



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

April 15, 2013

M-13-12

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients
Acting Director

SUBJECT: Legislative Coordination and Clearance

This memorandum reiterates the Administration's formal legislative coordination and clearance process, and requests your cooperation in submitting drafts of materials to the Office of Management and Budget for clearance in a timely manner.

OMB's legislative coordination and clearance process allows for review and clearance of the Administration's legislative proposals, testimony, and statements on bills progressing through Congress. The clearance function assures that bills and position statements submitted to Congress take into account the interests and concerns of all affected agencies, supports the coordinated review of proposals to carry out the President's legislative program, and assures that Congress receives coordinated Executive branch views on legislation under consideration.

Given the operational challenges posed by sequestration that will affect agencies and offices across the Executive branch, we encourage your efforts to ensure timely and efficient review and clearance by having draft materials submitted to OMB for clearance as far in advance as is feasible. Enhanced levels of communication and cooperation between agencies and OMB, including with respect to materials that your agencies are developing and will be submitting, will further support our efforts to facilitate the process.

Please bring this memorandum to the attention of policy officials in your agency. Detailed information regarding the legislative coordination and clearance process is attached to this memorandum.

Thank you for your cooperation. We appreciate your support in this endeavor. The Legislative Reference Division staff at OMB will be contacting their agency counterparts to discuss these matters.

Attachment

THE LEGISLATIVE CLEARANCE FUNCTION

This paper briefly describes the major elements of the legislative clearance function which the Office of Management and Budget (OMB), working with other elements of the Executive Office of the President (EOP) and with the agencies, carries out on behalf of the President. The function is designed to serve the needs of the President in carrying out his legislative responsibilities.

Background

The President's legislative responsibilities are founded in his constitutional duties and powers to: (1) require the opinion in writing of the principal officer in each of the Executive departments; (2) take care that the laws are faithfully executed; (3) give the Congress information on the State of the Union; (4) recommend to the Congress such measures as he judges necessary; (5) approve or disapprove bills passed by the Congress; and (6) convene either or both houses of Congress.

The legislative recommendations of the President in his three regular annual messages -- State of the Union, Budget, and the Economic Report -- together with those in any special messages or other communications to the Congress generally constitute the President's legislative program. These recommendations often originate in the agencies, the Congress, and commissions, panels, and task forces established by law or by administrative order.

Basic Elements of Clearance Process

Purpose -- The clearance function:

- Permits the coordinated development, review, and approval of legislative proposals needed to carry out the President's legislative program.
- Helps the agencies develop draft bills that are consistent with and that carry out the President's policy objectives.
- Identifies for Congress those bills that are part of the President's program and the relationship of other bills to that program.
- Assures that Congress receives coordinated and informative agency views on legislation which it has under consideration.
- Assures that bills and position statements submitted to Congress by one agency properly take into account the interests and concerns of all affected agencies.
- Provides a means whereby divergent agency views can be reconciled.

The clearance function covers agency legislative proposals, agency reports and testimony on pending legislation, Statements of Administration Policy, and enrolled bills.

Legislative Proposals -- All bills that Executive agencies wish to transmit to the Congress are sent to OMB for clearance. OMB circulates the bills to other affected agencies and appropriate EOP staff.

Agencies reviewing a draft bill may favor it or have no objection. One or more may propose substantive or technical amendments, or perhaps a complete substitute. Divergent views can be reconciled by telephone, letter, e-mail, or interagency meetings called by OMB.

After review, analysis, resolution of issues, and obtaining appropriate policy guidance, OMB advises the proposing agency that (1) there is "no objection" from the standpoint of the Administration's program to the submission of the proposed draft bill to the Congress, or (2) the proposed bill is "in accord with the President's program," if it implements a Presidential proposal. The submitting agency conveys this "advice" to the Congress in its transmittal letter. (Major legislation is sometimes transmitted by the President.)

On the other hand, if the agency is advised that its proposed bill conflicts with an important Administration objective, or is not in accord with the President's program, it may not transmit the bill to the Congress. In practically all instances, however, disagreements are resolved through discussions at the policy levels of OMB and the agencies.

Clearance of Agency Testimony and Letters on Pending Legislation -- If agencies are asked by congressional committees to testify or send letters on pending legislation or wish to volunteer a letter, similar clearance procedures are followed.

Statements of Administration Policy (SAPs) -- OMB prepares SAPs for major bills scheduled for House or Senate floor action in the coming week, including those to be considered by the House Rules Committee. In addition, SAPs are sometimes prepared for so-called "non-controversial" bills considered in the House under suspension of the rules. SAPs are prepared in coordination with other parts of OMB, the agency or agencies principally concerned, and other EOP units. Following its clearance, a SAP is sent to Congress by OMB's Legislative Affairs Office.

Enrolled Bills -- After Congress has completed action on a bill, it is "enrolled," i.e., sent to the President for his approval or disapproval. The Constitution provides that the President shall take action within 10 days after receipt of the bill, not including Sundays.

To assist the President in deciding his course of action on a bill, OMB requests each interested agency to submit within 48 hours its analysis and recommendation in a letter to OMB. Such views letters are signed by the head of the agency or other Presidential appointee. OMB prepares a memorandum to the President on the enrolled bill which transmits these views letters and summarizes the bill, significant issues, and various agency and OMB recommendations. If an agency recommends disapproval, it is responsible for preparing a draft of an appropriate statement for the President's consideration.