



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

September 11, 2007  
(Senate)

## STATEMENT OF ADMINISTRATION POLICY

### S. 1789 – Departments of Transportation, and Housing and Urban Development, and Related Agencies Appropriations Act, 2008

(Sponsor: Byrd (D), West Virginia)

The Administration strongly opposes S. 1789 because, in combination with the other FY 2008 appropriations bills, it includes an irresponsible and excessive level of spending and includes other objectionable provisions.

The President has proposed a responsible plan for a balanced budget by 2012 through spending restraint and without raising taxes. To achieve this important goal, the Administration supports a responsible discretionary spending total of not more than \$933 billion in FY 2008, which is a \$60 billion increase over the FY 2007 enacted level. The Democratic Budget Resolution and subsequent spending allocations adopted by the Senate Appropriations Committee exceed the President's discretionary spending topline by \$22 billion, causing a 9 percent increase in FY 2008 discretionary spending. In addition, the Administration opposes the Senate Appropriations Committee's plan to shift \$3.5 billion from the Defense appropriations bill to non-defense spending, which is inconsistent with the Democrats' Budget Resolution and risks diminishing America's war fighting capacity.

S. 1789 exceeds the President's request for programs funded in this bill by \$3.1 billion, part of the \$22 billion increase above the President's request for FY 2008 appropriations. The Administration has asked that Congress demonstrate a path to live within the President's topline and cover the excess spending in this bill through reductions elsewhere, while ensuring the Department of Defense has the resources necessary to accomplish its mission. Because Congress has failed to demonstrate such a path, if S. 1789 were presented to the President, he would veto the bill.

The President has called on Congress to reform the earmarking process that has led to wasteful and unnecessary spending. Specifically, he called on Congress to provide greater transparency and full disclosure of earmarks, to put them in the language of the bill itself, eliminate wasteful earmarks, and to cut the cost and number by at least half. The Administration opposes any efforts to shield earmarks from public scrutiny and urges Congress to bring full transparency to the earmarking process and to cut the cost and number of earmarks by at least half.

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

## Department of Transportation (DOT)

*Federal Highway Administration.* The Administration strongly objects to the bill's provisions that would increase funds for the Federal Aid Highway program based on adjustments determined through a revenue aligned budget authority (RABA) mechanism. The Administration believes that highway resources must be directed to our Nation's highest priorities. During this Administration, highway spending has increased by 40 percent. However, Congress has heavily earmarked highway funds, which diverts funding from higher priorities. At authorized levels, the Highway Account is spending beyond its means and will be insolvent in 2009. By providing additional funding through RABA adjustments this bill only exacerbates the situation, making the highway account oversubscribed by an additional \$500 million before the end of the current authorization in 2009. The Administration believes that Congress must focus on better targeting highway resources and, at the same time, should work to extend solvency of the Highway Account without resorting to gas tax increases or a raid on the general fund.

*Amtrak.* The Administration strongly objects to providing \$1.4 billion for Amtrak, which will perpetuate a flawed model for intercity passenger rail. While the bill provides funding for Intercity Passenger Rail Capital Grants, which will help encourage sustainable, demand-driven service, the bill fails to include reform provisions proposed by the Administration to improve accountability and encourage competition.

*Federal Aviation Administration (FAA).* The Administration is disappointed that the Senate Committee did not adopt the President's proposal to align FAA's budget accounts with its lines of business and to delineate the specific uses of the General Fund contribution. These proposals would provide greater transparency, improve management of resources, and complement the reforms proposed by the Administration in the NextGen Financing Reform Act of 2007. The Administration also objects to the nearly \$800 million in unrequested and unnecessary funding included in the bill for the Airport Improvement Program. The requested level is robust by historical standards, meets high priority needs, and would encourage airports with greater financial wherewithal to tap more flexible non-federal revenue sources.

The Administration also opposes language in the House-passed bill that seeks to prevent the FAA from establishing a new user fee structure. A cost-based, user fee approach could better align the costs that users pay with the services that they receive. The Administration has proposed charging users more directly in exchange for greater user input in FAA operations to encourage more efficient use of resources. Over the long term, user fees could incentivize both the FAA and its users to make more efficient decisions to address air travel delays. The Administration urges the Senate to remove this counterproductive rider.

*U.S.-Mexico Cross-Border Trucking Pilot.* The Administration strongly opposes any language imposing further restrictions on the cross-border trucking demonstration project. The Administration has satisfied all requirements imposed by Congress on the program including those enacted earlier this year as part of the Iraq Supplemental (P.L. 110-28). The Administration reiterates its commitment to the Congress that it has the necessary safeguards in place to ensure a safe and secure program.

*Aviation Insurance Revolving Fund.* The Administration opposes the one-year extension for the war risk insurance program for domestic air carriers, which subsidizes the airline industry, crowds out private sector mechanisms for diversifying risk, and exposes the federal government to greater financial risk. The Administration has proposed reforms in the NextGen Financing Reform Act that ensure that air carriers more equitably share in the risks associated with this program.

*Surface Transportation Board.* The Administration also objects to allowing States to regulate solid waste stored along rail property, preempting authority granted to the Surface Transportation Board. A multiplicity of standards across States would create confusion for stakeholders and potentially create an undue burden on interstate commerce.

*Reduction Proposals.* The Budget proposed reductions in certain programs, such as Essential Air Service program and the Federal Transit Administration's Capital Investment Grants. These reductions are programmatically justified and would help slow the growth in Federal spending. In addition, the Senate should consider reductions to unrequested items, such as Assistance to Small Shipyards.

#### Department of Housing and Urban Development (HUD)

The bill exceeds the request for HUD programs by nearly \$3.6 billion. The Budget provides increases for high-performing and high-priority programs, ensures effective implementation of HUD programs, and reduces funds for lower priority programs that are not effectively performing.

*Community Development Block Grant (CDBG).* The Administration objects to the \$1 billion increase for the CDBG program through a formula that is long outdated and, in many cases, provides more money to wealthier communities than poorer ones. The Administration urges Congress to pass the CDBG legislative reform proposal that was transmitted on June 5, 2007, which improves targeting to the neediest communities and provides incentives to expand economic growth more strategically. In addition, the Administration recommends eliminating the \$288 million in funding for congressional earmarks.

*Tenant-Based Rental Assistance.* The Administration commends the Committee's adoption of key Administration proposals to reform the Housing Choice Voucher program, including tying Public Housing Authority (PHA) administrative expense payments to the number of assisted families and providing incentive funds for smaller PHAs to consolidate. However, we urge the Senate to eliminate the cap on the number of families PHAs can assist, as the Administration proposed, to unlock funds that PHAs are unable to spend to assist more families in need. The President's request would aid significant numbers of additional families and renew approximately 1.9 million vouchers currently in use, without the Committee's addition of \$600 million in unrequested funds.

*HOME/American Dream Downpayment Initiative.* The Administration supports the bill's full funding of the HOME request, but objects to the lack of funding for the American Dream Downpayment Initiative, which provides needed assistance to increase first-time homeownership.

*Project-Based Rental Assistance.* The bill includes administrative provisions that would mandate or allow for transfer of project-based assistance, as well as require HUD to maintain assistance payments attached to units undergoing disposition. These provisions are potentially costly and unnecessary given HUD's authorities to enforce rental assistance contracts and to protect the interest of assisted households.

*Reducing Chronic Homelessness.* The Administration appreciates the bill's support for its goal of reducing and ending chronic homelessness; however, the Senate should also fund the Prisoner Re-Entry program.

*Federal Housing Administration.* The Administration appreciates the bill's support for its proposals to increase multifamily loan limits in high-cost areas and to lift the statutory cap on the number of Home Equity Conversion Mortgages that HUD may insure through the end of FY 2008. However, the Administration would prefer to permanently lift the cap to allow HUD to continue assisting the market in providing a financial vehicle for the elderly to access the equity in their homes. The Administration is concerned that bill directs HUD to reverse its implementation of certain recently enacted asset disposition reforms for FHA multifamily programs, which would increase spending and the deficit by \$38 million in FY 2008.

*Other Housing Programs.* The request provides a program base funding level for public housing that can be sustained in future years and, hence, the Administration does not support the substantial increases for these programs in the Senate bill. In addition, the Administration objects to the funding provided for the HOPE VI program. HOPE VI has accomplished its original goal of addressing the needs of the Nation's 100,000 most distressed public housing units. The Administration also opposes the unreasonably high amount of new section 202 and 811 housing unit construction in the bill, which simultaneously reduces resources dedicated to tenant services, threatens future preservation, and exacerbates a large and growing fiscal responsibility.

*Working Capital Fund.* The Administration objects to the \$45 million reduction to HUD's working capital fund. HUD has made significant improvements through investments in its IT system resources, with demonstrated success. The requested funds are needed to continue to improve HUD financial management and provide proper program delivery and compliance.

*Lower Performing Programs.* The Administration opposes the funding provided for lower performing programs such as section 108 loan guarantees, Brownfields, and Rural Housing. These programs are duplicative, lack long-term outcome measures, and have been unable to produce transparent information on results.

*Exemption from Credit Reform.* The Administration opposes section 218, which would prohibit using funds provided in this or any other act to implement the requirements of the Federal Credit Reform Act of 1990 beyond those already being implemented by the Government National Mortgage Association. Congress enacted credit reform in 1990 to more accurately budget for the full cost of credit programs and to bring greater transparency to credit programs in the budget process. This provision of the bill begins to unravel this important reform by setting a precedent that could undermine ongoing efforts to accurately estimate and report the costs of credit programs in the Federal budget and Federal financial statements.

## Potential Amendments

*Interstate 35-W Bridge.* The Administration remains committed to ensuring that necessary funds are made available as the State of Minnesota, Hennepin County, and the City of Minneapolis continue the process of repairing and reconstructing the damaged portions of the I-35-W Bridge. Because the cost of repairing the bridge will not be known for some weeks and existing funds are adequate to meet the needs of the State in the interim, the Department of Transportation will provide additional relief for Minnesota through funds that are currently available for emergency relief programs. As the State completes the assessment of the total damage and the ultimate cost to replace this bridge, the Administration stands ready, working with Congress as necessary, to ensure that appropriate funding is made available to replace it under the terms of DOT's Emergency Relief Program.

*Highway Trust Fund.* The Administration understands that an amendment may be offered that would further increase spending from the Highway Trust Fund rather than prioritize existing resources for needed bridge repairs. The Administration opposes such an amendment because it would exacerbate the Highway Trust Fund's projected exhaustion. Further, as Secretary Peters has testified, measures to address infrastructure must focus on the right problem. Over the past 15 years the backlog of bridges in need of significant repair has been cut in half. The Administration believes that further progress requires a basic change in how competing infrastructure priorities are analyzed and that competing infrastructure priorities and low-priority spending such as earmarks should be addressed before committing additional taxpayer dollars.

## Constitutional Concerns

Several provisions of the bill purport to require approval of the Committees prior to the obligation of funds or other Executive Branch action to implement the law. These include sections 190, 405 and 406; and under the headings, "Salaries and Expenses" and "Working Capital Fund," Office of the Secretary, "Administrative Expenses," Federal Transit Administration, and "Operations," Federal Aviation Administration, Department of Transportation. These provisions should be changed to require only notification of Congress, since any other interpretation would contradict the Supreme Court's ruling in *INS v. Chadha*.

Provisions in the bill 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. Such provisions include sections 124, 161, 212, 229, and 405. Such provisions should be amended to eliminate references to such documents.

To ensure consistency with the constitutional authority of the President to supervise the unitary Executive Branch, language under the heading, "Office of the Inspector General," Department of Housing and Urban Development, that purports to grant independent authority should be amended to specify that the authority granted or prohibition imposed is subject to the authority of the President.

Provisions of the bill that purport to specify the content of Presidential recommendations for enactment of laws, such as section 193 and "Facilities and Equipment," Federal Aviation Administration, Department of Transportation, 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.

Provisions of the bill relating to programs for Native Hawaiians should be amended to provide for implementation of such programs to the extent consistent with the requirement of the Due Process Clause of the Fifth Amendment to afford all persons equal protection of the laws.

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