

## MINORITY VIEWS

We are deeply grateful for the Subcommittee Chairman's laudable effort to make the best of a very difficult funding allocation and we appreciate the open and bipartisan manner in which he has approached the process this year. Even the best process and the best of intentions, however, cannot make up for the low allocation imposed on the Subcommittee, which was based, of course, on the low allocation imposed on the Appropriations Committee itself.

The annual Commerce, Justice, Science and Related Agencies (CJS) Appropriations Act funds a diverse set of departments and agencies with missions that are critical to the security and economic competitiveness of the nation. Unfortunately, the bill for FY 2012 approved by the Committee provides only \$50.2 billion, a cut of \$3.1 billion (5.8 percent) below FY 2011 and \$7.4 billion (12.9 percent) below the Administration's request. This allocation is even below the FY 2007 level, severely impacting many critical missions of CJS agencies.

Although the Chairman fully funded certain high priority programs, including the Federal Bureau of Investigation, the Office on Violence Against Women and the International Trade Administration, the Subcommittee allocation simply does not allow for adequate funding for the vast array of other important programs in the bill. The Subcommittee's allocation, in turn, was limited by the budget resolution passed by the House, which took a "cut first and ask questions later" approach, with virtually no analysis of how the overall cut would translate into reducing the capabilities of federal agencies and programs. The consequences will be obvious. The cuts will both impair the ability of CJS agencies to fulfill their missions and increase future costs to taxpayers by requiring those agencies to cancel certain contracts and postpone some essential activities.

### DEPARTMENT OF COMMERCE

Title I of the bill provides a total of \$7.2 billion for the Commerce Department, a decrease of \$419.7 million below the FY 2011 enacted level and \$1.6 billion below the Administration's request.

The International Trade Administration is funded at \$450.2 million, a cut of \$66.4 million below the request. This means that the vast majority of the Commerce Department's portion of the Administration's National Export Initiative—aimed at creating American jobs by boosting exports—will remain unfunded.

The Bureau of Industry and Security (BIS) receives \$100 million, a cut of \$11.1 million below the request. The BIS requested funding to hire enforcement agents and intelligence analysts to enhance the Bureau's ability to ensure that sensitive technology exports do not end up in the wrong hands, but this funding level will render BIS unable to hire additional personnel, thus putting our economy and security at further risk.

We are pleased that the bill provides up to \$5 million to the Economic Development Administration (EDA) for a new program to provide loan guarantees to small and medium-sized businesses to help develop innovative new products and new technologies. The bill also provides \$5 million for a new grant program to relocate jobs back to the United States that had previously been placed outside the United States. Funding is also maintained for the Trade Adjustment Assistance for Firms program. However, it is troubling that the bill cuts EDA as a whole by \$25.8 million (9 percent) below FY 2011 and \$67.3 million (20.7 percent) below the request. This is an unwise cut, in our judgment, particularly at a time when unemployment remains high. The EDA helps distressed communities create jobs, and the cut means EDA will have fewer resources to accomplish this critical task.

The bill slashes Census Bureau funding by \$170.3 million (16.6 percent) below the request. The cut would greatly harm the Bureau's ongoing work, including the 2012 Economic Census. This important economic data-gathering effort ensures the accuracy of Gross Domestic Product data and other key economic indicators that are vital to the decisions of both government policymakers and the private sector.

The budget cut would also harm the accuracy of the Census Bureau's American Community Survey (ACS), which is the key source of annual socio-economic and demographic data about the nation used by decisionmakers in the private sector and at all levels of government to make resource allocation decisions. In a letter expressing support for fully funding the Administration's request for ACS, the U.S. Chamber of Commerce noted:

ACS data points are critical for business decisionmaking and long range planning. The business community uses census information daily to drive sound investment decisions affecting the allocation of resources throughout the country.

Furthermore, the cut to the Census Bureau's budget will render it unable to begin early preparations for the 2020 Census that are needed to help minimize its eventual cost. As the American Statistical Association noted in a recent letter to the Appropriations Committee, "cuts to the Census Bureau's budget will cost taxpayers billions of dollars in the long run . . . furthermore, because census data guide more than half a trillion dollars in federal assistance, action that undermines such data could prevent this assistance from reaching places where it would be most helpful." The Census is an obligation that Congress has been given under the Constitution, and should be given a higher priority.

The bill cuts the National Institute of Standards and Technology (NIST) by \$50 million (6.7 percent) below FY 2011 and \$301 million (30 percent) below the request. While the bill maintains the Manufacturing Extension Partnership program at the FY 2011 level and funds the National Innovation Marketplace effort, other NIST programs are cut substantially. The bill provides no funding for the Technology Innovation Program, the Baldrige Performance Excellence Program, or the proposed new Advanced Manufacturing

Technology Consortia program. These programs invest in American innovation and competitiveness.

The bill also cuts funding for NIST Scientific and Technical Research and Services by \$162.5 million below the President's request. The reduction will render NIST unable to fund an array of planned new initiatives designed to bolster research in critical areas and to promote proven services to strengthen U.S. manufacturing in high-value-added product markets. Finally, NIST will be unable to fund its requested \$43.4 million initiative to strengthen the development and promulgation of effective cybersecurity standards.

We are also very concerned about the substantial cuts to NOAA programs. NOAA overall is funded in the bill at \$4.5 billion, which is \$56.9 million below FY 2011 and \$1 billion below the request. Within the NOAA Operations, Research, and Facilities account, we are pleased that the Committee bill fully funds the National Weather Service (NWS) at the President's requested level of \$908 million. However, the operations, research, and facilities budgets of the NOAA units outside of the NWS are cut by a total of \$443.2 million (19.2 percent) below the FY 2011 enacted level, and \$601.8 million (24.4 percent) below the President's request. These cuts will have significant consequences across a wide array of NOAA's environmental and research efforts.

The NOAA Procurement, Acquisition, and Construction account is increased by \$368.4 million (27.6 percent) above FY 2011. However, this amount is \$351.7 million (17.1 percent) below the level in the President's requests—and the requested level is necessary to maintain the pace of work on NOAA's satellite programs needed to minimize gaps in weather data coverage. While funding for the Joint Polar Satellite System has been increased substantially compared to FY 2011, it remains more than \$168 million below the level in the President's request. Polar-orbiting weather satellites help provide critical weather forecasting for the \$700 billion maritime commerce sector. In addition, they save approximately \$200 million each year for the aviation industry in ash forecasting alone, and these satellites provide drought forecasts worth billions of dollars per year to the farming, transportation, tourism, and energy sectors. We are concerned that the anticipated future weather data gap associated with NOAA's polar-orbiting weather satellite—already expected to be up to a year—will be further lengthened as a result of this cut to the President's budget request.

In addition, the bill cuts funding for NOAA's GOES-R geostationary weather satellite procurement by \$50 million below the request, which will likely result in launch delays to this satellite as well. Geostationary weather satellites help to accurately track life-threatening tornadoes, floods, and hurricanes, as well as solar activity that can impact satellite-based electronics, communications, and power industries. We cannot afford data gaps in these areas.

The Committee mark cuts funding for the Jason-3 satellite by \$33 million, or 62 percent, below the request. This satellite is designed to measure sea surface heights and help forecast severe weather activity over the ocean. The Committee mark provides no funding at all (\$47.3 million was requested) for the Deep Space Cli-

mate Observatory (DSCOVR) satellite, which is designed to predict solar and deep space activity that can negatively impact electrical power grids, communication satellites, and aviation instruments. Finally, the Committee mark provides no funding (\$11.3 million was requested) for the COSMIC-2 satellite, which provides measurement profiles of atmospheric temperature, humidity, and pressure that are fed into National Weather Service Numerical Weather Prediction models.

When we consider the human and economic impact of not having accurate weather data, combined with the inevitable added cost to the taxpayer of delaying these procurements, it becomes clear that these cuts below the President's request must be restored.

#### DEPARTMENT OF JUSTICE

Title II of the bill provides a total \$26.3 billion for the Department of Justice (DOJ), a cut of \$1.1 billion below the FY 2011 level and \$2.4 billion below the budget request. While some components of DOJ are level funded, this represents a cut in real terms to ongoing missions and activities, the costs of which continue to rise significantly from year-to-year.

Furthermore, DOJ's federal law enforcement and litigation components received substantial supplemental funding in recent years for additional agents, attorneys and other personnel needed to address challenges along the southwest border, to increase apprehensions of fugitive sex offenders, and for other critical federal law enforcement priorities. Except for the Federal Bureau of Investigation, the bill fails to provide the funding for the full integration of these additional personnel. By the end of FY 2012, if the funding levels in this bill were to be enacted, DOJ would lose an estimated 7,500 positions, a reduction of 6 percent, including law enforcement agents and attorneys.

The DOJ General Administration account is cut by \$46 million, or 39 percent, below the current level and \$62 million below the budget request; the cut will mean the loss of more than half of the current staff of the Department's leadership and policy offices, severely crippling the management of federal law enforcement.

The Justice Information Sharing Technology appropriation is cut by 18.5 percent below the request, which would disrupt critical IT services—including cyber security safeguards—at a time when cyber threats are becoming increasingly frequent and severe.

The bill provides no increase for the Office of Federal Detention Trustee (OFDT). This office pays the costs of detaining individuals awaiting federal prosecution or transfer to the Bureau of Prisons. The population of detainees has grown by 6 percent since FY 2010, which translates to an increase of 3,000 detainees daily. In addition, the daily cost to house detainees is expected to grow by 3 percent in FY 2011 and FY 2012. At the funding level in the bill, OFDT could only operate through early September 2012 and U.S. attorneys could potentially find their prosecution activities limited by the inability to detain some of the alleged criminals they wish to prosecute.

The U.S. Marshals Service (USMS) is also funded at the FY 2011 level, which is \$121 million below the minimum amount required to carry out its important missions in FY 2012. At this funding

level, USMS would have to furlough every employee for three weeks during the year, severely impacting fugitive apprehension, Adam Walsh Act enforcement, efforts to combat violent gang crime, and judicial protection. Such limits on the USMS would also exacerbate the funding pressures on OFDT, which relies on USMS for transporting individuals for court appearances and to federal prisons following sentencing. Detainees would be in custody for at least 5 additional days per sentenced-prisoner, resulting in additional costs of nearly \$23 million.

The Administrative Review and Appeals account, which primarily funds the Executive Office of Immigration Review, is also flat funded by the bill. Funding at this level would result in the loss of all of the new immigration judges hired over the last few years to help reduce the immigration case backlog, and would lead to a significant increase in the number of immigration matters pending adjudication, which currently stands at 275,000. As the immigration case backlog increases, the average number of days that Immigration and Customs Enforcement (ICE) detains individuals will rise, with a corresponding increase in ICE's detention costs. Meanwhile, the bill provides no funding to expand the Legal Orientation Program, which has been shown to speed the conclusion of immigration court proceedings for program participants by an average of 13 days, with a corresponding reduction in the cost of detention.

The bill cuts \$22.4 million, or 2.6 percent, from the General Legal Activities account, which supports the various DOJ legal divisions. These components require an \$88 million increase above the FY 2011 level, or \$110 million more than in the bill, to pay the cost of fully integrating the 300 attorneys added in 2010 and to continue the current pace of prosecutions and litigation in defense of the United States. The Tax Division would lose an estimated 56 attorneys; the Criminal Division would lose an estimated 74 positions; and the Civil Division could be forced to implement an 11-day, division-wide furlough, equivalent to the loss of 55 positions, which would impact major casework, including Deepwater Horizon and Hurricane Katrina litigation. This cut below the current services level would also impact the Treasury through reduced tax enforcement activities and reduced civil and criminal fines, as many more cases would have to be settled on terms less favorable to the Government. In addition, more judgments against, and penalties imposed on, the Government would result in increased payouts from the Judgment Fund.

The bill provides no increase for the Executive Office for United States Attorneys, which requires an additional \$62 million to cover the cost of fully integrating new positions added in 2009 and 2010 and to cover the inflationary costs of investigations and prosecutions across the country. This funding level would result in the loss of hundreds of positions, likely impacting Southwest border enforcement and Project Safe Childhood prosecutions, and would result in 11,000 (8 percent) fewer criminal cases and 3,000 fewer civil cases. By the end of FY 2012, position vacancies would increase to an estimated 1,000, and the result would be billions of dollars lost to the federal government through the reduced collection of civil and criminal debt.

The Committee report indicates that the bill increases funding for the Drug Enforcement Administration (DEA). However, this calculation includes DEA's fee revenue for diversion control activities, which is mandatory funding not appropriated in the bill. When counting only appropriated funding for DEA's non-diversion control activities, the bill cuts DEA's budget by \$42 million, or 2.1 percent, which would result in DEA losing at least 225 non-diversion positions, including 100 special agents. Even when including all of DEA's funding sources, both appropriated and fee revenue, the net new resources available to DEA in FY 2012 would be slightly below the FY 2011 level because the bill includes a rescission of \$30 million from DEA's prior year appropriations.

For the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the bill provides \$1.1 billion, \$57 million below the current services level. ATF would experience a net loss of approximately 400 positions at this funding level. In addition, the bill makes permanent a number of provisions related to the regulation of firearms, including the "Tiahrt" provision, which the bill has carried on an annual basis in prior years. No matter what one thinks of these provisions, the Appropriations Committee has no business in making permanent these controversial provisions that are properly under the jurisdiction of the authorizing committee.

Funding for the Bureau of Prisons (BOP) is at least \$188 million less than what BOP needs to cover the growth in costs for housing an expanding population of inmates. At the funding level provided in this bill, BOP would run out of money before the end of the fiscal year. Further, this base funding requirement does not include the extra \$63 million BOP needs to activate three newly-built prisons. While the Committee report establishes an expectation that BOP will prioritize the activation of new prisons, the reality is that these three prisons will sit largely idle at a cost of \$60 million just to maintain them.

While the appropriation for the Buildings and Facilities account is approximately at the FY 2011 level, the bill also rescinds \$110 million in prior year unobligated appropriations, \$75 million more than had been proposed by DOJ for FY 2012. DOJ had proposed using the remainder of these unobligated funds for the acquisition of a new, high security prison facility to help mitigate the current 52 percent overcrowding rate at BOP's high security facilities.

The burden of cuts in the bill falls disproportionately on the State and local grant programs at the Department of Justice, which are slashed by more than \$1 billion, or 38 percent compared to FY 2011. Cuts to these grants represent more than one third of the cuts in the entire bill, even though grants made up only 4.6 percent of the bill for FY 2011. Compared to FY 2010, these programs would be cut by nearly \$2 billion, or 53 percent. As a result, State, local and tribal governments would be starved for law enforcement and criminal justice resources.

Second Chance Act programs are funded at \$70 million, a 15 percent cut from the FY 2011 level and a 30 percent reduction from FY 2010. Youth-oriented programs in the bill are cut by \$199 million, or 55 percent, including the outright elimination of several programs.

The bill entirely eliminates funding for the Office of Community Oriented Policing Services (COPS), including all funding for the COPS hiring program, the Secure our Schools program and COPS training and technical assistance activities.

The collection and dissemination of criminal justice statistics and research on “what works” in criminal justice are arguably the most fundamental role for the federal government in helping state, local and tribal governments improve criminal justice systems. Yet, the bill cuts funding for the National Institute of Justice by 14 percent and cuts the Bureau of Justice Statistics by 22 percent. Further, not one of the new, evidenced-based grant programs proposed by the Office of Justice Programs is supported in the bill.

#### SCIENCE

Title III of the bill provides a total of \$23.6 billion for Science programs, a cut of \$1.7 billion below FY 2011 and \$2.8 billion below the requested amount.

The bill provides only \$3 million for the Office of Science and Technology Policy (OSTP) in the Executive Office of the President, a cut of \$3.6 million, or 55 percent. Report language directs OSTP to focus its remaining resources on the coordination and improvement of Science, Technology, Engineering, and Mathematics (STEM) education efforts across the government. OSTP plays an important role in improving STEM education and science and technology education is critical to this country’s ability to successfully compete globally. However, OSTP has a much broader role in coordinating science and technology policy across the executive branch, a role that would be severely undercut by the funding level in this bill. When we are asking agencies across the federal government to find efficiencies and eliminate duplication, funding for coordinating agencies such as OSTP should not be slashed.

The bill funds the National Science Foundation (NSF) at approximately the FY 2011 level. We should keep in mind, however, that the *Rising Above the Gathering Storm* report prescribed a doubling of NSF funding that would have required a 34 percent higher funding level for NSF Research and Related Activities in FY 2012 than the bill would provide, and 39 percent more funding for NSF overall. Level funding for NSF may be a good outcome in the context of this bill’s low funding allocation, but not in terms of what we should be investing in the basic research that is crucial to our economy. Compared to the amount requested by NSF for FY 2012, the funding level in the bill would lead to 2,200 fewer NSF grants and 26,000 fewer graduate students, undergraduate students and teachers supported.

The NSF Major Research Equipment and Facilities Construction account is funded at only 44 percent of the requested level. This dramatically lower funding level would result in the termination of approximately \$100 million in contracts for work in progress on major facilities for environmental and oceanographic research, and it means roughly 100 scientific and technical staff would be laid off. Supplier companies would face even greater constraints. The associated delays in construction would result in a \$100 million increase in the lifecycle costs of these projects, a prime example of

how the subcommittee's low funding allocation will translate into greater costs to the taxpayer down the road.

NSF's Education and Human Resources directorate, which plays a crucial role in the development of evidence-based STEM education curricula and the nurturing of the country's future STEM work force, is cut by \$27 million, which is \$77 million below the request.

The bill provides a total of \$16.8 billion for the National Aeronautics and Space Administration, a cut of \$1.7 billion below FY 2011 and \$1.9 billion below the request. While we are pleased that funding is provided for a comprehensive, independent assessment of NASA's strategic direction and agency management, many of the funding cuts to NASA are very problematic.

Within the NASA total, Science is cut by \$435.9 million (8.8 percent) below FY 2011. While the bill unfortunately eliminates funding for the James Webb Space Telescope, we are grateful for the chairman's commitment to consider funding this effort later in the process. NASA has begun to address management issues identified by the Independent Comprehensive Review Panel, and new leadership is overseeing this project. Nearly 75 percent of the spacecraft is already in fabrication; this is not the time to pull the plug on the project. The James Webb Space Telescope will be 100 times more powerful than the Hubble Space Telescope, and will greatly advance our scientific understanding of the universe, allowing us to see images of the first glows (or glimmers of light) after the Big Bang.

The NASA Exploration account is cut by \$303.3 million, or 7.7 percent, below the budget request. Within this overall account, we are disappointed that funding for Commercial Crew Development is cut by \$538 million, or 63 percent, below the level in the President's request. The requested level is necessary for ensuring that American-built and operated spacecraft will be able to transport astronauts to the International Space Station (ISS) as soon as possible, so that the United States can minimize the amount of time it needs to rely on Russian Soyuz spacecraft for crew transportation to the ISS. This funding cut is not a true savings; the United States will need to pay Russia at least \$63 million per seat, for a longer period of time, to fly to the Space Station on Soyuz spacecraft.

NASA Education is funded at \$137.9 million, a cut of \$7.6 million (5.3 percent) below FY 2011. We are pleased that the Committee mark maintains funding for the Minority University Research and Education Program at \$31.4 million, an increase of nearly \$800,000 above the FY 2010 level. However, we are disappointed that there are very significant cuts below FY 2010 in the NASA Space Grant program (-\$18.9 million, or 41.4 percent) and the Experimental Program to Stimulate Competitive Research (EPSCOR) program (-\$15.8 million, or 63 percent).

#### RELATED AGENCIES

Title IV provides a total of \$815 million for the bill's related agencies, a cut of \$103 million below FY 2011 and \$177 million below the request.

The establishment of justice is one of six primary purposes identified in the Preamble to the Constitution. The access to justice mission of the Legal Services Corporation (LSC), therefore, is among the most important of all the agencies funded through the bill. Therefore, we are deeply disturbed that the bill provides only \$300 million for LSC, a cut of \$104 million or 26 percent. FY 2012 funding would be equal to the LSC appropriation in FY 1999. A cut of this magnitude would result in 235,000 fewer eligible Americans having access to legal services. This cut falls predominately on some of the most vulnerable members of our society, with women and children representing three out of four users of legal services.

The bill provides \$366 million for the Equal Employment Opportunity Commission, \$19 million below the request. Funding at this level would require a furlough of the entire EEOC workforce for nearly four weeks, and would result in the loss of 20 trial attorneys, 30 to 40 fewer cases filed, and a 13 percent increase in the pending charge inventory.

#### COMMITTEE AMENDMENTS

During Committee consideration of the bill, two amendments were adopted that we find particularly troubling. First, the Committee adopted an amendment that would prevent the enforcement of a reporting requirement finalized by the Office of Management and Budget just days before Committee consideration of the bill. Under this new requirement, firearms dealers would report multiple sales of certain semi-automatic rifles—those greater than .22 caliber that also have the ability to accept a detachable magazine—to the same individual within a five-day period in the four South-west border states.

This reporting requirement is identical to one that has existed for decades for handguns and in no way does it hinder the ability of any law-abiding person to purchase as many rifles as they like. The very narrow expansion of the existing reporting requirement is an important tool for federal law enforcement in the effort to uncover illegal trafficking operations intended to supply semi-automatic weapons to the violent drug gangs across the border.

Another amendment adopted in Committee would also prohibit the Executive Branch from carrying out its legal responsibilities under federal law. The Department of Justice is responsible for enforcing the Gun Control Act of 1968, and under that law, firearms cannot be imported if they have characteristics that are not consistent with sporting purposes. In recent years, however, there has been a certain amount of confusion about how the Gun Control Act should be applied to shotguns with characteristics that are similar to military style or law enforcement style rifles and, in effect, this uncertainty has made shotgun importers very cautious about what they import.

In January of this year, ATF published a study which concluded that shotguns with certain characteristics—such as a grenade launcher mount, a flash suppressor, a magazine with more than five rounds or a drum magazine—are not designed for sporting purposes and should not be imported. This is consistent with the criteria used for rifles. The new rule, which has not yet gone into effect, will provide certainty to importers while it would have no im-

pact on the ability to manufacture, sell or distribute domestically-made shotguns.

This Committee simply has no business in tying the hands of law enforcement agencies as they attempt to carry out federal law. If Members want to change the laws of the land, there is a process for that, and it begins with the authorizing committees.

We want to reiterate our appreciation for the Subcommittee Chairman's adherence to regular order in drafting the bill and throughout the appropriations process. It is all the more unfortunate, therefore, that the process has been unable, so far, to overcome the limitations imposed by the bill's inadequate allocation. Funding levels throughout the bill would have significant deleterious consequences on the basic capabilities and missions of the bill's departments and agencies—missions that are fundamentally important to the security and economic competitiveness of the Nation.

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