



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 11 2019

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on S. 375, the Payment Integrity Information Act of 2019. As we explain below, the bill presents a constitutional concern.

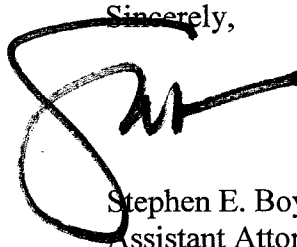
The proposed bill requires various Executive Branch agencies and officials to submit numerous reports relating to improper payments made by the government and associated remedial measures. In complying with three of these reporting requirements, Executive Branch agencies and officials would be required to recommend legislative action, in violation of the Recommendations Clause, U.S. Const. art. II, § 3, which gives the President the constitutional responsibility to “recommend to [Congress’s] Consideration such Measures *as he shall judge necessary and expedient.*” *Id.* (emphasis added); see *Application of the Recommendations Clause to Section 802 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, 40 Op. O.L.C. __, *19 (Aug. 25, 2016). We suggest making the following changes to eliminate this concern:

- Sec. 2, § 3353(b)(2)(B): “if . . . additional funding is necessary to obligate the full level of funding determined by the Director of the Office of Management and Budget [to bring the agency into compliance] . . . , the executive agency **shall should** submit a request to Congress for additional reprogramming or transfer authority.” § 3353(b)(2)(B)(ii)(II).
- Sec. 2, § 3353(b)(3)(A)(i)–(ii): The head of an executive agency, found by the Director of the Office of Management and Budget not to be in compliance for three fiscal years, “~~shall, not later than 30 days after the date of that determination,~~ may submit to the appropriate authorizing and appropriations committees of Congress and the Comptroller General of the United States—reauthorization proposals, **if any**, for each program or activity that has not been in compliance for 3 or more fiscal years; and proposed statutory changes, **if any, necessary** to bring the program or activity into compliance.”

- Sec. 2, § 3354(e)(3): “Not later than 120 days after the date of enactment of this section, the Director of the Office of Management and Budget shall submit a report to Congress on the plan described in this subsection, including any recommended legislation.” § 3353(e)(3).

Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Boyd", written over the word "Sincerely,".

Stephen E. Boyd
Assistant Attorney General

cc: The Honorable Gary C. Peters
Ranking Member