

Week Ending Friday, January 30, 2004

**Statement on Signing the
Consolidated Appropriations Act,
2004**

January 23, 2004

Today, I have signed into law H.R. 2673, the “Consolidated Appropriations Act, 2004” (CAA). The CAA consolidates into a single appropriations Act several appropriations bills that the Congress normally passes each year as separate bills to fund the operations of the Federal Government.

Many provisions of the CAA are inconsistent with the constitutional authority of the President to conduct foreign affairs, command the Armed Forces, protect sensitive information, supervise the unitary executive branch, make appointments, and make recommendations to the Congress. Many other provisions unconstitutionally condition execution of the laws by the executive branch upon approval by congressional committees.

The executive branch shall construe as advisory the provisions of the Act that purport to: (1) direct or burden the Executive’s conduct of foreign relations, including sections 514, 531, 548, 557, 570, 571, 589, 610, and 618(b) of, and language relating to an agreement under the heading “Other Bilateral Economic Assistance, Economic Support Fund” in, the Foreign Operations Appropriations Act; and sections 404, 612, and 635 of the Commerce, Justice, State Appropriations Act and language in that Act relating to World Trade Organization negotiations and United Nations Security Council voting; (2) limit the President’s authority as Commander in Chief, such as language under the heading “Andean Counterdrug Initiative” in the Foreign Operations Appropriations Act and section 610 of the Commerce, Justice, State Appropriations Act; (3) limit the President’s authority to supervise the unitary executive branch, such as section 610(3) of the Commerce, Justice, State Appropriations Act, and sections 618 and 628 of the Trans-

portation, Treasury Appropriations Act and the language in that Act relating to Office of Management and Budget (OMB) review of executive branch orders, activities, regulations, transcripts, and testimony; or (4) restrict the President’s constitutional authority to make appointments, such as section 604(c)(3)(B) of the Foreign Operations Appropriations Act and subsections 112(a) and (d) of the Commerce, Justice, State Appropriations Act.

In addition, the executive branch shall construe provisions in the CAA that mandate submission of information to the Congress, other entities outside the executive branch, or the public, such as section 637(e)(2) of the Commerce, Justice, State Appropriations Act, in a manner consistent with the President’s constitutional authority to withhold information that could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties. Also, to the extent that provisions of the CAA, such as section 404 of the Transportation, Treasury Appropriations Act and section 721 of the Agriculture Appropriations Act, purport to require or regulate submission by executive branch officials of legislative recommendations to the Congress, the executive branch shall construe such provisions in a manner consistent with the President’s constitutional authority to submit for congressional consideration such measures as the President judges necessary and expedient. In particular, the executive branch shall construe sections 121 and 223 of the Veterans Affairs, Housing and Urban Development Appropriations Act in a manner consistent with the President’s authority under the Recommendations Clause to submit budget requests to the Congress in any form he determines appropriate.

The executive branch shall construe the phrase “developed by the Kimberley Process” in section 584 of the Foreign Operations

Appropriations Act as requiring the enforcement only of those standards that are in existence as of enactment of the CAA, for the reasons I stated upon signing the Clean Diamond Trade Act on April 25, 2003.

The executive branch shall construe as calling solely for notification the provisions of the CAA that are inconsistent with the requirements of bicameral passage and presentment set forth by the Constitution, as construed by the Supreme Court of the United States in 1983 in *INS v. Chadha*. Such provisions include: sections 704, 718, 732, and 786 in the Agriculture Appropriations Act and language relating to Food and Drug Administration fund transfers in that Act; section 436(5) of the District of Columbia Appropriations Act; section 207 of the Labor, Health and Human Services Appropriations Act and language under the Pension Benefit Guaranty Corporation Fund heading in that Act; sections 201, 211, 212, 217, 403, 526, 533, 614, 623, and 643 in the Transportation, Treasury Appropriations Act and language in that Act under the headings "Department of Transportation, Office of the Secretary, Salaries and Expenses," "Department of Transportation, Working Capital Fund," "Federal Transit Administration, Administrative Expenses," "Treasury Building Annex Repair and Restoration," "Internal Revenue Service, Business Systems Modernization," "Federal Drug Control Programs, High Intensity Drug Trafficking Areas Program," "General Services Administration, Real Property Activities, Federal Buildings Fund, Limitations on Availability of Revenue," and "Human Capital Performance Fund;" and section 111 of the Veterans Affairs, Housing and Urban Development Appropriations Act and language in that Act relating to additional amounts for Capital Asset Realignment for Enhanced Services Activities.

Section 409 of the Commerce, Justice, State Appropriations Act purports to compel the Secretary of State to furnish all Department of State cables, on any topic and of whatever classification, to any member of the House or Senate appropriations committees who requests them. The executive branch shall construe this provision consistent with the President's constitutional authority to

withhold information the disclosure of which could impair foreign relations, national security, the deliberative process of the Executive, or the performance of the Executive's constitutional duties.

The executive branch shall construe section 646 of the Transportation, Treasury Appropriations Act, relating to assignment of executive branch employees to perform functions in the legislative branch, in a manner consistent with the President's constitutional authority to supervise the unitary executive branch and as Commander in Chief, and recognizing that the President cannot be compelled to give up the authority of his office as a condition of receiving the funds necessary to carrying out the duties of his office.

Several provisions of the CAA relate to race, ethnicity, or gender. The executive branch shall construe such provisions in a manner consistent with the requirement to afford equal protection of the laws under the Due Process Clause of the Fifth Amendment to the Constitution.

Sections 153 and 154 of Division H of the CAA purport to establish interparliamentary groups of U.S. Senators to meet with members of the national legislatures of certain foreign countries for a discussion of common problems in the interest of relations between the United States and those countries. Consistent with the President's constitutional authority to conduct the Nation's foreign relations and as Commander in Chief, the executive branch shall construe sections 153 and 154 as authorizing neither representation of the United States nor disclosure of national security information protected by law or executive order.

The executive branch shall construe section 161 of Division H of the CAA as applicable only with respect to statutory functions assigned to the Director of OMB and not to the Director's role of assisting the President in the President's exercise of his constitutional powers of obtaining the opinions of the heads of departments, recommending for the consideration of the Congress such measures as the President judges necessary and expedient, and supervising the unitary executive branch. The executive branch shall not construe section 161 to affect the power

of the President to modify or amend the executive order to which the provision refers.

Several provisions in the CAA make specified changes in statements of managers of the House-Senate conference committees that accompanied various bills reported from conference that ultimately became laws. As with other committee materials, statements of managers accompanying a conference report do not have the force of law. Accordingly, although changes to these statements are directed by the terms of the statute, the statements themselves are not legally binding.

George W. Bush

The White House,
January 23, 2004.

NOTE: H.R. 2673, approved January 23, was assigned Public Law No. 108-199. An original was not available for verification of the content of this statement. This item was not received in time for publication in the appropriate issue.

Executive Order 13325— Amendment to Executive Order 12293, the Foreign Service of the United States

January 23, 2004

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Foreign Service Act of 1980, as amended, and in order to adjust the basic salary rates for each class of the Senior Foreign Service in light of the changes made to the manner in which members of the Senior Executive Service will be paid pursuant to the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), it is hereby ordered as follows:

Section 1. Section 4 of Executive Order 12293 of February 23, 1981, as amended, is amended to read as follows:

“**Sec. 4.** (a) In accord with Section 402 of the Act (22 U.S.C. 3962), there are established the following salary classes with titles for the Senior Foreign Service, at the following ranges of basic rates of pay.

(1) Career Minister

Range from 94 percent of the rate payable to level III of the Executive Schedule to 100 percent of the rate payable to level III of the Executive Schedule.

(2) Minister-Counselor

Range from 90 percent of the rate payable to level III of the Executive Schedule to 100 percent of the rate payable to level III of the Executive Schedule.

(3) Counselor

Range from 120 percent of the rate payable to GS-15/Step 1 to 100 percent of rate payable to level III of the Executive Schedule.

(b) Upon conversion to a rate of basic pay within the range of rates established for the applicable salary class by this section as of the first day of the first applicable pay period beginning on or after January 1, 2004, a member of the Senior Foreign Service shall receive the rate of basic pay to which he or she was entitled immediately before that date, including any locality-based comparability payment authorized under 5 U.S.C. 5304(h)(2)(C) that the member was receiving immediately before that date. On the same date, or on a later date specified by the Secretary of State (or the heads of the other agencies that utilize the Foreign Service personnel system (collectively the “Secretary”)), the Secretary may increase the member’s rate of basic pay upon a determination that the member’s performance or contribution to the mission of the agency so warrant and that the member is otherwise eligible for such a pay adjustment under Section 402 of the Foreign Service Act.”

Sec. 2. Effective Date. The salary rates contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2004.

George W. Bush

The White House,
January 23, 2004.

[Filed with the Office of the Federal Register, 8:45 a.m., January 27, 2004]

NOTE: This Executive order was published in the *Federal Register* on January 28. This item was not