



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

November 1, 2005
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 1932 - Deficit Reduction Omnibus Reconciliation Act of 2005

(Sen. Gregg (R) NH)

The Administration strongly supports Senate passage of S. 1932 and appreciates the Senate's efforts to promote budget discipline.

The Administration believes that the primary purpose of this legislation is to achieve mandatory savings. The Administration appreciates that the Senate bill achieves close to approximately \$71 billion in total savings and approximately \$39 billion in net savings. With the unanticipated costs associated with Hurricane Katrina, it is important to achieve additional savings as part of the reconciliation process. The Administration looks forward to working with Congress to find additional savings and further improve the bill as it moves through the process.

Agriculture, Nutrition and Forestry Committee

The Administration appreciates the Committee's efforts to meet its Budget Resolution target. In addition, the Administration is pleased with the inclusion of provisions eliminating the upland cotton Step 2 program, although the Senate is strongly urged to advance the effective date from August 2006 to August 2005.

The Administration has serious concerns about other portions of the savings package. In particular, the Administration strongly objects to the extension through 2011 of select farm programs as well as the provision in the bill that would delay certain commodity payments by several months. The Administration also opposes the limitations on and disproportionate reductions to the Conservation Reserve Program, and proposes instead that the Senate include other provisions from the Administration's original proposal that would achieve savings, while promoting more efficient commodity production decisions, and helping further our efforts to achieve global trade liberalization in the Doha Round.

The Administration would like to work with Congress to set aside funds to provide relief for States that administered disaster food stamp assistance in response to Hurricane Katrina.

Banking, Housing and Urban Affairs Committee

The Administration supports the Senate proposal for deposit insurance reform to improve the deposit insurance system's operations and fairness. Specifically, the Administration supports the provisions in the bill that would merge the Bank Insurance and the Savings Association Insurance Funds and ensure that institutions appropriately compensate the Federal Deposit Insurance Corporation (FDIC) for insured deposit growth, while also taking into account the past contributions of many institutions to build fund reserves. The Administration also supports

providing the FDIC Board with discretionary authority to increase deposit insurance coverage limits for both retirement and non-retirement accounts.

The Administration appreciates the inclusion of an Administration proposal to make Federal Housing Administration multi-family below-market sales and rehabilitation grants subject to appropriations, thereby allowing the Administration and Congress to set the level of activity for these authorities and have an opportunity to better control their use.

Commerce, Science and Transportation Committee

The Administration supports the inclusion of the "Digital Transition and Public Safety Act of 2005," which meets the Committee's reconciliation targets and ensures the reclamation of spectrum for public safety use and telecommunications innovation. The Administration will seek improvements to the Senate language as it continues through the legislative process, so that a significantly larger share of the spectrum auction receipts are devoted to deficit reduction rather than being earmarked for spending that is not subject to appropriations and is unnecessary or duplicative.

Energy and Natural Resources Committee

The Administration strongly supports the provision to open a small portion of the Arctic National Wildlife Refuge to environmentally responsible oil and gas exploration and development, as called for by the Administration's National Energy Policy.

The Administration urges the inclusion of the Administration's proposal to recover long unpaid capital and associated operations and maintenance costs of the Pick-Sloan Missouri Basin Program.

Environment and Public Works Committee

The Administration appreciates the Committee's efforts to achieve its savings target and looks forward to working with the Committee to meet these goals.

Finance Committee

The Administration appreciates the Committee's efforts to achieve \$10 billion in Medicare and Medicaid savings. While the proposals achieve the recommended budget savings and target resources to preserve program integrity, the Administration has significant concerns with a number of provisions as described below.

S. 1932 would repeal the establishment of a Medicare Advantage Regional Plan Stabilization Fund as provided for in the Medicare Prescription Drug Improvement and Modernization Act of 2003. The Administration strongly opposes the elimination of the Fund because it is a critical component to ensuring regional Preferred Provider Organizations (PPOs) in the Medicare Advantage (MA) program. This Fund is a long-term investment that will promote the growth of the MA program by ensuring the participation of regional PPOs. In turn, regional PPOs will offer a choice to Medicare beneficiaries, especially those living in rural areas, of how they receive their Medicare coverage. If a final bill is presented to the President that limits the

choices of seniors, takes away their prescription drug coverage, or cuts the Stabilization Fund to increase Medicare spending, the President's senior advisors will recommend that he veto the bill.

The Administration is concerned with the significant number and cost of provisions that would increase Medicare spending. For example, S. 1932 would: (1) extend the current Medicare Dependent Hospital Program payment methodology; (2) extend hold-harmless payments for certain facilities under the outpatient prospective payment system; and (3) freeze implementation of the rule used to determine whether a hospital or unit qualifies as an inpatient rehabilitation facility.

The Administration supports the goals of many Medicaid proposals in S. 1932. However, the Administration has recommended a different approach to some of the proposals included in S. 1932, such as: (1) changing the basis for reimbursement of prescription drugs; (2) revising the asset transfer rules; (3) expanding the State long-term care partnership program; and (4) improving program fraud, waste, and abuse prevention activities. The Administration is concerned that, as drafted, these proposals may be burdensome to implement or inconsistent with the President's Budget. We have the same concerns with respect to the provisions increasing rebates paid by pharmaceutical companies for certain drugs; increasing the Federal medical assistance percentage for Hurricane Katrina-affected States and Alaska, and we also believe that some of these provisions may unnecessarily increase spending.

S. 1932 fails to include proposals that were included in the President's Budget that would help ensure the integrity of the Medicaid program. These proposals include phase-down of the broad-based health care-related tax from six percent to three percent; disallowance of State Medicaid payments not retained by governmental entities; cost-limited reimbursement of governmental providers; clarification of the definition of rehabilitation and case management services; reducing the Federal matching rate for case management services; and allotment limits for administrative costs. The bill also does not include repeal of the Continued Dumping and Subsidy Offset Act, a costly and unwarranted subsidy that diverts valuable taxpayer resources to private parties and which has led to retaliatory tariffs on U.S. exports by our trading partners.

The Administration appreciates that the Senate has included provisions to give States relief from health-related costs associated with Hurricane Katrina. To help provide this relief, the Administration has developed a Section 1115 Demonstration Project for states to assure access to medically necessary services and supplies for individuals who have been displaced by Hurricane Katrina. As of October 31, 2005, twelve states have used this project to create presumptive eligibility programs for evacuees who are eligible for Medicaid or SCHIP in their states. Further, seven of these states have additional authority to reimburse providers who have delivered needed care for individuals and needed services not covered under Medicaid through an uncompensated care pool. These funding mechanisms build on existing systems to meet the needs of States and evacuees, without requiring an unprecedented Federal expansion of Medicaid that would involve additional costs, administrative burdens, and delays.

The Administration prefers the Section 1115 demonstration approach that builds upon existing Medicaid/SCHIP eligibility and other program rules. The Administration believes that we can meet the needs of States without setting the precedent of guaranteeing 100 percent Federal medical assistance percentage (FMAP). Our approach would provide targeted relief, set aside

specific funds and designate priorities, while allowing the Department of Health and Human Services flexibility to manage the funds among specified priorities. We estimate that about \$1 billion will be sufficient to address these needs.

Health, Education, Labor and Pensions Committee

The Administration strongly supports most of the higher education provisions in S. 1932, in particular the new Pro-GAP program, which supplements the Pell Grant program by providing additional grant aid to the neediest students, and the reduction of excess subsidies in the guaranteed student loan program. The higher education provisions, while departing in some instances from the President's budget proposals for FY 2006, would generally achieve the Administration's key objectives for reauthorization of the Higher Education Act of 1965: making the student loan programs more efficient and cost-effective; increasing student benefits; and reducing costs to the taxpayer through expanded risk-sharing with institutions and lenders.

The Administration, however, has concerns that the bill reauthorizes various programs (including LEAP and Byrd Scholars) that the Administration proposed to repeal and fails to eliminate the practice known as "recycling" of 9.5 percent tax-exempt student loans. The Administration looks forward to working with Congress to address these concerns.

The Administration proposed providing up to \$2.6 billion to students and families displaced by Hurricane Katrina and the schools that are serving them. The Administration's proposal would provide up to \$1.9 billion in funding to public schools to reimburse them for the unexpected cost of educating displaced students, and up to \$488 million to compensate families for the costs associated with attending private schools. It also would provide up to \$227 million in assistance to postsecondary institutions, students, and borrowers. The Administration applauds the Senate for its work to date in crafting legislation that will help students, families, and schools recover from Hurricane Katrina. We look forward to continuing to work with Congress on finalizing legislation that reflects the Administration's priorities of simple, streamlined assistance to public schools and families with children in private schools.

The Administration appreciates the Senate's efforts to begin to improve the solvency of the Pension Benefit Guaranty Corporation's insurance program by increasing and indexing the per-pension plan participant premium. In addition, comprehensive reform is urgently needed to ensure retirement security for the 44 million Americans who participate in defined-benefit plans. The Administration looks forward to working with Congress on legislation to strengthen pension plan funding rules, increase the transparency of pension plans' funding status, and avoid a taxpayer bailout of the insurance program.

The Administration has proposed a new \$650 million program of Worker Recovery Accounts to help unemployed victims of Hurricane Katrina who need extra help finding work. The Administration looks forward to working with Congress to provide this important reemployment assistance to the victims of Hurricane Katrina.

Judiciary Committee

The Administration supports the proposal to impose new fees on companies filing applications for certain employment-based visas. Although the Administration would prefer that the fees be

based on recovering operational costs, it has no objection as these increased collections would be deposited in the Department of Homeland Security's Immigration Examinations Fee Account.

Constitutional Concerns

The bill contains several provisions that raise constitutional concerns.

Provisions of the bill that direct the transmission of legislative recommendations by the executive branch, such as sections 6012, 6036, and 7446, should be revised to require such content only “to the extent the President shall judge necessary and expedient,” so as to make the provisions consistent with the Constitution’s commitment to the President of exclusive authority to recommend to Congress such measures as he judges necessary and expedient.

Section 6026 of the bill would establish a new position of “Medicaid Chief Financial Officer” and provide that this new official “may be removed only for cause.” Because this new official would exercise significant authority over Federal funds in a purely executive capacity, the “for cause” restriction unconstitutionally interferes with the President's authority to appoint and supervise officers within the Executive Branch and should be deleted.

Finally, some provisions of the bill, such as sections 6055, 7331, 7349, 7504, and 7801, appear to authorize programs or allocate benefits using racial or other ethnic criteria. Also, section 7345 authorizes grants to institutions of higher education with enrollments of 10% or more “Native American” students, a term defined to extend beyond members of Federally recognized Indian tribes. To the extent that these provisions could be viewed as authorizing the award of government benefits on the basis of ethnicity or national origin, they would be subject to strict scrutiny by the courts and would be upheld as constitutional only if narrowly tailored to serve a compelling governmental interest.

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