EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 29, 2005
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 3058 – Transportation, Treasury, Housing and Urban Development, the Judiciary, and the District of Columbia Appropriations Bill, FY 2006

(Sponsors: Lewis (R), California; Obey (D), Wisconsin)

The Administration supports House passage of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and the District of Columbia Appropriations Bill, FY 2006, as reported by the Committee.

The Administration applauds the Committee for reporting this bill in a timely manner and looks forward to working with the Congress to ensure that the FY 2006 appropriations bills do not exceed the $843 billion discretionary funding level proposed in the President's FY 2006 Budget and contained in the FY 2006 Congressional Budget Resolution. Sustaining the economy's expansion requires strong Federal spending discipline. The President's Budget includes over 150 savings and reforms and was the first to propose reducing non-security discretionary spending since the Reagan Administration. The Administration urges Congress to shift funding from lower-priority programs and, as assumed in the Budget Resolution, to hold spending in the non-security discretionary category below last year's level.

The Administration would like to take this opportunity to share its views regarding the Committee's version of the bill.

Department of Transportation

The Administration supports the Committee's measures to encourage Amtrak reform, such as withholding Federal funding from Amtrak's poorest performing routes and giving the Department of Transportation (DOT) direct control over funds for capital investments on the Northeast Corridor. The Administration looks forward to working with Congress to continue to improve Amtrak's performance and accountability by instituting the fundamental reforms outlined in the Administration's proposal.

The Administration appreciates that the bill provides FY 2006 funding for highways, highway safety, and transit programs at levels consistent with H.R. 3 as passed by the House. The House-passed version of H.R. 3 authorizes an overall funding level of $283.9 billion over six years for surface transportation programs. The Administration has previously indicated its desire for prompt enactment of this critical reauthorization legislation, and that the final version must conform to strict spending limits. Likewise, the appropriations process should also conform to the fiscally disciplined approach put forth in the President's Budget and limit surface transportation funding in FY 2006 to a level consistent with the final six-year authorization bill.

While the Administration is pleased that the Committee provides the request for the new DOT headquarters project, it is concerned about funding reductions in the Office of the Secretary and a reduction in the number of Presidential and political appointees. The Administration is also concerned that the Committee did not accept a number of major savings proposals, including ones for the Federal Aviation Administration's Airport Improvement Program and the Next Generation High Speed Rail Program. Adopting these proposals would allow funds to be shifted to higher priority programs in the bill.

Department of the Treasury

The Administration strongly urges Congress to support the $446 million increase requested for Internal Revenue Service (IRS) tax enforcement. This increase, supported in the Congressional Budget Resolution, is needed to address the tax gap. The Administration strenuously objects to section 205, which limits the ability of the IRS to maximize the efficiency and quality of taxpayer service by shifting from taxpayer assistance centers to the more efficient and higher service quality telephone and internet options.

The Administration objects to the $5 million reduction to the funding levels for the Office of Terrorism and Financial Intelligence (TFI). The President's request is necessary to enable TFI to continue to fight the war on terror through activities such as the production of actionable intelligence by the Office of Intelligence and Analysis, the development of greater expertise on specific terrorist organizations, increased international engagement, and other efforts to combat terrorist financing and other illicit financial activities.

Congress is strongly urged to fund the Treasury Foreign Intelligence Network (TFIN) under the Department Wide Systems and Capital Investment Program account, at the requested level of $6 million. This is an integral component of the Department's efforts in the financial war on terror, and funding is critically needed to both stabilize and modernize the existing system.

The Administration urges Congress to provide the requested levels of funding and flexibility for the Departmental Offices account so the Secretary can carry out the essential economic and financial missions of the Department and develop and present to Congress and the American people the President's economic agenda for jobs, growth, lower taxes, and retirement and health security.

The Administration objects to language that was adopted in Committee regarding the regulations controlling agricultural trade with Cuba that are enforced by the Office of Foreign Assets Control. The Administration is strongly opposed to any efforts to weaken these regulations, and if the final version of the bill contained such a provision, the President would veto the bill.

The Administration also objects to a provision that would prohibit a credit card issuer from using information contained in a credit report to increase a customer's interest rate unless the information is directly related to the customer's account with that issuer. The provision is a substantive amendment to the Fair Credit Reporting Act and should be considered by the relevant authorizing committees.

Department of Housing and Urban Development

The Administration appreciates the Committee's support for the President's Budget proposal to shift resources from Department of Housing and Urban Development (HUD) programs such as HOPE VI, Section 108 loan guarantees, Empowerment Zone grants, and Brownfields to higher priority and more effective programs. The Administration is concerned, however, that the bill does not support the Strengthening America's Communities Initiative, but looks forward to working with Congress on this proposal.

The Administration is also pleased that the Section 8 tenant-based housing assistance program funding structure provides a set amount of funds to each public housing agency (PHA); however, the Committee is correct that without real reforms to this program, such as those proposed by the Administration, PHAs will have difficulty maximizing the issuance and renewal of vouchers, thereby aiding fewer low-income households. Congress is urged not to include the imposition of a new allocation formula for public housing operating subsidies in the final bill. This would prejudge the results of HUD's proposed regulation.

The Administration appreciates the Committee’s support for programs to help end chronic homelessness, but the Congress is urged to provide the full request for this high priority, which includes funds for HUD's component of the interagency Prisoner Re-entry initiative, and for the American Dream Downpayment initiative to support first-time homeownership. Funding that was provided above requested levels for Public Housing Capital, Native American Housing Block Grants, and Housing Opportunities for Persons with AIDS could be applied to offset the increases for these high priorities.

The Administration appreciates the Committee's support of the Youthbuild transfer to Labor, but notes the Labor-HHS-Education appropriations bill has not provided funding for this program.

District of Columbia

The Administration appreciates the Committee's full funding of the President's request of $41.6 million for the District of Columbia school-improvement program. The Administration is concerned, however, that the Committee provides $20 million in unrequested funds for unspecified purposes to the Office of the Chief Financial Officer (CFO) of the District of Columbia.

Executive Office of the President

The Administration appreciates the Committee's support for the Office of National Drug Control Policy (ONDCP), but urges the adoption of the proposed transfer of the High Intensity Drug Trafficking Areas program to the Department of Justice, where it can more effectively coordinate with the Organized Crime Drug Enforcement Task Force. Additionally, the Administration urges funding of this program at the requested level.

The Administration urges the Committee to adopt the President's request for the consolidation of the White House Accounts and the continuation of the Enterprise Services initiative to include both OMB and ONDCP. The consolidation initiative presents the best means for the President to immediately realign or reallocate the resources and staff available in response to changing needs and priorities or emergent national needs. The continuation of

Enterprise Services for all Executive Office of the President components reduces the administrative burden across the components and provides a common funding strategy for enterprise-wide services, thereby improving financial management.

United States Postal Service

The Administration opposes the $29 million the Committee provided to the Postal Service (USPS) for revenue forgone for reduced rate mail. This revenue forgone appropriation is only authorized to be appropriated, not required to be appropriated, to USPS each year, and in 2003, USPS received windfall pension savings of approximately $3 billion a year which more than compensates for the loss of this appropriation. Going forward, USPS should cover its costs while minimizing costs to the taxpayers.

Civilian Pay

The Administration strongly opposes the 3.1 percent increase for Federal employee pay and urges the House to adopt the President's proposal. The Committee proposal exceeds the President's request by nearly $1 billion, the statutory base pay increase, and the average increase in private-sector pay, measured by the Employment Cost Index. Any recruitment or retention problems facing the Government are limited to a few areas and occupations, and do not warrant such an arbitrary across-the board increase.

In addition, the Administration opposes the provision applying the 3.1-percent across-the-board increase to all civilian employees of the Department of Homeland Security (DHS) and Department of Defense (DOD), limiting these agencies' flexibility to begin using the new authorities conferred upon them by Congress to design and implement a modern personnel and pay system that best meets their needs. The Administration also opposes the provision relating to pay adjustments for blue collar employees, which would disregard the results of local blue-collar wage surveys and provide a pay increase identical to local General Schedule employees. These provisions could result in paying blue-collar employees at rates higher than local labor markets would support and would create a host of technical and equity problems.

Federal Employees Health Benefits Program Abortion and Contraceptive Language

The Administration appreciates that the Committee has continued current legal provisions that prohibit the use of Federal funds for abortions in the Federal Employees Health Benefits Program, except in cases where the life of the mother is endangered or the pregnancy is the result of an act of rape or incest.

President's Management Agenda

The Administration is very concerned about several provisions in the bill that would impede the Administration’s efforts to implement the President’s Management Agenda (PMA), which seeks to ensure that the resources entrusted to the Federal government are well-managed and wisely used. These provisions include a $3 million reduction for the Office of Personnel Management’s (OPM) efforts to develop better performance measures and conduct program evaluations, a prohibition on OPM’s efforts to implement civil service reform, and a limitation on individual agency contributions to the President’s E-Gov initiatives, generated by the

Expanded Electronic Government Initiative.

The Administration also understands that amendments may be offered that would further weaken the PMA. These amendments seek to either: (1) effectively shut down the current iteration of the Competitive Sourcing initiative; or (2) reverse competitions that have already been completed, such as at the FAA where anticipated savings exceed $2.2 billion over the life of the contract. Canceling the contract, however, would result in penalties exceeding $300 million in FY2006. Competitive sourcing studies conducted in FY 2003 and 2004 are planned to generate $2.5 billion in savings over the next five years. While concerns exist about loss of government jobs associated with competitive sourcing, Federal employees have won 90 percent of all competitions conducted under the current rules.

The Administration will continue to work closely with the House on finding the best way to implement the PMA, however, if the final version of the bill were to significantly erode the PMA, the President's senior advisors would recommend he veto the bill.

Potential Amendments

Weakening Cuba Sanctions: The Administration understands that an amendment may be offered that would weaken current sanctions against Cuba. The Administration believes that it is essential to maintain sanctions and travel restrictions to deny economic resources to the brutal Castro regime. The licensing process helps to ensure that humanitarian and cultural travel facilitates genuine exchanges between U.S. travelers and ordinary Cuban citizens and that any sales to Cuba are done within the bounds of the law. Lifting the sanctions now, or limiting our ability to enforce them, would provide assistance to a repressive regime at the expense of the Cuban people. If the final version of the bill contained such a provision, the President would veto the bill.

Private Collection Agencies: The Administration understands that an amendment may be offered that would prohibit the Department of the Treasury from contracting with Private Collection Agencies (PCAs). The Administration would oppose such an amendment. The American Jobs Creation Act of 2004 permits PCAs to assist the IRS in the collection of delinquent tax debts. Similar measures instituted by various States have met with much success, allowing for more efficient collections while also safeguarding the privacy rights of individual taxpayers.

Privacy and Civil Liberties Oversight Board: The Administration understands that an amendment may be offered that would increase funding for the Privacy and Civil Liberties Oversight Board from $750,000 to $3 million. The Administration requested $750,000 as it believes this amount fulfills the President's commitment and interest in protecting the legal rights of all Americans. The Administration believes that this oversight board should be modeled after the President's Foreign Intelligence Advisory Board. Under this model, members would carry out their functions for the government on a part-time basis, with a full-time Executive Director. This model ensures the Board is staffed with expert individuals who will not have to leave their jobs to carry out this important function. The Administration would oppose such an amendment.

Constitutional Concerns

Provisions in section 920 of the bill relating to communications with Congress and protection of national security information interfere with the authority of the President to supervise the unitary Executive Branch and as Commander in Chief and therefore should be deleted. Similarly, section 938 of the bill, which purports to prohibit limitations on assignment of Coast Guard personnel to duties with Congress, should be stricken as inconsistent with the President's constitutional authority to supervise the unitary Executive Branch and as Commander in Chief. To ensure consistency with the constitutional authority of the President to supervise the unitary Executive Branch, section 928 and language under the heading "Department of Housing and Urban Development, Office of Inspector General" that purport to grant independent authority should be amended to specify that the authority granted or prohibition imposed is subject to the authority of the President.

Certain provisions of the bill authorize the provision of benefits to Native Hawaiians. There is a substantial, unresolved question whether Congress has authority to deal with Native Hawaiians as it does with Indian tribes. To the extent the definition of "Native Hawaiians" constitutes a racial, rather than political classification, such programs would be subject to strict scrutiny in Federal courts.

Provisions in the bill, such as language under the heading "Department of Housing and Urban Development, Management and Administration, Salaries and Expenses," that purport to condition execution of a law upon compliance with documents, such as congressional committee reports, that do not have the force of law because they do not comply with the bicameralism and presentment requirements of the Constitution, should be amended to eliminate references to such documents. Also, because the execution of a law cannot constitutionally be conditioned upon concurrence by an employee of the Judicial Branch, the reference to agreement by the Director of the Administrative Office of the United States Courts under the heading "Courts of Appeals, District Courts, and Other Judicial Services, Court Security" should be deleted.

The Administration objects to a number of provisions in the bill that purport to require congressional committee approval before Executive Branch execution. These provisions should be deleted or changed to require only notification of Congress, since any other interpretation would contradict the Supreme Court's ruling in *INS v. Chadha*. Such provisions include sections 201, 211, 217, 703, 810, 811, 914, 923, 940, and 943, and language in the bill under the headings "Department of Transportation, Office of the Secretary, Salaries and Expenses," " Department of Transportation, Office of the Secretary, Working Capital Fund," "Federal Transit Administration, Administrative Expenses," "Department of the Treasury, Departmental Offices, Salaries and Expenses," "Department of Housing and Urban Development, Public and Indian Housing, Public Housing Operating Fund," "Office of National Drug Control Policy, High Intensity Drug Trafficking Areas Program," and "General Services Administration, Real Property Activities, Federal Buildings Fund."

Because the Constitution vests exclusively in the President the authority to submit for the consideration of Congress such measures, including requests for enactment of appropriations laws, as the President shall judge necessary and expedient, sections 508 and 704 should be amended to delete provisions that purport to regulate the content of a budget request for fiscal year 2007.

Provisions under the heading "Office of Management and Budget, Salaries and Expenses," that relate to agricultural marketing and transcripts should be deleted, as is consistent with the President's constitutional authority to supervise the unitary Executive Branch.

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