



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

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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Robert Fairweather *Robert Fairweather*  
Acting Director

SUBJECT: Legislative Coordination and Clearance

This memorandum and the attachment provide an overview of the Executive branch's formal legislative coordination and clearance process. Please share this with policy officials in your agency.

Adherence to the long-standing requirements of the clearance process serves the needs of the President by ensuring that agency legislative proposals and recommendations, as well as testimony, are consistent with his policies and programs. We request that agency legislative proposals, letters, and testimony discussing or involving legislation be submitted to the Office of Management and Budget (OMB) as far in advance of a needed clearance as feasible.

OMB runs a clearance process on these items, which requires sufficient time to review and coordinate with all relevant agencies, and offices in the Executive Office of the President (EOP).

OMB Circular No. A-19 describes the requirements and procedures for legislative coordination and clearance. The attachment summarizes the major elements and the essential purposes of the clearance process.

We will be working with you to ensure the timely transmittal to Congress of legislative proposals necessary to support the President's legislative agenda and the Fiscal Year 2022 Budget. As decisions are made on these matters, we will be in contact about details related to the drafting, review, and clearance of these proposals.

In addition, OMB also manages the formulation of the President's Budget request to Congress. OMB Circular No. A-11, which provides comprehensive guidance on budget formulation and execution, describes the OMB review and approval process for materials supporting the President's Budget, including communications with Congress on supplemental requests.

Among other things, this includes the review and approval of agency Budget requests; related testimony and materials responding to legislative reporting requirements and inquiries; and press releases relating to the President's Budget.

Thank you for your cooperation.

Attachment

## THE LEGISLATIVE CLEARANCE FUNCTION

This Attachment summarizes the major elements of the legislative clearance function that OMB, working with other offices in the EOP and with the agencies, carries out on behalf of the President.

### **Background**

The President's legislative responsibilities are founded in his constitutional duties and powers. In executing his executive duties, the President generally outlines legislative recommendations through the Inaugural address, State of the Union address, Budget, Economic Report, and other communications. The compilation of these recommendations constitutes the President's Program. In supporting the President's Program, Executive branch agencies: (1) submit to the Congress legislative proposals needed to carry out the President's Program; (2) convey the Administration's views on legislation that the Congress has under consideration; and (3) recommend approval or disapproval of bills passed by the Congress.

OMB's legislative clearance function allows for all affected agencies to engage and reconcile differences on legislative proposals and communications that are cleared and transmitted to the Congress. The primary goals of the clearance process are to ensure that: (1) agencies' legislative communications with Congress are consistent with the President's policies and objectives; and (2) the Administration "speaks with one voice" regarding legislation. During clearance, OMB circulates items to affected agencies and EOP offices for their review, and ensures that all issues are resolved before providing final clearance to the transmitting agency.

### **Items that are Subject to the Clearance Process**

***Legislative Proposals*** - All draft legislation that Executive branch agencies wish to transmit to the Congress must be sent to OMB for clearance. OMB circulates the draft bills, along with any other supporting documents, to affected agencies and appropriate EOP offices.

Any agency reviewing a draft bill may respond that it: (1) supports or has no objection to the draft bill; or (2) proposes substantive or technical amendments, or even a complete substitute. OMB facilitates reconciliation of divergent views. Most disagreements are resolved through discussions at the staff level by OMB, other EOP offices, and the agencies.

After obtaining appropriate policy guidance on a draft bill and resolving all issues, OMB advises the proposing agency of clearance. OMB directs the originating agency to convey the draft bill, a transmittal letter, and a sectional analysis to the Congress. If the draft bill is contrary to or conflicts with the Administration's objectives, clearance is withheld and OMB advises the proposing agency that it may not transmit the bill.

***Testimony and Letters on Pending Legislation*** - Congressional committees often invite agency officials to testify on pending legislation on behalf of the Administration, or

request that agencies submit their views through a letter. Agencies may also choose to submit a letter on pending legislation without a congressional request. Such testimonies and letters must be submitted to OMB for clearance. OMB circulates legislative testimonies and letters to affected agencies for their review and resolves any issues, which includes ensuring that testimonies and letters comport with Administration policy and the President's Budget.

***Other Legislative Communications*** - All transmittals to Congress communicating legislative views or recommendations must be submitted to OMB for clearance. In addition to testimonies and letters, an agency may communicate in another form, such as submitting talking points to convey comments (often informally) on a bill under consideration by Congress, or responding to questions for the record following a congressional hearing. Also, agencies have numerous requirements to submit certain reports to Congress, and reports that contain any legislative views or recommendations must be submitted to OMB for clearance to ensure consistency with Administration policy and the President's Budget.

***Statements of Administration Policy (SAPs)*** – SAPs allow the Administration to state publicly its views on legislation for the record. Generally, the House releases a weekly schedule that provides notice of bills that will be considered the following week. The Senate schedule is ascertained informally. OMB coordinates with lead agencies and other EOP entities to determine if a SAP is desired on a given bill, and prepare the draft SAP if needed. Once drafted, SAPs are circulated to agencies for review and comment. Once cleared, a SAP is sent to the Congress by OMB's Legislative Affairs Office, and OMB publishes the SAP on its public website. Due to the timing between the notice and congressional action, SAPs are often cleared under tight time constraints. Agencies should anticipate hard deadlines on SAP review requests.

***Enrolled Bills*** - Once a bill passes the House and Senate it is then enrolled and sent to the President for action -- either approval or disapproval. With regard to the timing of Presidential action, the Constitution permits the President ten days from receipt of the enrolled bill to take action (including holidays but excluding Sundays). This ten-day clock begins on the day after the bill is received.

To assist the President in deciding his course of action on a bill, OMB requests that each stakeholder agency submit its recommendation for the President's action on the bill. OMB requests a formal views letter from the lead agency or agencies. This letter must be signed by the head of the agency or another Presidential appointee. All formal enrolled bill views letters must provide a specific recommendation as to whether the President should approve/sign or disapprove/veto the enrolled bill. The enrolled bill views letters should also contain: (1) an analysis of the significant features of the bill; (2) a comparison of the enrolled bill with Administration proposals, if any, on the same subject; and (3) identification of any factors that make it necessary or desirable for the President to act by a particular date. Agencies' enrolled bill views letters are privileged communication, and agencies should be guided accordingly in determining their content. OMB also requests views from other affected agencies, which may provide their recommendations informally. Such agencies may indicate approval, no objection, no comment, or defer to a lead agency informally.

OMB prepares a memorandum to the President for each enrolled bill which includes a summary of the bill, analysis of significant provisions in the bill, and agency and OMB recommendations for Presidential action on the bill. Any agency recommending disapproval of a bill or the issuance of a signing statement must submit for clearance a statement for the President, and early indication of this intention, including when a bill is circulated to agencies for views prior to floor consideration, is extremely helpful.