



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

June 6, 2012  
(House)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 5855 — Department of Homeland Security Appropriations Act, 2013

(Rep. Rogers, R-KY)

The Administration strongly opposes House passage of H.R. 5855, making appropriations for the Department of Homeland Security for the fiscal year (FY) ending September 30, 2013, and for other purposes.

Last summer, the Congress and the President came to a bipartisan agreement to put the Nation on a sustainable fiscal course in enacting the Budget Control Act of 2011 (BCA). The BCA created a framework for more than \$2 trillion in deficit reduction and provided tight spending caps that would bring discretionary spending to a minimum level needed to preserve critical national priorities. Departing from the bipartisan agreement reached in the BCA and departing from these caps, the House of Representatives put forward a topline discretionary funding level for FY 2013 that, for example, would cost jobs and hurt average Americans, especially seniors, veterans, and children – as well as degrade many of the basic Government services on which the American people rely such as air traffic control and law enforcement. In addition, these cuts were made in the context of a budget that fails the test of balance, fairness, and shared responsibility by giving millionaires and billionaires a tax cut and paying for it through deep cuts, including to discretionary programs.

Taking this into account, passing H.R. 5855 at its current funding level would mean that when the Congress constructs other appropriations bills, it would necessitate significant and harmful cuts to critical national priorities such as education, research and development, job training, and health care. Furthermore, the bill undermines key investments in homeland security, including cuts to aviation security activities, reductions to critical grant programs, and elimination of key consolidation efforts to improve operations across Department of Homeland Security (DHS) enterprise operations. Investing in these areas is critical to the Nation's economic growth, security, and global competitiveness. The Administration also strongly objects to the inclusion of ideological and political provisions that are beyond the scope of funding legislation.

If the President were presented with H.R. 5855, his senior advisors would recommend that he veto the bill.

The Administration would like to take this opportunity to share additional views regarding the Committee's version of the bill.

*Transportation Security Administration.* The Administration objects to the bill's failure to reform the aviation passenger security fee as proposed in the FY 2013 Budget. The Administration is also concerned that funding for the Federal Air Marshals is cut by \$50 million below the FY 2013 Budget request, which will result in reduced coverage on high-risk flights.

*State and Local Grant Programs.* The Administration objects to the Committee's failure to include the proposed National Preparedness Grant Program (NPGP). NPGP is designed to develop, sustain, and leverage core capabilities across the United States in support of national

preparedness, prevention, and response. The Administration appreciates that the bill continues the flexibility provided to the Secretary of Homeland Security to award grants, as authorized in FY 2012.

*U.S. Immigration and Customs Enforcement (ICE).* The Administration opposes the Committee's decision to fund 1,200 unrequested detention beds while reducing funds requested for ICE's Alternatives to Detention program, which helps ensure that low-risk individuals in removal proceedings appear for hearings and comply with removal orders, all at a lower per-day cost than detention. The Administration objects to the funding provided above the FY 2013 Budget request for the 287(g) program, since Secure Communities is more consistent, efficient, and cost-effective in identifying and removing criminal and other priority aliens than the 287(g) program. The Administration also objects to a statutory funding floor for worksite enforcement, which would limit ICE's ability to address emerging criminal trends and prevent ICE from reallocating investigatory resources based on threat and risk.

*Departmental Management Initiatives.* The Administration opposes the lack of funding for two key management initiatives at DHS: continued investments for the St. Elizabeths Headquarters Consolidation project; and funding for DHS Data Center Consolidation. Both of these initiatives are necessary to strengthen DHS operations and increase efficiency in future years.

*Cybersecurity.* The Administration appreciates the support the bill provides for cybersecurity initiatives including the EINSTEIN program and a new initiative to continuously monitor Federal networks for malicious cyber activity.

*Incremental Funding.* The Administration opposes the use of incremental funding for the Coast Guard's National Security Cutter program. Although the Administration supports the underlying shipbuilding programs, the use of incremental funding rather than the full funding requested for FY 2013 undermines program stability and long-term cost discipline.

*Transfer of US-VISIT.* The Administration is concerned that the bill does not include the Administration's proposal to transfer portions of the US-VISIT program to U.S. Customs and Border Protection (CBP). Currently CBP operates numerous screening and targeting systems, and integrating US-VISIT activities within CBP would strengthen the Department's overall vetting capability while also realizing efficiencies and savings. The bill instead places US-VISIT within the National Protection and Programs Directorate without achieving operational efficiencies or cost savings, hampering the Department's efforts to improve program effectiveness.

*Disaster Relief Fund.* The Administration appreciates the funding level provided in the bill for the Disaster Relief Fund, including \$608 million for base program activity and \$5.5 billion provided as a disaster relief cap adjustment made pursuant to the BCA. This funding should be sufficient to support the Nation's response to emergencies and major disasters and to provide ongoing aid to disaster survivors.

*Immigrant Integration Grants.* The Administration appreciates the \$9.2 million in fee-based funding provided to administer the citizenship and immigrant integration grant program at U.S. Citizenship and Immigration Services, and encourages the Congress to fund these efforts through discretionary appropriations, as requested in the FY 2013 Budget.

*Civilian Pay Freeze.* The Administration objects to efforts to reduce pay for civilian personnel that would effectively extend the freeze on civilian pay through FY 2013. As the President

stated in his FY 2013 Budget, a permanent pay freeze is neither sustainable nor desirable. The Administration encourages the Congress to support the proposed 0.5 percent pay raise.

*Facilitating Trade and Travel.* The Administration underscores its concern that the bill does not include the Administration's proposal for additional authority for U.S. Customs and Border Protection (CBP) to enter into public-private partnerships, which would enable CBP to expand and expedite the throughput of travelers and cargo to and from the United States. The Administration proposed this authority to provide additional flexibility for augmenting safe and secure processing capacity to increase travel and trade to the United States.

### Riders

The Administration strongly opposes problematic policy and language riders that have no place in funding legislation, including, but not limited to, the following provisions in this bill:

*Abortion-Related Provisions.* Sections 566, 567, and 568 purport to limit the use of Federal funds for providing or facilitating abortion services. Longstanding Federal policy prohibits Federal funds from being used for these services, except in cases of rape, incest, or when the life of the woman would be endangered. Current DHS practice does not compel employees to perform or facilitate them, or permit Federal funds to be used to acquire these services except in cases where a pregnancy is the result of rape, incest, or threatens the life of the woman.

### Constitutional Concerns

The Administration strongly objects to and has constitutional concerns about the provisions of section 533 that limit the use of funds to transfer detainees and otherwise restrict detainee transfers. Although the Administration opposes the release of detainees within the United States, section 533 undermines our national security and raises significant separation of powers concerns. This provision unnecessarily constrains the Nation's counterterrorism efforts, particularly where Federal courts are the best – or even the only – option for incapacitating dangerous terrorists. For decades, presidents of both political parties have leveraged the flexibility and strength of this country's Federal courts to incapacitate dangerous terrorists and gather critical intelligence. The continued prosecution of terrorists in Federal court is an essential element of counterterrorism efforts – a powerful tool that must remain an available option. Such restrictions or interferences would, in certain circumstances, violate constitutional separation of powers principles.

Additionally, Section 512 purports to prevent funds from being used to exercise supervisory control over preparation of certain reports by the Privacy Officer of the Department of Homeland Security. This provision implicates separation of powers concerns by imposing a potentially material practical burden on the President's effective supervision and management of the Executive Branch. The Administration urges that it be deleted. Finally, Sections 547 and 550 both raise concerns under the Recommendations Clause, because they purport to constrain the substance of the President's or other executive officers' budget proposals. The Administration also urges that these provisions be deleted.

The Administration looks forward to working with the Congress as the FY 2013 appropriations process moves forward.

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