HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

March 5, 2010

The Honorable John M Spratt, Jr.
Chairman
Committee on the Budget
207 Cannon House Office Building
Washington, D.C. 20515

The Honorable Paul Ryan
Ranking Member
Committee on the Budget
B71 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Spratt and Ranking Member Ryan:

As is the custom of the Committee on Energy and Commerce, the Majority and the Minority transmit separately their Views and Estimates on the President's Budget. Attached are the Views and Estimates of the Minority for the President's Budget for fiscal year 2011. Should you have any questions about this submission, please direct them to the Committee's Minority General Counsel, Amanda Mertens Campbell, at extension 5-3641.

Sincerely,

Joe Barton

Joe Barton
Ranking Member

JB/res
Attachment

Views and Estimates on the President's Budget For Fiscal Year 2011

Submitted by:

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

March 5, 2010

Additional Views on the Fiscal Year 2011 Budget

Committee on Energy and Commerce

U.S. House of Representatives

Introduction

Clause 4(f) of Rule X of the Rules of the House of Representatives for the 111th Congress and section 301(d) of the Congressional Budget Act of 1974, as amended, require each standing committee of the House to submit to the Committee on the Budget (1) its views and estimates with respect to all matters to be set forth in the Concurrent Resolution on the Budget for the ensuing fiscal year (FY 2010) which are within its jurisdiction or functions, and (2) an estimate of the total amounts of new budget authority and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction which it intends to be effective during that fiscal year.

President Obama submitted to Congress his proposed budget for FY 2011 (the President's budget). The Committee on the Budget has requested that committees submit their Views and Estimates by March 5, 2010. The following represents the Committee on Energy and Commerce's Minority views and estimates on the President's budget and its requests for additional budget authority beyond the requests contained therein.

Department of Energy (DOE)

The proposed FY2011 DOE budget is $28.4 billion, $2 billion above its 2010 budget. This is over and above the $36.7 billion DOE received last year under the American Recovery and Reinvestment Act (Recovery Act).

Nuclear

DOE's budget request includes an additional $36 billion in loan guarantee authority for the nuclear power sector to help construct the first new nuclear plants in decades, which together with the existing $18.5 billion in loan guarantees for new nuclear facilities is anticipated to support 7-10 reactors. The budget also includes $495 million for research, development, and demonstration, and additional funds for investments in supportive infrastructure.

We applaud the Administration's statements in support of nuclear energy, but we have significant concerns about whether the Administration's proposals will translate into new nuclear power plants in the United States. We note that the loan guarantees are wholly conditional commitments and dependent on successful completion of the certification of proposed reactor designs by the Nuclear Regulatory Commission (NRC) and on issuance of combined construction and operating licenses. Further, while the Administration states that it supports a new generation of nuclear power plants, in the same budget, it proposes shutting down the statutorily mandated Yucca Mountain program, including withdrawal of the Yucca Mountain license application pending before the NRC. Similarly, the NRC's FY2011 budget includes a reduction of $13.7 million in anticipation of the shutdown of the Yucca Mountain program. The Administration states, without any technical or scientific justification, that developing a repository at Yucca Mountain is "not a workable option," and that it has instead established a "blue ribbon" commission to consider alternatives.

We do not support the proposed defunding and closure of the Yucca Mountain program. DOE's pending application, supported by numerous technical, safety, and environmental analyses, reflects over two decades of expert, scientific research by more than 2,000 scientists and engineers representing DOE and its contractors, the Naval Nuclear Propulsion Program, eight of the nation's premier national laboratories, the U.S. Geological Survey, and many colleges and universities. DOE alone has expended more than $13.5 billion on the civilian nuclear waste program since 1983, including funds to support the Yucca Mountain application, complete the NRC's complex pre-licensing proceeding, and comply with the NRC's strict licensing requirements. To prematurely withdraw the application and defund the program will deprive Congress and the American public of the important information developed by the NRC's expert determination on the application.

Moreover, we believe that the Administration's actions will set back the U.S. nuclear waste management and disposal program by decades, potentially undermine the expansion of nuclear power in the United States, waste billions of dollars in stranded costs and past taxpayer investment, increase additional taxpayer liabilities, and raise national security, environmental cleanup, and other issues.

Environmental Protection Agency (EPA)

The proposed FY2011 EPA budget is $10 billion, which does not include $7 billion in funds received under the Recovery Act. While the Administration claims that EPA's budget was "cut" by $300 million from last year's $10.3 billion budget, EPA's FY2009 budget was $7.1 billion and was vastly increased by the Administration last year. We therefore remain concerned about the burgeoning EPA budget and expanding bureaucracy, and the agency's promulgation of an unprecedented number of expensive new global warming and other economy-wide regulations. These new and proposed regulations will impose massive new costs on the economy, undermine economic growth, eliminate jobs in the U.S., and encourage relocation of companies overseas, particularly in the manufacturing and industrial sectors.

Cap-and-Trade Revenues

The budget request assumes the imposition of a cap-and-trade program that would reduce greenhouse gas emissions in the U.S. by more than 80% below 2005 levels by 2050, with a near-term target in the range of 17% by 2020. The budget assumes that such legislation would pass, notwithstanding current political realities, and that it would be budget neutral. We do not believe it is appropriate to assume enactment of cap-and-trade legislation that would impose hundreds of billions of dollars in new costs annually. Nor do we believe that such legislation would be budget neutral. The cap-and-trade program would significantly burden the economy, increase the costs of energy, and result in the transfer of investment overseas.

Climate Change Initiatives

EPA's FY2011 budget would include $20.8 million to implement new greenhouse gas reporting rules as well as $55.5 million for programs to limit greenhouse gas emissions, including $25 million in connection with state New Source Review and operating permits, $7.5 million to develop New Source Performance Standards to limit greenhouse gases from major stationary sources, $6 million to implement EPA pending greenhouse gas standards for mobile sources, and $5 million to support "green travel practices and increasing the use of web-based video conferencing" and funding to support the creation of multi-use conference rooms. As Congress is considering whether the regulation of greenhouse gas emissions is appropriate, we have concerns that EPA is effectively rushing to push the Administration's global warming initiatives at a time when job creation and the nation's economic recovery should be the nation's highest priorities.

Reinstatement of Superfund Tax

The President's budget would reinstate Superfund excise taxes in the amount of an estimated $1.2 billion in FY2011 and increasing in future years. We are concerned that these additional costs will be passed directly to businesses and ultimately consumers at a time when American businesses can ill afford increasing taxes.

Department of Health and Human Services (HHS)

The proposed FY2011 HHS budget is $911 billion, $51 billion above its FY2010 budget. Many of the proposed spending changes do not reflect the passage of health care legislation; for instance, the budget does not take into account the long-term costs of the massive Medicaid expansion in both the House and Senate health care bills, nor does it provide funds for HHS to administer the federal government takeover of health care embodied in both bills.

Medicare

HHS's FY2011 budget lacks information on policies to contain Medicare costs and address the long-term sustainability of the program. Last year, the President outlined ways to generate savings for the Medicare program, but this year there is only a placeholder for health reform with projected savings of $150 billion. The budget does not specify which Medicare cuts the Administration supports, nor does it make any proposals to contain Medicare spending or to address the impending Medicare Trust Fund insolvency. The President's FY2011 budget presumes a permanent physician-payment fix, but does not detail what policy would be implemented to control for overuse of Medicare services. The budget also directs funds to CMS to do comparative effectiveness research, but its authority to do such work is unclear. We oppose using such research to make payment decisions.

Finally, there are more than 11 million Medicare beneficiaries with Medicare Advantage, a quarter of all enrollees. The budget is silent as to whether the Administration supports cutting Medicare Advantage. The Senate and House health care bills both cut Medicare Advantage, which would result in millions of Medicare Advantage beneficiaries losing access to the benefits they currently receive.

Medicaid

The Medicaid program is a shared responsibility of federal and state governments to provide medical assistance to low-income individuals, including children, the aged, the disabled, and people who meet eligibility criteria under the former Aid to Families with Dependent Children (AFDC) program. Others receive Medicaid through waivers and amended state plans with somewhat higher income-eligibility limits. Under the Administration's budget, the federal share of Medicaid outlays would be $297 billion in 2011. This is a $21.5 billion (7.8%) increase over last year's spending and a $95.4 billion (47.4%) increase over 2008 spending. Including the state funding share, OMB projects the total cost of the Medicaid program to the American taxpayers will exceed $6 trillion over the next 10 years. That number does not include the 15-20 million additional enrollees that would be added by the mandated Medicaid expansion provisions in both the House and Senate-passed health care bills.

We are deeply concerned about the rapid, unsustainable escalation of Medicaid spending proposed in the Administration's budget, not only because of the blatant disregard for fiscal prudence manifested in this budget, but also because most states cannot sustain the mandated growth without significant reductions in spending on other programs, including education, public safety, and transportation programs.

Community Health Centers

The FY2011 budget includes $2.5 billion for health centers to expand service capacity, an increase of $290 million. We support funding that will provide for the expansion of health centers to underserved communities.

Food and Drug Administration (FDA)

The FDA has requested a 23% increase for FY2011 to $4.03 billion. The increase includes $146 million from general revenue and $601 million in industry user fees, $215 million of which are tobacco user fees. Of the $601 million in proposed user fee increases, $289 million would come from new user fees that would require a change in law. The budget calls for the creation of new food facility user fees designed to raise $220 million in the next fiscal year. The House-passed food safety legislation also contains a food facility user fee, but it is unclear whether the budget request reflects the House bill. The budget also calls for a generic drug user fee designed to raise $38 million in FY2011.

Commerce, Trade, and Consumer Protection

Consumer Product Safety Commission (CPSC)

While the President's budget submission provides no specific information on the requested budget for CPSC, the Commission's FY2011 Performance Budget Request document reports only a nominal increase of $400,000 in requested FY2011 funds over the FY2010 enacted level of $118.2 million. This apparent funding freeze is misleading for two primary reasons. First, the Commission budget highlights nearly $14 million allocated in the FY2010 budget for non-recurring costs and thus not needed in the FY2011 request. Second, the Commission currently has an extra $2 million because the Commission has been unable to grant any funds authorized by the Virginia Graeme Baker Pool and Spa Safety Act in FY2009. As we noted at the time of Committee consideration, no state is currently eligible for a grant under the Act's grant program. If no state changes its existing pool safety laws, the $2 million reserved for the grant program in FY2010 will also revert to the Commission's general enforcement fund at the beginning of FY2011, creating a $4 million fund for the Commission to use at its complete discretion. In other words, while the funding request appears static, there is a functional increase in funds of nearly $18 million.

Further, we note that the Commission's request of $118.6 million for FY2011 exceeds the FY2011 authorization permitted by the Consumer Product Safety Improvement Act of 2008 (CPSIA) by nearly $3 million. There is no explicit justification for this budget-blowing number in its request unless the Commission intends these additional funds to support its request for 46 new full-time employees (FTEs), bringing the total FTEs to 576, exceeding the CPSIA directive of 500 FTEs.

We continue to have significant concerns about the administrative burden placed on the Commission by CPSIA. Reports suggest it has resulted in abundant unintended consequences. The Commission notes this burden by requesting 15 new FTEs for CPSIA-related functions. The Commission also notes that the CPSIA is the reason the Commission will promulgate more rules between 2009 and 2011 than it has since 1990. We remain concerned that the burden of CPSIA, both on the Commission and the private sector, far outweighs any benefit, and we question whether there has been any measurable improvement in safety as a result of the draconian "safety" standards contained in CPSIA. For instance, we are unaware of any reports of death or serious injury from exposure to lead via a children's product since 2006. While we recognize the danger posed by the ingestion of something made of pure lead, we fear that some sources of real danger will not receive adequate attention because of the onerous administrative burdens imposed by CPSIA.

In addition to the drain on Commission resources, we note the equally dramatic impact on industry resources, from the large toy companies to the smallest operations. We highlight the Commission's goal of collecting and testing samples of children's products at ports. These products must be certified by a third-party entity, but the Commission states that "Certification of children's products does not guarantee product safety." If the Commission intends to review the certification at taxpayer expense, we question the wisdom of also imposing the costs of the initial certification, which is passed through to consumers.

We remain concerned about the enormous resources that the CPSIA-mandated database will require. This database will be the depository of tens of thousands of consumer complaints, but there is no plan for verifying those complaints. We are concerned about the millions of dollars allocated to this project, which will likely be overwhelming and of little safety value.

We applaud the Commission for recognizing the need to undertake a consideration of the technological feasibility of the 100ppm lead standard. The legislation was intended to require the Commission to understand such feasibility on its own, rather than be prompted by petition, as demonstrated by the statutory direction to the Commission to periodically review and revise downward the statutory lead limit as is technologically feasible.

Federal Trade Commission

While the President's budget submission gives no specific information on the Commission's budget request, the Commission's FY2011 Congressional Budget Justification reveals a requested budget increase of 9.3% over the FY2010 request. The Commission's $314 million request supports 1,207 FTEs, an increase of $22.3 million and 40 FTEs. The Commission's current staffing level of 1,167 FTEs already exceeds the FY2010 budget request of growing the Commission to 1,149 FTEs. We are concerned that given our nation's current fiscal condition, now is not the appropriate time to increase the size of a bureaucracy that has already grown at more than twice the rate as the previous decade.[1]

Finally, we note that the non-specific line-item of "Contract and other non-pay inflation" increased from the FY2010 budget request of $1.419 million to $3.144 million in FY2011. The Commission's budget provides no specific information on the purpose of these funds, and we believe that any line item that doubles in one year warrants scrutiny.

National Highway Traffic Safety Administration (NHTSA)

Under the President's budget submission for FY2011, NHTSA would receive only a $5 million increase in its overall authorization above the FY2010 enacted level. However, the President's budget proposal requests $50 million in new spending authority to combat distracted driving. The money would be used to encourage states to enact laws banning texting and other cellphone use while operating a vehicle. We are troubled that this grant program may amount to a federal giveaway to states that are already in the process of enacting distracted driving laws.

This funding is representative of the larger question of how NHTSA should best accomplish its mission of promoting vehicle safety. NHTSA has long been a federal gateway for statutorily required funding to the states through grant programs, the cost of which is disproportionate to the money NHTSA receives for its own federal operations and research. The current budget request, which seeks $250 million for NHTSA's operations and research, includes an overwhelming $621 million to fund for the state grant programs. We believe fiscal discipline includes limiting pass-through grant programs and recognizing that certain responsibilities belong to the states.

International Trade Administration (ITA)

---

[1] The Commission grew 18.5 percent between 2000 (985 FTE's) and 2010 (1167 FTE's) compared to a growth rate of 9.1 percent between 1990 (903 FTE's) and 2000.

The President's budget request includes $534 million funding for the ITA, an $88 million (20%) increase over the FY2010 for export promotion initiatives. While we wish to fulfill our trade obligations and ensure compliance with trade agreements enacted with our trade partners, making the federal government a full partner with industry to help promote exports carries with it an enormous potential for problems. Most importantly, we are concerned about the potential anticompetitive nature of the Administration picking industries that will receive limited taxpayer-funded support. Notwithstanding the state-supported trade activities of other nations, we are concerned about furthering government intervention into the marketplace by assuming the marketing and technical assistance arm of particular industries. These loans are essentially subsidies that should be considered in the context of our overall trade policy.

Economic Development Administration (EDA)

EDA proposes to shift a significant portion of its 2011 budget—nearly $90 million—away from the Public Works (PW) program and towards the Economic Adjustment Assistance (EAA) program. This shift is surprising in light of the President's recent commitment to infrastructure investment as a foundation for economic recovery. The PW program helps communities upgrade their physical infrastructure to attract new industry. Communities across America are ready to benefit from the long-term investments this program provides.

The great diversity of programs within the EAA program entails risk of misuse and waste of taxpayer resources. For example, the EDA allocated $782,960 in taxpayer funding to the Regents of the University of Michigan to help it help *other* organizations obtain more taxpayer funding. That EDA chose to highlight this action as a champion for the EAA program's merits is also a cause for concern.

How the EAA will use its increased funds is unclear. The Revolving Loan Fund (RLF) represents one of the most efficient tools the EAA program has at its disposal, in its ability to stimulate both economic development and employment. These lower interest loans often provide the extra financing needed to push a business venture into the realm of fiscal viability, and serve as a catalyst for private investment. Small businesses benefit especially from these loans. We believe that a significant portion of new EAA funds should find their way to the RLF program.

EDA's proposed salary allocations present another matter for concern. Between FY2009, and FY2010, EDA increased its personnel by 42 people. We assume that this increase occurred in response to the influx of new funding from the stimulus and the Supplemental Appropriations Act. With the EDA budget returning to pre-stimulus funding levels, we fail to see the need for 217 employees to manage essentially the same amount of resources that 175 employees could manage two years ago. This unsustainable staffing level is compounded by an unsustainable system of compensation. The FY2011 budget proposes to increase employee compensation by approximately $4.5 million, of which $2.9 million is borrowed from the FY2010 budget. Additionally, according to the proposed budget, the borrowed $2.9 million is used specifically to offset the $4 million annual salary costs of 10 new positions. That is nearly $400,000 per new position added to an agency that already appears overstaffed and whose average employee earns just under $100,000. As EDA budget levels return to pre-stimulus level, we believe budget management resources should also return to comparable levels.

Telecom

The President's FY2011 budget proposes spending another $418 million into the United States Department of Agriculture (USDA) rural broadband loans and grants even though the existing USDA programs have been criticized as largely ineffective. This money is over and above the $2.5 billion the Recovery Act allocated to the USDA and $4.7 billion allocated to the Commerce Department for broadband loans and grants last year. Less than $1 billion of that money has been awarded to date, let alone spent, and many industry observers fear that money will have little positive impact. The broadband mapping that would help guide where those funds would best be aimed has yet to be completed, and it already appears that a number of awards will go to overbuilds of existing infrastructure rather than new builds for Americans who are truly unserved. If that turns out to be the case, the program will merely succeed in creating government-subsidized competitors that cannibalize existing providers' customer bases in rural areas where there are already few subscribers from which to cover the high costs of deployment. This would jeopardize existing jobs and broadband deployment, the exact opposite of the stated goals.

Overall, the budget would provide the USDA with $690 million in direct telecommunications loans, $400 million in broadband loans, $18 million in broadband grants, and $30 million in distance learning and telemedicine grants. Many of these programs are duplicative of programs at the Federal Communications Commission and the National Telecommunications and Information Administration. In other contexts, the President's budget recommends eliminating duplicative USDA programs, and it is unclear why we should not be doing the same here. At a minimum, we should not be throwing more money into these programs until we use the existing funds and determine if the programs have been successful, if funding is still needed, and how the current programs can be made more effective.

Joe Barton

Joe Barton
Ranking Member
Committee on Energy and Commerce