

Statement on Signing the Coronavirus Aid, Relief, and Economic Security Act
March 27, 2020

Today, I have signed into law H.R. 748, the "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES" Act (the "Act"). The Act makes emergency supplemental appropriations and other changes to law to help the Nation respond to the coronavirus outbreak. I note, however, that the Act includes several provisions that raise constitutional concerns.

Section 15010(c)(3)(B) of Division B of the Act purports to require the Chairperson of the Council of the Inspectors General on Integrity and Efficiency to consult with members of the Congress regarding the selection of the Executive Director and Deputy Executive Director for the newly formed Pandemic Response Accountability Committee. The Committee is an executive branch entity charged with conducting and coordinating oversight of the Federal Government's response to the coronavirus outbreak. I anticipate that the Chairperson will be able to consult with members of the Congress with respect to these hiring decisions and will welcome their input. But a requirement to consult with the Congress regarding executive decision-making, including with respect to the President's Article II authority to oversee executive branch operations, violates the separation of powers by intruding upon the President's power and duty to supervise the staffing of the executive branch under Article II, section 1 (vesting the President with the "executive Power") and Article II, section 3 (instructing the President to "take Care" that the laws are faithfully executed). Accordingly, my Administration will treat this provision as hortatory but not mandatory.

Section 4018 of Division A of the Act establishes a new Special Inspector General for Pandemic Recovery (SIGPR) within the Department of the Treasury to manage audits and investigations of loans and investments made by the Secretary of the Treasury under the Act. Section 4018(e)(4)(B) of the Act authorizes the SIGPR to request information from other government agencies and requires the SIGPR to report to the Congress "without delay" any refusal of such a request that "in the judgment of the Special Inspector General" is unreasonable. I do not understand, and my Administration will not treat, this provision as permitting the SIGPR to issue reports to the Congress without the presidential supervision required by the Take Care Clause, Article II, section 3.

Certain other provisions (such as sections 20001, 21007, and 21010 of Division B of the Act) purport to condition the authority of officers to spend or reallocate funds upon consultation with, or the approval of, one or more congressional committees. These provisions are impermissible forms of congressional aggrandizement with respect to the execution of the laws. The Congress may affect the execution of the laws only by enacting a new statute in accordance with the requirements of bicameralism and presentment prescribed in Article I, section 7. My Administration will make appropriate efforts to notify the relevant committees before taking the specified actions and will accord the recommendations of such committees all appropriate and serious consideration, but it will not treat spending decisions as dependent on prior consultation with or the approval of congressional committees.

Finally, several provisions (such as sections 3511(d)(4) and 3862 (creating section 744N(d)(1) of the Federal Food, Drug, and Cosmetic Act) of Division A of the Act) purport to require recommendations regarding legislation to the Congress. Because Article II, section 3 gives the President the authority to recommend only "such Measures as he shall judge necessary and expedient," my Administration will continue the practice of treating provisions like these as advisory and non-binding.

DONALD J. TRUMP

The White House,
March 27, 2020.

NOTE: H.R. 748, approved March 27, was assigned Public Law No. 116–136. An original was not available for verification of the content of this statement.

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