

NLWJC - Kagan

DPC - Box 013 - Folder 017

**Domestic Policy Council - NGA
1999**

Fred Duval 02/12/99 10:27:54 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: NGA Remarks

I don't presume to be a speechwriter or policy advisor - but I do have some strong instincts about what will work for the Governors Roundtable remarks. Thus, I would like to lay out a suggested construct for the Presidents remarks for you to adopt, consider, edit, or reject as you wish.

I. Opening

1. former colleagues - 16th (?) NGA mtg I have attended etc.
2. Memory of Gov. Chiles - whose civility left a mark on all of us...

II. Six Years of a Successful partnership - Effective federalism.

1. As a former Governor, I understand the federal/state role.
2. Our record demonstrates this:
 - Unfunded Mandates Bill
 - COPs program
 - CHIP program
 - Welfare reform
3. Last year we met in this room and you presented the following goals:
 - Transportation Finance - Govs Schafer and Patton made this case for you and working together we passed it - all 27 billion.
 - Internet taxation (Gov Leavitt and Romer made this case and we worked together to get this passed)
 - Workforce development Act - Gov Ridge (?) presented this and I signed it.
 - Regulatory Reform - Gov ? presented this and I signed Thompson-Levin
4. Through the year we worked on other issues successfully together:
 - FICA Ruling - Treasury has opined that states are not required to pay FICA for workfare - major cost savings to states.
 - Cost Allocation - Congress required us in the Ag Research Bill to allocate your costs, and after hearing clearly from you we accepted your state-by-state methodology for doing so.
 - EPA Air regs- We were required to issue new standards but - after hearing from you - the states were given significant tools of flexibility.

Each of these issues presented federalism issues and we respected the states role.

III. Our Budget is a Win for States

Prior to the release of our budget we met with you and you expressed two priorities, (1) don't cut existing commitments, and (2) invest in kids.

Our budget does that - and more - for the states

- a. fully funds SSBG
- b. no Medicaid cuts
- c. Head Start increase
- d. COPs increase
- e. Welfare increase - emphasis on fatherhood per your lead
- f. School Modernization initiative
- g. Class size initiative
- h. Livability initiative

These budget commitments reflect both the importance of the level of funding , but are consistent with our effective federalism - they give you the tools and flexibility to do your job (livability, welfare, SSBG).

IV. Looking Ahead: Preparation for the 21st Century Economy

As we look ahead, using this partnership - this effective federalism - that has worked to tackle welfare, children's health etc. how to we prepare our workforce for the 21st Century economy. Theme of partnership - accountability and flexibility . Two components: (1) Workforce training, and (2) Education Accountability

Workforce Training - describe our initiative

Education Accountability /Flexibility

- a. We have learned from the states : examples. Ridge, Hunt, etc.
- b. We can't have any failing schools... federal role to assure that
- c. We won't tell you how to do it - only that you find a way to do it - and we will give you the flexibility to do that:

ED-Flex - break out of reauthorization
Teacher Block Grant

V. Additional tools of flexibility - NPR initiative (Oregon plan)

Message Sent To:

Michael Waldman/WHO/EOP
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Fred Duval 02/10/99 10:01:13 PM

Record Type: Record

To: Douglas B. Sosnik/WHO/EOP
cc: See the distribution list at the bottom of this message
Subject: NGA

This is an overview of the major issues we face with the Governors. I hope and anticipate that Bruce/Elena/Chris and DPC can take this and add information and perspective, but it should suffice for the purposes of tomorrow's meeting.

THE RECORD

Positive. Over the past few years we have been quite successful in producing on many of their priorities such as (1) Welfare To Work, (2) CHIP money and program structure, (3) COPs initiative. Last year we collaborated successfully on 5 of 7 major priorities identified in the Roundtable: (1) Ed Flex -(which we endorsed) (2) TEA-21 (which we signed) (3) Internet taxation (which we helped negotiate to a positive outcome) (4) Workforce Development legislation (which we signed into law), and (5) Regulatory reform (we signed the Thompson-Levin Bill).

Negative. We had more difficulty with two issues: (1) Tobacco Recoupment - where we reached a deal with the Governors to support the McCain legislation including an agreed upon menu of permissible state expenditures but when the bill died we were left pursuing our claim, and (2) one "failure" - we continue to oppose the Enzi Amendment which is a state supported effort to restrict Indian Gaming.

Recent topics. After the NGA meeting we had some other major successes and some battles. The Dept of Treasury issues a long-awaited rule which exempts state workfare recipients from FICA taxes - a major cost saving to the states. EPA issued new air quality regulations which received praise from Northeastern Governors but caused major bitterness among the Southerners and Midwesterners. The Dept of HHS issued regulations on the allocation of costs between food stamps and Medicaid - which determines how much the states and the feds each pay for administrative costs - but after extensive consultation was done sensitive to their preferences and concerns.

The issuance of the Presidents Executive Order of Federalism without sufficient consultation with the state and local governments and significantly changing the prior Reagan order which was to their liking but badly out of date and inaccurate, was a major tempest which we are still navigating to an uncertain outcome.

THE BUDGET

The request was made by the major state and local officials that we (1) fully fund existing state and local programs, and (2) that we support increases in target priorities such as Head Start. We did so. The budget is a major success for the states:

1. Fully funds the Social Services Block Grant at 2.38 bil (\$471 mil above 99' enacted)
2. No cuts in Medicaid other than already anticipated cost allocation implementation.
3. Head Start increase to 5.3 bil (607 mil over 99)
4. Increases in COPs program
5. School Modernization and Construction - 25 bil

6. Class size reduction initiative - (1.4 bil)
7. Urban agenda - 7.9 bil in EZs, ECs and new markets initiative
8. Adult education money to states - 575 mil (up 190 mil)
9. TEA-21 - 27.3 bil (up 1.8 bil) -
10. Lands Legacy and Livability initiatives .

STATE OF THE UNION/PRIORITIES

Education.

Standards and Accountability. The Governors generally are moving toward standards and accountability but at the state and local level. 19 states have standards initiatives at the state level similar to what we are proposing. Many others are moving in that direction. The Governors strongly held position is that these are matters of local control and that our plan is an inappropriate degree of federal intrusion. More specifically they note that we should not be able to leverage 7% of the education funding to dictate all of the terms. They are quite ideological and emotional about it.

Ed Flex. The holy grail of the Governors this year. they don't trust that we will - notwithstanding the Presidents commitment last year to support Ed Flex - stay with them on an ed-flex package that gives the states the kind of flexibility they desire.

Modernization and Construction. They don't oppose this, but nor will they support this. They fear that the feds at some point (since it is only authorized year at a time) will pull back on the funding commitment, leaving them with unfilled expectations and holding the financial liability for the balance of the program.

Social Security.

The Governors are not engaging this issue as it is not particularly a state concern. Over the long-term the failure of Social security and Medicare would have severe impacts on state safety nets but this has not resulted in significant interest. What is of interest is whether state employees not now participating in Social Security will be required to do so. They oppose this.

Livability/Lands Legacy

The Governors are warm to the idea but see it - correctly - as mostly a local government tool.

Child Care.

As our package has, in the past, been tied to the funding stream of tobacco dollars, the Governors have - as a whole - been anxious about this issue.

HMO Bill of Rights

The Democratic Governors have been more supportive than the GOP here but, as a whole, all Governors to differing extents, see our proposal as invading traditional areas of state regulation.

Tobacco Recoupment.

The "deal" we were able to strike last year is inoperative this year. The democratic Governors will join us in an effort to negotiate a "menu" of acceptable state expenditures, but Republican opposition to us has hardened.

PRESIDENT CLINTON: EDUCATION INVESTMENTS THAT WORK

February 22, 1999

Today, in an address to the National Governors Association, President Clinton will reiterate his call for a new era of accountability in American education, and will ask Congress to pass his agenda to give states the tools they need to provide all children with a world-class education.

Building on What Works to Strengthen Accountability. In his State of the Union address, President Clinton announced a package of accountability measures designed to hold students, teachers, and schools to the high standards that will be the keys to success in the twenty-first century. In his remarks to the nation's governors at the White House, President Clinton will discuss his plan to support state and local school reform efforts through bold new steps to insure that federal support for education is directed only toward programs and policies that work to improve student achievement. The President will shortly send to Congress his Education Accountability Act, which will require states and school districts that receive federal funds to end social promotion; to insure that all teachers are qualified; to turn around their lowest-performing schools; to provide parents with annual report cards on school performance and to institute effective school discipline policies.

National Leadership in Support of State Reform. President Clinton will also applaud the efforts that North Carolina, Michigan, Delaware, Pennsylvania, California and other states are making, under the leadership of committed governors, to implement these common-sense principles. The President will call on all states to take similar steps to ensure that all of America's children reap the rewards of strengthened accountability. While states and school districts have made important progress in instituting rigorous academic standards, a great deal of work remains to be done to help schools, teachers and students meet those standards. Only 26 states now require students to pass high school graduation exams, and far fewer have policies in place to require students to show that they have mastered the skills necessary to be promoted from grade to grade. Just 19 states have policies to intervene in low-performing schools and turn them around. And there are some 50,000 people teaching in America's schools on emergency teaching licenses – which means that they have not met the standards set by states for beginning teachers.

Investments To Support World-Class Education. The President's effort to support high academic standards for all children includes an unprecedented commitment of national resources to help states and local districts improve education. President Clinton's balanced budget calls for strengthened investments in education to hire 100,000 teachers to reduce class size in the early grades, modernize up to 6,000 schools, triple funding for after-school activities, improve the quality of teaching, increase literacy, enhance the use of technology in the schools, recruit outstanding teachers in underserved high-poverty rural areas and inner cities, and provide new pathways to college for disadvantaged students.

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Q&A for NGA Address:

Q. If states are already implementing accountability measures, why is the Administration proposing to make them federal policy ?

A. States and school districts have made great progress in raising academic standards, but they are not all taking the steps necessary to ensure that schools, teachers, and students meet these high standards. For example, only 26 states require students to pass high school graduation exams, and far fewer have policies preventing unprepared students from being promoted. Only nineteen states have policies in place to intervene in low performing schools, and take responsibility for turning them around. And every year, approximately 50,000 individuals teach on "emergency" certificates, which means that they do not meet the standards states themselves have set for beginning teachers.

We need to do better than this. We need to take the education reforms that some states and cities have shown produce results --ending social promotion, turning around failing schools, phasing out the use of unqualified teachers --and to spread those reforms throughout the nation. The President's proposal is designed to ensure that all our children benefit from these proven and effective accountability measures.

Q. Will states that decline to adopt these policies lose their share of federal education funds?

A. We fully expect that states will adopt these accountability mechanisms, just as they have complied with current law's requirements to adopt academic standards and measure student performance. Governors of both parties, state and local school superintendents, and other educators know that these reforms work, and many are implementing them already. So we do not expect to face compliance problems. But if we do, we will take steps to ensure compliance and, in the very last resort, we will withhold some or all federal money. We cannot continue to invest in failing educational systems. That would be cheating American taxpayers --and cheating our children.

Q. Doesn't this amount to a federal takeover of education?

A. No. The President believes, as he did when he was a governor, that states and localities have primary responsibility for education and must have the flexibility to decide what to teach and how to teach it. But the President also believes that we should hold schools accountable for results. For our children's sake, we should invest in what works and not in what doesn't.

We should put into place the accountability measures that study after study shows produce results and increase student achievement. A growing number of states, cities, and schools are implementing these reforms. They are, almost without exception, the places making the biggest student achievement gains. The President wants to ensure that all our children reap the rewards of these accountability measures.

Q. Won't that the requirement to end social promotion will lead to an increase in retention rates, especially for minority youngsters?

A. The President believes that when a "no social promotion" policy is done right, it helps all students --particularly minority and disadvantaged students. We have to insist on high standards and we have to give students the assistance they need to meet these standards --including reduced class size, more training for teachers, and extended learning time. The President's FY 2000 budget will help significantly, in particular by tripling funding --from \$200 to \$600 million --for after-school and summer-school programs that provide extra help to students who need it.

Q: What kind of accountability provisions is the President demanding be included in an Ed-Flex proposal?

A: The President believes that we should know whether a waiver is improving student performance and make sure we turnaround or drop waivers that are failing to do so. He is open to a variety of specific proposals, but Ed-Flex ought to contain a mechanism that links waivers to student performance.

Q: Will the administration support amendments to Ed-Flex that raise unrelated issues, such as school construction or class size reduction?

A: We will support amendments of this kind if members of Congress choose to raise them. Ed-Flex is important, but modernizing our schools and reducing class size is even more so. If we are having an education debate prior to reauthorizing the ESEA, we ought to include these important issues.

TOBACCO RECOUPMENT

Governors Who Will Discuss:

Governor John Rowland (R-CT)
Governor Paul Patton (D-KY)

Administration Experts Present:

Bruce Reed
Secretary Shalala

What Governors Will Say:

The NGA's top legislative priority for the 106th Congress is the Hutchison-Graham bill, which protects tobacco settlement funds awarded to states from claims by the federal government. The Governors will argue that there is no basis for federal recoupment because (1) the states assumed all the burden and risks of litigation and (2) much of the settlement money is for non-Medicaid claims. In an NGA statement, Governors Carper and Leavitt said, "After bearing all the risks initiating the suits and all the expense of years of arduous negotiations and litigation, states are now entitled to all of the funds awarded to them in the tobacco settlement without federal seizure. States should not be hindered from using the settlement funds for programs to promote the health, education, and welfare of their citizens."

Administration Talking Points:

- The state tobacco settlement is a real step in the right direction and I congratulate you.
- I know we all share a commitment to reducing youth smoking. Every day, 3,000 children become regular smokers and 1,000 have their lives shortened as a result.
- We also all share a commitment to protecting tobacco farmers. I am pleased that the states and industry were able to negotiate a package to compensate farmers and I remain committed to doing more to protect tobacco farmers and their communities.
- While the state settlement is a great first step, I believe we must do more to protect children and reduce youth smoking. I will continue to push for legislation to increase the price of cigarettes so fewer young people start to smoke, hold the tobacco companies accountable for their youth marketing practices, and reaffirm the Food and Drug Administration's authority to regulate tobacco products. In addition, as you know, the federal government is bringing suit to recover from the tobacco companies the health care costs incurred by Medicare and other federal programs as a result of smoking.

- On the question of tobacco recoupment, we have an obligation under current Medicaid law to recoup the federal share of the tobacco settlement. As you know the federal government pays an average of 57 percent of Medicaid costs, and states routinely reimburse us for the federal share of Medicaid collections. I realize that there is some debate about how much of the settlement represents Medicaid damages, but both the Justice Department and HHS have analyzed this question and concluded that the bulk of the settlement is for Medicaid.
- But I want you to know that as I have said all along, I am committed to working with you and members of Congress to change the law, to enact legislation to settle the federal government's claims in exchange for a commitment by the states to use tobacco money to prevent youth smoking, protect tobacco farmers, improve public health, and assist children. My budget specifically assumes no recoupment until FY 2001 so that we can reach an agreement this year. I hope we can start work on this kind of agreement as soon as possible.
- I will, however, vigorously oppose any legislation which would completely give up the federal share of the states' tobacco settlement -- without any commitment by the states to use these monies to prevent youth smoking, protect tobacco farmers, improve public health, or assist children. I know that most of you want to do the right thing with this money, but I also know that Governors and legislatures will come under tremendous pressure to spend this on things that have nothing whatsoever to do with children or tobacco farmers or reducing youth smoking. Look at what happened in the Congress debate last year. It would be a national tragedy if this landmark state settlement went by without any real assurance that we are going to do everything we can to reduce youth smoking and help tobacco farmers.

Q&A:

Q: Why are you trying to recoup state funds when you are filing a federal lawsuit to obtain reimbursement for federal tobacco-related costs?

A: These two claims are separate and distinct. Under current law, the federal government cannot pursue Medicaid claims directly; states are under a legal obligation to pursue them and the federal government must recoup its share from the states. The Justice Department litigation will seek reimburse for federal claims outside of Medicaid, including tobacco-related health costs in Medicare, the Federal Employee Health Benefits program, military and veterans benefits, and the Indian Health Service.

Q: You say you want a commitment from the states to spend the federal share of the state tobacco settlement on certain shared national and state priorities. What exactly do you have in mind?

A: I am seeking a commitment from the states to use tobacco money to prevent youth smoking, protect tobacco farmers, improve public health, and assist children. I want to work with you and Congress to devise a specific menu which meets these purposes, as we were able to do last year in the McCain legislation. We will have to rethink some issues this year -- for example the McCain bill had other spending for tobacco prevention and farmers and thus the menu did not include those items. The important thing is that we work together as we did before to construct a menu that works for all of us.

Q: Our state has agreed to spend all the tobacco funds we receive from the settlement to prevent youth smoking and promote public health. Why should we have to change our plans to fit a bill written here in Washington?

A: I want to enact legislation that will enable states like yours to continue your efforts to reduce youth smoking and improve public health. I just want some assurance that every state will use these funds for these important purposes -- that is, to prevent youth smoking, protect tobacco farmers, improve public health, or assist children.

Q: Our legislature is meeting now and will have to make appropriations over the next two months. We can't wait for months for this legislation to be finished!

A: I understand your concerns, and I couldn't agree more that we should reach agreement and enact this legislation as soon as possible.

Q: Isn't it contradictory to bring suit against the tobacco companies and try to protect farmers?

A: I have repeatedly reaffirmed my commitment to protecting tobacco farmers and their communities and I believe we can reduce youth smoking and also protect tobacco farmers. I am encouraged that the states and industry were able to agree recently upon a \$5 billion package to compensate farmers. I will continue to work with all parties to ensure the financial well-being of tobacco farmers, their families, and their communities. Farmers who never marketed cigarettes to children and worked hard to sell a legal crop should be protected. If we are successful in this suit, we could use some of the money to make sure farmers are protected.

EDUCATION FLEXIBILITY

Governors Who Will Discuss:

Governor Frank O'Bannon (D-IN)

Administration Experts Present:

Bruce Reed
Secretary Riley

What Governors Will Say:

The governors will remind you that at last year's NGA Winter Meeting, you proposed to expand Ed-Flex from a twelve-state demonstration project to a nationwide program. They will ask you to reiterate your commitment to Ed-Flex by supporting the Frist-Wyden bill, which Senator Lott intends to bring to the Senate floor in the next few weeks. Governors believe that Ed-Flex will accelerate the pace of education reform by freeing states and school districts from certain regulatory burdens. Governor O'Bannon also believes that passing Ed-Flex will remove the pressure to pass broad education block grants as part of ESEA reauthorization.

BACKGROUND:

Under the current Ed-Flex program, the Secretary of Education can delegate to 12 states his authority to waive certain federal rules and regulations. To apply for status as an Ed-Flex state, states must (1) institute a comprehensive school improvement plan approved by the Secretary; (2) agree to waive their own regulatory requirements when they waive federal requirements; and (3) take steps to hold districts and schools affected by the waivers accountable for academic performance.

A state may use Ed-Flex authority to waive requirements relating to a number of programs authorized as part of the ESEA, including Title I, Eisenhower Professional Development, Safe and Drug-Free Schools, and Even Start. Ed-Flex does not apply to the Individuals with Disabilities Education Act (IDEA) or to requirements pertaining to health, safety, civil rights, and parental participation in education. The twelve states with Ed-Flex authority are: Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, New Mexico, Ohio, Oregon, Texas and Vermont.

In November 1998, a GAO report gave Ed-Flex mixed reviews. The GAO found that while Ed-Flex succeeded in relieving states, districts, and schools of certain regulatory burdens, it failed to ensure accountability for results. GAO found that under the program, some states did very little to monitor and assess the impact of the waivers on student

achievement.

While Democratic Governors are strongly supportive of Ed-Flex, Hill Democrats have greater reservations. They are concerned about the accountability issues raised by the GAO; they are also concerned about the possibility that states will use their Ed-Flex authority to divert Title I and other funds from the most disadvantaged students.

Notwithstanding these reservations, most Senate Democrats have resigned themselves to voting for the Ed-Flex bill. They will use the debate on the bill to strengthen Ed-Flex's accountability provisions and push other education proposals, including our class size initiative. Some House Democrats are now expressing greater real resistance to the Ed-Flex bill, but we would be surprised if they do not eventually adopt the Senate Democrats' more pragmatic position.

Secretary Riley has taken the position that he would like Congress to take up Ed-Flex as part of ESEA reauthorization, rather than as a freestanding bill. He has indicated, however, that he could accept a freestanding bill if it had sufficiently strong accountability provisions.

Administration Talking Points:

- I continue to support Ed-Flex. I would have preferred that Congress consider this bill as part of the overall reauthorization of the Elementary and Secondary Education Act (ESEA), rather than as a freestanding bill. This would ensure that Ed-Flex is designed to fit the federal education programs of the next five years, rather than the last five years.
- But as Secretary Riley has already told Mike Castle, Tim Roemer, and the other sponsors, if Congress is going to take up Ed-Flex as a stand-alone bill, we need to strengthen the accountability provisions so we can know whether a waiver is getting results and turnaround or drop those that are not succeeding.
- Secretary Riley and Bruce Reed are willing to work with you and members of both parties in both Houses to try to reach a bipartisan agreement on this issue.

Q&A:

Q: What kind of accountability provisions are you demanding be included in an Ed-Flex proposal?

A: I believe that we should know whether a waiver is improving student performance and make sure we turnaround or drop waivers that are failing to do so. I am open to a variety of specific proposals, but Ed-Flex ought to contain a mechanism that links waivers to

student performance.

Q: Will you support amendments to Ed-Flex that raise unrelated issues, such as school construction or class size reduction?

A: I will support amendments of this kind if members of Congress choose to raise them. Ed-Flex is important, but modernizing our schools and reducing class size is even more so. If we are having an education debate prior to reauthorizing the ESEA, we ought to include these important issues.

EDUCATION ACCOUNTABILITY

Governors Who Will Discuss:

Governor Jim Hunt (D-NC)
Governor Tom Ridge (R-PA)

Administration Experts Present:

Bruce Reed
Secretary Riley

What Governors Will Say:

Governor Hunt will speak about the positive impact that his accountability initiatives are having in North Carolina. Governor Ridge will likely endorse the concept of accountability, but object to the increasing “federalization” of education. Ridge will say that education is a state and local issue, and that because states provide 93 percent of all education dollars, Washington should not dictate education policy.

Administration Talking Points:

- First, let’s recognize that we are making progress. Our children are doing better. SAT scores are up; math scores have risen in nearly all grades. Last week, we learned that our students are making gains in reading. But there’s a problem. While our 4th graders outperform their peers in other countries in math and science, our 8th graders are around average, and our 12th graders rank near the bottom.
- I know that there is not a Governor at this table that believes our work is done. I know that because I’ve read many of your State of the State addresses, and I’ve followed closely, with the help of Secretary Riley, what is going on in the states in education. Some have even said I’m following education policy in the states too closely -- because I’m stealing all of your best ideas. I plead guilty.
- We need these ideas, because too many schools in depressed communities still fail to give disadvantaged children the tools they need to break their way out of poverty. Too many public school students still move from grade-to-grade without having mastered the basics. And too many of our teachers aren’t appropriately prepared to teach the subjects they’re assigned to.
- I believe -- as you all believe -- that we must change these things, and hold schools accountable for their performance. As a former governor, I know that states and localities must have primary responsibility for education and must have the flexibility to decide what

to teach and how to teach it, what standards to set for students and teachers, and how to measure students and teachers against those standards. But at the federal level, we should invest in what works and not in what doesn't. We have spent \$118 billion on Title I over the last 30 years, and we certainly have not gotten \$118 billion worth of results. We should put into place the tough accountability measures that the states themselves have shown produce results and increase student achievement.

- So in my proposal to reauthorize the Elementary and Secondary Education Act (ESEA), we will say that states and school districts receiving federal education funds should do certain things.
 - They should end social promotion, and give students who are lagging behind the intensive help they need to meet high standards;
 - They should phase out the use of unqualified teachers and ensure that all new teachers pass performance and subject matter tests;
 - They should take responsibility for turning around their lowest-performing schools by providing intensive intervention and if necessary, by making significant staff changes or closing the school down and reopening it as a charter school;
 - They should make sure that parents get annual report cards so they can see how well the schools are working and make informed choices; and
 - They should institute effective discipline codes so that schools can be real places of learning.
- A growing number of states, cities, and schools are implementing these reforms. They are, almost without exception, the places making the biggest student achievement gains. I want to build on those efforts and ensure that all our children reap the rewards of these accountability measures.
- I am committed to securing resources to help states take these steps. My FY 2000 budget asks Congress for \$1.4 billion to continue on the path to hire 100,000 teachers to reduce class size in the early grades; \$600 million to fund summer and after-school programs; \$200 million to help states turn around their lowest-performing schools; and a sixfold increase in college scholarships for students who commit to teach in inner cities, isolated rural areas, and Indian communities.
- I ask for your guidance and support as we draft an Education Accountability Act. I am committed to developing legislation that provides a great deal of flexibility in how these accountability measures are designed and carried out. I am not interested in micromanaging anybody. We want to build on the great work being done in states and communities, not interfere with it. This is a debate I welcome. It is a debate whose outcome is vital to the future of our nation. And it is a debate that needs to include each of you.

Q&A:

Q. If states are already implementing accountability measures, why are you proposing to make them federal policy?

A. States and school districts have made great progress in raising academic standards, but not all of them are taking the steps necessary to ensure that schools, teachers, and students meet these high standards.

For example, only 26 states require students to pass high school graduation exams, and far fewer have policies preventing unprepared students from being promoted. Only 19 states have policies in place to intervene in low performing schools and take responsibility for turning them around. And every year, approximately 50,000 individuals teach on “emergency” certificates, which means that they do not meet the standards states themselves have set for beginning teachers.

We need to do better than this. We need to take the education reforms that some states and cities are showing the best results -- ending social promotion, turning around failing schools, phasing out the use of unqualified teachers -- and spread those reforms throughout the nation. I have probably supported more state options for more policies than any President in history -- but I can't think of one good reason why continuing social promotion or ignoring failing schools or hiring unqualified teachers ought to be an option for states or anybody else. We all agree these changes are the right things to do, so let's all agree to do them.

Q. Doesn't this amount to a federal takeover of education?

A. No. I believe, as strongly as I did when I was a governor, that states and localities must have primary responsibility for education and must have the flexibility to decide what to teach and how to teach it. But I also believe that we should hold schools accountable for results. For our children's sake, we should invest in what works and not in what doesn't. We should put into place the accountability measures that study after study shows produce results and increase student achievement. A growing number of states, cities, and schools are implementing these reforms. They are, almost without exception, the places making the biggest student achievement gains. I want to ensure that all our children reap the rewards of these accountability measures.

Q. Will states that decline to adopt these policies lose their share of federal education funds?

A. We fully expect that states will adopt these accountability mechanisms, just as they have complied with current law's requirements to adopt academic standards and measure student performance. Governors of both parties, state and local school superintendents,

and other educators know that these reforms work, and many are implementing them already. So we do not expect to face compliance problems. But if we do, we will take steps to ensure compliance and, in the very last resort, we will withhold some or all federal money. We cannot continue to invest in failing educational systems. That would be cheating American taxpayers -- and cheating our children.

Q. Are you concerned that the requirement to end social promotion will lead to an increase in retention rates, especially for minority youngsters? Won't you have a problem with the civil rights community on this?

A. I believe that when a "no social promotion" policy is done right, it helps all students -- particularly minority and disadvantaged students. We have to insist on high standards and we have to give students the assistance they need to meet these standards -- including reduced class size, more training for teachers, and extended learning time. My FY 2000 budget will help significantly, in particular by tripling funding --from \$200 to \$600 million -- for after-school and summer-school programs that provide extra help to students who need it.

WELFARE REFORM BACKGROUND

Q: Will the final welfare regulations respond to the governors' concerns?

A: The draft final welfare regulations are currently under review at the Office of Management and Budget. I know that many governors -- individually and through NGA -- submitted extensive and constructive comments on this regulation, which we greatly appreciate. In addition, we have consulted with State organizations consistent with the regulatory review procedures. Because of your critical role in welfare reform, your comments have been given considerable weight in the rulemaking process and I expect the final rule will address many of your priorities.

Background

NGA's welfare reform resolution seeks several major changes in the pending TANF regulations including: allowing greater flexibility for programs funded with state maintenance-of-effort funds; narrowing the definition of assistance under TANF so that supports for working families won't be subject to the federal time limit, work requirements, or reporting requirements; providing states maximum flexibility to continue their welfare reform waivers; streamlining data reporting; and allowing more flexibility in the definition of administrative costs.

NOTE: Under the Executive Order governing rulemaking, only the President himself can talk about the status of a rule under review; any communications by staff must be made through the Administrator of the Office of Regulatory Affairs at OMB.

Q: Is the Administration committed to upholding the funding levels agreed to in the welfare reform law?

A: We will continue to support preservation of full funding for the TANF block grant over a five-year period. In particular, we will oppose any attempt to divert the \$3 billion in unobligated TANF funds for other priorities. Since the TANF block grant is fixed, we believe it is prudent for States to reserve some funds should economic conditions change. In addition, States may need to invest more as work requirements increase and as the 'hardest to employ' become a greater proportion of the caseload. We also understand that different states are in different situations: nearly half the states have obligated all of their FY 1998 funds.

Background

The Governors are urging Congress and the Administration to uphold the commitment in the 1996 welfare reform law to provide five years of fixed TANF block grant funding and to maintain the flexibility of the TANF block grant, including maximum flexibility to transfer funds between TANF and the social services (SSBG) and child care block grants. We share the commitment to preserving the five-year funding levels, and will oppose efforts to divert unobligated funds to

other purposes.

However, your FY 2000 budget does propose two offsets which may be troubling to the Governors.

- The budget proposes to reduce the amount states can transfer from TANF to SSBG from 10% of the TANF block grant to 4.25%, moving up by one year the cap reduction already enacted for FY 2001 as part of the transportation reauthorization bill. This offset allows us to restore funding for SSBG to its fully authorized level of \$2.38 billion -- the level the Governors agreed to as part of the welfare reform law in 1996 (another priority of the Governors). Preliminary data show that, in FY 98, 36 States used their flexibility to transfer funds from TANF to SSBG, of which 28 States transferred more than 4.25%. However, the restoration of SSBG funding in FY 2000 does reduce the need to transfer funds from TANF to SSBG to make up for SSBG cuts.
- The budget freezes supplemental TANF grants at the FY 99 level for all eligible States. Currently, low-benefit States with population growth get 2.5% increases in their TANF grants each year. Under our budget proposal, 17 States that received an increase in FY 99 will not receive an additional increase in FY 2000.

Q: Why is the Administration proposing new strings on Welfare-to-Work funds?

A: First, we should all commit to work together to reauthorize the Welfare-to-Work program, so that these funds will continue. Some in Congress believe that there is no longer a need for those funds -- especially given unobligated TANF funds. But I know there are many good reasons why some states have not obligated all their TANF funds, including the need to put funds aside for a rainy day. In addition, I believe that the Welfare-to-Work funds complement rather than duplicate the TANF block grant funds, because they are focused on long-term welfare recipients with the greatest challenges to employment are targeted to those areas with the greatest need.

In my \$1 billion reauthorization of Welfare-to-Work, I will maintain the program's focus on long-term welfare recipients, while streamlining some of the eligibility criteria that I understand many States found got in the way of serving those most in need. That change means there will be fewer strings than in the current program. In addition, I am proposing that the Welfare-to-Work funds build on the responsible fatherhood efforts initiated by a number of Governors, by focusing a minimum of \$150 million on increasing the employment of low-income fathers so they can better meet their responsibilities to their children. States such as Missouri, Nevada and Wisconsin have already focused much of their Welfare-to-Work money on this population, and now I'm proposing that all States do so.

Background

In the Republican radio address on January 30th, Governor Keating touted the Governors' success with welfare reform, but charged that the Administration was proposing to shift some welfare funds into programs with more strings attached. We believe these claims are unwarranted -- in fact, your proposed reauthorization of Welfare-to-Work would streamline eligibility criteria that many States have expressed concerns about. We also do not believe the proposal to require each State to spend at least 20% of their Welfare-to-Work funds on fathers is particularly burdensome: many Governors are committed to promoting responsible fatherhood and the reauthorization would allow them to spend Welfare-to-Work funds on a broader population of low-income fathers than they can under current law.

In FY 1998, 44 States plus D.C., Guam, Puerto Rico, and the Virgin Islands claimed the Welfare-to-Work formula funds, though 6 States did not (ID, MS, OH, SD, UT, WY). In addition, in FY 1998, the Department of Labor received approximately 1,400 applications totaling approximately \$5 billion for Welfare-to-Work competitive grants funds, but only had sufficient funds to award \$468 million to 126 grantees.

THE WHITE HOUSE
WASHINGTON

February 19, 1999

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Summary and Analysis of NGA Resolutions

HR-2: Immigration And Refugee Policy

Summary

The resolution calls for increased enforcement against illegal immigration, including efforts at the border, such as hiring more Border Patrol agents, and efforts in the interior, such as identifying and removing criminal aliens, combating alien smuggling and document fraud, and barring the employment of illegal aliens. The resolution calls on the Immigration and Naturalization Service to eliminate backlogs in naturalization and other immigration benefits. Further, on a variety of immigration related issues, the resolution requests increased federal consultation with states and increased federal funding commensurate with federal responsibility for immigration policy. NGA urges the federal government to continue to support refugees and not to shift these costs to state and local governments.

Analysis

The Administration's budget helps combat illegal immigration by:

- Funding nearly 9,000 Border patrol agents, a 122 percent increase since FY 1993, while also enhancing technology and facilitating legal border traffic; and
- Enhancing interior enforcement by providing \$20 million and 185 new positions to identify and remove criminal aliens from the United States, deter and dismantle smuggling organizations, and block employer access to illegal workers.

The Administration is improving customer service and reducing the waiting time for naturalization through \$124 million in new funding and a comprehensive set of administrative reforms. The Administration also has succeeded in restoring certain benefits to legal immigrants that were cut off by the welfare law. This year's budget builds on this progress by proposing to restore disability, health, and nutrition benefits to additional categories of legal immigrants, at cost of \$1.3 billion over five years.

HR-14: Child Support Financing

Summary

The NGA resolution states that any reduction in the federal government's financial commitment to the child support system would be a breach of the 1996 welfare reform act and could negatively affect states' ability to serve families. The resolution expresses appreciation for efforts the Administration has made in the past year to consult with states on issues related to CSE financing, and argues that the financing system should not be restructured at this time. In addition, the governors call for a continuation of the "hold harmless" provision which guarantees states their 1995 share of child support collections despite falling welfare caseloads.

Analysis

During the last year, the Administration conducted an extensive consultation process regarding child support financing that included both the NGA and the states. Through this process, we are seeking to develop legislation that will: 1) maximize collections and support for all families in the program; 2) maximize paternity establishment; 3) give priority to increasing payments to families, while ensuring federal budget cost neutrality; 4) create incentives for state and local investment of staff and resources needed to improve performance; and 5) promote national standards and ease of interstate case processing, while maintaining state flexibility.

This year's budget, like last year's, proposes to eliminate the child support "hold harmless" provision which guarantees states their 1995 share of child support collections. Originally designed to protect states from the results of new rules determining what share of child support was retained by the family versus the state, the hold harmless provision has instead guaranteed states funds despite falling welfare caseloads. The budget also lowers the federal match for paternity establishment from the enhanced 90 percent level established to encourage states to adopt the practice to the normal 66 percent match level. The third change will require states to review and revise the amount of support orders for TANF families every three years, which will increase the amount of support collected for families. Together these changes are estimated to save less than \$500 million over five years.

HR-16: MEDICAID

16.2.1: The Federal Commitment to the Medicaid Program

Summary

NGA is concerned about proposals to reduce the federal match for or cap the federal commitment to the Medicaid program, believing there is no way to reduce funds without jeopardizing patient protections and other critical program functions. In addition, NGA feels strongly that Medicaid expenditures should not be cut as part of efforts to balance the budget.

Analysis

The Administration does not support either a cap on federal Medicaid spending or any federal matching rate reductions. The President's FY 2000 budget proposal reduces Medicaid administrative payments to offset the overall rise in Medicaid administrative costs as states shift costs that were previously charged to AFDC to Medicaid.

16.2.2: Medicaid Mandates**Summary**

NGA is calling on Congress to enact statutory language to clarify that a cut or a cap on the Medicaid program without new or expanded flexibility is an unfunded mandate.

Analysis

It is not clear that the Unfunded Mandate Act should cover changes in Medicaid policy. All Medicaid spending is matched at some rate by the Federal government. This Administration has both given states significant flexibility in Medicaid and made appropriate policy changes to ensure the fiscal integrity of this program. Thus, this extension does not appear to be needed.

16.2.3: Medicaid and Medicare**Summary**

NGA would like additional flexibility to integrate Medicaid and Medicare funding streams, benefit packages, and delivery systems in order to improve on fragmented systems of care.

Analysis

This Administration has been a strong proponent of budget-neutral demonstrations to improve the effectiveness of Medicare service delivery. This Administration shares the states' commitment to integrating care for dual eligibles and we have demonstrated this commitment by working closely with states to develop creative ways to utilize both Medicaid and Medicare to serve vulnerable populations in a way that is consistent with the statute.

16.2.4: Disproportionate Share Hospital Program**Summary**

NGA is opposed to any further cuts in DSH payments.

Analysis

There is no change in DSH payments in the President's FY 2000 budget.

16.2.5: Budget Neutrality**Summary**

NGA notes that expenditures in one program often realize savings in others. NGA would like

states to have the flexibility to consider budget neutrality across federal programs, not just for individual programs.

Analysis

The current way that budget neutrality is determined for Medicaid waivers reflects an agreement made with the NGA in 1993. We have since heard states' concerns about the narrowness of the determination, but are concerned that broadening budget neutrality to include other programs would create additional federal liabilities. Although we are willing to hear how states propose that budget neutrality can be broadened, we have serious concerns about this resolution.

16.3.1: Allow States Greater Flexibility to Establish Managed Care Networks

Summary

Although NGA is appreciative of the added flexibility that the BBA provided in the design and development of Medicaid managed care networks, it believes HCFA regulations will create so many barriers to full implementation of these networks that the option is not really valid. NGA also wants Congress to clarify that, under federal law, if the state enters into a contract with a provider or HMO that covers the necessary benefits, the state's obligation to provide services is satisfied. Any dispute regarding covered services should be resolved as a contractual matter between the client and provider under state law.

Analysis

The Administration supports states in their efforts to expand mandatory managed care programs consistent with BBA. HHS is currently in the process of reviewing comments from Governors, Medicaid agencies, managed care organizations and other stakeholders on the proposed regulation, and will give them full consideration.

16.3.2: Managed Care Quality Standards

Summary

NGA believes that the HCFA regulations governing grievance procedures in Medicaid managed care are overly proscriptive, and that many states have specific grievance and appeal procedures in their plan contracts that are as effective as the federal approach.

Analysis

The Administration intends to work in partnership with the states to improve the quality of care for Medicaid beneficiaries. When developing the regulation, HCFA was guided by three principles: the preservation of state flexibility wherever possible and appropriate; consistency with the Medicare program; and incorporation of the recommendation of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

16.3.3: Waivers

Summary

NGA believes that states should not have to produce and defend waivers that are “similar to” previously approved ones in other states. NGA argues that developing and securing approval for similar waivers is a waste of both federal and state resources.

Analysis

Although states often implement similar programs through waivers, no two state waiver programs are the same. Each state’s goals, desired changes, budget neutrality, etc. are unique and thus distinct waivers are required. Thus, we cannot support this resolution. However, this Administration has eliminated the need for managed care waivers, and through eligibility simplification, allowed states to cover new categories of people without waivers (e.g., two-parent families, working families, people with disabilities who return to work).

16.3.4: Boren-like Provisions

Summary

NGA believes that the same ambiguity that caused problems for states in the Boren amendment exists in other parts of the Medicaid statute governing reimbursement to providers and urges Congress to repeal them in order to preclude any litigation over provider or health plan payment rates.

Analysis

We are reviewing this issue and will consult with Governors and Medicaid agencies as we do so.

16.3.5: Managing Costs in EPSDT

Summary

NGA believes that current policy should be modified to allow states to limit the range and cost of services required under EPSDT.

Analysis

Recognizing states’ concerns about costs, the BBA authorized a study to determine whether and how much EPSDT raises costs. We do not support this resolution while this study is ongoing.

16.3.6: Ensure that States will not be Required to Implement Medicaid Program Changes Until HCFA has Published Final Regulations to Guide Program Administration

Summary

NGA believes that states should not be held liable for operating under state law or state interpretation of federal statute until the federal regulations are adopted. In addition, NGA feels that states should not be bound by informal policy directives that are issued in violation of the

formal rulemaking process.

Analysis

The Administration is sensitive to the desire of states to be guided by final regulations that are complete, consistent, and reflect the input of governors and other stakeholders. HHS will give comments from governors full consideration as it drafts the Medicaid managed care final regulations.

16.3.7: Promote Cost Control and Efficiency

Summary

NGA believes that mandatory reasonable cost reimbursement strategies should be repealed.

Analysis

The Administration is committed to carrying out the intent of the Congress to phase out cost-based reimbursement for federally qualified health centers and rural health clinics through the gradual process outlined in the BBA. We will work with states and these community based providers throughout this process to ensure that the delivery of high quality care is not interrupted or impaired.

16.3.8: Assume Full Financial Responsibility for All Low Income Medicare Beneficiaries Who Are Not Otherwise Medicaid-Eligible

Summary

NGA believes that the federal government should assume full responsibility for meeting the Medicare cost sharing obligations for low income beneficiaries and for providing the full Medicaid benefit package to these beneficiaries when applicable.

Analysis

The Administration is committed to ensuring that low income beneficiaries receive the medical care they require. We are committed to maintaining at least the current level of assistance to low income Medicare beneficiaries. Any proposed increase in federal spending would need to be considered in the context of a balanced budget.

16.3.9: Make Audit and Disallowance Policies More Equitable

Summary

NGA believes that the Medicaid statute should be revised to prohibit heavy federal penalties when the state violation does not result in direct harm to beneficiaries. States should be held harmless against possible penalties or disallowances for reasonable interpretations of law prior to the issuance of Federal regulations.

Analysis

Part of the Federal government's fiduciary responsibility for overseeing the Medicaid program is to employ disallowances for violations such as unauthorized or inappropriate payments, and so we do not agree that penalties should be limited to those violations that directly harm patients. We share the states' concerns that the size of a disallowance be in proportion to the significance of the state violation, but believe this would require a statutory change.

16.3.10: Allowing Greater Flexibility in Medicaid Home and Community-based Programs**Summary**

NGA requests the authority to administer home and community-based care programs through Medicaid State Plan Amendments rather than through waivers. However, the states would like to retain the ability to limit the number of beneficiaries served under this program. In addition, the states would like to eliminate the current incentives in the Medicaid program to place beneficiaries in institutional care.

Analysis

The Administration's FY 2000 budget proposes to eliminate the institutional bias in Medicaid by implementing an equal eligibility standard (300% of SSI) for all institutional home and community based services program, and we are extremely supportive of state efforts in this area. However, the Administration could not support allowing states to implement home and community based services programs that provided services to only a portion of those who would qualify under equal eligibility criteria, as this would fundamentally change the entitlement nature of Medicaid.

16.3.11: Children who are eligible for Medicaid**Summary**

NGA is opposed to tying receipt of Medicaid funds to achieving increased program enrollment rates.

Analysis

The Administration has not proposed to link receipt of Medicaid funds to increased program enrollment rates.

16.3.12: Flexibility for Optional Eligibility Groups**Summary**

NGA believes that states should have the flexibility to customize a package of optional benefits to meet the particular needs of optional eligibility groups, acknowledging that this would require waiving comparability and statewideness.

Analysis

The Administration could not support a program that would change the entitlement nature of

Medicaid by providing services to only a portion of those who would qualify under equal eligibility criteria. We are committed to working with the states through the waiver programs to allow for additional program flexibility while demonstrating improvements in service delivery and cost-efficiency.

16.3.13: The Americans With Disabilities Act

Summary

NGA believes that recent court decisions have interpreted the ADA in such a way that home and community based services will become an open ended entitlement for people with disabilities. They would like constructive clarification of the parameters of state requirements under the ADA.

Analysis

The Administration supports state flexibility in designing a range of institutional and home and community based services to serve Medicaid beneficiaries with disabilities. We are committed to working closely with states to ensure the civil rights protections found in the ADA while affording states the flexibility to provide services to each beneficiary in the setting most appropriate to their needs.

HR 17: MEDICARE

17.1: Improving the Coordination of Acute, Primary, and Long Term Care

Summary

NGA believes that the lack of coordination between the Medicare and Medicaid programs causes fragmented service delivery and poor clinical outcomes. NGA suggests that the way to end this fragmentation is full integration of funding and care delivery.

Analysis

The Administration is extremely interested in working with states to develop programs for the integration of acute and long term care. However, the BBA outlined broad parameters for the expansion of Medicare managed care, and we believe that state integrated care demonstrations should stay within this framework. We are also committed to beneficiary choice within the Medicare program, and believe that Medicare beneficiaries should retain the choice as to whether or not to join a managed care program.

17.1 Eliminating Institutional Bias

Summary

NGA believes that current Federal policy related to long term care is very complicated and results in care management based on reimbursement instead of need.

Analysis

The Administration shares NGA's commitment to developing community based care options for the disabled. We believe that there is significant flexibility within Medicaid's current structure through the personal care option and the home and community care waiver program to allow recipients access to a comprehensive range of home and community based services. The Administration's FY 2000 budget proposes to eliminate the institutional bias in Medicaid by implementing an equal eligibility standard (300% of SSI) for all institutional home and community based services program, and we are extremely supportive of state efforts in this area.

HR-24: National and Community Service**Summary**

NGA revised this resolution on promoting a system of service and volunteer programs emphasizing that the federal government should provide for sustained federal funding to continue and strengthen local service programs. NGA also affirmed that federal, state and local government officials should be encouraged to serve as mentors and promote personnel policies that allow for flexible time for mentoring activities.

Analysis

The administration agrees with NGA on the importance of service and volunteer programs. The President's 2000 budget continues and expands the Administration's consistent and strong support for community service through AmeriCorps, the National Senior Service Corps, Service-Learning and other service programs. The FY 2000 budget request includes \$585 million for AmeriCorps, an increase of \$113 million over last year, to expand AmeriCorps to nearly 70,000 members by the year 2000, with the goal of reaching 100,000 members serving each year by 2002. To tap the skills and experience of America's growing senior population, the budget requests \$201 million for the Senior Corps, a \$13 million increase over last year. This level would support an estimated 464,000 retired and senior volunteer program volunteers, 28,200 foster grandparents serving 100,000 children and youth with special needs, and 14,800 senior companions providing support to almost 52,000 adults who have difficulty with daily living tasks.

The administration also supports the efforts of federal employees to contribute their time and resources to their communities, even as they fulfill official responsibilities. On April 22, 1998, the President directed all Federal departments and agencies to explore additional measures to expand service opportunities for Federal employees, including the use of flexible scheduling to allow employees to perform community service.

HR-36: Implementation of Welfare Reform**Summary**

This resolution emphasizes the early success of welfare reform, as well as the remaining challenges to help those remaining on the rolls move into jobs and help those who go to work

succeed in the workforce. The governors lay out principles and recommendations to ensure the continued successful implementation of welfare reform.

Analysis

Most of these points address the final TANF regulations which are close to being finalized, but several also relate to FY 2000 budget initiatives.

36.2.1: Block Grant Funding And Flexibility

Summary

The resolution calls on Congress and the Administration to uphold the financial commitment in the 1996 welfare reform law to provide five years of fixed block grant funding and to maintain the flexibility of the TANF block grant, including maximum flexibility to transfer funds between TANF and the social services and child care block grants.

Analysis

The Administration continues to support preservation of full funding for the TANF block grant over a five-year period. Some in Congress have indicated that the \$3 billion in unobligated TANF funds may be a good way to pay for other priorities. We disagree. Since these funds are fixed based on historic spending levels, it is prudent for states to reserve some funds for a rainy day when economic conditions may change. In addition, states may need to invest more as they face increasing work requirements, approaching time limits, and at the same time, those remaining on the rolls are the 'hardest to employ.'

36.2.2 - 36.2.8: Issues Related to the TANF Rule

Summary

The resolution, and a recent NGA letter, raise several concerns related to the pending TANF regulations including: allowing greater flexibility for programs funded with State Maintenance of Effort funds; narrowing the definition of assistance under TANF so that supports for working families won't incur the federal time limit, work requirements, or reporting requirements; providing states maximum flexibility to continue their welfare reform waivers; allowing greater flexibility in what counts toward the work requirement; streamlining the data reporting burden; and allowing more flexibility in the definition of administrative costs.

Analysis

HHS' draft final regulations for TANF are currently under review at the Office of Management and Budget. Governors -- individually and through NGA -- submitted extensive and constructive comments, as did many other interested parties. In addition, the Administration has consulted with state organizations consistent with the Administrative Procedures Act and Executive Order 12866 (which governs the Administration's regulatory review procedures). As critical pillars in the success of welfare reform, the Governors' comments have been given considerable weight in the rulemaking process, and the final rule is

expected to address many of their priorities.

36.2.9: Contingency Fund

Summary

The Governors recommend modifying the TANF Contingency Fund.

Analysis

Your budget proposes uncapping the Contingency Fund (currently capped at \$2 billion). In addition, the Administration is currently developing a revenue neutral proposal to submit to Congress to further improve the Contingency Fund, which should address some of the state concerns.

36.2.14: State Flexibility to Set Benefit Levels for Families from Other States

Summary

The resolution supports the continuation of state flexibility provided in the 1996 welfare reform law to set durational residency requirements on individuals moving from one state to another -- that is, to pay new residents at the benefit levels of their prior state. The Governors maintain such provisions are constitutional.

Analysis

The United States filed a friend of the court brief with the Supreme Court which essentially supports the states' position on this issue. The Administration's position is that the residency provision in the 1996 welfare reform law is constitutional, and that its residency provision, like other sections of the statute, simply gives states additional flexibility to establish welfare policies that best meet their needs. About one-quarter of the states provide differential benefits to new residents.

36.3.2: Job Development/Creation

Summary

The resolution emphasizes the importance of private sector involvement in hiring and also challenges the public sector to lead by example and hire welfare recipients.

Analysis

Your Administration shares a commitment to both these goals, as evidenced by your launching of the successful Welfare-to-Work Partnership which has now enlisted over 10,000 companies (26 Governors serve on the Partnership's National Advisory Council, co-chaired by Governors Carper and Thompson). In addition, the federal government is doing its part -- you challenged federal agencies to hire 10,000 welfare recipients by 2000 and under the leadership of the Vice President, they will meet this goal ahead of schedule.

36.3.6: Social Services Block Grant

Summary

The Governors urge full funding and flexibility for the Social Services Block Grant.

Analysis

Your budget restores funding for SSBG to its fully authorized level of \$2.38 billion -- the level the Governors agreed to as part of the welfare reform law in 1996. States use these funds to support a wide range of programs for children and adults including child protection and child welfare, child care, and services for the elderly and disabled. However, the budget also moves forward by one year the 4.25% cap on transfers from TANF to SSBG. While states will argue that this reduces their flexibility, the Administration believes that restoring full funding increases the funds available for SSBG purposes and therefore reduces the need for transfers from TANF to make up SSBG cuts.

EC-11: Child Care And Early Education

Summary

At last year's meeting, the Governors adopted a strong resolution urging greater investment in child care and early childhood education. The resolution, which remains active for this year, calls for the creation of a seamless child care and early education system that provides a safe, nurturing, and developmentally sound environment for children.

Analysis

The Governors' policy proposals dovetail well with the child care initiative that you put forth last year and that remains a central part of your budget. Your FY 1999 budget victories on child care -- including enhanced support for after-school care, Head Start, child care quality, and child care research -- address specific needs identified by the Governors. The Governors share your rationales for efforts to improve child care as well as many of our policy prescriptions. Their largest priority for federal action is to maintain state flexibility and provide adequate funding to meet demand, both of which our initiative does through your proposed dramatic expansion of the Child Care and Development Block Grant. Other areas of mutual agreement on the child care agenda include: providing tax incentives for the private sector like our Business Tax Credit; providing tax credits for individuals, like our proposed expansion of the Child and Dependent Care Tax Credit; increased funding for Head Start and Early Head Start, which is included in the FY 2000 budget; and supporting state and local efforts to improve child care quality, like our Early Learning Fund.

EDC-14: Affordable Housing

14.2: Percent Cap On Rental Payments

Summary

This resolution expresses the NGA's desire for greater flexibility in housing programs in order to assist tenants in public housing who are trying to move from welfare-to-work.

Analysis

Your administration is asking Congress, as part of our request for additional welfare-to-work housing vouchers, for greater waiver authority in the Section 8 statute subject to HUD approval for moving people off welfare into work.

14.3: Existing Programs**Summary**

The NGA is requesting increases for a number of programs including the Low-Income Housing Tax Credit (LIHTC), the Community Development Block Grant (CDBG), the Housing Opportunities For People With AIDS (HOPWA) program, among others.

Analysis

We are asking for increases of 7% in HOPWA, a \$1.6 billion increase in the LIHTC, and \$25 million for CDBG. We are also proposing increases of \$10 million for the Home Investment Partnerships (HOME) program. The NGA is also asking for increase in the volume cap for the Mortgage Revenue Bond (MRB) program. Last year you signed an increase in the overall private activity bond cap and this year we are proposing over \$30 billion in bond authority for school construction and Better America Bonds (BABs). The NGA is also asking for quick implementation of HUD's new Mark-to-Market program. HUD is working in consultation with the states on implementation of this program and expects it to be up and running this year.

14.3.1: Data Tracking Systems.**Summary**

This resolution expresses NGA's desire that HUD delay implementation of its Analysis Integrated Data Information System (IDIS) until it is ready and field-tested.

Analysis

HUD has had some difficulty in implementing IDIS. This system is designed to improve the efficiency of the agency's grant-making process. The implementation of this system has been a sore point with the Governors because it was not originally rolled out effectively and with adequate consultation. HUD is working with the states to improve the system to get all the problems with the system worked out. At this time 11 states have voluntarily adopted the system.

14.4: Programs Serving the Homeless**Summary**

The NGA supports the combining of the seven programs authorized by the Stewart B. McKinney

Homeless Assistance Act into a block grant to state and local governments.

Analysis

The Administration does not believe this proposal is necessary. While the Administration supported the notion of performance-based block grants six years ago, HUD has now administratively consolidated the various McKinney Act programs -- as has the Appropriations Committee. The Continuum of Care provides a coordinated community approach to homelessness in moving persons into jobs and permanent housing. Each community submits a single Continuum of Care plan to HUD that reflects efforts to address the complexities of homelessness through a range of housing and services. These plans are prepared by the private sector, non-profit groups, and local and state governments working together. HUD then determines which individual projects to fund from these plans. The Administration is committed to furthering the benefits of the Continuum of Care. The FY 2000 budget provides \$1.125 billion in homeless assistance -- more than a 15 percent increase from the \$975 million enacted last year.

EDC-6: The Role of States, The Federal Government, And Indian Tribal Governments With Respect to Indian Gaming And Other Economic Issues.

Overview

While recognizing the sovereignty of Tribal governments, the NGA proposes changes to the Indian Gaming Regulatory Act of 1988 (IGRA) which would clarify the role of states and tribal governments in negotiating gaming issues.

6.2.1: Clarification of the Scope of Gaming

Summary

The NGA seeks amendments to IGRA that make clear that tribes can negotiate to operate gambling of the same types and subject to the same restrictions that apply to all other gambling in the state. The NGA believes that governors should not be compelled by federal law to negotiate for gambling activities or devices that are not expressly authorized by state law.

Analysis

The Administration has taken the position in court filings that a state has no duty under IGRA to negotiate with a Tribe with respect to particular Class III (casino-type) gaming that state law completely and affirmatively prohibits. However, the Administration has never taken a position as to what the outcome should be if a type of gaming is neither expressly prohibited nor expressly authorized.

6.2.2: Application of the "Good Faith" Negotiation Standard

Summary

The NGA would like to amend IGRA to apply the "good faith" negotiation standard in tribal-state

compacts to tribes as well as states.

Analysis

While the Administration has never articulated a position on whether the “good faith” negotiation standard should apply to tribes as it does for states, the legislative history indicates that the “good faith” standard was added to address the issue of unequal bargaining power between states and tribes.

6.2.3: Regulatory Oversight

Summary

The NGA believes that in many cases, federally imposed minimum regulatory standards for the operation of tribal gambling facilities may be appropriate.

Analysis

The Administration agrees that certain federal minimum standards are necessary.

6.3: The Effect of the Seminole Decision on the Authority of the Secretary of the U.S. Department of the Interior

Summary

The NGA opposes the Department of the Interior promulgating a rule permitting the Secretary to provide a remedy to a tribe to permit Class III gaming in the event that the state and the tribe are unable to reach agreement and the state then raises immunity as a bar to a suit by the tribe.

Analysis

The Administration disagrees that the Secretary of the Interior has no authority to create an administrative compact process. While there is a Congressional moratorium on Interior promulgating its rule before March 31, 1999, it is likely that the Interior rule finally issued after that time will authorize the Secretary to create an administrative compact process.

6.4: Federal Enforcement

Summary

The NGA wants the federal government to actively use existing IGRA enforcement authority to shut down Class III gaming conducted on Indian lands in violation of or in the absence of a tribal-state compact.

Analysis

The Administration agrees with federal enforcement of unlawful gaming consistent with the Attorney General’s tribal gaming enforcement policy.

6.5: The Governors’ Role in Congressional and Other Federal Decisionmaking

Summary

The NGA believes that in cases where a new tribe becomes federally recognized, there should be the concurrence of the Governor of the state in which the tribe is located.

Analysis

The Administration opposes the concurrence of states in the process for providing federal recognition to tribes. This function has historically been the sole purview of the federal government. Furthermore, under current procedures, states are permitted to comment on whether a tribe should be federally recognized.

6.5.1: Trust Land Acquisition for Gambling Purposes and

6.5.2: Trust Land Acquisition in General

Summary

The NGA seeks the commitment to preserve the current required concurrence of a state to acquire land in trust for gambling purposes. In addition, the NGA seeks state concurrence when land is taken into trust for nongaming purposes.

Analysis

The Administration generally supports state concurrence in trust land acquisition for gambling purposes. However, the Administration opposes gubernatorial concurrence on nongaming trust acquisitions. This is the subject of a proposed rulemaking to be submitted to OMB in the Spring of 1999. The proposed rule will somewhat ease the burdens required to take land into trust for nongaming purposes, but will increase the requirements for consultation with third parties and will provide for a showing of demonstrated need for acquiring land into trust for gaming purposes.

6.5.2.1: State and Local Taxation Authority Over New Trust Lands

Summary

The NGA seeks a requirement that before new trust land is acquired, the federal government, the state, and the tribe should reach an agreement regarding the application of state and local taxes on the land.

Analysis

The Administration opposes state and local taxation of new trust land.

Addendum: Community Policing and Federal Support for Prisons Background

While there was no resolution on criminal justice, it is possible that the NGA could raise issues with respect to state and local funding in our FY 2000 budget for administration of justice programs. It is important to note that while overall crime funding is up slightly (\$200 million) from last year, and our COPS proposal will help keep about \$3.6 billion going to the state and local level, our decisions

not to fund Republican-proposed block grants and to cut prison construction funds will mean that total state and local crime funding is about \$1.2 billion lower than last year's high of \$4.8 billion. Three programs may be of particular interest to NGA:

(1) Prisons: The Administration's budget does not provide funding for the Violent Incarceration/Truth-in-Sentencing State prison construction program authorized in the 1994 Crime Act. Instead, our budget provides \$100 million in new funds to help states to comprehensively drug test, sanction, and treat inmates, parolees, and probationers, and continues to provide \$500 million for the State Criminal Alien Assistance Program. Our budget also contains a significant increase in funding for federal prisons, but this is not likely to appease the Governors.

(2) Community Policing: As you know, the COPS Initiative was slated to phase out beginning in FY 2000. Our FY 2000 budget provides \$1.3 billion to roughly maintain the current COPS funding level for a new 21st Century Policing Initiative. In addition to funding more officers, the Initiative will provide more support for statewide law enforcement priorities such as improved criminal history records, crime labs, and police communications. This proposal should be strongly supported by the NGA, as nearly every state police agency has received COPS funding for hiring, training, technology and other non-hiring purposes.

(3) Byrne: The NGA has historically supported full, unearmarked funding for the Byrne Law Enforcement Memorial block grant -- the primary source of state anti-crime funds. Amidst budget pressures and overall reduced funding for state and local crime funds, Byrne was reduced by \$92 million in our budget (from \$552 million in FY 99 to \$460 million in FY 2000).