Minority Views of Rep. Norm Dicks and Rep. Chaka Fattah

We want to begin by thanking Chairman Wolf for being a model chairman for this Subcommittee. He is a professional, he is principled, and he has once again involved us at every appropriate level of deliberation. We appreciate the Chairman's adherence to regular order in drafting the bill and throughout the committee process.

The fiscal year (FY) 2013 bill approved by the Committee provides net budget authority of $51.1 billion, a cut of $1.6 billion (3.1 percent) below FY 2012, when excluding FY 2012 emergency funding, and $731 million (1.4 percent) below the Administration's request.

Department of Commerce

For the Department of Commerce, the bill provides a total of $7.7 billion, an increase of $95.6 million above the FY 2011 enacted level and $280.4 million below the Administration's request.

The International Trade Administration (ITA) is funded at $458.3 million, an increase of $2.7 million above FY 12 but a cut of $58.7 million below the request, preventing ITA from funding, among other things, the vast majority of the additional Foreign Commercial Service Officers and locally engaged staff it had hoped to post in high-growth overseas markets in FY 2013. These staff help create jobs here at home by helping American businesses increase their exports. We should provide additional resources for ITA's efforts, which are important for our economy.

We are pleased that the bill provides up to $5 million to the Economic Development Administration (EDA) for a new program, first funded in last year's bill, 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 to continue a 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 programs overall by $38 million (17 percent) below FY 2012. This is an unwise cut, in our judgment, particularly at a time when unemployment remains high. EDA program grants have proven to be of great help in creating jobs in many of the most distressed communities across the country.

We will need to find more funding for the Census Bureau, which is cut by $91.7 million (9.5 percent) below the request. The largest part of this cut comes from the Bureau's 2020 Census research, preparation, and testing activities, which are cut by $51.6 million (39.3 percent) below the request. The 2020 Census is still several years away, but the effort to control its ultimate cost must begin immediately. As The Census Project, an informal network of census stakeholder organizations, has written, "To save potentially billions of dollars in future years, as Congress has directed, the Census Bureau must invest resources early in the decade to ensure cost-effective, successful implementation of census operations." In particular, the Bureau needs to expand its research and testing infrastructure to effectively test new enumeration methods, new processes to support field operations, more cost-effective information technology (IT) systems, and other efforts aimed at saving billions of dollars later in the decade. It is unwise to cut back on these efforts, as this will lead to far greater costs in the long term.

The bill makes significant and laudable investments in the National Institute of Standards and Technology, providing a total of $830.2 million, including $621.2 million for scientific and technical research and services, an increase of $54.2 million above FY 2012 though $26.8 million below the request. $128 million is provided for the Manufacturing Extension Partnership program, including $2.5 million to continue the work of the National Innovation Marketplace, to help expand our manufacturing base by connecting manufacturers, parts suppliers, purchasers and others. We are also pleased that the bill provides $21 million, as requested by the President, for a new Advanced Manufacturing Technology Consortia program, which will expand research and development in support of manufacturing. All of these programs are important investments in American innovation, competitiveness, and future job growth.

Within the National Oceanic and Atmospheric Administration (NOAA), we are concerned that some important NOAA programs have been cut, in part to pay for necessary new weather satellites. We strongly support the development and deployment of these satellites, along with the funding necessary to accomplish this work. At the same time, however, we feel it is important to find a way to pay for them without making such drastic reductions in other important NOAA programs. We are appreciative of the NOAA programs that have been protected in the committee mark. For example, the bill provides $65 million for the Pacific Coastal Salmon Recovery Fund, as well as an increase for the Mitchell Act program so that the hatcheries along the Columbia River system can be reformed to better operate toward the goal of recovery under the Endangered Species Act. Funding is continued for integrated ocean acidification research. In addition, the committee mark wisely rejects the Administration's proposed cuts in National Weather Service IT personnel, air quality forecasting, tsunami warning capability, and wind profile measurements.

However, it is clear that we need to invest more, especially in the NOAA Operations, Research, and Facilities account, which overall is cut by $54 million (1.8 percent), below 2012, and by $74 million (2.4 percent) below the request. The committee mark cuts funding for an array of programs across NOAA. In particular, the National Ocean Service is cut by $32.1 million (7 percent) below FY 2012 and by $48.2 million (10.1 percent) below FY 2011. The National Marine Fisheries Service overall is cut by $29.3 million (3.6 percent) below FY 2012 and by $69.8 million (8.3 percent) below FY 2011. NOAA Education is cut by $7.5 million (30 percent) below FY 12. These cuts will have significant consequences across a wide array of NOAA's important efforts aimed at strengthening our environment, economy, and public safety.

Department of Justice

For the Department of Justice (DOJ), the bill provides $27.42 billion, an increase of $11 million above the FY 2012 level, but $44.3 million below the request. When including the request by the Department to transfer $365 million in mandatory Crime Victims Fund receipts to a number of discretionary grant programs, the bill provides a total of $409.3 million less than proposed by the Department.

The bill provides funding at or near the requested level for the Department of Justice law enforcement agencies, including an increase above the request for the FBI to augment key capabilities related to cyber investigations, surveillance, and gang enforcement. Earlier this year, FBI Director Mueller warned that cyber attacks are becoming one of the biggest threats to America's safety, possibly surpassing the threat level posed by terrorism. We believe that the Director is absolutely correct, and we are pleased that the Chairman has provided $23 million above the request for this priority. This additional funding is desperately needed in order to protect our nation, and we thank Chairman Wolf for his leadership in this area.

Funding for the U.S. Marshals Service and the Drug Enforcement Administration is provided above the FY 2012 level, although below the requested amounts. This reduction below the request is mitigated, however, by the fact that the bill does not impose rescissions of prior year balances proposed by the Department of Justice.

Unfortunately, the bill provides no cost-of-living increases for the litigation divisions of the Department of Justice. The litigation offices, as a whole, received no funding increases in FY 2011 or FY 2012, and the funding level in the bill is $11.7 million less than the FY 2010 level and $40.2 million below the request.

Without annual funding increases to cover inflationary costs, the litigation divisions are able to do less each year. The Civil Division returns $7 to the Treasury for every $1 we appropriate, by defeating unmeritorious claims against the United States and through recovering monies lost through fraud, waste, and violations of consumer protection laws.

Under the House funding level, the Environment and Natural Resources Division (ENRD) could lose 12 attorney positions, and reduced resources could impact the ability of ENRD to vigorously pursue litigation against parties potentially responsible for the Deepwater Horizon oil spill.

The Tax Division could lose up to 56 attorneys (14 percent), requiring the Division to decline approximately 2,000 cases and preventing the Division from pursuing affirmative litigation involving collections and bankruptcy cases. On average over the last three fiscal years, the Tax Division has annually collected $335 million in outstanding taxes, interest, and penalties through affirmative litigation.

After a significant effort in FY 2010 to restore its base enforcement capacity, the Civil Rights Division has been hit particularly hard over the past few years, losing all of the ground it gained in FY 2010 to restore its capacity to protect civil rights and voting rights, enforce laws against hate crimes and human trafficking, and engage in other efforts to protect vulnerable individuals. Flat funding for the litigation offices in FY 2013 would cause the Civil Rights Division to fall even further behind.

The bill also fails to provide the proposed program increases for financial and mortgage fraud enforcement by the litigation divisions. It provides only a portion of the increase proposed for the FBI for financial and mortgage fraud enforcement, and potentially makes available only a small portion of the funds proposed for the U.S. Attorneys for this purpose. We were pleased to hear Chairman Wolf state, during Committee consideration of the bill, that he is open to considering additional funding for financial and mortgage fraud enforcement at the FBI as we move further through the process. We believe the final allocation available to the subcommittee will be at or near the Senate level, and we hope the majority will also work with us to provide the requested financial and mortgage fraud enforcement funding for the litigation divisions and the U.S. Attorneys in the final bill.

The bill provides $6.82 billion for the salaries and expenses of the Federal Bureau of Prisons (BOP), an increase of $268.9 million, as requested. Because the request assumed the enactment of legislation to increase "good time" credit that inmates can earn, however, we may need to consider additional funding for BOP as we continue through the process to ensure that it has sufficient resources to maintain a safe and secure environment for Federal inmates during FY 2013.

The cost of BOP operations has grown 41.2 percent since FY 2006, and now represents 25 percent of DOJ's entire budget. The BOP inmate population is 38 percent above the rated capacity of BOP facilities, and BOP plans to build several additional prisons by 2018 to keep up with its inmate population growth. We would need to appropriate billions of additional dollars in the next few years, however, to keep that construction schedule on track.

While it was probably unrealistic of DOJ to assume the enactment of "good time" credit legislation in the development of its budget request, there is no doubt that we are in desperate need of reforms in our criminal justice system, similar to the "Justice Reinvestment" efforts that many states have successfully carried out, including Texas, Kansas, Michigan and many others. The House must be a full and engaged partner in this effort. Otherwise, we will continue to experience annual growth in our Federal inmate population and continued growth in the cost of incarcerating those inmates.

The bill provides a small increase for Office on Violence Against Women grant programs, as well as a small increase for Crime Victims Fund programs. Many important grant programs are protected through level funding or healthy increases, including the Byrne-JAG formula grant program, the Victims of Trafficking program, the Youth Mentoring program, and the National Instant Background Check System grant program.

However, State and Local grant programs at DOJ overall are cut by $378 million, or 17 percent, compared to FY 2012, even as state and local budgets continue to recover from historic losses in revenue. This represents a 50 percent cut to the grant programs just since FY 2010, and more than a 60 percent cut in these programs since FY 2001.

Several important grant programs are eliminated entirely, including cutting edge, evidence-based programs like the Byrne Criminal Justice Innovation Program, the Children Exposed to Violence Initiative, the Community-Based Violence Prevention program, and the State and Local Help Desk and Diagnostic Center. Juvenile Justice programs overall are hit particularly hard, including the elimination of the Juvenile Accountability Block Grant program and the Local Delinquency Prevention Incentive Grant program. The COPS Hiring program is funded at only $40 million, a cut of $126 million (76 percent) from the FY 2012 level. The final FY 2013 CJS Act must invest more in these State and local grant programs.

Science

The Committee bill provides $24.9 billion for Title III science agencies, an increase of $74.6 million above FY 2012, but $178.2 million below the request.

The bill fully funds the Office of Science and Technology Policy, which plays a critical oversight and coordination function for science and technology activities across the executive branch, including a new initiative begun at the request of this subcommittee to better coordinate and strengthen neuroscience research. We are at the cusp of significant breakthroughs related to the treatment of brain injuries, cognitive developmental disorders, and neurodegenerative diseases like Parkinson's and Alzheimer's that will have tremendous implications for the mental health of the American people and the cost of healthcare. The National Science and Technology Council, which is coordinated through OSTP, is in the process of establishing a Neuroscience Working Group that we hope will lead to larger investments and better interagency coordination related to neuroscience research and technologies.

The bill provides a total of $17.6 billion for the National Aeronautics and Space Administration (NASA), $137.6 million below the request, and $226.2 million below FY 2012. However, the bill provides strong funding levels for many important NASA programs.

We are pleased that the James Webb Space Telescope is funded at the President's request of $628 million. This telescope, scheduled to be launched in 2018, 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.

NASA Space Technology is funded at $632.5 million, an increase of $57.5 million above FY 2012 though $66.5 million below the request. The activities funded in this account are critically important to the future of space travel, and will enable us to solve the technological challenges associated with traveling into deep space.

NASA Commercial Crew Development is funded at $500 million, an increase of $94 million above FY 2012 though $330 million below the request. A strong funding level for this program is important to ensure that American-built and operated spacecraft will be able to transport astronauts to the International Space Station as soon as possible. Until then, the United States will need to pay Russia at least $63 million per seat for the use of Soyuz spacecraft for this purpose. We strongly believe that it is important to ensure competition among multiple American companies for these transportation services, which will help ensure safe designs, affordability and sustainability.

In the area of NASA Education, we are pleased that the committee mark maintains funding for the Minority University Research and Education program at the current level of $30 million. However, we are disappointed that NASA Education overall is cut by $38 million (28 percent) below the current level, including a 40 percent cut to the Space Grant program and a 51 percent cut to the Experimental Program to Stimulate Competitive Research (EPSCOR) program. NASA's education efforts help inspire students to pursue future careers in science, technology, engineering, and mathematics.

The bill provides a healthy increase of $299.4 million (4.3 percent) for the National Science Foundation, although still $41 million below the request. 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 44 percent higher funding level for NSF Research and Related Activities in FY 2013 than the bill actually provides and 50 percent more funding for NSF overall. Chairman Wolf is to be commended for making NSF funding a priority in the bill, but we believe we should be making much more of an investment in NSF than the allocation allows.

Related Agencies

Title IV of the Committee bill provides $846.2 million for the related agencies under the jurisdiction of the CJS Subcommittee, a cut of $10.4 million below the FY 2012 level and $83 million below the amounts requested.

Like last year, the Legal Services Corporation takes a disproportionate hit to its funding, with a cut of $20 million, or nearly 6 percent, when it should be getting an increase. This cut would come on top of the $56 million cut to LSC in FY 2012. With some 60 million impoverished Americans eligible for legal aid services, the recession has drastically increased the need for legal aid for those who cannot afford it.

At the funding level in the House Committee bill, local legal services programs would be forced to lay off of at least 110 staff attorneys, approximately 24 offices would be forced to close, primarily in rural areas, and access to an attorney would be significantly reduced for Americans living outside of major cities. Overall, an estimated 55,000 fewer impoverished Americans would be served nationwide, and 22,000 fewer cases would be closed. This includes returning veterans seeking benefits, elderly victims of foreclosure, and women seeking safety for themselves and their children from domestic violence. There would be a disproportionately large impact on those programs that currently rely most heavily on LSC grants, including those in Alabama, Mississippi, South Dakota, Wyoming, Connecticut, Massachusetts and Nevada.

This additional cut would come at a time when the still-recovering economy has translated into declining funding from non-LSC sources, reduced by $12 million in the last year alone. LSC, and the legal aid programs it supports, helps to ensure that access to justice is not limited to only those who can afford an attorney. Both the President and the Senate Committee recognize the need for additional funding by recommending $402 million for the LSC. We are hopeful that we can reach an agreement at the end of this process that allows for this level of funding.

The bill provides $366.6 million for the Equal Employment Opportunity Commission (EEOC), an increase of $6.7 million above the FY 2012 level but $7.1 million below the amount requested.

Allocation

It is unfortunate that the process has been unable, so far, to overcome the limitations imposed by the Ryan budget. We are extremely disappointed that House Republicans walked away from the bipartisan agreement to establish $1.047 trillion as the Committee's allocation. A majority of their conference voted for the Budget Control Act agreement less than nine months ago. By reneging on the agreement, House Republicans put themselves at odds with House Democrats, the White House, Senate Democrats, and Senate Republicans. Senate Minority Leader McConnell recently voted for allocations at $1.047 and Ranking Member Cochran stated that it's appropriate "for the Committee to proceed on the basis of the discretionary caps enacted into law." House Republicans have introduced uncertainty about the discretionary allocation, and about whether the House majority will threaten to shut down the government. This uncertainty will slow down the appropriations process, and the austere House allocation, if it stands, will stall economic growth and impede job creation.

While the level of funding in the FY 2013 Commerce, Justice, Science and Related Agencies (CJS) Appropriations bill may not be as low as a strict proportional reduction based on the Ryan budget, and it is certainly better than what the subcommittee had to work with at the beginning of the FY 2012 process, it is nevertheless inadequate to meet the needs of many programs and activities in the bill.

In comparison, the allocation for the Senate CJS bill is $731 million higher than the House allocation. It is no coincidence, then, that the Senate Appropriations Committee approved its CJS bill on April 19, 2012, with significant bipartisan support. The House bill, on the other hand, contains funding levels in several areas that are difficult for Democrats to support.

Committee Amendments

Although the Chairman's mark was free of any new controversial riders, three amendments were adopted during Committee consideration of the bill that we find troubling. First, the Committee adopted an amendment that would prevent the enforcement of an existing requirement that Federal firearms licensees (FFLs) in four southwest Border States report to the National Tracing Center on the sale of certain kinds of rifles favored by the Mexican drug cartels. This reporting requirement is narrow and targeted, applying only to the four border states (Texas, Arizona, New Mexico and California), and only when a dealer sells two or more qualifying long guns to a single individual within five business days. Qualifying guns are rifles that (1) are semi-automatic; (2) are greater than .22 caliber; and (3) can hold a detachable magazine. It does not apply to shotguns or the vast majority of rifles regularly used for hunting or sporting purposes.

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 desire. It is not an undue burden on FFLs, with the time to complete a multiple sales form estimated at 12 minutes and an estimated annual cost in employee time of only $16.

During the first six months it has been in effect, this very limited reporting requirement has already proven to be 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. According to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), these multiple sales reports have led to the recommendation of 100 defendants for prosecution, including both alleged straw purchasers and others further up the firearms trafficking chain. Also according to ATF, the reporting requirement is forcing firearms traffickers to change tactics, making straw purchases more difficult and serving as a deterrent for many people who might have engaged in straw purchasing in the past.

This is not about gun control or compiling a registry of long gun owners. Information that does not become part of a trafficking investigation is purged from ATF records within two years. This is a law enforcement response to the evidence from successful tracings of weapons recovered in Mexico. Recent tracings show that a large number of these weapons were first sold by licensed gun dealers in California, Arizona, New Mexico, or Texas.

A U.S. District Judge ruled in January that this reporting requirement is a reasonable law enforcement tactic. Given that an appeal of that decision is likely, we should let the courts resolve the legal question. This Committee simply has no business in tying the hands of law enforcement agencies as they attempt to carry out Federal law.

A second amendment was adopted that would prohibit the use of funds to implement, administer, or enforce final regulations on "Disparate Impact and Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act," published by the Equal Employment Opportunity Commission (EEOC) in the federal Register on March 30, 2012. The EEOC regulation this amendment would negate is a response to a Supreme Court ruling against an earlier, stricter EEOC standard. The regulation requires that business be prepared to show that their practices are based on a reasonable factor other than age, which means that they are reasonably designed and administered to achieve a legitimate business purpose, while taking into account potential harm to older workers.

A third adopted amendment would prohibit the use of funds to implement an existing regulatory requirement for public entities, places of public accommodation, and commercial facilities to provide a permanent means of accessible entry to pools and spas under titles II and III of the Americans with Disabilities Act, even when it is readily achievable to do so.

Disagreements about the appropriateness of agency regulations are natural and understandable. It is problematic, however, when the appropriations process is used to categorically circumvent the statute-based agency rulemaking process.

We want to reiterate our appreciation for the Subcommittee Chairman's adherence to regular order in drafting the bill and taking it through the full Committee. We look forward to continuing to work cooperatively with him and our Committee colleagues to improve the CJS bill as we continue through the appropriations process.

Norm Dicks

Chaka Fattah