate Government-wide requirements and would limit the authority of the Federal Service Impasses Panel to resolve bargaining impasses. By stipulating that a CBA shall remain in full force and effect until a new bargaining agreement is reached through mutual consent, this provision would effectively trap agencies and would force them to remain party to agreements that do not advance the effectiveness or efficiency of the agency's mission. Similarly, the Administration strongly opposes section 752, which seeks to limit the President's authority to suspend provisions of the Federal Service Labor-Management Relations Statute or exempt certain agencies for reasons of national security. It also strongly opposes section 753, which seeks to curtail agencies' discretion to place reasonable limitations on use of official time by their employees and to limit agency space to mission-related uses rather than occupancy by employee unions.

*Public-Private Competition.* The Administration opposes language in section 740 of the bill that continues the moratorium preventing agencies from using public-private competition as a tool for determining whether specific work of the Federal Government should be performed by Federal workers or contractors. Such a tool would enable more efficient use of resources, helping to achieve important mission goals to better serve the needs of taxpayers, including those laid out in the President's Management Agenda.

**Division E— Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2021**

Department of Labor (DOL)

*Apprenticeship.* The Administration appreciates the Committee’s funding for the expansion of apprenticeships, but opposes the restriction of funding to Registered Apprenticeships. This restriction limits DOL’s ability to expand access to Industry Recognized Apprenticeship Programs, which engage employers to give more Americans pathways to the middle class through work and learn programs.

*Protecting Union Members.* The Administration strongly objects to the Committee’s underfunding of the Office of Labor-Management Standards (OLMS). The \$7 million increase proposed in the FY 2021 Budget Request is necessary to restore OLMS’s investigative workforce and strengthen protections for union members by supporting more audits and investigations to uncover flawed officer elections, fraud, and embezzlement.

*Job Corps.* The bill provides \$740 million in increased funding for Job Corps over the level in the FY 2021 Budget Request, which would ensure that excessive funds would continue to be spent on low-performing centers that are failing students. The Administration continues to strongly support reforms to create a program to better prepare youth for jobs and keep them safe while doing so.

*H-1B Training.* The Administration opposes the rescission of \$349 million in H-1B job training funds, which would prevent the creation of new and innovative training programs to get American workers into high-growth industries.

*Prohibition on Deregulatory Actions.* The Administration objects to the provisions in sections 113, 114, and 115 prohibiting DOL from using funds to implement rules critical to providing clarity for businesses on Joint Employment under the Fair Labor Standards Act; providing greater certainty and more appropriate parameters for religious organizations under contract with the Federal Government; and providing staffing flexibility for States in carrying out their employment service programs.

Department of Health and Human Services (HHS)

*Unaccompanied Alien Children (UAC).* The Administration opposes the numerous irresponsible and burdensome provisions that would impede HHS’s ability to effectively operate the UAC program and protect the safety of children in its care, including sections 231, 232, and 234. Further, the bill provides insufficient funding to support the program’s bed capacity needs and the appropriate level of services for all UAC referred to HHS’s care, particularly during times of high levels of migration. The bill also fails to provide any expanded transfer authority for the Secretary of HHS for this account as proposed in the FY 2021 Budget Request, which has in recent years enabled the program to respond to unanticipated and crisis-level migration trends. In order to ensure that HHS would be able to respond to unpredictable UAC trends, particularly over the longer-term, the Administration urges Congress to fund its FY 2021 Budget Request and enact the proposed \$2 billion mandatory contingency fund, which is the most effective way to manage the inherent uncertainty in this program.

*Title VI “Emergency Funding” for Public Health Infrastructure.* The Administration opposes the inclusion of unrequested emergency funding in the bill, and reiterates that Congress should honor the budget caps deal it agreed to in 2019.

*Title X Family Planning.* The Administration opposes language under the Health Resources and Services Administration—Family Planning account heading that prevents the implementations and enforcement of new Title X Family Planning rule that took effect on May 3, 2019. This language would prevent the Administration from ensuring compliance with statutory Title X program integrity provisions, in particular the prohibition on the use of Title X funds in programs in which abortion is a method of family planning. The new regulations make notable improvements designed to increase the number of patients served to improve the quality of care they receive, and to help protect vulnerable women and children from abuse and coercion. In addition, the Administration opposes language in this account that requires HHS to earmark grants in certain circumstances to entities that terminated or relinquished grants due to the new rule. The Administration is also disappointed that the bill does not contain language proposed in the FY 2021 Budget request that would prohibit Federal funding from being provided to certain providers of abortion services.

*Teen Pregnancy Prevention (TPP) Program.* The Administration opposes the bill’s inclusion of \$101 million in unrequested funds for the TPP program. The TPP program began in FY 2010 to provide competitive grants to replicate successful TPP approaches, test new TPP approaches, and identify the effectiveness of these interventions. The TPP program serves less than one percent of teenagers in the United States. Although the teenage pregnancy rate has declined significantly, the evidence suggests that TPP has not been a major driver in that reduction.

*Conscience Rule Implementation Prohibition.* The Administration strongly objects to the inclusion of section 244 of the bill, which prohibits the HHS Office for Civil Rights from using appropriated funds to implement, enforce, or otherwise give effect to the final rule entitled “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority.” This rule protects vital conscience rights for healthcare entities and professionals.

*Section 1557 of the Affordable Care Act (ACA) Rule Implementation Prohibition.* The Administration strongly objects to the inclusion of section 245 of the bill, which prohibits the HHS Office for Civil Rights from using appropriated funds to implement, enforce, or otherwise give effect to the final rule entitled “Nondiscrimination in Health and Health Education Programs or Activities.” This rule clarifies the scope of section 1557 of the ACA in keeping with pre-existing civil rights statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, age, and disability.

*Religious Freedom and Non-Discrimination in HHS Grants.* The Administration strongly opposes section 248. This section would prohibit HHS from providing any funding in the Act to grantees, including foster care grantees under title IV-E of the Social Security Act, who do not abide by HHS’s current nondiscrimination rules, which prohibit discrimination on the basis of gender identity and sexual orientation, or treat as valid marriages in accordance with the recent Supreme Court decisions in *United States v. Windsor* and *Obergefell v. Hodges*.

*Reassignment of Medicaid Provider Claims.* The Administration strongly objects to the bill's prohibition in section 247 on the use of funds to implement the final rule to Protect Medicaid Provider Payments. This rule ensures that any diversions of Medicaid providers' payments are consistent with statute.

*Medicaid Nonemergency Medical Transportation (NEMT).* The Administration objects to the bill's prohibition in section 246 on the use of funds to publish a Centers for Medicare & Medicaid Services rule to provide States with greater flexibility regarding the provision of NEMT for Medicaid beneficiaries.

*Indirect Costs.* The Administration appreciates the inclusion of language that would permit the National Institutes of Health (NIH) to support the 21st Century Cures Act Research Policy Board. The bill, however, continues an objectionable language provision, section 224, that would prohibit changes to the method that NIH uses to pay grantee institutions for facilities and administrative costs. The section also prohibits Federal departments and agencies from developing or implementing modified indirect cost policies, which inhibits agency staff and stakeholders from developing strategies to maximize effectiveness of Federal Government programs and reduce burdens, such as through the Research Policy Board.

#### Department of Education

*Elementary and Secondary Education for the Disadvantaged (ESED) Block Grant Proposal.* The Administration is disappointed that the bill fails to provide funding for the ESED block grant, which would consolidate nearly all currently funded grant programs authorized by the Elementary and Secondary Education Act, empowering State and local education leaders to determine how to use Federal resources most efficiently.

*Career and Technical Education.* The bill provides \$1.3 billion for Career and Technical Education (CTE), which is \$745 million below the FY 2021 Budget Request. The requested increase is necessary to support access to high-quality CTE in all of the Nation's high schools.

*Student Aid Administration.* The bill provides \$1.8 billion for Student Aid Administration, \$114 million below the FY 2021 Budget Request. The requested increase is needed to effectively service Federal student loans, improve cybersecurity to protect the data of 40 million Americans, and implement Federal Student Aid's Next Generation Processing and Servicing Environment.

#### Other Independent Agencies

*Corporation for National and Community Service (CNCS).* The \$1.2 billion in funding provided by the bill for CNCS, which the FY 2021 Budget Request proposes to eliminate, is unnecessary and wasteful. More than 60 million Americans perform volunteer service in their communities each year absent Federal subsidies. Funding paid volunteerism and subsidizing the operation of nonprofit organizations is outside the proper role of the Federal Government. To the extent these activities have value, they should be supported by the nonprofit and private sectors, and not with Federal subsidies provided through the complex Federal grant structure run by CNCS.

*Corporation for Public Broadcasting (CPB).* The Administration proposes to eliminate Federal funding for CPB in the FY 2021 Budget Request and opposes the \$515 million funding level for FY 2023 provided for CPB through the two-year advance appropriation. CPB grants represent a small share of the total funding for the Public Broadcasting Service and National Public Radio, and the Administration believes private donations will be sufficient to fund these operations.

## **Division F— Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2021**

### **Department of Transportation (DOT)**

*DOT Topline Funding.* The Administration supports additional investment in transportation infrastructure that is effective and well-targeted. It appreciates the Committee’s support for certain requests, such as the \$11 billion provided for Federal Aviation Administration operations, including associated increases for aviation safety, and \$1 billion for the BUILD competitive grant program. The Administration, however, opposes the inclusion of new and excessive parameters and timelines placed on this and several other grant programs. Further, the Administration believes the overall funding level for DOT is excessive, and even at a more appropriate level, and it believes that resources could be better allocated to more effective programs even with a lower overall level of funding. For example, the bill should support the FY 2021 Budget Request to provide \$1 billion in discretionary budget authority to the Infrastructure For Rebuilding America (INFRA) competitive grant program, which has a proven track record of supporting nationally- and regionally-significant freight and highway congestion relief projects.

*Highway Trust Fund (HTF) Program Funding Levels.* The Administration opposes the amount of obligation limitations provided for highway and transit programs financed out of the HTF, which mirror the Contract Authority levels provided in the House’s recently passed H.R. 2, for which the Administration has issued a statement in opposition. The authorizations in H.R. 2 are unsustainable given that the HTF cannot even support current baseline spending.

*DOT “Emergency” Spending.* The Administration opposes the bill’s inclusion of \$26 billion in emergency spending for several DOT infrastructure programs. This spending appears to be classified as emergency solely to enable the bill to reach the unrealistic budget authority authorization levels in the House’s Moving Forward Act, while evading discretionary spending caps. The Administration supports additional investment in infrastructure that is reasonable and well-targeted, but opposes the use of budget gimmicks to achieve this goal.

*Mask Mandate.* The Administration objects to language in the bill that requires passengers and transportation workers to wear masks on commercial airplanes, Amtrak trains, and public transit systems. This requirement is overly restrictive, and such decisions should be left to States, local governments, transportation systems, and public health leaders working together to reduce the public health risk and restore passenger confidence in these transportation systems.

*Amtrak.* The Administration is disappointed that the bill continues the status quo of providing more than \$2 billion for all Amtrak operations, including its highly inefficient long-distance trains. The Administration believes that there is great potential to reform and improve Amtrak service across the United States. The FY 2021 Budget Request would provide, through National Network Transformation Grants, the opportunity to undertake a multi-year process to restructure the network, which has not changed significantly in more than 40 years.

*Essential Air Service (EAS).* The Administration is disappointed that the bill did not include the FY 2021 Budget proposals to reform the EAS program at DOT. The Administration has proposed reforms to EAS for several years that build upon existing eligibility requirements and would help control costs while ensuring that truly remote communities receive air service.

*Position, Navigation, and Timing (PNT) Back-Up Technologies.* The Administration opposes the bill's inclusion of \$5 million within the Research and Technology account to fund DOT-recommended PNT back-up technologies. Global Positioning System (GPS) resilience and back-up requirements differ greatly by infrastructure sector, and there is already a strong private sector market of multiple and varied PNT back-up solutions to address the need. Consistent with Executive Order 13905 entitled "Strengthening National Resilience Through Responsible Use of Positioning, Navigation, and Timing Services," rather than subsidize back-up technologies, the Administration believes the appropriate role for the Federal Government is to encourage adoption of existing private sector back-up solutions that best fit the particular infrastructure sector.

*Cable Security Fleet Program.* The Administration opposes the bill's inclusion of \$10 million to fund retainer payments to corporate owners of United States flagged cable repair ships. There is no discernable justification for this program, as there is a robust global network of private cable repair ships available to meet commercial needs, and similarly, the DOD has no cable repair readiness gap.

*California High Speed Rail.* The Administration objects to section 193 of the bill that would prohibit DOT from using funds de-obligated from California's High-Speed Rail project from being used for any other purpose until any litigation is resolved. California's ill-fated attempt to construct a high-speed rail line has been criticized by its own Governor for cost overruns and is a case study in governmental dysfunction.

#### Department of Housing and Urban Development (HUD)

*Rental Assistance Programs.* The Administration is disappointed that the bill provides \$47.9 billion, or \$6.4 billion above the FY 2021 Budget Request, for rental assistance programs. The bill continues to reflect the status quo and does not include the legislative reforms proposed in the FY 2021 Budget Request for Housing Choice Vouchers, Project-Based Rental Assistance, Public Housing, and Housing for the Elderly and Persons with Disabilities. The Administration's proposed reforms include uniform work requirements and offers public housing authorities, property owners, and HUD-assisted families a simpler and more transparent set of rent structures that would reduce administrative burden, incentivize work, and place these programs on a more fiscally sustainable path.

*Homeless Assistance.* The Administration strongly objects to language in title II of the bill, under the heading Homeless Assistance Grants that would continue to limit HUD's ability to modify its Homeless Assistance Program's Notice of Funding Availability for the Continuum of Care. The language enshrines a rigid approach that prohibits updates to out-of-date funding criteria intended to achieve a more balanced program while maintaining historic paradigms of housing assistance. Over the past year, HUD has worked to make meaningful changes to the funding notice to promote self-sufficiency, so that homeless individuals can quickly get off the streets and on their feet. While the Administration appreciates the bill's support for the proposed initiative to reduce unsheltered homelessness, it strongly objects to language that would constrain innovative policy approaches.

*Proposed Grant Eliminations.* The Administration opposes funding for the Community Development Block Grant (CDBG) and HOME Investment Partnerships programs, both of which the Administration proposed to eliminate in the FY 2021 Budget Request. The CDBG program is not well-targeted to the most distressed areas and has not demonstrated a measurable impact on communities. The Administration also believes that State and local governments are better positioned than the HOME program to comprehensively address the unique market challenges, local policies, and impediments that lead to housing affordability problems. In addition, the Administration opposes the \$250 million for the Choice Neighborhoods program rather than eliminating it as proposed in the FY 2021 Budget Request. The Administration believes that State and local governments should play a greater role in addressing community revitalization needs.

*HUD "Emergency" Spending.* The Administration strongly opposes the \$49 billion in unrequested emergency spending across multiple HUD programs for additional infrastructure investments, including, for example, \$24.3 billion for the Public Housing Capital Fund, \$17.5 billion for HOME Investment Partnerships program, and \$4 billion for CDBG. This additional funding is excessive, unnecessary, and would violate the terms of the Bipartisan Budget Agreement of 2019.

*HUD Rulemaking Prohibitions.* The Administration strongly objects to section 237 of the bill, which would prevent HUD from proceeding with the proposed rule that prohibits persons other than United States citizens and other eligible noncitizens benefitting from HUD rental assistance. Section 235 of the bill would also prevent HUD from proceeding with the proposed rule to allow grantees participating in programs that permit single-sex facilities to have greater flexibility in establishing their own policies, consistent with State and local laws. In addition, section 236 of the bill would codify an outdated guidance notice on this subject in statute. The Administration opposes such provisions because they would impede the Administration's rulemaking process and authority as well as damage efforts to protect vulnerable women and girls.

*HUD CDBG-Disaster Recovery (CDBG-DR).* The Administration strongly opposes language in title II of the bill, under the heading of "Community Development Fund" that would exempt from apportionment CDBG-DR and CDBG-Mitigation funds appropriated under Public Law 115-123. This language impinges upon executive branch functions and authorities. In addition, the Administration has concerns about section 239 that would allow 2011-2013 CDBG-DR grantees to avoid recouping and repaying duplications of benefits in cases of fraud, bankruptcy, foreclosure, or death of beneficiaries. This section

would contribute to a weakening of the Stafford Act's prohibition on duplication of benefits.

### **Constitutional Concerns**

Several provisions of the bill raise constitutional concerns. The Administration objects to provisions in division A of the bill, such as sections 8067, 8074, 8078, 9012, and 9029, that would limit the President's constitutional authority as Commander in Chief to direct the use of military personnel and materiel. The Administration also objects to provisions that would require advance notice to Congress before certain military operations and objectives, preventing the President from exercising his constitutional authority as Commander in Chief to take immediate military action when necessary to ensure the security of the United States.

The Administration objects to sections 509 and 516 of division B, which would prevent the negotiation of certain terms in international agreements, as well as section 526, which would prevent certain forms of bilateral cooperation between executive branch agencies and China and Chinese-owned companies. These provisions would contravene the President's constitutional authority to conduct diplomacy. Likewise, section 523 of division B, section 628(b) of division D, and section 414 of division F would limit the number of representatives the President may send to an international conference absent advance notification to Congress. In some applications, the requirement of advance notification would infringe on the President's constitutional authority to conduct diplomacy.

The Administration objects to provisions in division D that would bar the President and OMB from expending funds on supervision of agency activities, including orders, regulations, testimony, work plans, and investigations. These provisions would interfere with the President's supervision of the executive branch, a necessary feature of his constitutional duty to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3.

The Administration objects to section 713 of division D, which would allow an employee of the executive branch to disclose information to Congress, including privileged information, without disciplinary consequence. The Administration also objects to section 8009 of division A, which would prohibit initiating a special access program without advance notice to Congress, and section 625 of division D, which would require an agency to disclose, without discretion, certain classified and other privileged information to an Inspector General. These provisions would interfere with the President's supervision of the executive branch and with the President's Article II authority to control the dissemination of privileged information.

The Administration objects to sections 8013 and 8138 of division A and section 309 of division C, which would bar the use of appropriated funds to generate certain legislative recommendations. These provisions would 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. Other provisions would require the submission a legislative recommendation in violation of the Recommendations Clause.

The Administration objects to a number of provisions throughout the bill that would condition the authority of the President to take certain actions, such as obligating or transferring funds, on prior approval of or consultation with committees of Congress. These provisions would contravene the constitutional separation of powers between the executive branch and Congress by giving legal effect to congressional action outside the Article I, Section 7 requirements of bicameralism and presentment. The same is true for section 3 of the bill, which purports to declare that committee reports on the appropriations contained in each division of the bill “shall apply for purposes of determining the allocation of funds provided by, and the implementation of,” that division.

The Administration objects to section 232 of division E, which would authorize members of Congress to inspect facilities used for custody of unaccompanied minor children at any time without notice. This provision does not make any allowance for maintaining order or the responsibility for the efficient execution of the laws, and would contravene the constitutionally mandated accommodation process by which the executive responds to congressional requests for access or information.

For related reasons, the Administration objects to sections 748 and 749 of division D on separation of powers grounds. These provisions would require executive agencies to produce “information, documentation, and views” on demand by the Comptroller General for use in investigations, and would authorize the Comptroller General to sue an official of the executive branch whom he deems not to have complied with such a demand. They would also require an agency to provide a report to the President and Congress in response to a Comptroller General determination that an executive branch official has violated the law. Because Congress may not empower a congressional agent to direct executive action, we would understand these provisions to require only the production of information already available to the agencies and not to bypass the constitutionally required accommodation process for the production of information protected by executive privilege. Also, because the opinions of the Comptroller General, an agent of Congress, cannot bind the executive branch, Congress may not authorize the Comptroller General to direct the executive branch or to seek a court order compelling the executive branch to respond to a Comptroller General directive.

The Administration objects to section 248 of division E, which would disable agencies administering grant programs from making exceptions to non-discrimination rules when required by the First Amendment. The restrictions mandated by this section would violate the First Amendment in certain applications, such as when the grant recipient is a religious organization whose employment decisions are protected by the ministerial exception, or when the funding program is not designed to create a limited public forum for individual expression.

### **Department of Homeland Security Appropriations Act, 2021**

While the Administration understands that the Department of Homeland Security Appropriations Act, 2021 will not be considered in the above package of legislation pursuant to the manager’s amendment considered as adopted, it would like to take the opportunity to share its views on the version of the bill that was previously slated for consideration.

## Department of Homeland Security (DHS)

*Border Wall.* The Administration strongly opposes the lack of funding, as well as language included in sections 104 and 209 through 212 of the bill, that would prevent DHS from securing the Southern Border by using physical barriers, where appropriate. The bill provides no funding for border wall construction, prevents the Administration from using other available funds to construct border barriers, and prohibits Customs and Border Protection (CBP) from constructing border wall in locations prioritized by the Border Patrol. It would also unnecessarily delay CBP's use of previously appropriated funds for border wall construction. Finally, the bill rescinds \$1.4 billion that was previously appropriated to CBP for border wall construction, and imposes new location and consultation restrictions that could disrupt projects that are already underway.

*Immigration and Customs Enforcement (ICE) Detention Beds.* The Administration strongly opposes the level provided in the bill for ICE detention beds. The bill would reduce detention capacity by half of its currently funded level and completely eliminate family detention, making it nearly impossible for ICE to conduct its statutory mission to enforce the Nation's immigration laws and keep the Nation safe. Beyond this dangerously low detention capacity, the bill would further reduce ICE's capacity by 10,000 beds as long as the Centers for Disease Control and Prevention's order protecting Americans from COVID-19 is in effect.

*Restrictions on Border Security and Immigration Enforcement Activities.* The Administration strongly opposes language in section 533 that would prohibit the use of Federal funds to execute several of the Administration's immigration and border security priorities. These programs and policies are an integral part of the Administration's efforts to prevent the return of a security and humanitarian crisis on the Southern Border.

*Limiting ICE Flexibility.* The Administration opposes language in sections 237, 238, and 239 that seeks to limit ICE's flexibility to revise its guidance related to F and M visas, prohibit community outreach programs, and end immigration enforcement action against a class of aliens who otherwise may be amenable to removal.

*Immigration Detention Limits.* The Administration strongly opposes section 219 of the bill, which would limit immigration detention to 20 days for all aliens unless the Director of ICE concludes that the alien poses a public safety threat or is a flight risk. This provision undermines statutory and mission-critical requirements to detain aliens pending removal, criminal aliens, and those with final deportation orders. This provision seeks to formalize catch-and-release and would result in more criminal aliens and aliens with final orders of removal being released into the interior of the country, which would unnecessarily force ICE to make dangerous at-large apprehensions—putting the safety of citizens, communities, and law enforcement officers at risk. In addition, section 219 would compel the release of illegal aliens into the United States prior to the conclusion of their immigration proceedings. Section 219 also includes an arbitrary 5-day limit on the detention of aliens who self-assess as transgender and requires assessments be conducted in conjunction with the Office of the Immigration Detention Ombudsman, which would place an added burden on ICE.

*Immigration Enforcement Limitation.* The Administration strongly opposes section 215 of the bill, which would prohibit ICE from taking any enforcement action against

individuals who provide information to the Federal Government or its contractors as part of the unaccompanied alien children sponsorship process. Unlike prior attempts to limit immigration enforcement actions, section 215 fails to provide an exception for individuals with criminal histories, which undermine the imperative to protect the welfare of vulnerable children. It is vital to ensure that people convicted of felony child and sexual abuse or those associated with prostitution are barred from the unaccompanied children sponsorship process and are not provided immunity or shielded from enforcement action. This provision could also be exploited by criminal aliens to remain in the United States illegally.

*Third Country Asylum.* The Administration opposes section 106 of the bill, which would prohibit the use of Federal funds to return aliens to a third country to claim asylum under an Asylum Cooperation Agreement (ACA) until the Secretary of DHS certifies to Congress that the third country has the capacity to assess and resettle claims. Section 208(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158) provides the authority to remove an alien to a third country where the alien can request asylum or other protection, and DHS recently entered into ACAs with Guatemala, Honduras, and El Salvador. Section 106 would hamper successful international cooperation on migration issues and delay the Federal Government's use of a legal means of countering illegal immigration.

*Homeland Security Investigations (HSI) Personnel Restriction.* The Administration opposes section 220 of the bill, which would prohibit the use of ICE/HSI personnel and resources for immigration enforcement unless there is probable cause to believe the target of such action committed a criminal offense.

*Law Enforcement Officers.* The Administration is concerned that the bill fails to provide the funding needed to hire additional Border Patrol agents or ICE law enforcement officers required to secure the United States border, maintain community safety, and enforce the Nation's immigration laws. These investments are critical at a time when CBP and ICE are focused on preventing the spread of COVID-19 across United States borders.

*DHS Reprogramming Limitations.* The Administration strongly opposes section 503 of the bill, which would all but eliminate DHS's ability to manage its own resources. Section 503 of the bill would eliminate a critical mechanism for DHS to reprogram funds above certain minimum thresholds, or to transfer funds between departmental accounts. The section also subjects funding derived from fee collections to the reprogramming limitations of this section, restricting amounts that are otherwise authorized and available to DHS. Section 503 would severely hamper DHS's flexibility to address unforeseen and emerging requirements, and would instead require DHS to seek an act of Congress near the end of the fiscal year to continue operating.

*Federal Emergency Management Agency (FEMA) Grant Funding.* The Administration opposes the \$3.4 billion in excessive grant funding provided in the bill for the FEMA Federal Assistance account, which is \$1.1 billion more than the level in the FY 2021 Budget Request. Not only does the bill waive non-Federal matches for fire grants, it also provides increases to programs that are not evidence- or performance-based and fails to provide funding for an innovative competitive all-hazards grant program that could better measure risk reduction through evaluation. In addition, the bill provides funding for an

unauthorized, unnecessary, and duplicative grant program to provide case management services to individuals released from detention—a mission area completely outside of FEMA’s expertise.

*Transportation Security Administration Funding.* The Administration opposes excessive transportation security funding initiatives eliminated in the FY 2021 Budget Request that are either duplicative, not a Federal responsibility, or have not proven to be successful.

*Office of the Immigration Detention Ombudsman.* The Administration opposes the \$20 million in funding provided by the bill for DHS to establish an Office of the Immigration Detention Ombudsman. Oversight that would be conducted by the Ombudsman is unnecessarily duplicative of monitoring by DHS, ICE, and the DHS Office of Inspector General, and monitoring through contracts to provide routine inspections of detention facilities.

*Cybersecurity Advisory Council.* While the Administration appreciates the spirit of establishing a new Cybersecurity Advisory Committee at the Cybersecurity and Infrastructure Security Agency, it strongly opposes language in section 314 that would provide access to members of the public and private sector of executive branch deliberative and pre-decisional information. Providing access to this type of information would severely inhibit the free flow and exchange of information between members of the executive branch.

*Plum Island Closure and Sale.* The Administration opposes section 410 of the bill. Congress provided GSA the authority to dispose of the Plum Island property on an expedited basis and is now reversing that direction, which would result in higher taxpayer costs both through forcing the piecemeal sale of federally-owned assets and requiring DHS to continue to maintain facilities far longer, and at significantly greater cost, than currently planned.

### Constitutional Concerns

The Administration objects to section 532 of the committee reported bill, which would require the submission a legislative recommendation in violation of the Recommendations Clause.

The Administration objects to section 239(a) of the committee reported bill, which would authorize a legislative veto, in violation of *INS v. Chadha*, 462 U.S. 919 (1983), by requiring the Secretary of Homeland Security immediately to stay the removal of an alien “[u]pon receipt of a written request by a relevant committee [of Congress] for an investigative report relating to an alien beneficiary of a private bill that has been introduced in the Senate or the House of Representatives.”

The Administration objects to section 528 of the committee reported bill, which would authorize members of Congress or their staff to inspect facilities used to detain aliens, with little or no notice to DHS. This provision does not make any allowance for maintaining order, preventing violence, or the responsibility for the efficient execution of the laws, and would contravene the constitutionally mandated accommodation process by which the executive responds to congressional requests for access or information.

The Administration looks forward to working with Congress as the FY 2021 appropriations process moves forward.

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