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MEETING WITH JIM LYNN
FRIEDERSDORF ET AL Rm 252 EOB
THURSDAY, JULY 17, 1975
2:30 p.m.
Lynn's Office



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

June 26, 1975

INFORMATION

MEMORANDUM FOR: THE PRESIDENT
FROM: JAMES T. LYNN
SUBJECT: CONGRESSIONAL THREAT TO CONCEPT
OF PRESIDENT'S BUDGET

The Congressional Budget and Impoundment Control Act of 1974 made significant changes in the system of Presidential control over budget execution (i.e., "impoundments"). Although the Act also changed the way the Congress acts on the President's Budget, it did not change the basic concept that the annual budget represents the President's proposals. This "Executive Budget" concept has existed since the passage of the first Budget and Accounting Act in 1921.

However, there has been a growing trend in the Congress toward requiring concurrent agency submission of annual budget requests directly to the Congress at the same time the requests are submitted to OMB. This trend represents a threat to the concept of an Executive Budget as we have known it, since it establishes a direct relationship between the agencies and the Congress that could interfere with the budget decision-making process within the Executive Branch.

Attached at Tab A is a summary of major Congressional action in this area, beginning with the legislation creating the Consumer Product Safety Commission in 1972 and continuing through the Trade Act in January 1975. The latter Act goes beyond provisions for concurrent submission by requiring the President to submit budget proposals of the International Trade Commission without revision. (This reflects the ultimate danger in submitting unreviewed agency requests to Congress--it may lead to making the agency requests "untouchable" by the President.)

Congressional proposals for concurrent budget submissions have been considered for the last several decades, but until recently met with no success. Executive Branch opposition to these proposals has been consistent. A synopsis of the long-standing

Executive Branch position is set forth at Tab B, based on the statutory and administrative considerations that must be taken into account.

We may be faced with Congressional forays on this matter several times during the 94th Congress, particularly as it concerns the independent regulatory commissions. Enactment of such provisions for a significant portion of the budget would clearly undermine the President's authority to direct the activities of the Executive Branch. For this reason and the reasons set forth at Tab B, I will recommend veto of any bill -- although the legislation may be otherwise desirable-- if a concurrent-submission provision is included in it.

Attachments

PROVISIONS IN LAW REQUIRING
CONCURRENT SUBMISSION OF AGENCY
BUDGET REQUESTS TO BOTH OMB AND THE CONGRESS

- The Consumer Product Safety Commission (CPSC) was created by Public Law 93-573 of October 27, 1972. Section 27(k)(1) of that law specifies that:

"Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress."
- The effect of Public Law 93-328 (June 30, 1974) on the U.S. Postal Service is similar to that of concurrent submission requirements. Under that law, the original Postal Service budget request must be included in the President's budget, without revision, along with the President's recommendations to the Congress.
- The Commodity Futures Trading Commission was created by Public Law 93-463 of October 23, 1974. Section 101(a)(9)(A) of that law states that:

"Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry."
- The Privacy Protection Study Commission was established by Public Law 93-579 of December 31, 1974. Section 5(a)(5)(A) of that law specifies that:

"Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress."

- Under Public Law 93-633 of January 3, 1975, the National Transportation Safety Board was removed from any administrative controls of the Department of Transportation and made an independent agency. Section 304(b) (7) of the law provides that:

"Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information ... to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress."

- Public Law 93-618 of January 3, 1975, changed the name of the U.S. Tariff Commission to the U.S. International Trade Commission. Section 175(a) (1) of that law did not require concurrent budget submissions to OMB and the Congress, but mandated an even more substantial change:

"Effective with respect to the fiscal year beginning October 1, 1976, for purposes of the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), estimated expenditures and proposed appropriations for the United States International Trade Commission shall be transmitted to the President on or before October 15 of the year preceding the beginning of each fiscal year and shall be included by him in the Budget without revision, and the Commission shall not be considered to be a department or establishment for purposes of such Act."

- Bills have been introduced in all the recent sessions of the Congress to extend the CPSC concurrent-submission arrangement to all the independent regulatory commissions (e.g., SEC), and to certain other quasi-regulatory agencies (e.g., EPA). To date, none has been enacted.

BASES FOR OPPOSITION TO SUBMISSION
OF AGENCY BUDGET REQUESTS CONCURRENTLY TO OMB
AND THE CONGRESS

- The concept of the President's Budget, as established in the Budget and Accounting Act of 1921 and confirmed in the Congressional Budget Act of 1974, involves the ability of the President to evaluate the competing claims and requests of Federal departments and agencies and arrive at a total budget amount that is coordinated and consistent in all its parts. Once the President's Budget is transmitted to the Congress, it is to be evaluated both in its constituent parts and as a whole; any change to one of its components must be reflected in a change in the total, or in another component. It is inequitable to establish permanently a privileged status for only selected agencies and permit those agencies to present an uncoordinated request to the Congress before the President presents a coordinated request for all agencies.

During the time between submissions of such selected agencies' requests to the Congress and submission of the President's Budget to the Congress several months later, the privileged agencies can lobby for their programs in disregard of other agencies' needs, overall national objectives, or the resources available. This encourages narrowly focused inductive budgeting, in which small sums are determined and added together to arrive at a total, and almost certainly will result in larger budgets. This process of induction is inconsistent with the deductive budgeting encouraged by the Congressional Budget Act of 1974, by which totals and subtotals are determined first, within which the various smaller pieces must fit.

- The principle of the confidentiality of Executive Branch inter- and intra-agency communications preliminary to decisionmaking must be preserved. Without such temporary confidentiality prior to transmittal of the budget, the process of candid, wide-ranging discussion among decision-makers and administrators would break down; objectivity would be more difficult and officials would be distracted by external pressures. The courts have long recognized the principle of preserving the confidentiality of advice, opinions, and recommendations received by administrators from their subordinates, as a requirement for efficient and expeditious conduct of government.

- It may be assumed that if agencies' annual budget requests, unreviewed and unevaluated against competing demands, are submitted to the Congress, they will also become public knowledge among lobbyists and pressure groups. Such persons can be expected to use the requests as a basis for lobbying pressures on members of both the Executive and the Legislative Branches. Rational decisionmaking would become much more difficult in this atmosphere, especially since countervailing pressures from representatives of other groups--having alternative demands for the funds--would not be present. If budgetary decisions are to reflect the best objective judgment of the Executive, they must be made in an atmosphere free from the pressure of special interests that may accompany advance disclosures. This absence of advance disclosure can have a cooperative and objective impact on the agencies as well. No one becomes wedded to a position, as often happens if that position is made public. Thus, in these formative stages, there exists the possibility of reconsideration and objectivity that would tend to disappear by advance disclosure.
- Concurrent submission would tend to pit agency heads against the President. It would focus attention on the wrong place--i.e., the increment by which the President adjusted agency budget requests. Instead, the focus should be on what the agency is planning to do, and how it plans to do it.
- It is important that the responsibilities of the Executive Branch for preparing the budget and of the Legislative Branch for reviewing and enacting the budget be kept entirely separate. Premature disclosure of agencies' budget requests would inject the Congress--directly or indirectly--into the considerations leading to presentation of the completed budget. For example, an executive agency, knowing of a difference of opinion between the President and members of Congress, could not help being influenced by that fact; both the size of the initial agency request and the arguments made during the Executive Branch deliberations on that request would be affected.
- Concurrent submission to the Congress affects only the timing of the disclosure of agency budget requests to OMB; it does not affect the amount of information available to the Congress during consideration of the President's Budget. Information concerning agency

requests is available under current procedures anyway, immediately after the President's Budget is transmitted to the Congress, at the time Congressional consideration of the budget begins. Further, the Congressional Budget Act of 1974 requires, beginning in 1975, that the President provide the Congress with a "Current Services" Budget each November, which will furnish preliminary information on aggregate levels of upcoming budget year costs of current programs. To the extent that the Appropriations Committees wish to get an early start on the upcoming budget, the Current Services Budget will provide appropriate advance information without involving premature disclosure of agency requests to OMB.