

**SECTION 22—COMMUNICATIONS WITH THE CONGRESS AND THE PUBLIC AND
CLEARANCE REQUIREMENTS**

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22.1 Confidentiality of budget deliberations.

The nature and amounts of the President's decisions and the underlying materials are confidential. Do not release the President's decisions outside of your agency until the Budget is transmitted to the Congress. The materials underlying those decisions may not be released at any time, except in accordance with this section. In addition, outyear discretionary data is considered pre-decisional and may not be released without prior OMB approval. (For additional information on the confidentiality of pre-decisional budget information, please consult OMB Memorandum [M-01-17](#) of April 25, 2001.)

Presidential decisions on current and budget year estimates (other than forecasts of items that will be transmitted formally later), both in total and in detail, become the "proposed appropriations" as that term is used in the Budget and Accounting Act of 1921, as amended, and must be justified by your agency. Do not release agency justifications provided to OMB and any agency future year plans or long-range estimates to anyone outside the Executive Branch, except in accordance with this section.

Section [51.16](#) confirms and clarifies the application of this section to pre-decisional, deliberative budget information relating to the Inspectors General.

22.2 Congressional testimony and communications.

The Executive Branch communications that led to the President's budgetary decisions will not be disclosed either by the agencies or by those who have prepared the budget. In addition, agency justifications provided to OMB and any agency future year plans or long-range estimates will not be furnished to anyone outside the Executive Branch, except in accordance with this section.

When furnishing information on appropriations and budgetary matters, you (and your agency representatives) must be aware of the following limitation on communications:

"...An officer or employee of an agency may submit to Congress or a committee of Congress an appropriations estimate or request, a request for an increase in that estimate or request, or a recommendation on meeting the financial needs of the Government only when requested by either House of Congress" ([31 U.S.C. § 1108\(e\)](#)).

You must also be aware of restrictions on communications to influence legislation that are not conducted through proper official channels ([18 U.S.C. § 1913](#)).

After formal transmittal of the budget, an amendment, or a supplemental appropriations request, the following policies apply when testifying before any congressional committee or communicating with Members of the Congress:

- Witnesses will give frank and complete answers to all questions.
- Witnesses will avoid volunteering personal opinions that reflect positions inconsistent with the President's program or appropriation request.
- If statutory provisions exist for the direct submission of the agency budget request to the Congress, OMB may provide you additional materials supporting the President's Budget request that you will forward to the Congress with the agency testimony. Witnesses will be prepared to explain the agency submission, the request in the President's Budget, and any justification material.
- When responding to specific questions on program and appropriations requests, witnesses will not provide the agency's request to OMB or plans for the use of appropriations that exceed the President's request. Typically, witnesses are responsible for one or a few programs, whereas the President is responsible for all the needs of the Federal Government. Where appropriate, witnesses will explain this difference in perspective and that it is therefore not appropriate for them to support appropriations above the President's request.
- When asked to provide a written response that involves a statement of opinion on program and appropriations requests, witnesses will provide a reply through the agency head.
- Do not let your communications be perceived as an "appropriations estimate or request ... or an increase in that estimate or request" ([31 U.S.C. § 1108](#)). You are expected to support the President's budgetary decisions and seek adjustments to those decisions only through established procedures if your agency head determines such action is necessary.

22.3 Clearance of materials for the Congress and the media.

Policy consistency between the President's Budget and the budget-related materials prepared for the Congress and the media is essential. To ensure this consistency, you are required to submit budget-related materials to OMB for clearance prior to transmittal to congressional committees, individual Members of the Congress or their staff, or the media. Unless a specific exemption is approved by OMB, materials subject to OMB clearance include:

- All budget justifications and budget-related oversight materials;
- Testimony before and letters to congressional committees;
- Written responses to congressional inquiries or other materials for the record;
- Materials responding to committee and subcommittee reporting requirements;
- Capability statements;
- Appeals letters;
- Reprogramming requests;
- Related cost information;
- Financial management documents addressing budget and policy issues (e.g., some accountability reports or transmittal documents for audited financial statements); and

- Proposed press releases relating to the President's Budget.

Provide this information to OMB five working days in advance to allow adequate review time. Performance and Accountability Reports must be provided 10 days in advance unless a shorter period is approved by OMB. OMB review of reprogramming requests may take longer in some circumstances (e.g., if the request has not been coordinated or if supporting materials have not been provided concurrently). In exceptional circumstances, where the response time is very short, agencies may request oral clearance or make other arrangements for expedited review. Immediately after the budget transmittal and after subsequent transmittals, provide OMB with a schedule of anticipated congressional reviews that require agency oral and written participation. Revise this schedule as appropriate.

Address any questions you have about this subsection to the OMB representatives whom you normally consult on budget-related matters.

22.4 Clearance of changes to the President's Budget.

If you want to propose changes to the President's Budget (e.g., appropriations language, limitations, balance sheets required by the Government Corporation Control Act, and dollar amounts), you must follow the confidentiality and clearance guidance provided in this section and submit a written request as described in section [110.3](#). OMB will notify you whether a formal transmittal of the change will be made.

When it is possible to reduce the amount of an appropriations request before action has been taken by the Appropriations Committee of either House, the head of your agency must inform OMB promptly. Before your agency head decides to request restoration of a reduction, the reasons for the reduction, the circumstances under which it was made, and its significance to the President's program should be carefully considered.

22.5 Information available to the public.

Agency budget documents that are subject to the Freedom of Information Act (FOIA) may be exempt from mandatory release pursuant to [5 U.S.C. § 552\(b\)\(5\)](#). Depending on the nature of the record requested, other FOIA exemptions may apply. When deciding whether to withhold a budget document that is exempt from mandatory release, follow the [FOIA memorandum](#) issued by the President on January 21, 2009 and the [FOIA guidance](#) issued by the Attorney General on March 19, 2009. Any discretionary decision by an agency to disclose protected information should be made only after full and deliberate consideration of the institutional interests that could be implicated by disclosure, as well as after consultation with OMB. Agency heads are responsible for determining the propriety of record releases under FOIA.

Certain agencies headed by a collegial body are required to hold their meetings open to public observation unless the agency properly determines that the matter to be discussed warrants the closing of those meetings for reasons enumerated in the Government in the Sunshine Act ([5 U.S.C. § 552b](#)). Some meetings covered by that Act may pertain to budgetary information discussed in this Circular. Although, as with the FOIA, it is not possible to determine merely by the generic category of such information whether such an agency would be authorized to close a particular meeting covered by the Act, agencies must review those situations that involve budgetary information under the guidelines in the paragraph above and [5 U.S.C. § 552b\(c\)](#). Such agencies are responsible for the propriety of determinations under these guidelines and provisions.

22.6 Congressional budget justifications.

Congressional budget justification materials must include or be structured as the performance plan submission (section [240](#)). In addition, agencies must include the additional information described below,

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as well as detailed descriptions of agencies' activities and proposals at the program, project, and activity level.

(a) *Materials for performance plan submission to the Congress*

Consult with your congressional representatives to agree on the performance plan format prior to submitting your congressional justification. Please also note the applicable public posting and notification requirements that apply to performance plans as detailed in section [22.6\(c\)](#). Your OMB representative should be included in those consultations as appropriate. Accordingly, your OMB representative should be provided with your proposed justification to the Congress with sufficient time for review.

(b) *Material to be included in congressional budget justifications*

Consistent with [41 U.S.C. § 433\(h\)](#), identify funding levels requested for education and training of the acquisition workforce in your budget justifications to the Congress.

Consistent with [42 U.S.C. § 8255](#), identify funds requested for energy conservation measures in your budget justifications to the Congress.

Provide the Congress with information to assess current and proposed capital projects that is consistent with the Administration's budget proposals, including: appropriate information on planning; budgeting, including the current or proposed use of incremental or full funding; acquisition; and management of the projects.

Provide the Congress with information on the expected benefits you will receive from the President's E-Government initiatives and the funding levels for FY 2012.

You must submit all budget justification materials to OMB for clearance before transmitting them to the Congress.

(c) *Availability of congressional budget justifications*

Make your full congressional budget justification materials, including your performance plan submission, available to the public and post the materials on the Internet within two weeks after transmittal of those materials to the Congress. Release of these materials must be done in accordance with the requirements of this section and any relevant provisions of law. Materials will not be released if disclosure is prohibited by statute, the materials are classified or must be kept secret in the interest of national security or foreign policy, or the materials are otherwise exempt from release pursuant to [5 U.S.C. § 552\(b\)](#).