

Memoranda 01-12 -- Legislative Coordination and Clearance

February 15, 2001

M-01-12

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Mitchell E. Daniels, Jr.
Director

SUBJECT: Legislative Coordination and Clearance

This is to call to your attention the Executive branch's formal legislative coordination and clearance process. I would appreciate your bringing this memorandum and the attachment to the attention of incoming policy officers of the new Administration in your agency.

Adherence to the requirements of the clearance process will serve the needs of the President by assuring that agency legislative proposals and recommendations, as well as testimony, are consistent with his policies and programs. We request that agency legislative proposals and reports and testimony on pending legislation be submitted to the Office of Management and Budget (OMB) as far in advance as feasible. This will allow sufficient time for their review and coordination with other agencies prior to their being cleared by OMB. Circular A-19 asks agencies to make every effort to give OMB a minimum of five full working days for clearance of proposed reports or testimony. For its part, OMB will endeavor to ensure that all testimony is cleared within three working days of its submission for clearance.

OMB Circular No. A-19 presents in detail the requirements and procedures for legislative coordination and clearance by OMB. The attached paper 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 economic policy and the 2002 Budget. As decisions are made on these matters, we will be in touch about details related to the drafting, review, and clearance of the proposals.

Thank you for your cooperation.

Attachment

THE LEGISLATIVE CLEARANCE FUNCTION

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

Background

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

OMB Circular No. A-19 sets forth the basic guidelines and procedures for carrying out the function. These procedures have been substantially the same for over 60 years.

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

Basic Elements of Clearance Process

Purpose -- The clearance function:

- Permits the coordinated development, review, and approval of legislative proposals needed to carry out the President's legislative program.
- Helps the agencies develop draft bills that are consistent with and that carry out the President's policy objectives.
- Identifies for Congress those bills that are part of the President's program and the relationship of other bills to that program.

-- Assures that Congress receives coordinated and informative agency views on legislation which it has under consideration.

-- Assures that bills and position statements submitted to Congress by one agency properly take into account the interests and concerns of all affected agencies.

-- Provides a means whereby divergent agency views can be reconciled.

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

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

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

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

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

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

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

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

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

Volume of Activity -- During the 106th Congress, 9,158 bills and joint resolutions were introduced in the two Houses. The agencies submitted to OMB for clearance over 3,500 proposed reports and testimony on bills and 515 draft bills. The 106th Congress enacted 604 public and private laws.