



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

JAN 09 2018

The Honorable Michael D. Crapo  
Chairman  
Committee on Banking, Housing and Urban Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice (“the Department”) on S. 1591, the “Otto Warmbier Banking Restrictions Involving North Korea Act of 2017.” As to the general desirability of the bill, we defer to other Departments. However, as we explain below, the bill raises constitutional concerns.

**Conduct of Foreign Affairs.** Section 304(b) would require the Secretary of the Treasury to designate an office within the Office of Terrorism and Financial Intelligence that shall, among other things, “coordinate efforts to combat the illicit financing of human trafficking with . . . foreign governments.” As we have explained, “[o]ne well-established component of the President’s foreign affairs power is the ‘basic authority to conduct the Nation’s diplomatic relations.’” *Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy in Section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011*, 35 Op. O.L.C. \_\_\_, at \*4 (Sept. 19, 2011) (citation and internal quotation marks omitted). Accordingly, the President has exclusive constitutional authority “to determine the time, scope, and objectives of international negotiations and the individual who will represent the United States in those contexts.” *Id.* at 4 (citation and internal quotation marks omitted). Thus, we would recommend amending section 304(b) to make it precatory, perhaps adding “as appropriate” after “foreign governments.”

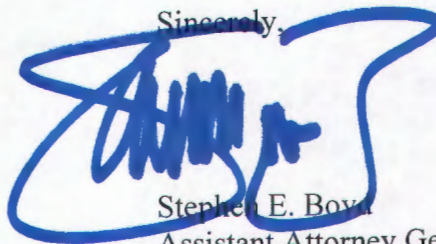
**Recommendations Clause.** Section 135 would require the Secretary of Treasury to brief the Congress on “recommendations for additional authorities or resources necessary to expand the capacity or capability” of the Treasury Department for sanctions enforcement. This provision would contravene the President’s constitutional authority to “recommend to [Congress’s] Consideration such Measures as he shall judge necessary and expedient.” U.S. Const. art. II, § 3 (emphasis added); see also *Application of the Recommendations Clause to Section 802 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, 40 Op. O.L.C. \_\_

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(Aug. 25, 2016), <https://www.justice.gov/opinion/file/929881/download>. Thus, we recommend that revising section 135 to make it precatory, perhaps by specifying “recommendations, *if appropriate*, for additional authorities . . . .”

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,



Stephen E. Boyd  
Assistant Attorney General

cc: The Honorable Sherrod Brown  
Ranking Member