September 19, 2022

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on Appropriations
Room S-128 - The Capitol
Washington DC, 20150

The Honorable Rosa DeLauro
Chairman
U.S. House of Representatives
Committee on Appropriations
2413 Rayburn House Office Building
Washington, DC 20515

The Honorable Richard Shelby
Ranking Member
United States Senate
Committee on Appropriations
304 Russell Senate Office Building
Washington, DC 20510

The Honorable Kay Granger
Ranking Member
U.S. House of Representatives
Committee on Appropriations
1026 Longworth House Office Building
Washington, DC 20515

Re: Concerns regarding Sec. 755 of the FY 2023 – House Agriculture, Rural Development, FDA, and Related Agencies Appropriations Bill

Dear Chairman Leahy, Ranking Member Shelby, Chairman DeLauro, and Ranking Member Granger,

We, the undersigned organizations are troubled by recent attempts by the House of Representatives to prohibit collaboration and education between USDA and the regulated community. This would break the connection that drives continuous improvement in our shared commitment to animal welfare.

The House's FY23 Agriculture Appropriation reduces APHIS to enforcement only, mandating an end to education and collaborative approaches to ensuring animal welfare, particularly eliminating teachable moments. The House language is overly broad, contrary to the best interests of the animals in our care, and useless to increasing compliance with the Animal Welfare Act (AWA).

Specifically, Sec. 755 of the House bill would prohibit funding to pay for salaries or expenses of personnel to implement any activities related to:

(a) The permitting of non-recording of observed violations of the AWA or its regulations on official inspection reports; or
(b) The prioritizing of education or collaborative approaches to violations or noncompliance ahead of enforcement under the AWA.

The House language appears to prevent inspectors from working with licensees to improve the condition of their facilities or treatment of the animals before enforcement, which raises a couple of important questions. Should the House language be interpreted to mean an inspector is prohibited from suggesting changes? Preventing inspectors from conveying questions and concerns or educating regulated entities would undoubtedly be detrimental to the health and well-being of the animals.

With a prohibition on "education" and "collaborative approaches," how would the agency promulgate and implement new regulations, a process that typically involves a 60-day public comment period under the Administrative Procedures Act? Education is a critical part of the regulatory process. For example, USDA's Animal and Plant Health Inspection Service (APHIS) has been working with licensees and registrants to help them understand and comply with the newly promulgated contingency plan regulations. The House language could be

interpreted as prohibiting that kind of training. It could also be interpreted as prohibiting agency staff from even participating in any kind of meeting with the regulated community.

To offer another example, as part of APHIS's new licensing regulations, the agency has encouraged licensees to request a visit before the formal pre-license inspection. This is something the agency has found to be constructive as part of their effort to ensure compliance with AWA regulations; however, it would be prohibited under this new House language.

The Animal Welfare Act gives the Secretary of Agriculture the authority to implement such inspections and investigations as necessary to enforce the Act (§ 2146, a.). Through this authority, the USDA prioritizes enforcement of critical and direct non-compliance that is related to the care and wellbeing of animals. This authority also allows USDA inspectors and staff to provide additional guidance (teachable moments) to regulated entities whose operations may benefit from additional recommendations and education. Although this initiative has fostered a collaborative environment in which the inspectors work with licensees to improve standards of care, the House appropriations language prohibits this positive relationship, and further appears to be in direct conflict with the Secretary's authority as established by the Act.

Properly implemented, teachable moments do not interfere with enforcement of direct violations of animal care requirements, but in fact complement it and help both parties achieve better and more efficient compliance with the AWA. As of this writing, teachable moments are inventoried by APHIS and are publicly available in a searchable database at *https://aphis-efile.force.com/PublicSearchTool/s/teachable-moments*.

The use of teachable moments exemplifies an open and collegial communication between the regulator and the regulated community which is necessary to achieve the mutual interest of compliance. It is worth noting that teachable moments have been applied to areas of regulation that have no direct impact on animal welfare, calling into question the motivation behind the House language.

The regulated community and the USDA both seek the same outcome: the highest level of animal welfare possible. Prohibiting teachable moments as a constructive tool sends the wrong message to regulated entities who care deeply for the welfare of their animals and who strive daily for nothing less than full compliance. The USDA has long requested self-reporting as part of its enforcement process. However, the House language suggests an enforcement scheme that is dangerously close to prosecution without due process. It is not difficult to imagine that if this approach prevails, the regulated community will likely interpret USDA enforcement as purely punitive, which would in turn undermine any future incentive to self-report noncompliance irrespective of its significance. Prioritizing enforcement actions over all other approaches to ensure animal welfare is short-sighted.

We respectfully request the committees express their support for collaboration and education between USDA and regulated entities, as well as the use of teachable moments which are constructive tools used by the agency to promote education, collaboration, and most importantly animal welfare.

Sincerely,

Alliance of Marine Mammal Parks & Aquariums
American Veterinary Medical Association
American Kennel Club
Association of American Veterinary Medical Colleges
International Marine Animal Trainer's Association
National Animal Interest Alliance
National Association of Biomedical Research
Sportsmen's Alliance
Pet Advocacy Network
Zoological Association of America

cc: Members of the House and Senate Appropriations Committees