

The Honorable Patrick Leahy
Chairman
Senate Committee on Appropriations
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Chris Van Hollen
Chair
Senate Committee on Appropriations, Subcommittee on Financial Services and General
Government
110 Hart Senate Office Building
Washington, DC 20510

The Honorable Richard Shelby
Vice Chairman
Senate Committee on Appropriations
304 Russell Senate Office Building
Washington, DC 20510

The Honorable Cindy Hyde-Smith
Ranking Member
Senate Appropriations Committee, Subcommittee on Financial Services and General
Government
702 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Vice Chairman Shelby, Senator Van Hollen, and Senator Hyde-Smith:

We are an ideologically diverse coalition of organizations that have come together to preserve and promote the constitutional role of Congress, including Congress's power of the purse. We write today to ask the Senate Appropriations Committee to include language in Fiscal Year 2022 Appropriations legislation strengthening and reaffirming Congress's fundamental constitutional authority over federal spending.

Specifically, we ask you to include several provisions that aim to rebalance the growing asymmetry between Executive and Congressional control over federal spending. These provisions were included in the House-passed Financial Services and General Government (FSGG) Appropriations bill in Fiscal Year 2021, including:

- (1) Requiring the Office of Management and Budget (OMB) to disclose apportionment decisions publicly, which currently are legally binding and made by OMB in secret.
- (2) Reining in reprogramming budget authority by requiring automatic disclosures when the Executive Branch seeks to reprogram congressionally appropriated funds.

- (3) Placing strictures on the manipulation of the timing of funds' obligation by requiring that funds are obligated within a reasonable time in order to avoid circumventing congressional intent.
- (4) Requiring executive agencies to, as a matter of statute, be more responsive to and cooperative with the Government Accountability Office investigations of potential violations of appropriations law.
- (5) Requiring executive agencies to notify Congress when OMB has issued apportionment decisions that would delay or disrupt funding directives enacted by Congress.

Additionally, we encourage you to include the following language in the FSGG report:

Online Budget Repository: Instructs agencies to post their budgets and associated congressional budget justifications on a publicly accessible website. Requires additional reporting and public disclosure of critical budget data.

Including these provisions in the Senate's FSGG Appropriations bill and report would help to meaningfully restore Congress's power over the purse through stronger transparency and reporting from the Executive Branch. These reporting and disclosure requirements are directly related to the use of the funds appropriated by this and other Appropriations legislation. These measures will ensure Congress has the information it needs -- how, where, and to what extent congressionally appropriated funds are spent by the Executive Branch -- to effectively discharge its constitutional responsibility as the steward of taxpayer funds.

Thank you for your consideration, and we are happy to provide assistance and answer any questions that you have.

Respectfully,

Demand Progress
FreedomWorks
National Taxpayers Union
Project on Government Oversight
Protect Democracy
R Street Institute
Taxpayers for Common Sense

Provisions Included in House-Passed FISCAL YEAR 2021 FSGG Bill

SEC. 204. (a) Beginning not later than 10 days after the date of enactment of this Act and until the requirements of subsection (b) are completed, the Office of Management and Budget shall provide to the Committees on Appropriations and the Budget of the House of Representatives and the Senate each document apportioning an appropriation, pursuant to section 1513(b) of title 31, United States Code, approved by the Office of Management and Budget, including any associated footnotes, not later than 2 business days after the date of approval of such apportionment by the Office of Management and Budget.

(b) Not later than 90 days after the date of enactment of this Act, the Office of Management and Budget shall complete implementation of an automated system to post each document apportioning an appropriation, pursuant to section 1513(b) of title 31, United States Code, including any associated footnotes, in a format that qualifies each such document as an Open Government Data Asset (as defined in section 3502 of title 44, United States Code), not later than 2 business days after the date of approval of such apportionment, and shall place on such website each document apportioning an appropriation, pursuant to such section 1513(b), including any associated footnotes, already approved the current fiscal year, and shall report the date of completion of such requirements to the Committees on Appropriations and the Budget of the House of Representatives and Senate.

(c) Each document apportioning an appropriation pursuant to section 1513(b) of title 31, United States Code, that is posted on a publicly accessible website pursuant to such section shall also include a written explanation by the official approving each such apportionment stating the rationale for the apportionment schedule and for any footnotes: Provided, That the Office of Management and Budget or the applicable department or agency shall make available classified documentation relating to any apportionment to the appropriate congressional committees on a schedule to be determined by each such committee.

(d)(1) Not later than 15 days after the date of enactment of this Act, any delegation of apportionment authority pursuant to section 1513(b) of title 31, United States Code, that is in effect as of such date shall be submitted for publication in the Federal Register: Provided, That any delegation of such apportionment authority after the date of enactment of this section shall, on the date of such delegation, be submitted for publication in the Federal Register: Provided further, That the Office of Management and Budget shall publish such delegations in a format that qualifies such publications as an Open Government Data Asset (as defined in section 3502 of title 44, United States Code) on a public Internet website, which shall be continuously updated with the position of each Federal officer or employee to whom apportionment authority has been delegated.

(2) Not later than 5 days after any change in the position of the approving official with respect to such delegated apportionment authority for any account is made, the Office shall submit a report to the Congress explaining why such change was made. This title may be cited as the “Executive Office of the President Appropriations Act, 2021”.

SEC. 738. None of the funds made available in this or any other appropriations Act may be used to increase, eliminate, or reduce funding for a program, project, or activity as proposed in the President’s budget request for a fiscal year until such proposed change is subsequently

enacted in an appropriation Act, or unless such change is made pursuant to the reprogramming or transfer provisions of this or any other appropriations Act.

SEC. 748. During the current fiscal year—

(a) With respect to budget authority proposed to be rescinded or that is set to be reserved or proposed to be deferred in a special message transmitted under section 1012 or 1013 of the Congressional Budget and Impoundment Control Act of 1974, such budget authority— (1) shall be made available for obligation in sufficient time to be prudently obligated as required under section 1012(b) or 1013 of such Act; and (2) may not be deferred or otherwise withheld from obligation during the 90-day period before the expiration of the period of availability of such budget authority, including, if applicable, the 90-day period before the expiration of an initial period of availability for which such budget authority was provided.

(b) With respect to an apportionment of an appropriation made pursuant to section 1513(b) of title 31, United States Code, an appropriation (as that term is defined in section 1511 of title 31, United States Code) shall be apportioned—

(1) to make available all amounts for obligation in sufficient time to be prudently obligated; and
(2) to make available all amounts for obligation, without precondition or limitation (including footnotes) that shall be met prior to obligation, not later than 90 days before the expiration of the period of availability of such appropriation, including, if applicable, 90 days before the expiration of an initial period of availability for which such appropriation was provided.

(c) As used in this section, the term “budget authority” includes budget authority made available by this or any other Act, by prior appropriations Acts, or by any law other than an appropriations Act.

(d)(1) The Comptroller General shall review compliance with this section and shall submit to the Committees on Appropriations and the Budget, and any other appropriate congressional committees of the House of Representatives and Senate a report, and any relevant information related to the report, on any noncompliance with this section or the Impoundment Control Act of 1974.

(2) The President or the head of the relevant department or agency of the United States shall provide information, documentation, and views to the Comptroller General, as is determined by the Comptroller General to be necessary to determine such compliance, not later than 20 days after the date on which the request from the Comptroller General is received, or if the Comptroller General determines that a shorter or longer period is appropriate based on the specific circumstances, within such shorter or longer period.

(3) To carry out the responsibilities of this section and the Impoundment Control Act of 1974, the Comptroller General shall also have access to interview the officers, employees, contractors, and other agents and representatives of a department, agency, or office of the United States at any reasonable time as the Comptroller General may request.

(e)(1) An officer or employee of the Executive Branch of the United States Government violating this section shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.

(2) In the event of a violation of this section or the Impoundment Control Act of 1974, or in the case that the Government Accountability Office issues a legal decision concluding that a department, agency, or office of the United States violated this section or the Impoundment Control Act of 1974, the President or the head of the relevant department or agency as the case

may be, shall report immediately to the Congress all relevant facts and a statement of actions taken: Provided, That a copy of each report shall also be transmitted to the Comptroller General and the relevant inspector general on the same date the report is transmitted to the Congress.

19 (3) Any such report shall include a summary of the facts pertaining to the violation, the title and Treasury Appropriation Fund Symbol of the appropriation or fund account, the amount involved for each violation, the date on which the violation occurred, the position of any individuals responsible for the violation, a statement of the administrative discipline imposed and any further action taken with respect to any officer or employee involved in the violation, and a statement of any additional action taken to prevent recurrence of the same type of violation: Provided, That in the case that the Government Accountability Office issues a legal decision concluding that a department, agency, or office of the United States violated this section and the relevant department, agency, or office does not agree that a violation has occurred, the report provided to Congress, the Comptroller General, and relevant inspector general will explain such department, agency, or office's position.

(4) If the report identifies the position of any officer or employee as involved in the violation, such officer or employee shall be provided a reasonable opportunity to respond in writing, and any such response shall be appended to the report.

SEC. 749. (a) If an executive agency or the District of Columbia government receives a written request for information, documentation, or views from the Government Accountability Office relating to a decision or opinion on budget or appropriations law, the executive agency or the District of Columbia government shall provide the requested information, documentation, or views not later than 20 days after receiving the written request, unless such written request specifically provides otherwise.

(b) If an executive agency or the District of Columbia government fails to respond to the request for information, documentation, or views within the time required by this section—

(1) the Comptroller General shall notify, in writing, the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and any other appropriate congressional committee of the House of Representatives and the Senate of such failure; and

(2) the Comptroller General is hereby expressly empowered, through attorneys of their own selection, to bring a civil action in the United States District Court for the District of Columbia to require such information, documentation, or views to be produced, and such court is expressly empowered to enter in such civil action, against any department, agency, officer, or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to require such production.

(c) If the Government Accountability Office determines that an officer or employee of an executive agency or an officer or employee of the District of Columbia government has violated section 1341(a), 1342, or 1517(a) of title 31, United States Code, the head of the agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken: Provided, That a copy of each report shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress: Provided further, That any such report shall include a summary of the facts pertaining to the violation, the title and Treasury Appropriation Fund Symbol of the appropriation or fund account, the amount involved for each violation, the date

on which the violation occurred, the position of any officer or employee responsible for the violation, a statement of the administrative discipline imposed and any further action taken with respect to any officer or employee involved in the violation, a statement of any additional action taken to prevent recurrence of the same type of violation, a statement of any determination that the violation was not knowing and willful that has been made by the executive agency or District of Columbia government, and any written response by any officer or employee identified by position as involved in the violation: Provided further, That in the case that the Government Accountability Office issues a legal decision concluding that section 1341(a), 1342, or 1517(a) of title 31, United States Code was violated, and the executive agency or District of Columbia government, as applicable, does not agree that a violation has occurred, the report provided to the President, the Congress, and the Comptroller General will explain its position.

SEC. 750. (a) Each department or agency of the executive branch of the United States Government shall notify the Committees on Appropriations and the Budget of the House of Representatives and the Senate and any other appropriate congressional committees if—

- (1) an apportionment is not made in the required time period provided in section 1513(b) of title 31, United States Code;
- (2) an approved apportionment received by the department or agency conditions the availability of an appropriation on further action; or
- (3) an approved apportionment received by the department or agency may hinder the prudent obligation of such appropriation or the execution of a program, project, or activity by such department or agency.

(b) Any notification submitted to a congressional committee pursuant to this section shall contain information identifying the bureau, account name, appropriation name, and Treasury Appropriation Fund Symbol or fund account.