107th Congress (2001-2002)

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December 6, 2001
(Senate)

H.R. 3338 - DEPARTMENT OF DEFENSE
APPROPRIATIONS BILL, FY 2002
(Sens. Byrd (D) West Virginia; Stevens (R) Alaska)

This Statement of Administration Policy provides the Administration's views on the Department of Defense Appropriations Bill, FY 2002, as reported by the Senate Appropriations Committee.
The Administration has worked, and will continue to work, with the Congress to ensure that FY 2002 discretionary spending is within the agreed upon bipartisan level of $686 billion and that the emergency supplemental funding total remains within the agreed upon level enacted in P.L. 107-38, the FY 2001 Emergency Supplemental Appropriations Act for Recovery from the tragedy that occurred on September 11, 2001. If the final bill presented to the President exceeds either of the agreed upon spending levels, the President will veto the bill.

In the immediate aftermath of the September 11th tragedy, the President established the Office of Homeland Security to develop and coordinate a comprehensive national strategy for homeland security. As part of that effort, the Office has begun a government-wide assessment of the nation's current preparedness for terrorist attacks. In the coming weeks and months the Office will be making specific recommendations for changes and reforms that will increase our security against the full range of potential terrorist attacks. The timing, content, and level of any additional resources beyond the $20 billion requested cannot be ascertained and should not be prejudged until after the Administration has had time to complete this comprehensive analysis of need, and share it with the Congress.

FY 2002 Emergency Supplemental

The Administration urges the Senate to expeditiously enact supplemental funding to respond to the September 11th attacks that totals no more than the Administration-requested and House-passed $20 billion level. The Committee bill exceeds this total by approximately $15 billion. This additional funding is not needed at this time and should be removed from the bill. As of the end of November 2001, the Administration estimated that it has spent less than 16 percent of the $40 billion designated by Congress to respond to the September 11th attacks. In addition, many of the costs associated with the response to and recovery from the attacks will not be known for many months and, therefore, the agencies will be unable to target additional funds to these needs.

The President would veto any bill that includes amendments that would add funding above the agreed upon level, including contingent emergency funding and funding that would be advance appropriated into FY 2003. The Homeland Security Director is conducting an intensive examination of the nation's homeland security needs and, based on that examination, the Administration will not hesitate to ask for additional funding as

needed. In addition to preempting the role of the Homeland Security Director, this particular step would be at complete and ironic variance with the notion that this extra money is needed immediately. We will continue to work with the Congress to address the most immediate and pressing needs that have arisen as a result of the September 11th terrorist attacks.

The Committee bill provides the following amounts that were not requested by the President, and are not needed at this time:

$8.4 billion for Federal Emergency Management Agency's (FEMA's) Disaster Relief program. The Administration has requested almost $7 billion already, and given that the total cost of recovery efforts in New York, Virginia, and elsewhere is not yet known, and it is unclear how or where these additional funds will be spent -- the request of such funds is premature;

$2.0 billion over the Administration's request for the Department of Health and Human Services to increase funding for bio-terrorism and other activities. The Administration's request included $644 million to acquire medicines, supplies, and equipment for the National Pharmaceutical Stockpile to treat an additional 10 million persons exposed to Anthrax and other bacterial infections, and to provide an enhanced ability to treat victims of chemical attacks, including $65 million to prepare states to receive and distribute pharmaceuticals and $509 million to acquire enough smallpox vaccine for the country;

$1.5 billion for the Department of Justice. The Administration believes these additional funds cannot be effectively utilized in FY 2002. The Administration also objects to the $237 million in State and Local Law Enforcement Assistance funding -- this funding is earmarked for unrequested projects that will have little or no tangible impact on preventing or responding to terrorism;

$875 million for the U.S. Postal Service to build and establish a system for sanitizing and screening mail and other security measures. It is not yet clear what type and mix of mail sanitization and/or detection is most appropriate to safeguard the U.S. mail system -- clearly an example of where we should wait for recommendations from the Office of Homeland Security. Under these circumstances, appropriations of this magnitude are unwarranted; and,

$175 million for the District of Columbia. The Administration believes that the amount requested ($25 million), in addition to the amounts already provided ($19 million), is sufficient to respond to the District's short-term needs, and that the Senate level is excessive.

The Administration strongly urges the Senate to provide $550 million in funding for first responders to FEMA and not to the Department of Justice, as the Committee has designated. FEMA has wide experience working with the full spectrum of first responders, including fire, police, and emergency medical technicians. FEMA's experience will help ensure better coordination and delivery of assistance. The Administration is also concerned that $78 million of the Justice funding is earmarked for

specific projects, which will seriously hamper the Administration's flexibility in working with State and local agencies to address unforeseen needs and vulnerabilities.

In addition, the Administration urges the Senate to eliminate section 902, which would eliminate the Defense Secretary's authority provided for in section 2808 of Title 10, to begin emergency military construction projects that are not previously authorized but are necessary to fight the war against terrorism. Secretary Rumsfeld has already invoked this authority to begin such military construction projects. Section 902 would tie the Secretary's hands at precisely the time when he most needs the flexibility to support our armed forces in the war on terrorism.

FY 2002 Defense Appropriations Bill

While the Committee bill includes important funding for many of the Administration's highest priorities, the bill provides approximately $2.0 billion less for DoD programs in FY 2002 than requested by the President. These reductions are largely achieved through unspecified management savings of $1.65 billion that cannot be implemented within this fiscal year. These reductions would make it more difficult for the Department to carry out transformation of America's armed forces and defense posture to counter 21st Century threats. The Administration also strongly objects to provisions in the bill, including Section 902 discussed above, that will impinge upon the Defense Secretary's ability and, ultimately, the President's ability, to prosecute the war on terrorism and defend the homeland. The Administration urges that these provisions be deleted.

The Administration is pleased that the Senate chose to fund both the basic and targeted pay raises fully for our service members as requested in the President's budget. The Administration also appreciates the inclusion of funding for changes to the military pay table and to reduce the out-of-pocket housing expenditures of service members. Likewise, we commend the Senate for ensuring that TRICARE for Life is adequately funded. Additional concerns are discussed below.

Operation and Maintenance

The Committee has made reductions to Operation and Maintenance (O&M) programs, based on unrealistic assumptions of how much savings could be achieved through reductions in consultant services, foreign currency fluctuation account balances, and travel. These reductions would undermine DoD's ability to adequately fund training, operations, maintenance, supplies, and other essentials. They would seriously damage the readiness of our armed forces and undermine their ability to execute current operations, including the war on terrorism. In addition, the Committee reduction of $46 million to Cooperative Threat Reduction programs would hamper the Administration's efforts to increase nuclear warhead storage security in Russia and eliminate Russian production of weapons-grade plutonium.

Missile Defense

The President is committed to the development and deployment of effective missile defenses to protect the United States, our forces, and our friends and allies as soon as possible. Missile defense remains one of the Administration's highest priorities. As such, the Administration urges the Senate to support funding missile defense programs as requested in the President's budget.

Contingency Funding

The Administration believes that moving all contingency operation funding from the Overseas Contingency Operations Transfer Fund (OCOTF) to the Service operation and maintenance accounts, is premature. A separate account has been helpful to track and prudently fund the incremental costs of such operations. The Administration moved the long-running Southwest Asia operation portion of funding out of OCOTF and into the Service accounts in FY 2001. However, before totally eliminating this separate account, the Administration believes it would be prudent to assess a full year of funding execution from the Southwest Asia operation in order to weigh the pros and cons of such an approach.

Additionally, the Administration opposes the Committee's $600 million OCOTF cut, which is based on unobligated balances and undefined project savings. Unobligated balances, which are a normal aspect of no-year cash accounts, are taken into consideration in planning the subsequent year's operations. Without these funds, the Department may be unable to meet emerging requirements in either the Balkans or for unforseen costs in Operation Enduring Freedom.

Military Personnel

The Administration is very concerned about the $340 million reduction in military personnel programs. In particular, the bill would significantly reduce Permanent Change of Station funding. While the Administration shares the Congress' concerns about the impact of frequent Permanent Changes of Station on morale, at a time when deployments are at a peak due to war, arbitrary reduction to force a policy change is risky. Reductions to this program, which is integral to military training and development, would adversely impact the Services' ability to correctly rotate and fill military billets and training seats.

Unrequested Program Adjustments

The Committee provided funding for several procurement and research and development programs that were not requested by the Administration. Some of the programs that received unnecessary funding include National Guard and Reserve Equipment, and Navy trainer aircraft. Increases to these programs come at the expense of other high priority programs. The Committee reduced funding for several high priority programs including the Joint Strike Fighter, DD-21 destroyer, LPD-17 amphibious ship, T-AKE auxiliary ship, and V-22 aircraft programs. The Administration also opposes the earmarking of funds for un-reviewed science and technology programs. In particular, the bill adds $470

million for 26 projects and diverts funding from medical management to a large number of medical research programs unrelated to national security.

November 28, 2001
(House)

H.R. 3338 - DEPARTMENT OF DEFENSE
APPROPRIATIONS BILL, FY 2002
(Reps. Young (R) Florida; Lewis (R) California)

This Statement of Administration Policy provides the Administration's views on the Department of Defense Appropriations Bill, FY 2002, as reported by the House Appropriations Committee.
The Administration strongly supports passage of this bill. The Administration appreciates the effort that the Committee has made to produce a bill in line with the Administration's defense and emergency priorities and that the Committee has maintained funding within agreed upon levels. We look forward to working with the Congress to ensure that the program and policy content of each of the thirteen appropriations bills is within the agreed upon bipartisan spending level of $686 billion and that the emergency supplemental funding total remains within the agreed upon level enacted in P.L. 107-38, the FY 2001 Emergency Supplemental Appropriations Act for Recovery from the Tragedy that Occurred on September 11, 2001. The President's senior advisors would recommend that the President veto any bill that provides discretionary spending beyond these agreed upon levels.

Our specific comments on this bill are noted below.

FY 2002 Emergency Response Fund

Department of Defense

The Administration appreciates the Committee's support of the requested funding for the Department of Defense (DOD). However, we are concerned that the House Report would place burdensome restrictions on DOD's flexibility to address emerging funding requirements as we prosecute the war on terrorism by subjecting DOD to traditional reprogramming procedures. We look forward to working with the House to address their concerns as the bill moves forward.

Federal Emergency Management Agency (FEMA)

The Administration, like the Congress, is committed to providing assistance to our Nation's first responders -- the first on the scene in the event of a terrorist attack or other disaster -- in as efficient a manner as possible. However, the Administration objects to the House's decision to eliminate the $550 million requested for FEMA for equipment and training for State and local emergency response personnel. Due to FEMA's close working relationship with emergency response personnel and its experience in managing disaster mitigation programs, this program should be funded in FEMA, rather than in the Department of Justice, as the House bill proposes. The Administration has serious reservations about the $150 million reduction in grant funding, the $69.8 million in

unrequested Justice earmarks for this program, and the $65 million in funds provided for FEMA activities that do not support the efforts of the Office of National Preparedness (ONP), as these actions will diminish the Administration's terrorism preparedness efforts.

We also object to the House's decision to eliminate the $50 million requested for FEMA's ONP. The President has designated the ONP to coordinate all Federal consequence management programs involving weapons of mass destruction and to work closely with State and local governments to ensure their planning, training, and equipment needs are addressed. This decision could compromise the President's management of this effort.

Department of Transportation

The Administration requests that the House fully fund the $300 million requested for aircraft changes needed to increase aircraft security, including fortified cockpit doors, transponder changes, and video surveillance. Deployment is expected to commence much sooner than envisioned by the Committee.

The Administration strongly encourages the House to provide the requested $203 million for the Coast Guard. The Coast Guard has mounted a significant response to threats to homeland security and has redeployed many of its resources to provide increased security at the Nation's ports. To accommodate this surge of port security operations, the Coast Guard needs funding for additional fuel and spare parts, 2,700 reservists called up to augment regular forces, and to keep assets operating that were previously scheduled to be removed from service. The funding level provided by the Committee is insufficient to meet these needs.

Executive Office of the President (EOP)

The Administration is extremely concerned that the Committee provided none of the requested $50 million, which is critically needed to ensure the safety, support and service to the President and Vice President of the United States and to strengthen protection of the more than 2,000 men and women who work within the White House Complex. The funds will enable the EOP to meet additional security requirements, including installing emergency response and notification systems, completing move-related activity associated with the forced relocation of staff from the Eisenhower Executive Office Building, and relocating the White House telephone staff.

Building Security at Federal Facilities

The $200.5 million requested for the General Services Administration would support improved building security at Federal facilities throughout the United States. However, the House Committee provided only the funds related to security and replacement space associated with Federal buildings in New York City ($87.4 million). The House is urged to include the additional $113.1 million requested to ensure increased levels of security is provided at Federal facilities nationwide.

In addition, the Administration is concerned that the bill does not provide funding for security upgrades at the main National Archives Building in Washington, D.C. This building houses the Charters of Freedom (Declaration of Independence, Constitution, and Bill of Rights) and receives no security support from the Federal Protective Service.

Potential Amendments

The Administration strongly supports House floor adoption of the "Walsh Amendment" that would provide additional resources for response and recovery efforts related to the New York City area within the agreed upon limits for disaster recovery spending. The Administration is committed to addressing the acute and unprecedented needs of the New York City area. The Walsh Amendment would address all currently identified needs.

The President's senior advisors would recommend that the President veto any bill that provides discretionary spending beyond these agreed upon limits. We look forward to working with the Congress to ensure that the highest priority needs are met in an expeditious manner.

FY 2002 Defense Appropriations Bill

We commend the Committee's full support of the President's requested military pay raise to increase the quality of life for America's military service members. The Administration also appreciates the Committee's inclusion of funding for changes to the military pay table and to reduce the out-of-pocket housing expenditures of service members. Additionally, the increases in the Defense Health Program will ensure that the promise of TRICARE for Life is adequately funded.

While the bill provides important funding for many of the Administration's highest priorities, the Committee bill provides approximately $2 billion less for Department of Defense (DoD) programs in FY 2002 than requested by the President. These program reductions would make it harder for the Department to counter 21st Century threats, such as terrorism, and to carry out the needed transformation of America's armed forces and defense posture. The following sections describe the Administration's specific concerns with the bill.

Missile Defense

The bill would reduce the Administration's request of $8.3 billion for missile defense programs by $441 million. The bill cuts more than half of the funding requested by the Administration to study sea- and space-based boost phase defense technologies, and reduces the funding requested for sea-based mid-course defenses. The bill would also severely reduce the funding requested for the Space-Based Laser program, relegating this program to laboratory research. The bill would eliminate the ability to field a contingency THAAD capability in FY 2005 and cut risk reduction activities. In addition, the bill would terminate the Space-Based Infrared System (SBIRS)- Low acquisition program, thereby seriously undermining the Administration's missile defense program and delaying

our ability to defend against a broad array of missile threats until beyond 2011. Finally, the bill would impose restrictions on management flexibility and burdensome reporting requirements precluding the ability to effectively manage missile defense programs.

The President is committed to the development and deployment of effective missile defenses to protect the United States, our forces, and our friends and allies as soon as possible. Missile defense remains one of the Administration's highest priorities. The Administration strongly opposes the bill's reductions in funding for key missile defense programs and the termination of the SBIRS-Low acquisition program and urges Congress to restore funding to the level requested by the President.

Operation and Maintenance Reductions

Directly and through its general provisions, the House reductions netted over $1.7 billion from Operation and Maintenance (O&M) accounts and these reductions could impair military operations. In addition, large portions of these reductions were based on unrealistic assumptions about achievable FY 2002 savings -- primarily from reductions in consultant services, headquarters staff, and A-76 studies. The Department is moving as quickly as possible toward achieving savings in areas such as these, but success will take time and congressional support. Therefore, the real effect of the House's deep O&M reductions would be to undercut the President's plan to address readiness shortfalls and competitive sourcing, and reduce funds available for military operations and support. Reduced funding for A-76 studies would eliminate flexibility DoD must have to seek the public or private sources best able to help it meet current threats. Also, section 8093 of the bill would not achieve $200 million in foreign currency fluctuations savings assumed by the Congress.

Fuel Funding

The Committee has underfunded the Administration's request for fuel by not providing the $427 million requested to restore the cash balances depleted when the Working Capital Fund sold fuel to the Services in FY 2001 at budgeted prices lower than actual costs. In addition, the House has reduced O&M accounts to reflect reduced fuel prices. The President's request already reflects some of the recent reduction in fuel prices. Given the marked volatility in fuel markets and emerging world events, assuming stability of fuel prices at the low point of the last several years is imprudent and threatens to affect operations. Finally, the bill would reduce funding for increased costs associated with electrical and natural gas utilities. These proposed reductions would put DoD's ability to purchase needed fuel and utilities at risk.

Military Personnel Funding

The Administration objects to the reduction in the military personnel accounts by over $750 million because such a reduction could undermine the ability of the Services to reach their personnel goals at this critical time. The Department plans to achieve its military personnel goals and has put in place a "stop loss" initiative to prevent key

military personnel from leaving the service during this critical time. The Department should be given every opportunity and encouragement to achieve these needed personnel levels, rather than being subjected to duplicative reductions for manpower variance and projected under execution.

Pentagon Renovation Cost Adjustment

The Administration disagrees with the Committee's reduction to the Operations and Maintenance payments for the Pentagon Renovation Maintenance Revolving Fund. These funds are critical to continue Pentagon operations and the on-going renovation project and are entirely separate from those related to the September 11th terrorist attack. This House cut would leave the Pentagon with no funding for security, utilities, cleaning, trash removal, and other support functions.

Depot Maintenance Backlog

To improve weapon system readiness, there has been a major effort to increase depot maintenance in ships, aviation, and ground combat systems. To that end, DoD proposed a readiness initiative that would have increased the amount of maintenance performed by allowing competitions between private contractors and public depots for workload that exceeded the capacity of the public depots. The Administration is disappointed that the Congress did not approve this proposal, thereby impeding efforts to reduce backlog. While the Department shares the Committee's concern regarding excess levels of funded depot maintenance backlog and is working closely with the General Accounting Office to identify more efficiency improvements, it is premature to reduce this vital readiness support program.

DoD-Veterans Affairs CHOICE

The Administration is disappointed that the Committee bill does not include the Administration's proposal for military retirees to choose annually between DoD and VA for health care. This CHOICE initiative would enhance continuity of care, while optimizing resources by preventing duplication of benefits.

Trident D-5 Missile Life Extension

The Administration urges restoration of the $25 million reduction to its $144 million request for life extension programs for the Trident II D-5. This reduction would require the termination of four of the five life extension programs and necessitate very costly requalification actions in the future. Shutting down these programs would incur termination costs of $15 million to $20 million, and re-qualification and procurement re-start costs could reach $150 million.

Other Funding Issues

The reduction to the Overseas Contingency Operations Transfer Fund may impede the scheduled use of Army Reservists on upcoming Bosnia peacekeeping rotations. This in turn, would downgrade the combat readiness (and delay the availability) of active component divisions that would otherwise be available for rapid deployment to ongoing operations or emergent crises.

The Committee failed to fund fully the development of new technologies of importance to DoD by taking numerous reductions to Air Force satellite procurement and development programs. For example, the $54 million reduction to the interagency National Polar-Orbiting Operational Environmental Satellite System would increase the risk that these satellites would not be available to back up the last launches of the current generation of Department of Commerce and DoD weather satellites. In addition, the $50 million cut to the Global Hawk program is objectionable given how critical it is to our ongoing efforts to combat terrorism.

The Committee bill would significantly decrease the funding for the DD21 program, making the current technology development programs unexecutable. The technologies being developed with this funding are critical to future ship programs.

The reductions in the Navy-Marine Corps Intranet and the Department's information systems would impede important information technology progress.

The Administration is pleased that the House recognizes the dangers inherent in the use of incremental funding and advanced appropriations in shipbuilding programs. Such practices would limit the flexibility of both the Administration and the Congress to make rational decisions in future shipbuilding programs while not actually increasing shipbuilding rates.

Unrequested Funding for Procurement and Earmarks

Much of the additional funding in the Committee bill is for unrequested procurement and R&D programs, funding that comes at the expense of more urgent needs. The President's FY 2002 request represents a balanced approach to modernization. The Committee bill would add funding for several unrequested items such as $820 million for a DDG-51 destroyer; $131 million for eight Army Blackhawk helicopters; $7.5 million for a UC-35 support aircraft for the Navy; $85 million for a C-40 aeromedical evacuation aircraft for the Air Force; $150 million for procurement and modification of a B-767 aircraft to serve as a "testbed" for the Air Force's next generation tanker; and $190 million for procurement and modification of a B-767 aircraft to serve as a "testbed" for a potential JSTARS replacement platform; $10 million for security locks; and $50 million above the Administration's request for networking of Intelligence Surveillance and Reconnaissance assets.

The Administration opposes the earmarking of funds for un-reviewed science and technology programs. In particular, the diversion of funds and medical management resources to a large number of medical research programs not related to national security,

dilutes the focus away from the defense mission, including protecting troops in the field from chemical and biological threats.

Title IX

The House bill would create a new Title IX for Counter Terrorism and Defense Against Weapons of Mass Destruction. The Administration believes that splitting existing accounts and thereby creating a separate title would establish an artificial distinction between ongoing defense programs and efforts to counter the immediate threats. The Administration recognizes the intent of this legislation and the need to reexamine the relational functions of DoD with the Office of Homeland Security. DoD has already instituted a counter terrorism effort comprised of its most senior officials to review its activities. The immediate effect of this legislation would be to fragment programs and disrupt these ongoing activities. The Administration urges the Congress to appropriate the amounts and authorities, included within Title IX, to existing accounts within the bill and delete Title IX.

October 3, 2001
(Senate)

H.R. 2506 - FOREIGN OPERATIONS, EXPORT FINANCING,
AND RELATED PROGRAMS APPROPRIATIONS BILL, FY 2002
(Sens. Byrd (D) West Virginia; Leahy (D) Vermont)

This Statement of Administration Policy provides the Administration's views on the Foreign Operations, Export Financing and Related Programs Appropriations Bill, FY 2002, as reported by the Senate Committee. We look forward to working with Congress to ensure that the Nation's priorities are met while encouraging the economic growth that is the essential guarantee of continued fiscal strength. A number of the agencies and programs funded within this bill may have modified requirements as a consequence of the terrorist attacks of September 11, 2001. The Administration is currently reviewing these new requirements and anticipates funding them through the FY 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States.
The Administration appreciates the Committee's efforts to reduce the level of earmarks compared with prior-year Foreign Operations appropriations bills and that the vast majority of the funding in the bill reflects the President's request and his priorities. The Administration would like to take this opportunity to share some concerns with possible floor amendments and specific sections of the Committee's version of the bill. The Administration looks forward to working with the Congress to resolve these issues as the bill moves through the legislative process.

As currently drafted, the bill contains a section that would unacceptably infringe upon the President's ability to enforce current Administration policy regarding international family planning assistance. If a bill containing this or similar unacceptable language were presented to the President, he would veto the bill.

Given the extradition of Slobodan Milosevic and other recent progress exhibited by the Yugoslav government, the Administration believes that more flexible language on war criminals and funding certifications for Serbia would help encourage the parties in the Balkans to turn over indicted war criminals, and would appreciate the opportunity to discuss modifications to the Committee's provisions that would recognize the significant advances recently made with regard to cooperation and transfer of war criminals to the International Criminal Tribunal for Yugoslavia. With regard to the war criminals provision, the Administration prefers the House-passed version, section 575, to the Senate Committee version, section 574.

We understand that the Middle East Peace Commitment Act of 2001 may be attached to the Committee bill as a floor amendment. We would strongly object to the inclusion by the Senate of such a provision. A report on Palestine Liberation Organization (PLO) compliance is already mandated by Congress in the PLO Commitments and Compliance Act. Inclusion of such a provision would seriously complicate our efforts to mediate and

support security cooperation, efforts that the Administration has engaged in at the highest levels , and would significantly undermine the Administration's ability to reduce the level of violence and move the parties toward the implementation of the Mitchell Committee's recommendations.

In addition, the Administration opposes section 566, which sets an administrative expenses cap of 14 percent on the use of Economic Support Fund available to support a democratic transition in Iraq. The Administration is concerned that this low ceiling would limit the President's flexibility to respond rapidly to changing events in Iraq.

With respect to the Andean Counterdrug Initiative, the Administration is very concerned that the $164 million reduction to the President's request would undermine the effort to develop healthy economies and strong, democratic governments in the Andes. The Andes are the hemisphere's source zone for illegal drug production, and full funding of this program is needed to stem the flow of illegal drugs to the United States. The requested levels of support reflect a necessary balance between social and economic development, and eradication, interdiction, and law enforcement programs.

Several provisions in the bill appear to infringe on the President's constitutional authority regarding the conduct of negotiations with foreign nations and the formulation of the U.S. position in international organizations. These provisions include "Economic Support Fund," "Contribution to the International Development Association," and sections 514, 557, 560, 574, and 576. The Administration advises that it will interpret these provisions as "sense of the Congress" recommendations.

July 19, 2001
(Senate)

H.R. 2299 - DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS BILL, FY 2002
(Byrd (D) WV; Murray (D) WA)

This Statement of Administration Policy provides the Administration's views on the Department of Transportation and Related Agencies Appropriations Bill, FY 2002, as reported by the Senate Committee.
We commend the Committee's efforts to accommodate many of the Administration's priorities in the bill. The Administration is pleased that the Committee has provided the requested levels for Coast Guard operating expenses. We also welcome the bill's funding of highway, transit, and aviation programs. However, the amounts provided exceed the levels specified in the Transportation Equity Act for the 21st Century and the Aviation Investment and Reform Act for the 21st Century. These acts already provide robust increases for transportation programs. The Administration is concerned that the levels included in the Senate Committee version of the bill will put additional pressure on spending that could cause Congress to exceed the limit on discretionary spending.

The Administration appreciates that the Senate Committee's bill provides $145 million to fund alternative transportation programs for people with disabilities under the President's New Freedom Initiative. The New Freedom Initiative is a comprehensive set of proposals to fulfill America's promise to the 54 million Americans with disabilities.

While the Administration supports passage of this bill, we would like to take this opportunity to share some concerns with the Senate Committee version of the bill. We look forward to working with the Congress to resolve these issues as the bill moves forward.

Mexico-domiciled Motor Carriers

The House bill contains two provisions that are unacceptable to the Administration. First, the House denied the Administration's request for $88 million to address critical motor carrier safety issues along the U.S.-Mexican border. Second, the House prohibits the use of any funds provided in the FY 2002 appropriations bill to process applications by Mexico-domiciled motor carriers for conditional or permanent authority to operate beyond the commercial zone adjacent to the border. As previously stated, the President's senior advisors will recommend that the President veto any legislation, like that passed in the House, that prevents the United States from fulfilling its NAFTA obligations to open the U.S. borders to Mexican motor carriers that can satisfy U.S. safety and operating standards.

The Administration is pleased that the Senate Committee has provided the necessary funding and staff to address critical motor carrier safety issues along the U.S.-Mexico border. The Administration is committed to strengthening the safety enforcement regime

to ensure that all commercial vehicles operating on U.S. roads and highways meet the same rigorous safety standards. However, the Senate Committee has adopted provisions that could cause the United States to violate our commitments under NAFTA. Unless changes are made to the Senate bill, the President's senior advisors will recommend that the President veto the bill. The Administration supports amendments to the Committee bill that would both strengthen the safety enforcement regime and allow the United States to meet its international obligations. For example, the Administration supports a safety enforcement regime that would emulate the very successful California inspection program for long-haul Mexican carriers.

Earmarks in Transportation Programs

The Administration is very concerned about the level of earmarking in the Senate Committee bill. The bill contains approximately $2.2 billion in earmarks for more than 700 projects. While the number of projects earmarked in this year's bill is approximately equal to the number of projects in the FY 2001 Senate Committee version of the bill, the dollar amount is more than double that included in last year's bill. In some Departmental activities, such as the bus and bus facilities program, the Senate Committee has earmarked 100 percent of the available funding. This level of earmarking diminishes the Department's ability to distribute these funds based on merit or in support of an overall transportation infrastructure funding strategy. The Administration urges the Senate to allow the Department to allocate funds as prescribed in authorizing law.

Mass Transit Budget Authority

The Administration is concerned that the Senate Committee exempted $1.35 billion in discretionary budgetary authority provided for mass transit from the overall limit of $661 billion on discretionary spending. Excluding the discretionary mass transit funding in the scoring of this bill can be viewed as backdoor financing that avoids the discipline of the budget authority limits proposed by the President and adopted in the Congressional Budget Resolution for FY 2002. The Administration urges the Congress to recognize all discretionary budget authority when developing its version of this bill by reflecting the budgetary impact of the $1.35 billion in mass transit funding.

Coast Guard Yard

The Administration strongly opposes the proposal to amend Section 648 of Title 14 to require that the Coast Guard Yard and other facilities designated by the Commandant be redesignated components of the Department of Defense for competition and workload purposes. This designation could increase the amount of depot work required to be performed in-house; displace existing private sector facilities; circumvent concurrence by the Secretary of Defense; and establish minimum onboard staffing levels for the Yard, which would reduce the flexibility of the Coast Guard to manage its resources in the most efficient manner.

Infringement on Executive Authority

The Administration objects to a provision in the bill under the heading "Transportation Administrative Service Center," that "no assessments may be levied against any program, budget activity, subactivity or project funded by this Act unless notice of such assessments and the basis therefore are presented to the House and Senate Committees on Appropriations and are approved by such Committees." This provision violates the requirement that Congress act only within the constitutionally-prescribed legislative process. If the bill is enacted, the President will construe this provision only as a notification requirement, since any other interpretation would contradict the Supreme Court ruling in INS v. Chadha.

The Administration is also concerned about Senate Committee report language addressing contract negotiations between the Federal Aviation Administration and the American Federation of State, County, and Municipal Employees because the language may interfere with appropriate use of a legitimate dispute process. The union has filed a complaint with the Federal Labor Relations Authority. This language could be interpreted as direction to the FAA to abandon use of the established dispute process and set an untenable precedent.

July 18, 2001
(House Rules)

H.R. 2506 - FOREIGN OPERATIONS, EXPORT FINANCING,
AND RELATED PROGRAMS APPROPRIATIONS BILL, FY 2002
(Reps. Young (R) Florida; Kolbe (R) Arizona)

This Statement of Administration Policy provides the Administration's views on the Foreign Operations, Export Financing and Related Programs Appropriations Bill, FY 2002, as approved by the House Committee.
The Administration applauds the Committee's efforts to fund the agencies and programs contained in this bill at the President's request and within the levels agreed to under the budget resolution. The vast majority of the funding in the bill reflects the President's request and his priorities. The Administration is particularly pleased that the Committee provided $100 million for the multilateral Global Fund to Fight HIV/AIDS, Malaria, and Tuberculosis, which is the centerpiece of the President's commitment to the global battle against infectious diseases. The Administration also commends the Committee for its continuing effort to limit earmarks and directives, and to provide the Administration with the flexibility it needs to pursue the President's foreign policy agenda.

While the Administration appreciates the Committee's considerable efforts to fund the President's priorities, the bill provides less than the full funding request in a number of areas. The Administration would appreciate the opportunity to discuss the ramifications of these reductions with the Congress. The Administration supports the Committee's action to provide relief and reconstruction assistance to El Salvador.

With respect to the Andean Regional Initiative, any reductions below the President's request would undermine the effort to develop healthy, licit economies and strong, democratic governments in the Andes. The Andes are the hemisphere's source zone for illegal drug production and the region of the most intensive terrorist activity. The requested levels of support reflect a necessary 50/50 balance between "carrots" of social and economic development and "sticks" of eradication, interdiction, and law enforcement programs. The Administration believes the continued aerial eradication of coca in Columbia is critical, combined with activities in support of alternative development, judicial reform, and promotion of human rights. The Administration would oppose any restrictions on this approach.

The Administration also supports the current version of this bill as it affects family planning. However, the President would veto any legislation that would infringe upon his ability to enforce current Administration policy regarding international family planning assistance.

May 8, 2001
(House Rules)

H.R. 1646 - Foreign Relations Authorization Act,
Fiscal Years 2002 and 2003
(Hyde (R) IL and Lantos (D) CA)

The Administration strongly opposes H.R. 1646 as reported by the House International Relations Committee. This bill authorizes appropriations for FYs 2002 and 2003 primarily for the Department of State and the Broadcasting Board of Governors (BBG), and contains other foreign relations provisions. If the bill were presented to the President in its current form, he would veto it principally because it overturns the Administration's family planning policy (commonly known as the "Mexico City" policy) and would allow taxpayer funds to go to international organizations which perform abortions and engage in abortion advocacy. The bill also includes a substantial number of provisions that interfere with the President's constitutional authorities and responsibilities with respect to foreign affairs.
The Administration recognizes and appreciates that the bill provides funding authorizations at levels generally in accord with the Administration's budget submissions, including the vitally important increases for embassy security to improve support for, and the safety of, U.S. Government personnel assigned abroad with their families.

The Administration strongly supports section 601 of the bill, which implements understandings on the need for substantial reforms at the United Nations. While H.R. 1646 codifies the reduced rates that the United States is assessed for U.N. peacekeeping and operating budgets, the Administration supports amending section 601(d) to allow the repeal of the 25 percent statutory cap relating to U.N. peacekeeping to begin in 2001 in order to avoid unnecessarily incurring additional arrears to the U.N. Absent such action, the United States is estimated to accrue new arrears in excess of $75 million.

The Administration opposes the earmark authorization for UNESCO because the Administration has not yet reviewed the question of UNESCO membership. In addition, it is not part of the Administration's FY 2002 budget request.

The Administration will work with the Congress to eliminate from the bill objectionable provisions, including unproductive reporting requirements and earmarks, provisions that limit flexibility in the conduct of the Nation's foreign affairs and, above all, Sections 131-133, which would allow taxpayer funds to go to international organizations which perform abortions and engage in abortion advocacy. In addition, the Administration will work with Congress to modify the limited number of appropriations authorizations that are significantly above the Administration's FY 2002 Budget request.

Provisions Inconsistent with the Constitution

Objectionable provisions that conflict with the constitutional authority granted to the President include:

Section 235, which seeks to direct U.S. policy toward Jerusalem, including directing the President to place the U.S. Ambassador in Israel in charge of the U.S. consulate in Jerusalem and eliminates funding for all State Department operations in Israel if the President fails to do so. In addition, the provision is not conducive to a constructive diplomatic outcome in a particularly sensitive and difficult negotiating environment.

Section 304, which requires the Department of State to designate a Coordinator for Tibet to undertake certain diplomatic negotiations.

Section 603, which directs the President to ensure that the U.S. speaks and votes a particular way on a foreign affairs matter at the United Nations.

Section 814, which requires annual consultations with certain Taiwanese representatives.

Provisions Interfering with Effective Conduct of Foreign Affairs or Proper Management

Section 233, which requires the State Department to reopen an embassy or consulate in Equatorial Guinea.

Section 302, which requires the State Department to establish certain cumbersome processes for right-sizing of the Federal Government's overseas presence. The Administration has initiated a comprehensive effort on this issue and welcomes the Committee's support for rightsizing. It does, however, believe it should have discretion to organize this effort as appropriate.

Section 305, which establishes a U.S. Special Envoy for Sudan Issues, and directs that officer in the conduct of that officer's work.

Section 402, which authorizes the Secretary of State to establish

private nonprofit entities that are not government instrumentalities, appoint the governing board of such entities, pay certain administrative costs, and solicit contributions for such entities.

Section 813, which requires Taiwan to be treated as a non-NATO ally in transfers of defense articles or services under the Arms Export Control Act.

Pay-As-You-Go Scoring

H.R. 1646 would affect receipts and direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. OMB's preliminary scoring estimate is under development.

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October 30, 2001
(Senate)

S. 1536 - DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES APPROPRIATIONS BILL, FY 2002
(Sens. Byrd (D) West Virginia; Harkin (D) Iowa)

This Statement of Administration Policy provides the Administration's views on the Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill, FY 2002, as approved by the Senate Appropriations Committee. The Administration appreciates the manner in which the Congress has worked to consider the FY 2002 appropriations bills. The Administration looks forward to working with the Congress to ensure that the policy and program content of each of the thirteen appropriations bills is acceptable to the President and that the bill totals are within the recently agreed upon aggregate funding level of $686 billion.
A number of the agencies and programs funded within this bill may have modified requirements as a consequence of the terrorist attacks of September 11, 2001. The Administration is continuing to review these new requirements and will continue to work with the Congress to ensure the highest priority needs are funded through the FY 2001 Emergency Supplemental Appropriations Act for Recovery From and Response to Terrorist Attacks on the United States.

The Administration appreciates the Committee's efforts to fund agencies and programs contained in this bill consistent with this agreed upon funding level. Further, the Administration applauds the Committee's restraint in providing funding for earmarked projects.

The Administration's views on specific issues are discussed below.

Stem Cell Research

The President strongly believes that the Dickey-Wicker Amendment, which for years has ensured that the federal government observes important ethical boundaries at the same time that it provides support for scientific research, should not be altered. The Administration therefore strongly opposes the Senate version of the bill, which modifies the existing language and would signal a weakening of the Federal Government's commitment to protecting human embryos. The Administration strongly supports the House version of the bill, which retains the current language, and includes clarifying report language that is consistent with the President's August 9, 2001 announcement. The President's senior advisors would recommend that he veto the bill if it contains the Senate's language.

Department of Education

The Administration appreciates the Committee's support for the President's elementary and secondary education reform initiatives. The Committee bill fully funds or exceeds the President's request for Reading First, Assessments, Teacher Quality, Transition to Teaching, and Special Education. This funding, which we believe is contingent upon the Elementary and Secondary Education Act (ESEA) reforms that we are working with Congress to enact in the near future, will enhance accountability and foster improved student achievement. We appreciate the Committee's inclusion of report language supporting the President's request for Character Education and Reach Out and Read programs.

The Federal government has a special responsibility to support school renovation needs for military dependents and children residing on Indian lands, and to help promote school choice by helping charter schools overcome infrastructure barriers that prevent their start-up. Thus, we urge the Senate to support the full President's request for both Impact Aid Construction and the Charter School Homestead Fund.

However, the Administration strongly objects to the $925 million for School Renovation Grants in the Senate bill. While we recognize the importance of ensuring the nation's schoolchildren have safe and modern facilities for learning, in general, responsibility for school facilities that are not affected by Federal activities should continue to be a State and local responsibility. The Administration believes this Federal program will do little to address the overall need to bring school facilities into good condition, and will divert resources away from other Federal priorities -- such as Title I -- that hold greater promise for reforming and improving our nation's education system.

The Administration is also concerned that the bill does not direct a sufficient share of Education Department funding toward disadvantaged students through the Title I program. Instead the bill funds over two dozen small, narrow-purpose programs that have not been shown to be effective. The Administration strongly prefers the House-passed bill, which reallocates a greater share of funds from low-priority programs to the Title I program. This will help low-performing schools meet the new accountability requirements outlined in the pending ESEA reauthorization, and the President's goal of ensuring that no child is left behind. As mentioned above, the Administration would prefer that funds from low-priority programs be redirected to the Title I program, and that any increase to Title I be directed through the Title I Targeted Grants formula.

The ESEA conferees are now considering provisions for Bilingual education and State Assessments that would require funding to reach a specified level before the President's proposed reforms could go into effect. While we strongly oppose these triggers, the appropriations bill must provide sufficient resources to ensure the necessary reforms go into effect.

Outside of the elementary and secondary area, the Administration is pleased that the Committee has increased funding for several Presidential priorities including the New Freedom Initiative. The Administration also appreciates the Committee's strong support for Pell Grants. However, recent data indicates that maintaining the maximum award

level at the 2001 level of $3,750 will require $1.7 billion more than the enacted 2001 level. This $1.7 billion increase is the same amount provided in the House bill, which would be a record increase in funding and would allow the largest number of students ever to get funding. We urge the Senate to adopt the funding level provided for Pell Grants by the House.

Department of Health and Human Services

The Administration is pleased that the Committee has funded the President's health initiatives, including, Consolidated Health Centers and Global HIV/AIDS activities. The Administration looks forward to working with the Congress to fully fund the President's request for Drug Abuse Treatment services.

The Administration commends the Committee for taking the first steps in funding the President's initiatives for children and families, most notably the Compassion Capital Fund, to expand or emulate model charitable programs, and the Maternity Group Homes initiative, which will provide safe, stable and nurturing environments for teenage mothers and their children. We look forward to working with the Congress in identifying funds for the President's Mentoring Children of Prisoners initiative, to support family rebuilding programs, Promoting Safe and Stable Families, to promote child safety, permanency and well-being, and Education and Vocational Training Vouchers, to help youths who age out of foster care develop skills to lead independent and productive lives.

Department of Labor

The Administration is also pleased that the Committee has supported the President's request for the Department of Labor. In particular, the Administration appreciates the Committee's funding for dislocated worker assistance, and that the Senate has included funding for the Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance programs, whose authorizations expired on September 30, 2001. However, the Administration is disappointed that the Committee has not provided the President's request for the Information Technology Crosscut. This initiative will ensure a cost-effective, integrated approach to financing the Department's technology investments. The Administration also is concerned that the Committee increased funding for the International Labor Affairs Bureau (ILAB) by 107 percent above the President's request. Between 1996 and 2001, funding for ILAB has risen by 1500 percent, expanding the Bureau's priorities and jeopardizing the Department's ability to effectively absorb these resources. Overly prescriptive direction on the use of ILAB resources further complicates the Department's ability to manage these unrequested funds.

Other Language Provisions: Needle Exchange, Abortions, and Grant Funding

The Administration appreciates that the Committee has retained the Hyde language regarding Federal funding of abortions. On needle exchange programs, the Committee's language would weaken existing protections that prohibit the use of federal funds for needle-exchange programs. The Administration strongly opposes the Senate provision,

and believes it is important to continue existing law as included in the House version of the bill.

The Administration strongly objects to section 514 of the General Provisions, which would unduly burden Executive Branch operations by requiring Committee notification before the announcement of any discretionary grant award or cooperative agreement totaling $500,000 or more.

Potential Amendment - Federal Communications Commission (FCC)

We understand that an amendment regarding the Federal Communication Commission (FCC) may be offered during Senate floor debate. The Administration would oppose any amendment that would restrict the FCC's ability to assign, via competitive bidding, spectrum licenses that could be used by terrestrial (i.e., non-satellite) services. Such a provision would interfere with the efficient allocation of Federal spectrum licenses, provide a windfall to certain users, and reduce Federal revenues.

Infringements on Executive Branch Authority

The Administration will construe Section 623 of the Senate version of the bill, which addresses the Director's position in the Office of Multi-Family Housing Assistance Restructuring, in a manner consistent with the President's constitutional powers to nominate and appoint.

July 30, 2001
(Senate)

S. 1246 - Crop Year 2001 Agricultural Economic Assistance Act
(Sen. Harkin (D) Iowa)

The Administration strongly opposes S. 1246 as reported by the Committee on Agriculture, Nutrition, and Forestry, because spending authorized by the bill would exceed $ 5.5 billion, the amount provided in the budget resolution and the amount adopted by the House. If S. 1246 is presented to the President at a level higher than $5.5 billion, the President's senior advisers will recommend that he veto the bill.
The budget resolution provides $5.5 billion for 2001, an amount that the Administration strongly believes is more than adequate for this crop year. Moreover, improvements in agricultural markets and stronger livestock and crop prices means that the need for additional federal assistance continues to diminish. An additional $5.5 billion in federal assistance will boost expected real U.S. farm net-cash income to $53.6 billion (1996 dollars), a level of income significantly above the previous two years. With the need for additional assistance well within the $5.5 billion provided, the expenditure of funds allocated for 2002 in crop-year 2001 would be premature. In addition, the bill provides funding for a number of programs that have nothing to do with farmers' 2001 incomes. Funding for these programs should not be included as part of a 2001 farm income assistance bill.

To ensure that assistance can be made available to the Nation's farmers and growers as soon as possible, the Administration strongly urges the Senate to approve H.R. 2213 as passed by the House of Representatives. The Administration also urges that the Senate refrain from adopting any extraneous amendments that could slow the timely enactment of this bill. The House-passed bill provides $5.5 billion in assistance, which is the amount provided for in the budget resolution and the maximum amount the Administration would support.

Pay-As-You-Go Scoring

S. 1246 would increase direct spending and, therefore, would be subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimate of this bill is that it would increase direct spending by $7.4 billion in Fiscal Years 2001-2002. Final scoring of this legislation may deviate from this estimate. The Administration will work with Congress to ensure that no unintended sequesters of spending occur under current law or through enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

June 21, 2001
(Senate)

S. 1052 - Bipartisan Patient Protection Act
(Sens. McCain (R) AZ, Kennedy (D) MA, Edwards (D) NC)

The President strongly supports passage of a patients' bill of rights this year and has been working with members of both parties since the first week of the Administration to forge a compromise. Congress has been divided on this issue for far too long at the expense of patients and their families. The President strongly urges Congress to pass a strong patients' bill of rights this year that provides meaningful protections for patients, not a windfall for trial lawyers or a threat to Americans' ability to obtain and afford quality health care. On February 7, 2001, the President transmitted to Congress his principles for a bipartisan patients' bill of rights and urged Congress to move quickly on this important issue.
The President's principles called for passage of a patients' bill of rights that ensures all Americans enjoy strong patient protections, including: access to emergency room and specialty care; direct access to obstetricians, gynecologists, and pediatricians; access to needed prescription drugs and approved clinical trials; access to health plan information; a prohibition of "gag clauses"; consumer choice provisions; and continuity of care protections. The President also recognizes, however, that many States have passed strong patient protection laws already, some of which have been in force for over a decade. To the extent possible, a Federal patients' bill of rights should give deference to these effective State laws.

The President's principles emphasized the importance of providing patients who have been denied medical care with the right to a fair, prompt, and independent medical review, which will ensure that disputes are resolved quickly and inexpensively and that patients receive the quality care they deserve.

The President stated that only after this independent review decision is rendered should we resort to the costlier, time-consuming remedy of litigation in Federal courts to ensure that health plans are held liable for wrongful decisions.

The President's principles also reminded Congress of the necessity of avoiding unnecessary and frivolous lawsuits, which will only serve to drive up costs and leave more individuals without insurance coverage. S. 1052 will significantly increase health insurance premiums and the number of uninsured. According to the Congressional Budget Office, health insurance premiums under S. 1052 as originally drafted would increase by over 4%. If the effects of litigation risk on the practice of medicine and of the reduced ability of health plans to negotiate lower rates were included, CBO's estimated cost impact could be much higher, by 4-5% or more. This is in addition to the estimated 10-12% premium increases employers are already facing in 2001. Further, leading economists have predicted that employers drop coverage for approximately 500,000 individuals when health care premiums increase by 1%. According to these estimates, S.

1052 could cause at least 4-6 million Americans to lose health coverage provided by their employers.

The President is encouraged by efforts in the Senate, like those of Senators Frist, Breaux, and Jeffords, to develop a common sense compromise that forges a middle ground on this issue and meets the President's principles.

While the President strongly supports a comprehensive and enforceable patients' bill of rights and has been working with members of both parties to enact legislation this year, he believes that S. 1052 would encourage costly and unnecessary litigation that would seriously jeopardize the ability of many Americans to afford health care coverage.

The President objects to the liability provisions of S. 1052. The President will veto the bill unless significant changes are made to address his major concerns. In particular, the serious flaws in S. 1052 include:

S. 1052 circumvents the independent medical review process in favor of litigation. The President believes that patients should be given care first -- litigation should be the last resort. Patients should exhaust the medical review process first, allowing doctors, not trial lawyers, to make decisions about medical care.

S. 1052 jeopardizes health care coverage for workers and their families by failing to avoid costly litigation. S. 1052 overturns more than 25 years of Federal law that provides uniformity and certainty for employers who voluntarily offer health care benefits for millions of Americans across the country. The liability provisions of S. 1052 would, for the first time, expose employers and unions to at least 50 different, inconsistent State-law standards. The result will inevitably be that employers and unions will be forced to pay for different benefits from State to State, even within a particular State, based on varying precedents set in State courts and leading to inconsistent standards of care for patients. Further, S. 1052 imposes no limitations on State court damages, and it is not clear whether existing State-law caps would apply to the broad, new causes of action in State courts that S. 1052 creates.
S. 1052 also would allow causes of action in Federal court for a violation of any duty under the plan, creating open-ended and unpredictable lawsuits against employers for administrative errors. These new Federal claims do not have any limitations on the amount of noneconomic damages, creating virtually unrestrained damage awards that are limited only by an excessive $5 million cap on punitive damages.

Moreover, S. 1052 would subject employers and unions to frequent litigation in State and Federal court under a vague "direct participation" standard, which would require employers and unions to defend themselves in court in virtually every case against allegations that they "directly participated" in a denial of benefits decision. Because such determinations are inherently fact-specific, any such allegation will force a costly and time-consuming court process and result in varying State interpretations of "direct participation," forcing employers to adhere to different standards in every State.

S. 1052 fails to provide a fair and comprehensive remedy to all patients. The President believes the new Federal law should establish a comprehensive set of rights and remedies for patients. S. 1052 instead encourages costly litigation by providing no effective limitations on frivolous class action suits and allows trial lawyers to go on fishing expeditions to seek remedies under other Federal statutes.

S. 1052 subjects physicians and all health care professionals to greater liability risk. S. 1052 would expand liability for physicians and all health care professionals in State courts well beyond traditional medical malpractice by permitting new, undefined causes of action in State courts for denials of medical benefits. This expanded litigation against physicians and all health professionals will create an opportunity to circumvent State medical malpractice caps that may not apply to these new causes of action.

Extraneous User Fee Provision. The Administration objects to inclusion in S. 1052 of an extraneous revenue-raising provision (section 502), which extends for multiple years Customs charges on transportation, passengers, and merchandise arriving in the country.
Pay-As-You-Go Scoring

S. 1052 would affect direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimate of the bill is under development.

July 31, 2002
(Senate)

H.R. 5010 - DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, FY 2003
(Sponsors: Byrd (D), West Virginia; Stevens (R), Alaska)

This Statement of Administration Policy provides the Administration's views on the FY 2003 Department of Defense Appropriations Bill, as reported by the Senate Committee. While every other bill reported by the Committee exceeds the President's request, this bill fails to include the war reserve and other necessary funding, resulting in an $11.5 billion decrease to the President's request. Despite these major concerns, the Administration supports passage of the bill in the Senate to advance the legislation to conference.

Before addressing the Administration's specific concerns with the Defense bill, the Administration would like to reiterate its strong opposition to the FY 2003 discretionary spending total adopted by the Senate Appropriations Committee, which allows for $772.5 billion in spending, including $2.2 billion in emergency funds and $2.2 billion in inappropriate advances on FY 2004 spending. Fiscal discipline and constraints on overall government spending are critical to the Nation's ability to provide needed resources for national priorities and a fiscal environment that encourages continued economic growth and a quick return to a balanced budget. We urge caution as the Senate continues to report bills well above the President's request and the House-passed budget resolution. Continuing this trend could lead to a breakdown in the appropriations process and hold up urgent funding for our agencies. The President supports a discretionary spending total of $759.1 billion, consistent with the House-passed Budget Resolution, and within that total urges the Congress to provide appropriations consistent with his request for defense and homeland security activities to support the war on terrorism and increased national homeland security efforts.

The Committee has funded many of the requirements needed to keep America secure, to transform U.S. defense capabilities, and to maintain the quality of life of our armed forces. For example as the President requested, the Committee bill fully funds the military pay raise of 4.1 percent and additional targeted pay increases for selected ranks, and funds a number of key programs critical to the President's goal of transforming U.S. military capabilities, including Trident submarine conversions and unmanned aerial vehicles.

The Administration welcomes the Committee's support of the President's decision to terminate the Crusader artillery program in favor of more transformational efforts to improve the Army's indirect fire capabilities. The Administration appreciates that consistent with the revised FY 2003 request, the Committee did not provide funding for the Crusader program and instead funded critical research and development efforts for more advanced indirect fire systems.

As missile defense is one of the President's top priorities, the Administration is concerned by the Committee's $814 million reduction in this account. While the Committee has provided some potential ability to replace this reduction in missile defense funding through use of projected FY 2003 inflation offsets, the Administration requests that the Senate provide certainty by providing full direct appropriation for this important program.

On July 3, 2002, the President submitted a budget amendment clarifying the intended purposes for the $10 billion war reserve. The Administration is very concerned that the Committee did not include the $10 billion appropriation to sustain the global war on terrorism. Without this funding, the Department of Defense (DoD) will lack sufficient resources for critical activities to sustain the war on terrorism as it expands. The Administration looks forward to working with the Senate to ensure that these funds are included in the final bill and to address the Department's request for an increase of $500 million in general transfer authority.

The Administration is also concerned that Committee report language permits funding for military retirees to concurrently receive Veterans Affairs (VA) disability and military retirement benefits subject to authorization of such a provision. The report contemplates tapping the $10 billion war reserve if such benefits are authorized. This authorization provision currently under consideration in the FY 2003 Defense Authorization Conference would cost nearly $60 billion over ten years and could increase the number of veterans seeking benefits by almost 690,000, diverting critical resources away from fighting the war on terrorism and transforming our military capabilities. As stated in the June 19th Statement of Administration Policy on S. 2514, the President's senior advisers would recommend that he veto the Defense Authorization bill if the bill repealed the current prohibition on concurrent receipt of these benefits.

The Committee bill does not include the Administration's CHOICE proposal to better coordinate DoD and VA medical care services by ensuring that retirees elect either VA or DoD as their exclusive health care provider through an annual open season. Military retirees have access to VA and DoD health care systems and both departments budget for the estimated 700,000 retirees. The result is imprecise and duplicative, drawing resources away from key requirements. Neither system can ensure that these retirees receive continuity of health care due to the movement between systems. This initiative would enhance continuity of care reduce waiting times, while optimizing resources by preventing duplication of benefits.

The Administration appreciates that the Congress granted the Administration's request for expanded authorities to prosecute the unified campaign against both terrorism and drugs in Colombia in the FY 2002 Emergency Supplemental Appropriations bill. We strongly encourage the Congress to provide these authorities for the Department of Defense in FY 2003 as requested as well. This will enable the Administration to use the resources available to aid Colombia and conduct a unified campaign against groups that use narcotics trafficking to fund terrorists and other activities that threaten the national security of Colombia.

The Administration opposes Title IX of the Committee bill, which provides authority to make loan guarantees for the production of commercial reusable in-space transportation. The bill language is premature and prejudicial to the upcoming work of the President's National Space Transportation Policy task force. It singles out one space transportation concept for preferential subsidized financing and supports a controversial propulsion system for which the technology and commercial viability is unproven. Moreover, the credit risk premiums for any loan guarantees would be so high as to eliminate private sector interest in the program.

Constitutional Concerns

Although the 30-day advance notice contemplated by Section 8007 of the bill can be provided in most situations as a matter of comity, situations may arise, especially in wartime, in which the President must promptly establish special access controls on classified national security information under his constitutional grants of the executive power and authority as Commander in Chief of the Armed Forces. Similarly, there may be times in which the President as Commander-in-Chief may need to proceed with respect to certain transfers of defense articles or services more promptly than the 15-day advance notice contemplated by section 8066. In addition, Section 8065 of the bill must be construed to require only notification of Congress, given the constitutional principles enunciated in INS v. Chadha. Finally, the Administration notes that, while the preferences in Section 8014 and 8094 may survive judicial review to the extent they constitute political classifications such as Indian tribes, they may not survive such review to the extent they involve racial classifications suspect under equal protection component of the Due Process Clause of the Constitution.

July 25, 2002
(House)

H.R. 5005 - Homeland Security Act of 2002
(Rep. Armey (R) Texas and 118 cosponsors)

The Administration strongly supports House passage of H.R. 5005 as reported by the House Select Committee on Homeland Security. This bill reflects the President's proposal. The President commends the House and the bipartisan leadership for the speed with which this bill has been moved to the floor.

H.R. 5005 establishes the four main pillars of the President's proposal:

- Information Analysis and Infrastructure Protection. Under the bill, the Department of Homeland Security will be able to comprehensively assess the Nation's vulnerabilities to terrorism, analyze information regarding threats to the homeland, and map the threat information against the Nation's vulnerabilities.
- Science and Technology. The bill supports the President's proposal to establish a network of national laboratories focused on homeland security science and

technology and transfers most of the requested Department of Energy programs to the new Department.

- Border and Transportation Security. The bill transfers the principal border-security agencies -- the Coast Guard, the Customs Service, and the Immigration and Naturalization Service's (INS) law enforcement and border management functions (including border inspectors and the Border Patrol) -- to the new Department, allowing the Secretary to establish seamless border security operations.
- Emergency Preparedness and Response. Under the bill, the Department of Homeland Security, building on the strong foundation laid by the Federal Emergency Management Agency (FEMA), will coordinate all major Federal response entities as proposed by the President, allowing for a more direct line of authority during incidents of national significance. However, the President strongly believes that FEMA needs to be part of the Department and would resist any effort not to include FEMA in the Department or any effort to break FEMA into separate parts.

H.R. 5005 establishes a strong framework for working closely with state and local governments, the private sector, and citizens, to ensure that public and private resources are properly aligned to secure the homeland.

In addition, the bill provides the new Secretary with invaluable managerial flexibility. It provides budgetary flexibility that will enable the Department to stand up rapidly and to respond quickly to the threat posed by an agile, adaptive enemy. The bill permits the Secretary to reorganize the Department to improve security and reduce redundancy and inefficiency. The bill will also speed the procurement of new technologies vital to securing the homeland.

Most importantly, the bill provides the Secretary a prudent degree of flexibility in the area of personnel management while protecting vital employee rights, including protection from discrimination, veterans' preferences, whistleblower protections, and collective bargaining. This flexibility will allow the Secretary to ensure that every employee of the new Department is able to realize his or her full potential in the noble mission of securing the homeland.

The Administration is pleased that the Select Committee preserved the President's long-standing authority to exempt from the operation of the Federal Labor Relations Management Act particular agencies involved in important intelligence, investigative, or national security work, when necessary to protect national security. The Administration would strongly oppose any amendments that would impair or limit in any way these vital authorities, which have been used with care and restraint by every President beginning with Jimmy Carter. Any such limitation or impairment would be unwise and anomalous in an Act establishing a Department whose primary mission is to protect the homeland against terrorist attack. Moreover, no sound reason exists to provide rights beyond those enjoyed by other federal employees. Therefore, the President's senior advisors would recommend a veto if the final legislation included such a limitation.

The Administration strongly opposes an amendment which would provide indemnification for companies that sell counterterrorism technology to the Federal government, as well as state and local governments. Such an amendment is fiscally irresponsible due to the potential for excessive costs that can be neither reasonably estimated nor controlled.

The Administration is also pleased with the bipartisan agreement on the appropriate method for reassigning the authority to issue and deny visas to the Department of Homeland Security, which closely tracks the President's proposal.

The Administration believes that the Department of Homeland Security should be the lead agency for all homeland security threats -- including biological terrorism, potentially the gravest homeland security threat of the 21st century. It is important that the Secretary have the responsibility to set priorities to prepare for and respond to bioterrorism. While the Administration would have preferred that the Secretary have both the responsibility and authority at the Department of Homeland Security, the Administration appreciates the bill language enhancing the coordination between the Department of Homeland Security and the Department of Health and Human Services.

While the Administration strongly supports the bill as a whole, the Administration does not support certain significant features that will make the new Department less effective in fulfilling its missions.

Immigration

The Administration appreciates that the Committee transferred INS enforcement functions to the new Department, but is deeply concerned that the bill retains INS' services functions in the Department of Justice. The services and enforcement functions of the INS are mutually supportive, are governed by the same provisions of immigration law, and rely for their effective operations on the same information systems. Therefore, both the service and enforcement elements of the INS should be moved to the new Department. The Administration also believes that it is important that the Executive Office of Immigration Review and associated adjudicatory functions be moved to the new Department, in order to maintain consistent and uniform control, interpretation, and application of immigration law and policy. Finally, the Administration is concerned with provisions of the bill relating to internal review of documents, qualifications for nominations, and legislative recommendations that are inconsistent with the President's constitutional authority to supervise the unitary executive branch and with his authority under the Appointments Clause and the Recommendations Clause of the Constitution.

Customs Service

The Administration commends the responsible committees for moving the entire Customs Service into the new Department of Homeland Security. However, the Administration is concerned that the reported bill inappropriately restricts the Secretary's operational flexibility with respect to certain defined functions of the Customs Service in

ways that could have adverse unintended consequences for both security and trade facilitation. The Administration is also concerned that the bill generally leaves legal authority with the Secretary of the Treasury, even though all operational responsibility to enforce these authorities will rest with the Secretary of Homeland Security, and with the Customs Service. Although the Administration appreciates provisions to ensure that the legal authority retained by the Secretary of the Treasury would be delegable by him to the Secretary of Homeland Security, the Administration believes that legal authority and operational responsibility should be permanently aligned in a single Cabinet Department, with a single Cabinet official accountable for the border security and trade facilitation missions.

Intelligence

The Administration opposes the portion of the bill that separates the intelligence components of the Coast Guard, INS, the Transportation Security Administration (TSA), Customs, and the Federal Protective Service from their parent entities. These intelligence units are tightly integrated with the day-to-day operations of their parent entities, and their separation will undermine the effectiveness of these organizations. The Administration believes that the Secretary should be given the discretion to determine when and how to reallocate the intelligence units of the various components of the new Department, consistent with operational needs.

Cyber Security

The bill does not include the Computer Security Division of the National Institute of Standards and Technology (NIST), as requested in the President's proposal. The Administration believes inclusion of this function would strengthen the cyber security abilities of the new Department.

Transportation Security

The Administration waited four months for Congress to act on its emergency supplemental request. The emergency supplemental package agreed to by Congress is $1 billion short of what the Administration said it needed to implement a rational plan to meet current law deadlines, and additional resources will not be available for months, if they come at all. And Congress has imposed additional mandates in the supplemental that are stricter and more inflexible than the original law. Based on these facts, the TSA's ability to meet current law deadlines without major disruption to passengers, airports, airlines, and the overall economy has been severely undermined.

Managerial Flexibility

The new Secretary of Homeland Security must have the freedom and the flexibility to manage the new Department. The new Secretary must be able to move money and resources quickly in order to respond to real threats to the Nation's security. The new Secretary will require considerable flexibility in procurement, integration of information

technology systems, and personnel issues, while maintaining critical civil service protections. The Administration opposes any further reduction to the managerial flexibility that is now provided in H.R. 5005, and the President's senior advisors would recommend he veto any bill that substantially diminishes the Secretary's flexibility to effectively manage the Department.

Statutory White House Office

The Administration accepts the Select Committee's action in establishing a statutory Homeland Security Council to coordinate Executive Branch homeland security policymaking. This Council is modeled on the National Security Council, which has served the Nation well and represents an appropriate balance between the need for statutory recognition and the need to preserve the President's authority, flexibility, and confidential relationship with Executive Office of the President staff and White House advisors. The Administration would strongly oppose more intrusive encroachments on the President's relationship with and authority over White House staff; such encroachments would impair his effectiveness in carrying out his constitutional responsibilities and protecting the homeland. The President's senior advisors would recommend a veto of any legislation that would establish a statutory Office of Homeland Security within the White House headed by an official subject to the advice and consent of the Senate, or which would erode the President's confidential relationship with his White House Homeland Security Advisor, or his ability to exercise proper control over the operations and functions of the Executive Office of the President including the preparation of the President's budget.

July 18, 2002
(House)

H.R. 5120 - TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS BILL, FY 2003

(Reps. Young (R), Florida; Istook (R), Oklahoma)

The Administration supports House passage of the FY 2003 Treasury, Postal Service, General Government Appropriations Bill, as reported by the House Committee. In particular, we appreciate the level of support provided to the Department of the Treasury enforcement programs and the Internal Revenue Service.

The Administration also applauds the House Committee for reporting a bill that is fiscally responsible. The President supports a discretionary spending total of $759.1 billion -- consistent with the House-passed Budget Resolution -- and this bill falls acceptably within that total allocation. Such a total provides for needed resources for national defense and homeland security while restraining overall government spending. Only within such a fiscal environment can we encourage continued economic growth and a

quick return to a balanced budget. The Committee's actions strongly endorse these principles.

The Administration would like to take this opportunity to share additional views and highlight specific concerns with the Committee version of the bill.

Department of the Treasury

The Administration strongly objects to Section 641 of the bill, which lifts the locality pay freeze for Secret Service Uniformed Division officers as of January 1, 2003. The President has requested significant flexibility in hiring processes, compensation systems and practices, and performance management to recruit, retain, and develop a motivated, high-performance and accountable workforce in the legislation he recently submitted to create the Department of Homeland Security. Accordingly, the Administration urges the House to consider these principles as this bill moves through the Congress.

Executive Office of the President (EXOP)

The Administration is very concerned that the Committee has only provided $5 million of the $45 million requested in the President's budget for the E-Gov Fund, the cornerstone of the electronic government initiative highlighted in the President's Management Agenda. Adequate central funding is critical for consolidating and integrating overlapping agency IT inititiatives to improve efficiency, responsiveness and access to government services, as well as to recognize savings in the billions of dollars from this integrated government-wide approach. The Administration also strongly objects to moving the E-Gov fund to the Executive Office of President (EOP) from the General Services Administration (GSA). This fund is used for cross-agency IT-related programs which GSA, not the EOP, is responsible for managing. GSA is much better positioned to manage this fund, and has considerable experience in doing so with other such funds. The Administration urges the House to support the President's request.

The Administration also objects to the Committee's reductions in requested funding for Office of National Drug Control Policy's (ONDCP) operations. Such reductions could require a 20 percent reduction in ONDCP staff currently on board, jeopardize the achievement of the President's goals for reducing drug use in our Nation, and significantly impair the management of ONDCP programs. The Administration also objects to the funding level and restrictions placed on the Youth Antidrug Media Campaign. The Administration urges the House to redirect increases provided above the President's request for the High Intensity Drug Trafficking Areas and Counterdrug Technology Assessment Center programs to fund these important programs.

The Administration continues to strongly support the proposed consolidated appropriation for EXOP and greatly regrets that the House committee failed to adopt it. The Administration urges the House, as a matter of comity between the branches and efficient use of resources, to adopt the Administration's consolidation proposal. This proposal would have consolidated the current 16 separate EXOP appropriations into one

and would enable the President to effectively manage and align EOP resources consistent with decision-making in an efficient and straightforward manner, while enhancing the accuracy of the financial systems and reducing the administrative volume and cost of processing transactions through the U.S. Treasury.

Office of Personnel Management (OPM)

The Administration believes that the additional funds earmarked to establish a telecommuting training program to educate Federal managers about the logistics and benefits of telecommuting are unnecessary. The President's budget funds OPM's Telework and Telecommuting program. Helpful information for employees and managers is already available at *http://www.telework.gov/*

Government-wide Language Provisions

The Administration strongly opposes the provision in the bill that provides a 4.1 percent pay raise for Federal civilian employees. The President's budget proposes a pay raise of 2.6 percent for Federal civilian employees, and the Administration continues to believe that proposal is both reasonable and responsible. We urge the Congress to adopt the President's budget policy. The additional cost of this increased pay level is $1.5 billion over the President's request. This congressional policy would divert critical resources from programs across the Government.

We are disappointed that the House has not embraced the Administration's proposal for full cost budgeting for retirement pension costs and post-retirement health benefits and would like to take this opportunity to reaffirm the importance of the proposal. At a time when corporate financial statements are being questioned, we need to ensure that the Federal Government reports its costs appropriately. The Administration's proposal would be a major step in more accurately measuring program costs in the Federal budget -- agency by agency, account by account, and program activity by program activity. This proposal does not affect the budget surplus or deficit. Including these costs where they are generated provides a more transparent and full budgeting for federal programs.

The Administration is disappointed that the House Committee does not include the proposal to amend the Federal Employees' Compensation Act (FECA) to allow the Department of Labor to add an administrative surcharge to the amount billed to agencies for their workers' compensation costs. By allocating the cost of administering FECA to customer agencies in proportion to their program usage, this proposal would strengthen incentives to monitor and reduce FECA costs and improve workplace safety. The Administration urges the House to adopt this important reform to strengthen management of the FECA program.

The Administration opposes section 513 of the Committee bill that continues the one-year moratorium on the application of Cost Accounting Standards (CAS) to experience-rated contracts awarded under the Federal Employees Health Benefits Program (FEHBP). These accounting standards ensure that Federal contractors accumulate and report

consistently on their incurred contract costs. Government contractors, including those that contract with FEHBP, must be held to the highest accounting principles and standards. Additionally, a statutory moratorium is not required as existing law provides for an administrative process to exempt or waive classes or categories of contracts from any or all CAS requirements.

The Administration appreciates that the Committee has continued current law provisions (sections 509 and 510) that prohibit the use of Federal funds for abortions in the FEHBP, except in cases where the life of the mother is endangered, or the pregnancy is the result of an act of rape or incest.

Potential Floor Amendments

The Administration understands that an amendment may be offered on the Floor that would effectively shut down the Administration's Competitive Sourcing initiative to fundamentally improve the performance of the government's many commercial activities. Last week, the Senate Appropriations Subcommittee adopted a similarly egregious amendment. Now is the wrong time to short-circuit implementation of the common sense principle of competition -- a proven prescription for reaping significant cost savings and performance enhancements -- especially since numerous agencies are starting to make real progress. The principle of competition was unanimously adopted by the recent congressionally-mandated Commercial Activities Panel. Prohibiting the funding for public-private competitions is akin to mandating a monopoly regardless of the impact on services to citizens and the added costs to taxpayers. If the final version of the bill would contain such a provision, the President's senior advisers would recommend that he veto the bill.

The Administration understands that an amendment may be offered on the House floor that would weaken current sanctions against the Cuban government. The Administration believes it is vitally important to maintain these sanctions. The function of the travel sanctions is to prevent unlicensed tourism to Cuba that provides economic resources to the Castro regime while doing nothing to help the Cuban people, and these sanctions should not be removed. Sanctions also help ensure that humanitarian and cultural exchanges are genuine, reaching out to the Cuban people and especially to civil society and democracy activists, and not become activities whose main effect is to strengthen the regime. Lifting the sanctions now would provide a helping hand to a desperate and repressive regime, whereas the President's policy calls for reaching out to help the Cuban people. As noted in the July 11 letter from Secretaries Powell and O'Neill, the President's senior advisors would recommend that he veto a bill that contained such changes.

Infringement on Executive Authority

The Administration objects to a number of provisions in the bill that would require committee approval before Executive Branch execution. For example, section 403 would require that any transfers for Federal Buildings Fund activities "shall be approved in advance by the Committees on Appropriations". The Administration will interpret these

provisions to require only notification of Congress, since any other interpretation would contradict the Supreme Court ruling in *INS v. Chadha*.

May 21, 2002
(House Rules)

H.R. 4775 - Making Supplemental Appropriations for Further Recovery from and Response to Terrorist Attacks on the United States, FY 2002
(Rep. Young (R) Florida)

This Statement of Administration Policy provides the Administration's views on the FY 2002 Emergency Supplemental Bill as reported by the House Appropriations Committee.

The Administration applauds the Committee's efforts to provide most of the funding requested by the Administration and to stay within the discretionary spending caps agreed to by Congress and the Administration. Consistent with the intent of the President's request, this bill provides $27 billion and additional spending offset by $1.8 billion in reductions and an additional $1.9 billion in contingent emergency defense funds. All of the requests in the Administration's transmittal were necessary to fulfill known and urgent FY 2002 requirements, requirements that could not reasonably be met through the use of existing agency funds. The Administration strongly supports the bill as reported by the House Appropriations Committee and will strongly oppose efforts to add resources above this net spending level.

The proposals for emergency funding included in this bill will provide critical resources to support the war on terrorism, secure the homeland, and help dislocated workers as the Nation continues to recover and rebuild following the September 11, 2001, terrorist attacks. We look forward to working with the Congress to ensure this bill is enacted as expeditiously as possible.

Defense

The bill provides critical funds for the Department of Defense (DoD) and the intelligence
community to prosecute the global war on terrorism for the balance of FY 2002 and to enable DoD to fulfill related national security missions. Overall, the Committee provides an increase of $1.8 billion over the President's request for national defense. This additional funding is provided on a contingent emergency basis. The Administration currently has no need for additional funding in these areas.

The President has made transformation of the military a top defense priority. Consistent with this policy, the Secretary of Defense has determined that the Crusader artillery program is no longer relevant to future requirements. The Committee version of the bill includes objectionable report language that prevents any action on the Crusader artillery program until Congress acts. The President's senior advisors would recommend that he veto any bill that included statutory restrictions limiting his ability to cancel this program.

Homeland Security

The Administration is greatly concerned that the Committee funded the Transportation Security Administration (TSA) at $4 billion, $350 million less than our request. With additional unrequested items within that total, the Committee bill leaves $1 billion of the Administration's request unfunded. Unless Congress wishes to revisit the specific statutory mandates for passenger and baggage screening contained in the Aviation and Transportation Security Act, the funding proposal and the 45,000 person cap on hiring could seriously undermine the ability of TSA to meet these requirements. The Administration looks forward to working with the House to address these concerns.

While the Committee provided much of the funding requested for the Administration's
Homeland Security initiatives, the Administration is disappointed that the $175 million for First Responders was provided through the Justice Department and not under the Federal Emergency Management Agency (FEMA), as requested. The Administration urges the Congress to consolidate terrorism preparedness assistance for first responders under FEMA and to ensure that this funding is used for planning at the state and local level. Responsibility has been fragmented among a number of agencies, something that many members of Congress, GAO and outside studies have criticized. The Administration continues to believe that FEMA's relationship with the entire first responder community will help ensure better overall coordination of assistance.

The Administration strongly opposes language that would prohibit the use of funds to transfer functions, missions, or activities of the U.S. Customs Service to the Justice Department. The Administration is committed to working with the Congress to determine the best option to support strong border enforcement and an efficient flow of cross-border commerce. The proposed language would unnecessarily restrict the Executive Branch in its review of the full range of options available for future organizational changes related to protecting our borders and enhancing our Nation's security.

New York

The Administration appreciates the Committee support of the request for additional disaster relief efforts for New York in response to the September 11th terrorist attacks.

Assistance to Dislocated Workers

The Administration is pleased that the Committee provided $300 million of the President's $750 million request to help dislocated workers return to work. However, the Administration believes that additional resources are needed. The Administration looks forward to working with the House to ensure that adequate assistance is available to displaced workers, through National Emergency Grants, and to distressed communities so that these workers can get the jobs they need.

United Nations Population Fund (UNFPA)

The Administration supports the language included in this bill regarding the United Nations Population Fund (UNFPA), which will ensure that the Administration and Congress have additional information before the appropriate funding level for UNFPA

is determined. On May 12, 2002, a three-member team left for a two-week investigation of UNFPA activities in China. Upon their return, they will complete a report describing the UNFPA program in China, which the Administration will use in determining whether funding of UNFPA would be consistent with the long-standing Kemp-Kasten provisions.

Infringement on Principles in the President's Management Agenda

The foundation of the President's Management Agenda is the need to improve agency
management. The President is committed to empowering agency employees with the tools they need to serve the American people and has made every effort to eliminate obstacles to efficient management throughout the Executive Branch. The Administration objects to language included in the Committee version of the bill that would prevent the Department of Health and Human Services from organizing its public affairs and legislative affairs personnel in an efficient manner. Giving agencies the flexibility to manage themselves, and to manage human capital strategically are cornerstones of the President's Management Agenda and the House is urged to delete this restriction.

Constitutional Concerns

Several provisions in the Act, including provisions for the INS Entry Exit System or approval for Defense Emergency Response Fund, purport to require congressional committee approval before Executive Branch execution of aspects of the bill. The Administration will interpret such provisions to require notification only, since any other interpretation would contradict the Supreme Court ruling in INS v. Chadha.

The Executive Branch shall construe Title II of the bill, relating to the International Criminal Court, in a manner consistent with the President's constitutional powers as commander in chief and the Nation's representative in foreign affairs.

The Administration is committed to working with the Congress to enact an emergency supplemental appropriations bill as expeditiously as possible and to ensuring that these important programs receive the funding requested. The Administration looks forward to working with the House to address its concerns.

May 9, 2002
(House)

H.R. 4546 - Bob Stump National Defense Authorization Act for FY 2003
(Reps. Stump (R) AZ and Skelton (D) MO)

The Administration supports H.R. 4546, which funds many of the major requirements needed to keep America secure, to transform the U.S. defense capabilities, and to sustain the high readiness and morale of our armed forces. The Administration commends the House Armed Services Committee for developing comprehensive and balanced national security legislation that strongly supports the President's FY 2003 Budget request. Consistent with the President's commitment to increasing the quality of life for the military, the bill would, among other things, raise military pay by up to

8.5 percent for members in certain pay grades, and would reduce service members' average out-of-pocket housing expenses from 11.3 percent to 7.5 percent in FY 2003. The Administration strongly supports provisions to help our service members.

The Administration appreciates the Committee's support for a reliable, flexible, and robust strategic nuclear deterrent. While improving U.S.-Russian relations enables the United States to reduce the number of its operationally deployed strategic nuclear warheads, in an uncertain security environment we must anticipate the unexpected. Consequently, it is vital that we implement the strategic vision laid out in the Nuclear Posture Review (NPR) by building: (1) improved command, control, communications, intelligence, and planning capabilities; (2) strategic defense capabilities; (3) flexible strategic strike options with advanced conventional weapons and a responsive capability; and (4) a responsive infrastructure. The bill's commitment to the NPR marks an important contribution to U.S. national security.

The Administration commends the Committee for including four of the eight requested readiness and range preservation provisions, and would strongly oppose any effort to strike or weaken them. In particular, the provisions relating to the Endangered Species Act and the Migratory Bird Treaty Act are narrow in scope, address only military readiness activities (the training, testing, and operations that relate to combat), and serve to safeguard against litigation which would thwart the military's primary mission. By allowing the military to provide realistic training experiences at various military installations, these provisions are designed to save the lives of America's young men and women by preparing them and their equipment for combat on the first day of battle. These authorities in no way diminish the Defense Department's commitment to responsible environmental stewardship.

In addition, the Administration commends the committee for its support of the Administration's missile defense program, which remains one of our top priorities.

Although the Administration supports H.R. 4546, the bill includes a number of provisions that are of concern, including those discussed below. The Administration looks forward to working with Congress to address these concerns as H.R. 4546 moves through the legislative process.

Contingency War Reserve Funding

Consistent with the Administration's request, the House Budget Committee set aside an additional $10 billion in funding for war-related items. The House Armed Services Committee has reduced this amount to $6.3 billion by charging $3.7 billion of the Administration's base appropriations request against the reserve and substituting unrequested programs of the same amount into the base request. This diminishes the Departments ability to address future contingencies. Full funding of the Contingency War Reserve is important because war requirements are constantly changing and the military needs flexibility to address emerging needs as they arise. The Administration looks forward to working with Congress to authorize the full contingency reserve so that the DoD can address the ongoing costs associated with the war on terrorism.

Transformation

The President has made transformation of the military a top defense priority. The Department of Defense is conducting a comprehensive review of capabilities and requirements to determine which weapons system will meet the emerging threats to our national security in the 21st Century. In order to carry out this review, the Secretary is carefully considering the legacy systems and evaluating promising transformational technologies. This effort will be challenging and will require consultation and cooperation with the Congress.

Consistent with this policy, the Secretary of Defense has determined that the Crusader is no longer relevant to the type of warfare we are likely to face in the 21st century. The Administration will soon transmit to Congress a budget amendment to reallocate funds originally requested for the Crusader to alternative programs that are essential to the acceleration and improvement of the Army's deployment of transformational precision ground fire capabilities. The President's senior advisors would recommend that he veto any bill which included statutory restrictions limiting his ability to cancel this program.

End Strength Increases

The Administration opposes the increases to active military end strength contained in Section 402. The increases contained in H.R. 4546 are not necessary to sustain the war on terrorism and support other security requirements and would undermine efforts currently underway to establish the most effective utilization of military resources. Studies, to be completed by late summer, will inform decisions on how to match resources to the areas that require unique military skills and how to focus military manpower on the most critical missions, while reducing operations and personnel tempo.

Concurrent Receipt

The Administration opposes Section 641, which would phase in full concurrent receipt of military retired pay and veterans disability compensation for military retirees with disabilities rated at sixty percent or higher. This provision is contrary to the long-standing principle that no one should be able to receive concurrent retirement benefits and disability benefits based upon the same service. All Federal compensation systems aim for an equitable percentage of income replacement in the case of either work-related injury *or* retirement. The Administration's preliminary estimate is that Section 641 would increase mandatory outlays by $18.5 billion from 2003 to 2012. Additionally, this provision would contravene longstanding law that DOD pays the accrual costs for all military retirement benefits (for post-1984 military service) and transfer those costs to the Treasury Department. The Administration also opposes any future expansion of the provision of Section 641.

Acquisition Issues

At a time when DOD needs to focus on threats from terrorism and weapons of mass destruction, the Administration is concerned with the potential for the diversion of military focus to non-military matters. The Administration seeks to work with the Congress to limit the number of assignments or organizational embellishments that are not strongly focused on or do not simplify the primary defense mission. Programs such as the Medical Free Electron Laser are best left to government agencies that have primary focus on medical and other non-defense missions, and to the private

sector. Initiatives such as the "Technology Transition Initiative" (section 215), "Defense Acquisition Challenge Program" (section 216), and "Quick-Reaction Special Projects Acquisition Team" (section 809), while well intentioned, reduce rather than provide the managerial flexibility that the Department needs. The Administration seeks to give government managers more latitude to manage their primary mission through the Freedom to Manage Act.

Core Logistics

The Administration opposes Section 335, which would expand the definition of core logistics functions from maintenance and repair of weapons systems to all the logistics capabilities including acquisition logistics, supply management, systems engineering, maintenance, and modification management needed to sustain weapons systems. By doubling the number of personnel positions exempt from competition, this provision would severely limit the Department's ability to manage logistics and acquisition programs; to reduce life cycle costs; and to foster economy, efficiency, high performance, and continuous support for weapons systems. Furthermore, this provision would undermine one of the President's top management agenda goals to increase competitive sourcing.

Wireless Priority Access Service

The Administration opposes the reduction of $37 million for the Defense Information Systems Agency for Wireless Priority Access Service (PAS). This program is a key element in the Administration's Homeland Security improvement effort. It provides emergency first responders as well as Federal, State, and local officials priority access to cellular telecommunications in the event of an emergency. The program schedule is ambitious, but September 11th clearly demonstrated the need for this type of capability, and we should not delay implementation any longer than necessary. Currently, both the local and nationwide solution are on schedule and on budget. The National Communication System expects to have initial operating capability by the end of 2002 and full operating capability by the end of 2003.

Base Closure Process Changes

The Administration opposes any changes to the existing carefully-crafted and carefully-considered statute for base closures and realignments enacted only last year.

Ball or Roller Bearings

The Administration opposes Section 807, which expands the existing requirement to procure only domestic ball or roller bearings -- to cover additional devices including cam follower bearings and ball screws. This provision would restrict competition, thereby decreasing the Department's ability to obtain the best products at the best price. It would add administrative complexity by forcing the Department and its prime contractors to ascertain the place of origin of these parts and to ensure no foreign-made parts are included in items purchased. No known national security reason justifies the added costs and administrative burden this provision would entail.

Constitutional Concerns

H.R. 4546 contains a number of provisions that intrude on the President's authorities under the Constitution as Commander in Chief, in the conduct of foreign affairs, with respect to his responsibilities to supervise the Executive Branch, and in other areas. These provisions would be carried out in a manner consistent with the Constitution.

The legislation contains constitutionally flawed provisions that are inconsistent with the President's authority to supervise the unitary executive branch and to submit for the consideration of Congress such measures as he judges necessary and expedient (Secs. 144(c), 213, 404(d), 572(3), 1007(b)(8), 1022, 1102, 2814(d)(3), and 3152(b)(4)) and the President's authority as commander in chief of the armed forces and the sole representative of the Nation in foreign affairs (Sec. 1202). Moreover, it contains provisions (Secs. 211 and 1403(f)(4) and (5)) that purport to give the force of law to conference committee statements and committee reports, contrary to the bicameral adoption and presentment requirements of the Constitution for enactment of a law. Finally, it contains provisions (Secs. 215, 313, 1005(a), 3129(d), 3130(d), and 3144(a)(2)(B)) that purport to require the heads of departments to act through particular subordinates or to submit materials unreviewed to Congress, which is inconsistent with the effective exercise of the President's constitutional authority to supervise the unitary executive branch.

Pay-As-You-Go (PAYGO) Scoring

Any law that would reduce receipts or increase direct spending is subject to the PAYGO requirements of the Balanced Budget and Emergency Deficit Control Act (BEA) and could cause a sequester of mandatory programs in any fiscal year through 2006. The requirement to score PAYGO costs expires on September 30, 2002, and there are no discretionary caps beyond 2002. Preliminary OMB estimates indicate that the bill would increase spending by $6.1 billion through FY 2007. The Administration will work with Congress to ensure fiscal discipline consistent with the President's budget and a quick return to a balanced budget. The Administration also will work with Congress to ensure that any unintended sequester of spending does not occur.

HR3801 Education Sciences Reform Act of 2002 HTML or PDF (66k) 04/30/2002 House MISSING

September 3, 2002
(Senate)

S. 2452 –National Homeland Security and Combating Terrorism Act of 2002
(Sen. Lieberman (D) Connecticut and 5 cosponsors)

America must be protected from terrorist attack. This obligation is at once immediate and long-term. It will occupy future Presidents, future heads of agencies, and future Congresses. It is critical that the Congress swiftly establish a Department of Homeland Security that will provide the best protection for the American people.

The Administration applauds the speed with which the Senate has proceeded on legislation to establish the Department of Homeland Security and looks forward to working with the Congress to enact legislation that will make a significant and lasting contribution to the security of the American homeland.

Although the Administration believes that S. 2452 moves in the right direction by including many of the major structural elements of the President's proposal such as the Federal Emergency Management Agency, the U.S. Coast Guard, the Immigration and Naturalization Service, the U.S. Customs Service, and the Transportation Security Administration, there are numerous issues with the Senate bill that must be resolved before the bill is acceptable to the President.

Simply transferring existing entities into a single Department is insufficient; the agencies must be able to function more efficiently and effectively than under the existing structure. S. 2452 would create an inflexible and inefficient bureaucracy that could hinder rather than improve our ability to protect the Nation. The bill also includes several unacceptable limitations on existing presidential authorities and prerogatives, and contains a number of unwarranted extraneous provisions.

If S. 2452 were presented to the President in its current form, the President would veto the bill. The President will not sign the bill unless: (1) the new restrictions on the President's existing national security authorities are removed; (2) the intrusive new statutory White House office with a Senate-confirmed director is eliminated; and, (3) the Secretary of Homeland Security is provided with the real personnel, budgetary, and reorganization flexibility that is needed to manage the new Department effectively, integrate its constituent parts, and provide the best security for the American people. Specific areas of concern are detailed below.

No Reorganization Authority

The President believes that the United States must have an agile and responsive organization to meet the 21st century threat of terrorism. Through a variety of separate provisions, S. 2452 would prohibit any meaningful reorganization or consolidation of the entities or functions it would transfer to the new Department. It would preclude, for example, even the most basic consolidation of Federal inspectors at the border ports of entry. Section 191 of the proposed bill expressly prohibits any combination or reorganization of almost every entity being transferred into the new Department and effectively forbids reassignment or delegation of the functions performed by each of those entities. The bill would provide the Secretary of Homeland Security with far less statutory reorganization authority than Congress provided to the Secretary of Energy and the Secretary of Education when those departments were created. It is incongruous that a department responsible for reacting quickly and decisively against terrorists is given less rather than more reorganization authority than these departments.

No Transfer Authority

S. 2452 provides no transfer authority to the Secretary of Homeland Security. Under this bill's structure, if new intelligence were to reveal the need to enhance the protection of a particular kind of target or to stockpile a particular kind of medicine that was not already explicitly funded by a prior Act of Congress, then the Secretary would have to ask the President to submit a supplemental budget request to the Congress and then wait until Congress acts on the request. The long delays that frequently result from this process present grave risks because terrorist threats can pose immediate dangers, putting the lives of the American people at risk.

There is ample precedent for providing a Cabinet Secretary authority to transfer limited funds between appropriations accounts. Presently, such authority is available to numerous departments including the Department of Health and Human Services, the Department Agriculture, and the Department of Energy. These Departments are granted authority to transfer between 1% and 7% of appropriated funds between appropriations accounts with notification to the Appropriations Committees. S. 2452 does not even permit this limited amount of transfer authority to the new Department.

Moreover, S. 2452 does not authorize the transfer of money to the new Department during the transition period, and as a result to finance the new Department's start up and transition process would require a second Act of Congress. This is unacceptable because the Nation is under the continuing threat of a terrorist attack and cannot afford a delay of unknown duration in the establishment and operations of the new Department.

Lack of Personnel Management Flexibility

The new Department cannot function properly without motivated, talented employees. The President believes that the Department's personnel system must protect vital employee rights, including, but not limited to, collective bargaining, minority recruitment, guaranteed health insurance, appeals, veterans' preferences, and whistleblower protections. In addition, the Department's employees should continue to be covered by generally applicable employment laws such as the Civil Rights Act, the Fair Labor Standards Act, and the Social Security Act. At the same time, to provide the best security for America, the Secretary must also have flexibility to develop improved and sensible rules in areas relating to the hiring, compensation, assignment, and discipline of employees.

The legislation establishing the new Department must strike a careful balance between the flexibility needed to defend against a ruthless enemy and the fairness needed to ensure employee rights. S. 2452 fails to strike this balance. The current legislation compels the new Secretary to work with a rigid, statutorily-mandated personnel system that will hinder any effort to build a Department capable of responding to an adaptable terrorist enemy. The bill, in fact, would provide significantly less flexibility to the new Department of Homeland Security than that currently available to most other agencies in the Federal government. In addition, it would deny the Secretary of Homeland Security the ability to integrate the twenty-two different personnel systems potentially slated for the new Department. And it would severely limit managerial innovation aimed at

ensuring the Department's ability to hire and retain the highly qualified individuals necessary to secure the nation and hold them accountable for critical homeland security functions.

Creation of a Statutory Office Within the White House

S. 2452 would create an Office for Combating Terrorism within the Executive Office of the President, headed by a Senate-confirmed Director, and subject to over twenty pages of detailed statutory tasks. The Administration is strongly opposed to Title II of S. 2452.

While the Administration understands and respects the role of Congress, the Constitution requires that the President be permitted to exercise control over his own staff as it assists him in carrying out his constitutional responsibilities as the head of a coordinated branch of government. S. 2452 seeks to interject Congress into the daily operations of the Executive Office of the President by requiring the director and a senior advisor to the President, within the President's own executive office, to report directly to Congress and participate in agency budget processes in a statutorily mandated fashion that is unacceptable. The creation of this Office represents undue interference with Presidential prerogatives and management of his own staff and support structures. The legislation would also produce a confusing structure within the Executive Branch that would muddle authority for a vital mission that requires clear lines of command. In so doing, S. 2452 would weaken this and future Presidents' ability to secure the homeland.

Limiting Established Presidential National Security Authorities

Every President since Jimmy Carter has had the statutory authority to exempt from the operation of the Federal Labor Relations Management Act particular agencies involved in important intelligence, investigative, or national security work, when necessary to protect national security. S. 2452 unwisely chooses to sharply curtail this authority in an Act establishing a Department whose primary mission is to protect the homeland against terrorist attack. No sound reason exists to provide labor unions located in the new Department rights beyond those enjoyed by other Federal employee unions.

Separation of Immigration Enforcement from Border Security

The new Department should provide a genuinely seamless border security system to protect against terrorist infiltration, and provide fair, humane, and efficient treatment to those who enter our country. To achieve these two goals, immigration enforcement operations should be separated from immigration services, while ensuring that the two functions remain closely coordinated.

S. 2452 as currently drafted would essentially reestablish one of the seams in America's border security that the Department of Homeland Security was intended to correct. The roles of Customs, INS, and USDA at the border overlap significantly as all three agencies are responsible for ensuring that persons and cargo do not illegally enter the United States. The new Secretary should have the flexibility to establish "one face" at the border

to efficiently, effectively, and humanely process all people and cargo seeking entry into the country. S. 2452 would make this critical task virtually impossible by creating two separate directorates - and two separate Under Secretaries - within the Department of Homeland Security with responsibility for securing our borders. The bill would thus establish a "Border and Transportation Protection" directorate that specifically excludes the Border Patrol and immigration inspectors. The bill's proposed remedy for this fissure - requiring the Secretary to meet four times a year with his two Under Secretaries in a statutorily established "Border Coordination Working Group" - plainly is insufficient to accomplish the needed integration and epitomizes the type of unwieldy coordinating mechanisms the new Department is designed to eliminate.

Fragmented Administration of Immigration Law

S. 2452 fundamentally alters governmental authority and implementation of immigration policy. It would abolish the Executive Office for Immigration Review and create within the Department of Justice what amounts to an independent agency for administrative immigration courts. This provision would undermine the national executive's time-honored and vital role in exercising firm, uniform control over immigration policy and the execution of immigration law - and would do so at precisely the time when we can least afford to weaken control over our immigration system. Moreover, S. 2452's creation of this new agency will result in duplicative and potentially conflicting interpretations of the immigration laws given that the Secretary of Homeland Security and the new quasi-judicial agency within the Department of Justice will both be implementing the same laws. In short, this legislation presents serious risks of unintended consequences and will complicate the fair and efficient administration of U.S. immigration law.

Disconnected Analysis of Threats and Vulnerabilities

The Administration's review of the Federal government's homeland security efforts revealed a key need - the ability to map the nation's critical infrastructure vulnerabilities against analysis of terrorist threats. Threat analysis, vulnerability assessments, and risk assessments must occur simultaneously, as each logically informs the other. It is a serious mistake to construct bureaucratic walls between these linked analytic disciplines. S. 2452 would do so by creating three separate units with responsibilities in this area.

Under S. 2452, the Under Secretaries for Intelligence, Critical Infrastructure Protection, and Science and Technology (which would contain a separate Office of Risk Analysis and Assessment) would each have some responsibility for evaluating terrorist threat information, analyzing and assessing risks, and performing vulnerability assessments. This bureaucratic structure would hinder rather than benefit the unified analysis of terrorist threats and vulnerabilities that is fundamental to the new Department's mission. The Administration believes that these are critically interrelated functions and does not support the creation of separate "stovepipe" directorates for information analysis, critical infrastructure protection, and risk assessment. Also,
S. 2452's provisions for access to information are both overinclusive and underinclusive. The bill appears to mandate a flood of immaterial "raw data" going to the Department

while, at the same time, not explicitly providing that all vulnerabilities-related information go to the Secretary to support this key mission. Finally, S. 2452 does not allow the President sufficient flexibility to calibrate carefully the information flow to the Department to protect intelligence sources and methods.

Other Issues

In addition to these major problems with S. 2452, the bill also contains numerous other provisions that the Administration does not support, either because they represent unsound policy choices or because they are extraneous to the central purpose of the bill and should not be addressed through this legislation. These provisions include the first ever blanket expansion of Davis-Bacon wage guarantees to an entire department where instead existing law should control, failure to make the new Department the lead agency for bioterrorism preparedness and response, NSC membership for the Secretary, restrictions on organizational flexibility for the Coast Guard and Customs Service, limiting the number of Assistant Secretaries to seven, micromanagement of the Science and Technology Directorate, failure of Section 303(e) to recognize the requirement to protect confidential statistical information, and Amtrak funding.

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June 19, 2002
(Senate)

S. 2514 - National Defense Authorization Act for FY 2003
(Sen. Levin (D) Michigan)

The Administration commends the Senate Armed Services Committee for reporting a bill that strongly supports many of the requirements in the President's request. For example, the Administration appreciates the Committee's support for the President's request for $10 billion to be set aside to fund the war on terrorism during FY 2003, the pay increase and other benefits to support our service members, and important authorities, such as the permanent waiver authority relating to Cooperative Threat Reduction and Freedom Support Act nonproliferation programs.

Unfortunately, S. 2514, as reported, would reduce the FY 2003 funding request for missile defense by $814 million and impose burdensome statutory restrictions impairing the Department of Defense's (DoD) ability to manage the program effectively. If these missile defense provisions are included in the final enrolled bill, the President's senior advisors would recommend that he veto the bill.

The Administration's missile defense program is a carefully balanced effort to defend the American people, our deployed forces, and our friends and allies against a growing missile threat. The provisions of S. 2514 would undermine this critical defense effort by severely reducing the program's workforce; significantly impairing DoD's ability to effectively integrate components currently under development; delaying boost phase defense efforts; hindering early deployment of contingency

capabilities; undermining efforts to address countermeasures; and slowing key sensor programs.

S. 2514 also contains a number of provisions, including those discussed below, that are of particular concern to the Administration. The Administration looks forward to working with Congress to address these concerns as S. 2514 moves through the legislative process.

Crusader

The Administration understands the Senate will consider an amendment to the Committee bill that will reallocate funding to the Objective Force from the Crusader program. The Administration welcomes the Senate's support of the President's decision to terminate the Crusader in favor of more transformational efforts to improve the Army's indirect fire capabilities. However, we are concerned that the amendment would unduly constrain the President's flexibility to proceed in a timely way to reallocate funding to currently identified transformational programs and cover termination costs. Should the final bill presented to the President include language which limits the Administration's ability to proceed with termination of the program, the President's senior advisors would recommend that he veto the bill.

Concurrent Receipt

The Administration strongly opposes Section 641 of the current version of the bill, which would phase in full concurrent receipt of military retired pay and veterans disability compensation for military retirees with disabilities rated at sixty percent or higher. The Administration also believes that our current deficit projections necessitate strict adherence to fiscal discipline to ensure the quickest return to a balanced budget. The Administration is concerned that an amendment may be offered on the Senate floor that would expand this objectionable provision even further. Should the final version of the bill include either provision affecting concurrent receipt of retirement and disability benefits, the President's senior advisors would recommend that he veto the bill.

Section 641 as currently drafted is contrary to the long-standing principle that no one should be able to receive concurrent retirement benefits and disability benefits based upon the same service. All Federal compensation systems aim for an equitable percentage of income replacement in the case of either work-related injury or retirement. The Administration's preliminary estimate is that Section 641 would increase mandatory outlays by $18 billion from 2003 to 2012 and would also increase DoD discretionary costs for retirement accrual by $11 billion from FY 2004 to FY 2012, an impact that would necessarily require tradeoffs with war fighting capabilities. The Administration also strongly opposes any further expansion of Section 641 and understands that the amendment that may be offered would provide immediate full concurrent receipt. This expansion would have an estimated mandatory cost of $58 billion ($42 billion associated with the additional payment of retired pay, and $16 billion associated with payment of additional VA disability compensation under claims that would not otherwise be submitted) and DoD discretionary costs of $20 billion over 10 years.

Contracting for Services

The Administration opposes the $850 million reduction for improved management of service contracts. As directed by Congress, DoD is acting to improve its management of Services Contracting and rely to a greater extent on the use of Performance Based Services Contracting. Because these initiatives are in their early stages and the true savings that they may yield are not yet known, it is premature to make such significant reductions -- or to impose overly aggressive performance goals for performance-based purchasing as provided in section 811. If the aggressive savings projections do not materialize, the congressional reduction will be met by unwarranted reductions to high priority programs. At a minimum, the Department should be allowed to allocate this reduction itself so that it would fall where savings are most achievable.

Core Logistics

The Administration opposes Section 344, which would effectively double the number of logistics support functions that are exempt from competition and shorten the required time period, from four years to two years, for DoD to determine the core logistics capabilities for new weapons systems after initial operating capability. Increasing the number of exempt positions would severely limit DoD's ability to: (1) manage logistics and acquisition programs; (2) reduce life cycle costs; and (3) foster economy, efficiency, high performance, and continuous support for weapon systems. Shortening the transition period would significantly increase the likelihood of acquisition of inappropriate elements of support due to the changing and immature nature of programs during initial fielding. Section 344 also would undermine the Administration's efforts to increase competitive sourcing, a central component of the President's Management Agenda.

Disposition of Weapons-Usable Plutonium at the Savannah River Site

The Administration supports a legislative approach such as that set out in H.R. 4648 and S. 2453 for disposition of weapons-usable plutonium at the Savannah River site, and remains committed to disposing of this material by fabricating it into mixed-oxide fuel. The Administration considers section 3182 as more than adequate to achieve this objective, and commends the provisions' sponsors and the Committee for its efforts to craft a solution enabling timely action by the Department of Energy.

Defense Nuclear Waste Disposal

The Administration opposes section 3105, which would cut the Administration's funding request for the Nuclear Waste fund by $100 million (a 32 percent reduction below the Administration's $315 million request). This reduction would have a devastating impact on the Administration's goals of submitting a license application to the Nuclear Regulatory Commission in 2004 so that the repository can open in 2010. As a result this funding reduction will increase the overall cost of the repository program and the time that waste remains at individual utility storage sites around the country.

Pay-As-You-Go (PAYGO) Scoring

Any law that would reduce receipts or increase direct spending is subject to the PAYGO requirements of the Balanced Budget and Emergency Deficit Control Act and could cause a sequester of mandatory programs in any fiscal year through 2006. The

requirement to score PAYGO costs expires on September 30, 2002, and there are no discretionary caps beyond 2002. Preliminary OMB estimates indicate that the bill would increase spending by $5.7 billion through FY 2007. The Administration will work with Congress to ensure fiscal discipline consistent with the President's budget and a quick return to a balanced budget. The Administration also will work with Congress to ensure that any unintended sequester of spending does not occur.

June 4, 2002
(Senate)

S. 2551 - Making Supplemental Appropriations for Further Recovery From and Response to Terrorist Attacks on the United States, FY 2002
(Sen. Byrd (D) West Virginia)

This Statement of Administration Policy provides the Administration's views on the FY 2002 Emergency Supplemental Bill as reported by the Senate Appropriations Committee.

While the Senate Committee bill funds the Defense request at the President's level, it exceeds the President's request for other programs by more than $4 billion and funds numerous lower priority non-emergency programs as "emergency" needs. The Administration strongly opposes this bill and also would strongly oppose any amendment to further increase spending above the President's request. For instance, the recently enacted Farm Bill provides an historically high level of agriculture spending that can accommodate funding for emergencies, economic assistance, rural development, and other purposes. The Administration supported the Farm Bill to ensure farmers have the resources they need. The Farm Bill breaks the bad fiscal habit of needing to pass emergency agricultural spending bills including drought assistance and other supplemental payments that make it difficult for Congress to live within its budget leading to uncertainty for farmers, ranchers and their creditors. The Administration strongly opposes any new agriculture spending.

In addition, the bill severely constrains the President's ability to fund emergency homeland requirements by compelling him to release non-emergency money provided in the bill. If the supplemental appropriations bill were presented to the President in its current form, his senior advisers would recommend that he veto the bill.

Overall Funding Level

The proposals for emergency funding included in the President's request were crafted to provide critical resources to support the war on terrorism, secure the homeland, and help dislocated workers as the Nation continues to recover and rebuild following the September 11, 2001, terrorist attacks. It is important to note that Congress has already provided $40 billion since September 11th and only half of those funds have been spent. The President's FY 2002 emergency supplemental request was targeted at this year's immediate emergency needs and funding in addition to this request is not warranted at this time.

The Senate bill includes scores of unneeded items that total billions of dollars -- all classified as an "emergency." The bill adds unrequested funds for numerous

programs and projects throughout nearly all of the Federal agencies. While some of these items relate to homeland security, many do not, including: $11 million to the National Oceanic and Atmospheric Administration (NOAA) for economic assistance to New England fishermen and fishing communities; $26.8 million for the U.S. Geological Survey for urban mapping activities; $2 million for the Smithsonian to begin design of an alcohol storage facility for specimens away from the Mall (President's FY 2003 Budget already includes funding for this project in FY 2003); and, a directive for the Department of Energy to construct duplicate waste treatment plants in Ohio and Kentucky that will cost at least $100 million more than necessary. In addition, without regard to the quality of the awards, the bill requires $26 million more new Advanced Technology Program awards than the Administration recommends for 2002. These awards are not related to homeland security needs, may not meet the Federal Government's standard of peer review, and over their duration are likely to cost the government over $75 million.

While the Administration is pleased that the Senate Committee provided $1 billion of the $1.3 billion needed to finance the Pell grant shortfall, the Administration objects to the provision that designates these funds as an "emergency." The Administration urges the Senate to follow the House's lead and offset this funding. The Administration will continue to work with Congress to identify offsets necessary to finance this and any other non-emergency activities that have not been fully paid for in the bill.

The Administration believes the funding requested for assistance to Colombia is crucial to support the struggle against drugs and terrorism in that country. The reductions in funding and the restrictions on the requested expansion of counternarcotics authorities in Colombia will impede the Administration's prospects of defeating these twin threats.

Homeland Security Needs

While the Senate Committee bill fully funds the President's request for the Transportation Security Administration (TSA), the Senate version of the bill provides $2.6 billion more than the Administration requested for homeland security-related funding. This funding could not possibly be obligated in the remaining months of this fiscal year, and therefore is not an emergency.

The Senate bill provides $175 million in new, unrequested funding for the Agriculture Department for research, inspection, and monitoring activities related to bioterrorism. Significant resources have already been provided through the Emergency Response Fund (ERF) as well as in the FY 2003 President's Budget request. For example, funding provided for the construction and renovation of an Ames, Iowa facility is redundant because a total of $90 million has been provided for FY 2002 as part of the ERF and regular appropriations, so that additional funding is not needed in FY 2002 and FY 2003.

The Senate Committee also added $100 million for nuclear non-proliferation activities for the National Nuclear Security Agency (NNSA). It is not possible for NNSA to use these funds in the remaining four months of the current fiscal year. The Senate bill also provides $315 million in unrequested funds for Centers for Disease Control and Prevention (CDC) buildings and facilities, including $278 million for accelerated planning, design, and construction of new facilities, of which $28 million

is designated as bioterrorism-related. CDC will not be able to obligate this additional funding in FY 2002 since they may not even be able to obligate all of the $250 million they already received in FY 2002 for buildings and facilities. To date, CDC has obligated approximately $18 million (7 percent) of its FY 2002 funding. In addition, the appropriate analyses have not yet been completed for many of these activities making it unlikely that these funds would be spent until well into FY 2003.

The bill also includes $85 million for the Justice Department's COPS program to create a new grant program to finance communications equipment for local first responder agencies. Communications equipment is a major focus of the $3.5 billion first responder initiative the President has proposed for FEMA in his FY 2003 budget. The creation of a new grant program for these purposes in the Department of Justice runs counter to the Administration's proposal to consolidate First Responder programs in FEMA, and in any event is duplicative of efforts currently underway in the Office of Justice Programs and FEMA.

The Administration also objects to the proposed creation of a Principal Associate Deputy Attorney General for Counter-terrorism. While well-intentioned, the creation of this position would hinder, rather than enhance, the Administration's counter-terrorism efforts by creating another unnecessary layer of bureaucracy. In addition, this position would complicate recently announced restructuring plans by the Federal Bureau of Investigation to enhance counterterrorism efforts.

Restrictions on Presidential Authorities

The Senate version of the bill also unduly restricts the President's prerogatives in numerous areas. First, it requires the President to designate "all or none" of the non-defense funding contained in the bill as an emergency. The Budget Enforcement Act provides that the President retain control over the release of emergency funds added by the Congress to ensure that the funds respond to critical emergency needs. By contravening this long-established budget enforcement mechanism, the Senate would require the President to waste taxpayers' dollars on low-priority, non-emergency items in order to access vital high-priority homeland security and recovery funding.

The Senate version of the bill also requires payment of $34 million to the United Nations Population Fund (UNFPA) by July 10, 2002. On May 26, 2002, a three-member team returned from a two-week investigation of UNFPA activities in China, designed to provide information relevant to the determination whether UNFPA is in compliance with the Kemp-Kasten law barring support for any program involving coercion. The team is in the process of completing a report outlining their findings. Thus the Senate version would remove the flexibility provided to the President under P.L. 107-115, the FY 2002 Foreign Operations Appropriations Act, to weigh the report's findings in his consideration of funding levels. As has been U.S. policy and law since 1985, no support should be provided to UNFPA if that organization's programs in China support coercion.

In addition, the bill requires that the Director of Homeland Security be confirmed by the Senate, and makes the provision of $5 million in homeland security funding for the White House contingent upon that confirmation. The Administration recognizes Congress' need to receive information on homeland security, and the Administration continues to take all steps possible to ensure that this is the case while protecting

the confidentiality of Presidential counsel. The President has said that the initial structure for organizing and overseeing homeland security may evolve over time and the National Strategy Review now underway may recommend an arrangement different from the current one. The Administration does not want to prejudge the outcome of the review process and strongly urges the Senate to drop this objectionable provision.

The Administration appreciates the Committee's support for the $420 million in military assistance for Pakistan and Jordan. However, we urge the Senate to provide these funds to the Defense Department, as requested, to allow the Defense Department to compensate coalition partners for costs incurred directly related to support of U.S. military operations in the war on terror. The Administration does not believe the State Department should be held accountable for managing or disbursing funds directly related to military operations.

Assistance to Dislocated Workers

The Administration appreciates that the Committee provided $400 million of the President's $750 million request to help dislocated workers return to work. However, the Administration is concerned that the Committee provided insufficient funds for National Emergency Grants (NEGs); provided an unrequested $80 million for State Dislocated Worker formula grants; and did not provide adequate funds for community economic adjustment and a targeted, high-growth job training demonstration. The Administration looks forward to working with the Senate to ensure that adequate assistance is available to displaced workers, through National Emergency Grants, and distressed communities to address higher unemployment levels resulting from the recession.

New York

The Administration appreciates the Senate support for the request for additional disaster relief efforts for New York in response to the September 11th terrorist attacks. However, we are concerned about language that expands FEMA's Mortgage and Rental Assistance program and proposes to redirect $90 million from FEMA to the Centers for Disease Control. The Administration believes that the program expansion is unnecessary because FEMA has sufficient authority to address the needs of homeowners and renters and that the President's full $2.75 billion request for FEMA is needed.

Funding for Global HIV/AIDS

The Administration appreciates the intent of the Senate in recognizing this very important issue. The United States is committed to providing a total of $500 million to the Global Fund to fight AIDS, Tuberculosis and Malaria (Global Fund) and we look forward to continuing to work with the Congress on this issue.

The Administration is committed to working with the Congress to enact an emergency supplemental appropriations bill as expeditiously as possible. The Administration looks forward to working with the Senate to address its concerns.