

Administration of Donald J. Trump, 2018

Statement on Signing the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019

September 28, 2018

Today, I have signed into law H.R. 6157, the "Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019".

Several provisions of the bill (Division A, sections 8068, 8075, 8080(b), 8099, and 8101) restrict the President's authority to control the personnel and materiel the President believes to be necessary or advisable for the successful conduct of military missions. While I share the objectives of the Congress with respect to maintaining the strength and security of the United States, my Administration will implement these provisions consistent with the President's authority as Commander in Chief.

Several provisions of the bill (Division A, sections 8068, 8115, and 9016) also require the Executive to notify the Congress and then wait a period of time before making certain military decisions. I reiterate the longstanding understanding of the executive branch that these types of provisions encompass only actions for which such advance notification is feasible and consistent with the President's exclusive constitutional authority as Commander in Chief. Section 8068 furthermore purports to permit the congressional defense committees to veto a proposed modification of a command structure during the 30-day waiting period, in violation of *INS v. Chadha*. My Administration will treat any such legislative veto as advisory and non-binding.

One provision of the bill (Division B, title II, under the "National Institutes of Health" and "Office of the Director (Including Transfer of Funds)" headings) authorizes a certain transfer of funds with "15 days prior approval of the Committees on Appropriations of the House of Representatives and the Senate." Under the separation of powers, the Congress may not make the approval of a committee of the Congress a precondition to the execution of the law. My Administration will treat this provision as requiring only 15 days' advance notice to the congressional appropriations committees.

Two provisions of the bill (Division B, section 514(a) and (b)) condition the Executive's authority to expend funds on consultation with congressional committees. As I have previously noted with respect to such requirements, I anticipate that my Administration will be able to consult with members of the Congress on these decisions, but the separation of powers does not permit a requirement to consult with the Congress in executive decision-making. My Administration will accordingly treat the consultation requirements as advisory.

Two provisions of the bill (Division A, section 8122, and Division B, section 210) could be read to prohibit the use of funds to recommend certain legislation to the Congress. Insofar as these provisions constrain my authority to recommend "such Measures as [I] shall judge necessary and expedient" (Article II, section 3), my Administration will treat them as advisory.

Division A, section 8009 prohibits the use of funds to initiate a special access program unless the congressional defense committees receive 30 days' advance notice. As I have previously stated, the President's authority to classify and control access to national security information flows from the Constitution and does not depend upon a legislative grant of authority. Although I expect to be able to provide the advance notice contemplated by section 8009 in most situations as a matter of comity, situations may arise in which I must act promptly

while protecting certain extraordinarily sensitive national security information. In these situations, I will treat these sections in a manner consistent with my constitutional authorities, including as Commander in Chief.

My Administration will treat provisions that authorize allocating benefits on the basis of race, ethnicity, or gender (e.g., Division A, sections 8020 and 8040; Division B, title I, under the "Departmental Management" and "Salaries and Expenses (Including Transfer of Funds)" headings; Division B, title III, under the "School Improvement Programs" heading) in a manner consistent with the requirement to afford equal protection of the laws under the Due Process Clause of the Constitution's Fifth Amendment.

DONALD J. TRUMP

The White House,
September 28, 2018.

NOTE: H.R. 6157, approved September 28, was assigned Public Law No. 115–245.

Categories: Bill Signings and Vetoes : Legislation, enacted : Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, signing statement.

Subjects: Defense and national security : Classified national security information; Legislation, enacted : Continuing Appropriations Act, 2019; Legislation, enacted : Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019.

DCPD Number: DCPD201800644.