

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 037 - FOLDER -008

[09/13/1998 - 09/14/1998]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:13-SEP-1998 15:16:18.00

SUBJECT: Country of Origin and food safety

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Attached is a note on the status of food labeling.

In addition, I have given some more thought to the question Elena raised last week -- what should be our new program for food safety? For the past year we have emphasized the need for greater resources (the \$101 million Initiative) and an improved organization of agencies (the Research Institute and the Food Safety Council). Perhaps the next emphasis should be put on improving standards and enforcement. The elements to this could be, but not limited to, a.) trying to get states to adopt our food safety code; b). pushing for USDA to be given recall authority for tainted food; and c.) some more food specific regulations (similar to juice) which we could explain is part of this yearlong effort. The idea would be that we would line up this third element of standards as the key part of the upcoming year, even as we move ahead on making sure we get sufficient resources and make sure the Council works. It would likely not be a significant cost in the budget. I plan on going ahead and sitting down with agency folks and pushing this idea and see what new major things they could add to such a standards package. I think it might be the germ of a good idea.

Country of origin labeling.

1. Recent events. Last week Secretary Glickman met with Senators Johnson, Craig, Burns, Baucus, and Dorgan (as well as staff from other offices, including Senator Daschle) to discuss the country of origin labeling amendment to the Ag Approps bill. In the meeting, Secretary Glickman made it clear that he was not present to give the Administration's position or support for the amendment but rather to provide technical assistance relative to concerns raised by the amendment. He also indicated that other agencies, such as USTR, DPC, OMB, State, FDA and Customs must be consulted on this issue.

2. What the Amendment does. The amendment as adopted would only apply to beef and lamb (not pork or poultry) and would require "imported" labeling rather than individual country of origin labeling, which is a legal problem relative to our trade agreements (and one of the areas in which the Senate will change). It would apply to muscle cuts as well as ground and processed products. The amendment would not allow cattle that are shipped into the

U.S. in sealed trucks for slaughter to bear the U.S. label (which is allowed under current law). On the other hand, cattle that were fed at a U.S. feedyard for 1 week, for example, would be labeled U.S.

USDA also raised issues about providing for civil penalties for violations of the country of origin requirements if enacted. Currently, USDA can only impose criminal penalties (and the Admin. is seeking broader civil penalty authority via the Harkin bill). USDA also raised issues about providing USDA the authority to traceback product and expressed concerns that we did not want to divert resources from food safety to implement and enforce this amendment. (informal agency estimates of about \$6.5 million for a study as well as rulemaking and enforcement)

An additional issue that was not raised in the meeting has to do with the timing of the amendment. As drafted, there are several different timeframes, with 4 months being the tightest, for promulgating rules. USDA intends to communicate to staff about the need for realistic timeframes for rulemaking.

3. Future in conference. It is unclear what will occur on this issue during conference. Ways and Means Chairman Archer has objected to this amendment (as well as the fruit and vegetable country of origin amendment), and Senate Ag Chair Lugar and House Ag. Chair Smith have also objected. Industry is strongly opposed, but the National Cattleman's Beef Association, National Farmers Union, and American Farm Bureau Federation strongly support. Consumer groups generally support country of origin labeling but do not view this as a high priority issue (they would support the traceback authority).

The bipartisan group of Senators with whom Secretary Glickman met indicated that they would fight strongly to include the amendment and also expressed interest in working to address some of the concerns about the amendment.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-SEP-1998 13:01:12.00

SUBJECT: Update for this afternoon's meeting -- NEW INFO

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

TO: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
 READ:UNKNOWN

CC: Shannon Mason (CN=Shannon Mason/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

TEXT:

Labor has double checked. USDA was correct. Under MSPA, the employer is obliged to provide the weeks of employment specified in the offer of employment (at the specified wage), unless there is an "act of God." MSPA also provides a private right of action to enforce the employment contract.

The one hindrance to enforcement is that MSPA, unlike the H2A program, does not require that the period of employment offered be precise (thus, could offer "at least 6 weeks of work, but possibly 8"). However, there is a possibility to challenge an employment contract in some cases as false and misleading.

julie

----- Forwarded by Julie A. Fernandes/OPD/EOP on 09/14/98
 01:14 PM -----

Julie A. Fernandes
 09/14/98 12:44:27 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Sally Katzen/OPD/EOP
 cc: Laura Emmett/WHO/EOP, Shannon Mason/OPD/EOP, Cecilia E. Rouse/OPD/EOP
 Subject: Update for this afternoon's meeting

Elena/Sally:

Contrary to what we were told by the USDA, John Fraser at the DOL says that he is not sure that the MSPA requires the payment of 100% of the contract wage. Labor was at the meeting when USDA asserted this (and we all discussed it), but they now question whether this is a statutory requirement. John is checking on this.

What is clearly true is that a U.S. worker who has a work contract that is broken (b/c promised 8 wks of work, but provided with only 5 wks) could

bring an action against the employer for breach. This option is less possible for migrant workers.

julie

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-SEP-1998 19:49:29.00

SUBJECT: education issues

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

A couple of developments since this morning:

1. Dollars to the Classroom Block Grant in the House

House Dems are trying to craft a class size amendment to offer when this bill comes to the floor, as a substitute

It is not at all clear that the R's have enough votes to pass this; a number of moderate R's, especially those endorsed by NEA or AFT, do not want to vote for it.

With regard to a letter or some other communication from the Administration (in addition to the SAP with a senior advisors veto threat), Riley has already sent one when the bill was marked up. I will draft an Erskine letter, though our WH and ED leg affairs types think we should be careful about raising our opposition to this in a way that will keep the R's united in support of it.

I also looked into the VP doing some kind of event; he is in NH on Friday announcing some unrelated grants, and is speaking to the Nat. Assoc. of Black Broadcaster on Thursday. We can probably get him to include some critical comments about the bill in his remarks, but probably no one would notice.

2. Appropriations Issues

Today's speculation is that this bill is not very likely to come to the floor as a stand-alone bill; instead it will be folded into a omnibus appropriations bill. If this turns out to be the case, its not clear what impact this will have on any amendments discussed below, especially the more objectionable riders.

Class Size--Spector is now apparantly opposed to putting additional \$ the subcommittee may get into a class size initiative; he'd rather use the funds to reduce the extent to which programs are advanced funded for next year. Harkin, Murray and other Dems are strongly opposed to this approach and are pushing to use the funds for class size and for other education initiatives (apparantly Harkin's list is class size, after-school, IDEA (even more \$!!!) and \$100 million for school construction). We're doing ok with half of Harkin's list, but don't know if we can move him off the other two, or get Am. Rds added to the list.

Single Sex Schools--Kay Bailey Hutchinson is still pushing forward with her amendment; when ED met with her they told her (1) we like single sex schools (2) we don't like her amendment because it is unneeded and because it will cause confusion in the field. In the meantime, Kennedy and Harkin -- responding in part to pressure from the women's groups -- are separately looking for possible amendments that would permit single sex schools only if there is an equal opportunity for the other gender. This

is moving in the wrong direction from our point of view. I don't see any simple ways to balance our policy position, the legal constraints, and the political pressures here. I think we need another meeting with ED, Justice and WH Counsel to figure out our next move. Elena, I think it would be good if you could come to this meeting.

Merit Pay and Teacher Testing We expect the Mack/D'Amato amendment that would provide incentives (additional funding under the Eisenhower professional development program) to states that have statewide merit pay and subject matter tests for current (not just prospective) teachers will come up again. Kennedy and other Dems are looking for something they can support in this area, and have begun talking to NEA and AFT. ED will end up in the wrong place on this--opposing the amendment on narrow technical grounds without finding something to be for. I will stay in touch with Kennedy, and pull a meeting together to figure out how to be for something sensible here. I'll keep you posted as this develops.

Gorton Block Grant/Ed-Flex We are anticipating a block grant and (bad) ed-flex amendment from Gorton. A similar one passed when attached to Coverdell. Our strategy here is to convince Kennedy that the Wyden/Frist Ed-Flex bill that the committee passed (our bill) should be offered as a second degree, and that Kennedy should convince the Dems and the ed groups that this is a good idea. If this shows promise, we will try to enlist the Govs to support this as well, on the grounds that it stands a better chance of being enacted than a rider which has already drawn a veto threat.

3. Higher Education Act Reauthorization

There are still a number of issues to be resolved here. On Tuesday the conferees are meeting for the first time, and will talk about TANF. No one from the education world knows what anyone is going to say on this topic.

With respect to our teacher preparation and recruitment proposal, it appears that we will get our teacher preparation approach ("lighthouse partnerships") and a scaled down version of our teacher recruitment proposal. We will not be able to claim victory for 35,000 teachers; we are still fighting to make sure that we get as much money as possible for this piece. I'll get back to you with some better estimate of what we will be able to claim.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-SEP-1998 17:19:11.00

SUBJECT: Native American idea for FY2000 budget

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Here is a modest proposal for a Native American initiative for the Army Corps of Engineers. It is a way to institutionalize outreach to Native Americans at the Army Corps. The Army Corps probably needs to be a little aggressive in repairing their reputation after the Kenniwick man situation (where the Army Corp discovered ancient remains and did not dispose of them in a way that was satisfactory to tribes or scientists). We should add this to our new ideas memo. Thanks, Mary ===== ATTACHMENT 1 ==
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D71]MAIL47367275I.226 to ASCII,
The following is a HEX DUMP:

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73E50F86E7B995341E23EB24C050F5235EA9E9ABF855D42F161B9D42B985944E28EC969054FB23

Create Native American Program at the Army Corps of Engineers. The Army Corps has a modest \$2 million proposal that would institutionalize Native American outreach within the Army Corps. Here is the proposal:

Outreach (\$1.5 million)

- Market engineering, environmental, economic, project management, real estate, and resource management services to Tribes.
- Using existing workforce of 150 cultural-historical-Tribal specialists for support, establish Tribal Coordinators (1 per Corps of Engineers Division, 8 Divisions).
- Establish an Indian Desk in Corps Headquarters to work with Tribes, BIA, Corps districts (37) and divisions (8), and other federal agencies to leverage resources/programs.

Training (\$250,000)

- Complete consultation guidelines.
- Complete Commander and senior leader video on Tribal matters.
- Develop a strategy for empowering Tribes in the areas of regulatory and natural and cultural resource management.

Partnerships (\$250,000)

- Explore watershed planning opportunities with Tribes.
- Link to Clean Water Action Plan Activities.
- Develop model MOUs that can be used with Tribal Governments on strategies, protocols, and processes for addressing issues.

Automated Records Management System
Hex-Dump Conversion

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-SEP-1998 12:45:04.00

SUBJECT: Update for this afternoon's meeting

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Shannon Mason (CN=Shannon Mason/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Elena/Sally:

Contrary to what we were told by the USDA, John Fraser at the DOL says that he is not sure that the MSPA requires the payment of 100% of the contract wage. Labor was at the meeting when USDA asserted this (and we all discussed it), but they now question whether this is a statutory requirement. John is checking on this.

What is clearly true is that a U.S. worker who has a work contract that is broken (b/c promised 8 wks of work, but provided with only 5 wks) could bring an action against the employer for breach. This option is less possible for migrant workers.

julie

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-SEP-1998 11:24:02.00

SUBJECT: Background for H-2A Meeting

TO: Karen Tramontano (CN=Karen Tramontano/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Barbara Chow (CN=Barbara Chow/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Lawrence J. Stein (CN=Lawrence J. Stein/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Rebecca M. Blank (CN=Rebecca M. Blank/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Peter G. Jacoby (CN=Peter G. Jacoby/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Robert N. Weiner (CN=Robert N. Weiner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: David W. Beier (CN=David W. Beier/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [UNKNOWN])
READ:UNKNOWN

CC: Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

CC: Francine P. Obermiller (CN=Francine P. Obermiller/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Sandra Yamin (CN=Sandra Yamin/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

CC: Mindy E. Myers (CN=Mindy E. Myers/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Shannon Mason (CN=Shannon Mason/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Adrienne C. Erbach (CN=Adrienne C. Erbach/OU=OMB/O=EOP @ EOP [OMB])

READ:UNKNOWN

TEXT:

Attached is background for today's Deputies meeting on the H-2A agricultural guestworkers program at 2pm in Room 211.

-- Ceci

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D9]MAIL49347565X.226 to ASCII,
The following is a HEX DUMP:

FF57504345080000010A02010000000205000000223D00000002000022DE7796DB6D59D859A94D
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March 29, 2010

H-2A Discussion Document

The purpose of today's meeting is to determine general Administration guidelines for H-2A reform.

Background

Agricultural "guestworkers" are admitted on H-2A visas for temporary jobs. Under the current program, in order hire H-2A workers, an employer must demonstrate to the DOL that (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers. Employers also are required to pay workers an "adverse effect wage rate" (AEWR), determined by the average wage paid to non-managerial agricultural workers in the state; provide free housing to workers outside the commuting area; reimburse workers' inbound transportation if they complete half the contract, outbound also if they complete the contract; guarantee 3/4 of the hours of the contract; and hire any qualified U.S. worker who applies during the first half of the work contract. There is no cap on the number of H-2A visas granted. Out of the 1.6 million farmworkers in the United States, approximately 600,000 are unauthorized to work, and approximately 20,000 are in the H-2A program.

In June 1995, in response to efforts in Congress to pass legislation that would create a new guestworker program (without the worker protections present in the existing program) and agreeing with the recommendation of the Commission on Immigration Reform, the President stated his opposition to a "new guestworker program." However, he also stated that if the crackdown on illegal immigration contributes to labor shortages, he would direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance the existing H-2A program.

Grower advocates argue that they continue to experience difficulties in finding domestic farmworkers and that the H-2A program is slow, cumbersome, and expensive. However, a recent (December 1997) GAO study concluded that agribusiness does not now and will not soon face an agricultural labor shortage. The GAO's finding of a labor surplus echoes the conclusions of the U.S. Commission on Agricultural Workers (1992), and the U.S. Commission on Immigration Reform reports (1995 and 1997). While the GAO report suggested that there could develop localized labor shortages, it noted the widespread belief that employers should respond to the market place by increasing wages, improving recruitment and modernizing their labor practices. Further, the GAO report cited a study which concluded that substantial wage increases would have little effect on consumer produce prices or international competitiveness. Many growers blame the INS's recent crackdown on undocumented farmworkers for the shortages of domestic farmworkers and their need to rely on a dysfunctional H-2A program.

On March 12th of this year, the House Judiciary Subcommittee on Immigration approved legislation, sponsored by Rep. Robert Smith (R-OR), that provides for a new pilot guestworker program that erodes existing worker protections. In a letter to Chairman Lamar Smith, Secretary

Herman stated that if this legislation were presented to the President, she would recommend a veto. This bill was voted out of the subcommittee on a voice vote, but has not been taken to the full House Judiciary Committee.

Soon after this bill was introduced, we initiated a process with the Departments of Labor and Agriculture to determine what kinds of regulatory and/or administrative reforms we could put into place before the next growing season. We developed a set of regulatory reforms that respond to the growers' concern that the program needs to be streamlined (i.e., improved processes; reduced paperwork and delay). The Department of Labor and the Justice Department (which handles the immigration aspects of the program) have developed a package of proposed rulemaking changes that we hope will go in effect by the end of January. However, though some grower advocates were pleased with the set of administrative reforms, they continue to press for a legislative package that would fundamentally alter the way the program is operated.

On July 22, 1998, Senators Ron Wyden, Bob Graham and Gordon Smith (R-OR) introduced an amendment to the CJS appropriations bill that would make significant changes to the current H-2A program. On that same day, the Secretary of Labor sent a letter to Senator Wyden stating her strong opposition to his amendment which creates a new guestworker program that erodes labor protections for migrant farmworkers. The overall concern with the Wyden-Graham bill is that it shifts costs and risks from employers to workers and/or the government.

Issues Regarding H-2A Reform

Issue #1

Use of the Adverse Effect Wage Rate

Whether we would consider eliminating the adverse effect wage rate and replacing it with an enhanced prevailing wage rate.

Current Law:

Under the current program, growers who employ H-2A workers are required to pay their workers the higher of the prevailing wage (determined by the average wage for the crop in the local area), the federal, state or local minimum wage or an "adverse effect wage rate" (AEWR) (equal to the average statewide agricultural wage rate). Because foreign workers can sometimes dominate a local labor market, this wage depression is often reflected in the local prevailing wage. The AEWR partially corrects for this depressive effect by measuring farmworker wages on a statewide basis -- thus dissipating the impact of foreign workers on the wage.

Wyden-Graham Bill:

Under the Wyden-Graham bill, the worker is required to be paid either the prevailing wage or the AEWR (capped at 105% of the prevailing wage).

Issue #2

Employer Recruitment -- Use of Proposed Registry

Whether we support the creation of a registry system for matching growers to farmworkers that totally replaces an employer's obligation to conduct positive recruitment.

Current Law:

Under current law, if the grower is seeking to employ H-2A workers, he must affirmatively recruit in the private marketplace (known as "positive recruitment") and use the federal-state Job Service to circulate job offers to areas where migrant workers may be located. Thus, the responsibility for farmworker recruitment is shared between the prospective employer and the U.S. Employment Service.

Wyden-Graham Bill:

Under the Wyden-Graham bill, growers seeking to employ H-2A workers would have no obligation to attempt to recruit legal U.S. farmworkers except through a newly-created "job registry." Thus, all responsibility for the recruitment of domestic farmworkers would shift to a new, untried, process for which the government and low-wage workers are entirely responsible. This registry would take years to create, but H-2A workers could be hired within 6 months of the enactment of the bill. Further, because growers would no longer have an obligation to recruit domestically, they would be free to concentrate their worker recruitment efforts abroad.

Issue #3

Housing

Whether H-2A employers should continue to have an obligation to provide housing to their workers. Also, whether this obligation is met by the issuance of housing vouchers.

Current Law:

Current law requires growers who employ H-2A workers to provide them with free housing.

Wyden-Graham Bill:

The Wyden-Graham bill allows growers to provide a payment voucher (equal to 1/4 of the Fair Market Rate in the applicable county for a two bedroom apartment) in lieu of housing, unless the State certifies that adequate housing is not available in the area. Under this approach, the grower employing H-2A workers would have no obligation to assure that housing is actually available and could be obtained with the voucher.

Issue #4

The 3/4 Guarantee

Whether we support the continued use of the 3/4 guarantee.

Current Law:

Under current law, workers must be paid for at least 75% of the work contract period for which they were recruited, except when there is an “act of God.” This “three-fourths guarantee” gives migrant workers some indication of their potential earnings and discourages employers from over-recruiting to secure a labor surplus and drive down wages. Under the MSPA (which applies to U.S. migrant farmworkers, but not H-2A workers), workers enjoy a 100% guarantee.

Wyden-Graham Bill:

The Wyden-Graham bill would eliminate this work guarantee for H-2A workers. This change will encourage growers to lure workers from hundreds or thousands of miles away with the promise of potentially high earnings without any obligation to fulfill any part of that promise. This may also encourage growers to recruit more workers than they actually need to hedge against uncertainties.

Issue #5

Repatriation Incentive

Whether we support wage-withholding as an incentive for H-2A workers to repatriate.

Current Law:

Under current law, there is no mechanism for ensuring that H-2A workers return to their home country.

Wyden-Graham Bill:

Permits employers to withhold 20% of a worker’s wages, to be reclaimed upon the worker’s return to his home country.

Issue #6

Transportation Reimbursement

Whether employers should continue to be required to provide reimbursement to workers for inbound transportation if they complete 50% of the contract, and for outbound transportation if they complete 100% of the contract.

Current Law:

Under current law, the employer must reimburse the H-2A worker for inbound transportation costs if the worker completes 50% of the contract and for outbound transportation costs if the worker completes 100% of the contract.

Wyden-Graham Bill:

Under the Wyden-Graham proposal, workers may receive such reimbursement from their employer, but the employer is under no obligation to pay. This change would simply shift the cost of transportation to and from the job from the grower to the worker.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Leslie Bernstein (CN=Leslie Bernstein/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:14-SEP-1998 18:22:53.00

SUBJECT: Policy Mtg

TO: Wesley P. Warren (CN=Wesley P. Warren/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

TO: Kathleen A. McGinty (CN=Kathleen A. McGinty/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

TO: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Gene B. Sperling (CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Shelley N. Fidler (CN=Shelley N. Fidler/OU=WHCCTF/O=EOP @ EOP [WHCCTF])
READ:UNKNOWN

TO: Dorothy Robyn (CN=Dorothy Robyn/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Robert M. Shireman (CN=Robert M. Shireman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Melissa G. Green (CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Jennifer L. Klein (CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Nancy Marlow (CN=Nancy Marlow/OU=CEQ/O=EOP @ EOP [CEQ])

READ:UNKNOWN

CC: Shannon Mason (CN=Shannon Mason/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Peter A. Weissman (CN=Peter A. Weissman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Sarah A. Bianchi (CN=Sarah A. Bianchi/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

Dawn L. Smalls (CN=Dawn L. Smalls/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TEXT:

Maria and John will be holding a meeting tomorrow morning at 10:30am to discuss policy issues for the upcoming weeks.

Your entire staff should attend. Please forward this to your staff members appropriately.

I will send out a room notice/reminder in the morning.

Thank You!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-SEP-1998 13:36:55.00

SUBJECT: ONDCP letter

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Jose and I put the following (see below) together as the guts of a cover note from Bruce regarding McCaffrey's letter.

We have a similar issue to resolve on the appropriations bill -- the Senate Labor/HHS approps bill provides \$150 million for ED to carry out a national competition to award grants to school districts for safe schools programs, based on proven practices. ED had requested \$125 million that would be given to states on a formula basis (like the current program) but with the requirement that the states distribute it on a competitive basis. ED likes the Senate approach. However, OMB anticipates that ONDCP will not like this provision, because it focuses on safety rather than drugs. Barbara Chow wants to pull a meeting together soon to figure out our position for the SAP. I think this is a good idea--its necessary, and its an opportunity for me to get a better handle on how to deal with both the reauthorization issue and the ONDCP staff (who I don't know).

Cover note for McCaffrey letter:

We have been working with the Education Department on a proposal to overhaul the State and Drug Free Schools Program, for announcement at the Oct. 15 Safe Schools Conference. The Education Department's proposal is similar to ONDCP's in many respects -- stronger accountability provisions, better targeting of the funds to school districts with the greatest need, and requirements that the funds be used on research-based programs with demonstrated effectiveness. However, whereas ONDCP proposes to focus this program primarily on reducing youth drug use, the Education Department proposes to focus it primarily on creating safe and orderly schools.

DPC is planning to bring both agencies together to work toward an agreed-upon approach to overhauling the program. Such an approach would include (1) the accountability and targeting components they already agree upon, (2) strategies that can help keep schools safe and students drug-free (e.g., clear, firm and fully enforced discipline and drug policies, better connections between students and adults, and programs that teach character and responsible decision making) and, (3) consideration of an increased budget request for an effectively overhauled program.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jennifer M. Palmieri (CN=Jennifer M. Palmieri/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:14-SEP-1998 19:39:38.00

SUBJECT: Guidance for Press Conference

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD]
READ:UNKNOWN

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Lori L. Anderson (CN=Lori L. Anderson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

The President is doing a press conference Wednesday with Havel. I am looking for guidance from you guys on anything that might come up in your area. He's only taking 4 (hopefully) questions so we think most of the questions will be on other topics.

Leg Affairs and NEC have handled budget, approps, etc. please e-mail Lori Anderson by 11 am with any other q and a you think we may need (bill of rights, maybe?).

Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: David R. Goodfriend (CN=David R. Goodfriend/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:14-SEP-1998 11:57:15.00

SUBJECT: President's Trip to OH and MA

TO: Malcolm R. Lee (CN=Malcolm R. Lee/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Lawrence J. Stein (CN=Lawrence J. Stein/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Robert S. Kapla (CN=Robert S. Kapla/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

TO: Craig Hughes (CN=Craig Hughes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Phillip Caplan (CN=Phillip Caplan/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jonathan Orszag (CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jonathan H. Adashek (CN=Jonathan H. Adashek/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Daniel Wexler (CN=Daniel Wexler/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Dorian V. Weaver (CN=Dorian V. Weaver/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Walker (CN=Ann F. Walker/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Beth A. Viola (CN=Beth A. Viola/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

TO: Barry J. Toiv (CN=Barry J. Toiv/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Marjorie Tarmey (CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Stephanie S. Streett (CN=Stephanie S. Streett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Todd Stern (CN=Todd Stern/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jake Siewert (CN=Jake Siewert/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Dan K. Rosenthal (CN=Dan K. Rosenthal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: John Podesta (CN=John Podesta/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Jennifer M. Palmieri (CN=Jennifer M. Palmieri/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Mary Morrison (CN=Mary Morrison/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Megan C. Moloney (CN=Megan C. Moloney/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Andrew J. Mayock (CN=Andrew J. Mayock/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Bruce R. Lindsey (CN=Bruce R. Lindsey/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Christopher J. Lavery (CN=Christopher J. Lavery/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Karin Kullman (CN=Karin Kullman/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia M. Jasso-Rotunno (CN=Cynthia M. Jasso-Rotunno/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Nancy V. Hernreich (CN=Nancy V. Hernreich/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Paul K. Engskov (CN=Paul K. Engskov/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Barbara A. Barclay (CN=Barbara A. Barclay/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Brenda M. Anders (CN=Brenda M. Anders/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Maria E. Soto (CN=Maria E. Soto/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Ryland M. Willis (CN=Ryland M. Willis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Julianne B. Corbett (CN=Julianne B. Corbett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Amy W. Tobe (CN=Amy W. Tobe/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jon P. Jennings (CN=Jon P. Jennings/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Cecily C. Williams (CN=Cecily C. Williams/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Christopher Wayne (CN=Christopher Wayne/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael Waldman (CN=Michael Waldman/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: June G. Turner (CN=June G. Turner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael V. Terrell (CN=Michael V. Terrell/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

TO: Jordan Tamagni (CN=Jordan Tamagni/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Aviva Steinberg (CN=Aviva Steinberg/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Craig T. Smith (CN=Craig T. Smith/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Laura D. Schwartz (CN=Laura D. Schwartz/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Christa Robinson (CN=Christa Robinson/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Simeona F. Pasquil (CN=Simeona F. Pasquil/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elizabeth R. Newman (CN=Elizabeth R. Newman/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Kevin S. Moran (CN=Kevin S. Moran/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Linda L. Moore (CN=Linda L. Moore/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Anne E. McGuire (CN=Anne E. McGuire/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Joseph P. Lockhart (CN=Joseph P. Lockhart/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sara M. Latham (CN=Sara M. Latham/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Kirk T. Hanlin (CN=Kirk T. Hanlin/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Phu D. Huynh (CN=Phu D. Huynh/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Laura A. Graham (CN=Laura A. Graham/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Anne M. Edwards (CN=Anne M. Edwards/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Brenda B. Costello (CN=Brenda B. Costello/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Laura K. Capps (CN=Laura K. Capps/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: David S. Beaubaire (CN=David S. Beaubaire/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Kris M Balderston (CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Lori L. Anderson (CN=Lori L. Anderson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

On Thursday, September 17, the President will travel to Cincinnati, Ohio, to attend a reception at a private residence and to Boston, Massachusetts, to attend a Unity Dinner. Deadlines for the President's trip book are as follows:

OH & MA Background Memos: DUE TUESDAY, SEPTEMBER 15, 6:00 P.M.

- Political Memos
- CEQ Hot Issues
- Cabinet Affairs Hot Issues
- Accomplishments

OH & MA Event Memos: DUE WEDNESDAY, SEPTEMBER 16, 6:00 P.M.

- Private Reception (OH)
- Unity Dinner (MA)

If you have any questions, please e-mail or call me (6-2702).

-- David Goodfriend

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-SEP-1998 17:54:50.00

SUBJECT: H2A memo for Erskine

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Shannon Mason (CN=Shannon Mason/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

attached is the draft.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D66]MAIL44969275U.226 to ASCII,

The following is a HEX DUMP:

FF57504315090000010A02010000000205000000A137000000020000B0486AD37BA00A856961F3
A74B752860F712170F22F933129EC94E7D9EA1722EB0153FBBE958BE3BB2E59349F0BE360E2BB4
6B6E17B2BD308E1D7C5B1D3C5064C860F95110F2DDF1381B6920AFDEBE7848DDE68BBBCF2F8A48

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: ELENA KAGAN
SALLY KATZEN

RE: WYDEN-GRAHAM AGRICULTURAL GUESTWORKERS BILL

DATE: March 29, 2010

You are meeting with Senators Ron Wyden (D-OR) and Bob Graham (D-FL) on Tuesday afternoon to discuss their amendment to the Commerce, Justice, State (CJS) Appropriations bill that would make significant changes to the current H-2A agricultural guestworker program. Sens. Wyden and Graham will ask you to either support their legislation or work with them to improve it.

Background

Agricultural “guestworkers” are admitted on H-2A visas for temporary jobs. Under the current program, in order to hire H-2A workers, an employer must demonstrate to the Department of Labor (DOL) that (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers. Employers also are required to pay workers an “adverse effect wage rate” (AEWR), determined by the average wage paid to non-managerial agricultural workers in the state; provide free housing to workers outside the commuting area; reimburse workers’ inbound transportation if they complete half the contract, outbound also if they complete the contract; guarantee 3/4 of the hours of the contract; and hire any qualified U.S. worker who applies during the first half of the work contract. There is no cap on the number of H-2A visas granted. Out of the 1.6 million farmworkers in the United States, approximately 600,000 are unauthorized to work, and approximately 20,000 are in the H-2A program.

In response to concerns expressed by growers that the H-2A program needs to be streamlined, the Department of Labor and the Justice Department (which handles the immigration aspects of the program) developed a set of regulatory reforms that we hope will go in effect by the end of January. However, though some grower advocates were pleased with these reforms, they continue to press for a legislative package that would fundamentally alter the way the program is operated.

The Wyden-Graham Bill

On July 22, 1998, Senators Wyden, Graham and Gordon Smith (R-OR) introduced their bill to overhaul the H-2A guestworker program as an amendment to the Senate CJS

Appropriations bill. Though we agree that the current program is in need of some reform, we strongly oppose the Wyden-Graham bill because it erodes protections for U.S. workers and shifts costs and risks from employers to workers and/or the government. For example, the bill:

- Eliminates the requirement that growers must conduct private market recruitment for workers, except through the proposed registry.

At the core of the Wyden-Graham bill is the creation of a new “job registry.” Under their bill, growers seeking to employ H-2A workers would have no obligation to attempt to recruit U.S. farmworkers except through this registry. Thus, all responsibility for the recruitment of domestic farmworkers would shift to a new, untried, process for which the government and low-wage workers are entirely responsible. This registry would take years to create, but H-2A workers could be hired within 6 months of the enactment of the bill. Further, because growers would no longer have an obligation to recruit domestically, they would be free to concentrate their worker recruitment efforts abroad.

- Erodes U.S. worker wages

Under the current program, growers who employ H-2A workers are required to pay their workers the higher of the prevailing wage (equal to the average wage for the crop in the local area), the federal, state or local minimum wage or an “adverse effect wage rate” (AEWR) (equal to the average statewide agricultural wage rate). Because foreign workers (both undocumented and H-2A guestworkers) can sometimes dominate a local labor market, this wage depression is often reflected in the local prevailing wage. The AEWR is intended to correct for this depressive effect by measuring farmworker wages on a statewide basis -- thus dissipating the impact of foreign workers on the wage.

Under the Wyden-Graham bill, the worker is required to be paid either the prevailing wage or the AEWR (capped at 105% of the prevailing wage). Our preliminary assessment is that 105% of the prevailing wage is not high enough to compensate for depression of wages where there is a heavy reliance on foreign workers.

- Does not provide an adequate mechanism for housing foreign guestworkers

Current law requires growers who employ H-2A workers to provide them with free housing. The Wyden-Graham bill allows growers to provide a payment voucher in lieu of housing, unless the State certifies that adequate housing is not available in the area. Under this approach, the grower employing H-2A workers would have no obligation to assure that housing is actually available and could be obtained with the voucher.

We have two concerns with this provision. First, there are many areas (particularly in the West) where there simply is not an adequate supply of rural housing to meet the needs

of farmworkers. Second, even if there is some housing available in the area, it is unrealistic to expect low-wage foreign migrant farmworkers to be able to secure housing on their own using a federal voucher. Thus, many workers will likely end up without housing or be encouraged to overcrowd any available rental housing.

- Eliminates the requirement that growers guarantee any part of the work offered to recruit U.S. and foreign workers.

Under current law, H-2A workers must be paid for at least 75% of the work contract period for which they were recruited, except when there is an “act of God.” This “three-fourths guarantee” gives migrant workers some indication of their potential earnings and discourages employers from over-recruiting to secure a labor surplus and drive down wages. The Wyden-Graham bill would eliminate this work guarantee. This change will encourage growers to lure workers from hundreds or thousands of miles away with the promise of potentially high earnings without any obligation to fulfill any part of that promise. This may also encourage growers to recruit more workers than they actually need to hedge against uncertainties.

- Permits growers to withhold worker wages as an incentive to repatriate

The Wyden-Graham bill permits employers to withhold 20% of the worker’s wages until the worker returns to his home country. According to the Department of Labor, the federal government does not, in any other circumstance, sanction the withholding of wages as an incentive toward future behavior. In addition, it is unclear whether many of these workers would be able to recover this money from the accounts in their home countries. Finally, there is little evidence that these amounts would serve as a disincentive for workers who intend to stay in the U.S.

Though the bill passed the Senate by a vote of 68 to 31, it has strong opposition from the Hispanic Caucus, Hispanic advocacy groups, labor unions, liberal Democrats in the House and many House Republicans. Because no one expected this bill to be offered as an attachment to the CJS Appropriations bill, many Members were unaware of precisely what the bill would do. Since the bill’s passage, both labor unions and Hispanic advocacy groups have been working to persuade Members that this bill is bad for farmworkers (who are overwhelmingly Hispanic). The National Council of La Raza (NCLR) and the Mexican-American Legal Defense and Education Fund (MALDEF) have cited preventing the enactment of this bill as one of their chief civil rights objectives during this session of Congress. Paul Yzaguirre, the President of NCLR, sent a letter to the President thanking him for his opposition to this bill. The United Farm Workers of America, AFL-CIO, also sent a letter to Secretary Herman strongly opposing the Wyden-Graham bill. Perhaps more importantly, House Republicans, led by House Judiciary Immigration Subcommittee Chairman Lamar Smith, strongly oppose adding the measure to the CJS Appropriations bill and have put the House Judiciary Committee on record in opposition.

In addition to our serious substantive concerns with the bill, we are strongly of the view that change of this magnitude should be the result of a thorough and careful process (including congressional hearings), rather than a last minute amendment to an appropriations bill. To that end, we have initiated (along with the Departments of Labor and Agriculture) a bi-partisan process with members of Congress to examine various policy proposals for H-2A reform and determine whether and where consensus can be reached. We believe that there is room for flexibility on several issues, including wages, housing, and repatriation. The first meeting of this group is scheduled for the afternoon of Tuesday, September 15. The objective of this process is to develop and present a reform package to the Congress next year.

Recommendation

Because of our serious substantive and procedural concerns regarding the Wyden-Graham bill, we recommend that we continue our strong opposition to their bill, including making it clear that we are prepared to veto it. In addition, in light of our commitment to address H-2A reform through a bi-partisan process on the Hill, we do not recommend any direct negotiation with Sens. Wyden and Graham about the specifics of their bill.

However, because Sens. Wyden and Graham have invested a lot of time and personal prestige in their efforts to reform the H-2A program, we believe that they will only be satisfied if they do not walk away empty-handed. Therefore, we recommend that you offer, in exchange for their dropping their support for the amendment, that we would agree to report language directing the Department of Labor to develop a pilot registry program. This pilot would be much more narrow than that proposed in their bill. Significantly, rather than replacing the growers' obligation to recruit U.S. workers, the goal of the pilot would be to determine how effective such a registry could be at matching growers to farmworkers. You should also urge Sens. Wyden and Graham to work with us in the bi-partisan process to develop a real reform package during the next Congress.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:14-SEP-1998 18:29:37.00

SUBJECT: Policy Mtg

TO: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Andrea Kane (CN=Andrea Kane/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Essence P. Washington (CN=Essence P. Washington/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Christa Robinson (CN=Christa Robinson/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jeanne Lambrew (CN=Jeanne Lambrew/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Neera Tanden (CN=Neera Tanden/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jennifer L. Klein (CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Sarah A. Bianchi (CN=Sarah A. Bianchi/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

FYI- 10:30 mtg. tomorrow

----- Forwarded by Laura Emmett/WHO/EOP on 09/14/98 06:24
PM -----

LESLIE
BERNSTEIN
09/14/98 06:22:08 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Policy Mtg

Maria and John will be holding a meeting tomorrow morning at 10:30am to discuss policy issues for the upcoming weeks.

Your entire staff should attend. Please forward this to your staff members appropriately.

I will send out a room notice/reminder in the morning.

Thank You!

Message Sent

To: _____
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Christopher C. Jennings/OPD/EOP
Gene B. Sperling/OPD/EOP
Sally Katzen/OPD/EOP
Cecilia E. Rouse/OPD/EOP
Dorothy Robyn/OPD/EOP
Kathleen A. McGinty/CEQ/EOP
Shelley N. Fidler/WHCCTF/EOP
Wesley P. Warren/CEQ/EOP

Message Copied

To: _____

Cathy R. Mays/OPD/EOP
Laura Emmett/WHO/EOP
Sarah A. Bianchi/OPD/EOP
Jose Cerda III/OPD/EOP
Michael Cohen/OPD/EOP
Julie A. Fernandes/OPD/EOP
Thomas L. Freedman/OPD/EOP
Jennifer L. Klein/OPD/EOP
Cynthia A. Rice/OPD/EOP
Paul J. Weinstein Jr./OPD/EOP
Peter A. Weissman/OPD/EOP
Melissa G. Green/OPD/EOP
Shannon Mason/OPD/EOP
Robert M. Shireman/OPD/EOP
Nancy Marlow/CEQ/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kate P. Donovan (CN=Kate P. Donovan/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:14-SEP-1998 19:07:41.00

SUBJECT: DRAFT TRANSPORTATION APPROPRIATIONS LETTER

TO: Karen Tramontano (CN=Karen Tramontano/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: RUDMAN_M@A1@CD@VAXGTWY (RUDMAN_M@A1@CD@VAXGTWY [UNKNOWN]) (NSC)
READ:UNKNOWN

TO: Todd Stern (CN=Todd Stern/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Kerri A. Jones (CN=Kerri A. Jones/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN

TO: Kathleen A. McGinty (CN=Kathleen A. McGinty/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

TO: Joshua Gotbaum (CN=Joshua Gotbaum/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Martha Foley (CN=Martha Foley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: John Podesta (CN=John Podesta/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Michelle Peterson (CN=Michelle Peterson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: G. E. DeSeve (CN=G. E. DeSeve/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Jeffrey M. Smith (CN=Jeffrey M. Smith/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN

TO: Wesley P. Warren (CN=Wesley P. Warren/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

TO: Lisa M. Kountoupes (CN=Lisa M. Kountoupes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Ron Klain (CN=Ron Klain/O=OVP@OVP [UNKNOWN])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Gene B. Sperling (CN=Gene B. Sperling/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Rahm I. Emanuel (CN=Rahm I. Emanuel/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC: FARRAR_J@A1@CD@VAXGTWY (FARRAR_J@A1@CD@VAXGTWY [UNKNOWN]) (NSC)
READ:UNKNOWN

CC: Victoria A. Wachino (CN=Victoria A. Wachino/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: Robert L. Nabors (CN=Robert L. Nabors/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

CC: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

CC: Lisa Zweig (CN=Lisa Zweig/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: Charles Konigsberg (CN=Charles Konigsberg/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: Shannon Mason (CN=Shannon Mason/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

CC: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

CC: Jessica L. Gibson (CN=Jessica L. Gibson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

CC: Rosemary Evans (CN=Rosemary Evans/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: Adrienne C. Erbach (CN=Adrienne C. Erbach/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: Peter A. Weissman (CN=Peter A. Weissman/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

CC: Judy Jablow (CN=Judy Jablow/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

CC: Charles R. Marr (CN=Charles R. Marr/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

CC: Elizabeth Gore (CN=Elizabeth Gore/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: Jonathan H. Adashek (CN=Jonathan H. Adashek/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

CC: Melissa G. Green (CN=Melissa G. Green/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

CC: Kevin S. Moran (CN=Kevin S. Moran/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TEXT:

Below is the draft Transportation FY99 Appropriations letter. The House is expected to appoint conferees at 10:30am tomorrow (Tuesday, 9/15). Obey's staff has asked to have the letter at that time. Therefore, please provide comments/clearance by 9:30am tomorrow. Thank you.

The Honorable Robert Livingston
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The purpose of this letter is to provide the Administration's views on H.R. 4328, the Department of Transportation and Related Agencies Appropriations Bill, FY 1999, as passed by the House and by the Senate. As the conferees develop a final version of the bill, your consideration of the Administration's views would be appreciated.

The Administration appreciates that both the House and Senate have made efforts to accommodate many of the President's priorities in their respective action on the bill. However, the allocation is simply insufficient to make the necessary investments in programs funded by this bill. As a result, a variety of critical programs are underfunded. The only way to achieve the appropriate investment level is to offset discretionary spending by using savings in other areas. The President's FY 1999 Budget proposes levels of discretionary spending for FY 1999 that conform to the Bipartisan Budget Agreement by making savings in mandatory and other programs available to help finance this spending. In the Transportation Equity Act, Congress -- on a broad, bipartisan basis -- took similar action in approving funding for surface transportation programs together with mandatory offsets. In addition, this year, as in the past, such mandatory offsets have been approved by the House and Senate in other appropriations bills. The Administration urges the Congress to consider such mandatory savings proposals for other priority discretionary programs, including those funded through this bill.

The Administration is concerned that both versions of the bill could seriously disrupt air transportation safety and vital Federal Aviation Administration (FAA) and Coast Guard modernization programs, compromise highway safety, and delay Amtrak's progress towards operating self-sufficiency. The conferees could accommodate some of the funding increases recommended below by adhering more closely to the President's request for the Airport Grants program, High Speed Rail, Coast Guard Alteration of Bridges, and other programs. Both the House and the Senate versions of the bill also include some objectionable language provisions.

The Administration's specific concerns with both the House and Senate versions of the bill are discussed below.

Essential Operations

The Administration strongly urges the conferees to fully fund the request for Coast Guard and FAA operations. The House has funded Coast Guard Operating Expenses at \$72 million below the requested level and reallocated funds among programs. The House version would force the Coast Guard to lay up certain cutters and aircraft and decommission one of the

Nation's three polar icebreakers, thereby compromising the integrity of our Exclusive Economic Zone and leaving critically depleted fish stocks under-protected. The Senate level of \$2,762 million would better enable the Coast Guard to carry out its many important missions.

Likewise, we ask the conferees to restore funding for FAA Operations. The House version is \$56 million below the requested level, the Senate version \$50 million below. The full requested level of \$5,631 million is needed to ensure that the FAA can continue to provide current service and can hire the security personnel and safety inspectors needed to meet the demands of increased air travel. The Administration also objects to Senate earmarks for low priority programs, such as subsidies for contract towers that are not cost-beneficial.

Coast Guard and FAA Modernization

The Administration urges the conferees to fully fund the request for Coast Guard and FAA modernization to ensure that the equipment and infrastructure necessary to fulfill critical missions in the future are available. The Administration is particularly concerned about language in the Senate version intended to limit outlays for FAA Facilities and Equipment. We question whether this provision can be implemented and are concerned about its detrimental programmatic effects.

Funding below the requested level for the FAA's capital program could delay National Airspace System Modernization. In particular, we urge full funding of the Host Computer replacement and other Year 2000 conversion activities. The conferees also are encouraged to restore funding for the Flight 2000 program, eliminated by the House and virtually eliminated by the Senate. This program is a key element of the FAA's plans for a transition to a more efficient, user-involved, satellite-based air traffic control system to meet the air traffic needs of the next century. The conferees are requested to fund the \$100 million for explosive detection systems from the FAA Facilities and Equipment account, not the Airport Improvement Program account, to ensure these critical systems are actually purchased and then deployed where they are most needed.

The Administration requests that the conferees fund the Coast Guard Acquisition, Construction, and Improvements account at the requested level of \$443 million and refrain from directing funds to unrequested projects that increase operating costs. The mix of projects requested in the President's budget will reduce the Coast Guard's future operating costs, improve mission performance, and upgrade facilities and housing for Coast Guard personnel. The reductions of \$54 million made by the House and \$17 million made by the Senate would have harmful long-term effects on the Coast Guard's capability. We also urge the conferees to fully fund the President's request for the Nationwide Global Positioning System and for adding a second civil signal to the Global Positioning System.

Amtrak Capital Grants

The Administration strongly encourages the conferees to adopt the House funding level of \$609 million for Amtrak capital grants and the Senate provision that would allow Amtrak to invest these capital funds flexibly, as is presently done by Federal Transit Administration grantees. Amtrak is an essential component of the Nation's inter-city transportation system, and it needs both adequate funding and flexibility to carry through on the bipartisan, five-year reform plan envisioned by the Amtrak Reform and Accountability Act of 1997. Also, neither the House

nor the Senate has provided the requested \$12 million to complete the Federal contribution to the renovation of Penn Station.

Project Labor Agreements

An acceptable compromise was reached between the Administration and the Senate on Section 322 of the Senate-passed bill. The Administration understands that there may be attempts to unravel this agreement. If the conference bill includes different language than the Senate-passed bill, it could jeopardize enactment of the bill. We strongly urge the conferees to retain the Senate language.

National Highway Traffic Safety Administration

To protect the safety of automobile travelers adequately, the Administration asks that the conferees work with the authorizing committees and provide an additional \$12 million for high-priority National Highway Traffic Safety Administration programs. These vehicle safety and consumer information activities are essential to providing consumers with up-to-date safety information, conducting critical research on advanced air bag systems and the biomechanics of injury, and developing improved crash test dummies.

Access-to-Jobs

The Administration requests that the conferees provide an additional \$50 million to fully fund the President's request of \$100 million for the Access-to-Jobs program. This program is an important component of the Administration's welfare reform effort. The additional resources are essential to helping more individuals in communities around the country make a successful transition from welfare to work.

Office of the Secretary and Civil Rights

The Administration urges the conferees to provide the President's requested \$62 million for the Office of the Secretary and to drop the new account structures and limitations on political appointees contained in both versions of the bill. These provisions would undermine the Secretary's ability to manage the Department effectively by, among other things, causing a reduction-in-force. The Administration is also greatly concerned about the Senate's 20-percent reduction to the funding request for the Office of Civil Rights, a level that is below FY 1998. This reduction would significantly hamper the Department's ability to enforce laws that prohibit discrimination in Federally operated or assisted transportation programs.

The provision in both the House and Senate versions of the bill that requires congressional approval of assessments to be levied by the Transportation Administrative Service Center on other departmental entities constitutes a legislative veto. The Administration will interpret this provision to require notification only, since any other interpretation would contradict the Supreme Court ruling in *INS vs. Chadha*.

Earmarks

The Senate bill earmarks nearly 400 transit projects, the House bill nearly 300. In addition, both versions earmark many airport, Intelligent Transportation System (ITS), and rail projects. Consistent with our objections to TEA-21, the Administration believes that projects should be funded based upon their merit and that funds should not be

directed to low-priority projects that cannot meet established selection criteria.

Language Provisions

The Administration strongly opposes section 341 of the Senate bill, which would allow helicopters to operate and land on Federally-owned lands in Alaska, including wilderness areas. This would be harmful to species and habitat and disrupt Congress's, carefully crafted balance on this issue in the Alaska National Interest Land Conservation Act (ANILCA). Under ANILCA, helicopter landings are permitted for emergency reasons and, on a case-by-case basis, for non-emergency use in non-wilderness areas. The Secretaries of the Interior and Agriculture have previously recommended that bills containing similar provisions be vetoed.

The Administration requests that the conferees delete the language in both versions of the bill that would prohibit the Coast Guard and the FAA from evaluating options for collecting fees for their services. User fees may be a critical means in the future for ensuring that the Coast Guard and the FAA have adequate resources to meet their operating and capital needs without significantly reducing other vital transportation programs.

The Administration is concerned that language in the Senate bill prohibiting obligation of funds for the FAA's Wide Area Augmentation System (WAAS) until it is certified as a sole means of navigation would suspend the WAAS program prematurely. The Administration appreciates the Senate's concerns but believes that these concerns relate more to Phases II and III of the WAAS program than to Phase I. It does not make sense to forego the substantial benefits of WAAS Phase I now that they are so close to being achieved. The Administration requests that the conferees either eliminate the Senate language or amend it to prohibit obligation of funds for WAAS Phases II and III prior to the requested certifications.

The Administration is pleased that the House recognizes the need to review the Coast Guard's roles and missions but objects to its proposed panel. This proposal would add significant administrative and procedural requirements to the process and delay the Deepwater contract by at least a year. The Administration's advisory council would provide an objective, third-party assessment of the Coast Guard's roles and missions in a time frame consistent with the planned Deepwater procurement.

The Administration strongly objects to the House bill's prohibition of any future changes to automobile fuel economy (CAFE) standards. This significant policy issue should be addressed analytically through the process in place under Federal law and not preemptively settled through the appropriations process.

The Administration urges deletion of the Senate provision pertaining to expedited Supreme Court review of decisions concerning the Department's Disadvantaged Business Enterprise programs as this provision would disrupt and delay pending court cases and send the wrong kind of cases directly to the Supreme Court.

Finally, the Administration objects to the language in the Senate version of the bill that directs the National Transportation Safety Board to reimburse the State of New York for both extraordinary and routine costs associated with the crash of TWA 800. The Administration believes that the State and local counties of New York should be reimbursed only

for extraordinary expenses incurred as a result of the crash. They should not receive a windfall by being reimbursed for routine activities that would have occurred absent the crash.

We look forward to working with the conferees to address our mutual concerns.

Sincerely,

Jacob J. Lew
Director

Identical Letter Sent to The Honorable Bob Livingston,
The Honorable David R. Obey, The Honorable Frank R. Wolf,
The Honorable Martin O. Sabo, The Honorable Ted Stevens,
The Honorable Robert C. Byrd, The Honorable Richard C. Shelby,
and The Honorable Frank R. Lautenberg

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-SEP-1998 09:16:45.00

SUBJECT: H-2A -- background paper for Deputy's meeting

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Shannon Mason (CN=Shannon Mason/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Elena/Sally,

Attached is a background memo for the H-2A Deputy's meeting this afternoon. It outlines the six main issues re: H-2A reform. We would also like to send a abridged version of this document (without the recommended administration positions) to those who are attending the meeting this afternoon. Please advise. Thanks.

julie & ceci

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D41]MAIL44366465T.226 to ASCII,
The following is a HEX DUMP:

FF57504345080000010A0201000000020500000047510000000200009CBE986A89A443C086A3E3
F189E21853C58DB9359AD58B20457501E0748E5D139BA43EF49BCAF083F3C05EC715BB35433DF8
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3B0CCBE435C766A307921D0B7534908A6A64FF8923AD3C619C44E16113A8B2A5E4333BA28203A9

MEMORANDUM FOR ELENA KAGAN and SALLY KATZEN

FROM: JULIE FERNANDES
CECILIA ROUSE

RE: WYDEN-GRAHAM AGRICULTURAL GUESTWORKERS BILL

DATE: March 29, 2010

Background

Agricultural “guestworkers” are admitted on H-2A visas for temporary jobs. Under the current program, in order hire H-2A workers, an employer must demonstrate to the DOL that (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers. Employers also are required to pay workers an “adverse effect wage rate” (AEWR), determined by the average wage paid to non-managerial agricultural workers in the state; provide free housing to workers outside the commuting area; reimburse workers’ inbound transportation if they complete half the contract, outbound also if they complete the contract; guarantee 3/4 of the hours of the contract; and hire any qualified U.S. worker who applies during the first half of the work contract. There is no cap on the number of H-2A visas granted. Out of the 1.6 million farmworkers in the United States, approximately 600,000 are unauthorized to work, and approximately 20,000 are in the H-2A program.

In June 1995, in response to efforts in Congress to pass legislation that would create a new guestworker program (without the worker protections present in the existing program) and agreeing with the recommendation of the Commission on Immigration Reform, the President stated his opposition to a “new guestworker program.” However, he also stated that if the crackdown on illegal immigration contributes to labor shortages, he would direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance the existing H-2A program.

Grower advocates argue that they continue to experience difficulties in finding domestic farmworkers and that the H-2A program is slow, cumbersome, and expensive. However, a recent (December 1997) GAO study concluded that agribusiness does not now and will not soon face an agricultural labor shortage. The GAO’s finding of a labor surplus echoes the conclusions of the U.S. Commission on Agricultural Workers (1992), and the U.S. Commission on Immigration Reform reports (1995 and 1997). While the GAO report suggested that there could develop localized labor shortages, it noted the widespread belief that employers should respond to the market place by increasing wages, improving recruitment and modernizing their labor practices. Further, the GAO report cited a study which concluded that substantial wage

increases would have little effect on consumer produce prices or international competitiveness. Many growers blame the INS's recent crackdown on undocumented farmworkers for the shortages of domestic farmworkers and their need to rely on a dysfunctional H-2A program.

On March 12th of this year, the House Judiciary Subcommittee on Immigration approved legislation, sponsored by Rep. Robert Smith (R-OR), that provides for a new pilot guestworker program that erodes existing worker protections. In a letter to Chairman Lamar Smith, Secretary Herman stated that if this legislation were presented to the President, she would recommend a veto. This bill was voted out of the subcommittee on a voice vote, but has not been taken to the full House Judiciary Committee.

Soon after this bill was introduced, we initiated a process with the Departments of Labor and Agriculture to determine what kinds of regulatory and/or administrative reforms we could put into place before the next growing season. We developed a set of regulatory reforms that respond to the growers' concern that the program needs to be streamlined (i.e., improved processes; reduced paperwork and delay). The Department of Labor and the Justice Department (which handles the immigration aspects of the program) have developed a package of proposed rulemaking changes that we hope will go in effect by the end of January. However, though some grower advocates were pleased with the set of administrative reforms, they continue to press for a legislative package that would fundamentally alter the way the program is operated.

On July 22, 1998, Senators Ron Wyden, Bob Graham and Gordon Smith (R-OR) introduced an amendment to the CJS appropriations bill that would make significant changes to the current H-2A program. On that same day, the Secretary of Labor sent a letter to Senator Wyden stating her strong opposition to his amendment which creates a new guestworker program that erodes labor protections for migrant farmworkers. The overall concern with the Wyden-Graham bill is that it shifts costs and risks from employers to workers and/or the government.

Issues Regarding H-2A Reform

Issue #1

Use of the Adverse Effect Wage Rate

Whether we would consider eliminating the adverse effect wage rate and replacing it with an enhanced prevailing wage rate.

Current Law:

Under the current program, growers who employ H-2A workers are required to pay their workers the higher of the prevailing wage (determined by the average wage for the crop in the local area), the federal, state or local minimum wage or an "adverse effect wage rate" (AEWR) (equal to the average statewide agricultural wage rate). Because foreign workers can sometimes dominate a local labor market, this wage depression is often reflected in the local prevailing wage. The

AEWR partially corrects for this depressive effect by measuring farmworker wages on a statewide basis -- thus dissipating the impact of foreign workers on the wage.

Wyden-Graham Bill:

Under the Wyden-Graham bill, the worker is required to be paid either the prevailing wage or the AEWR (capped at 105% of the prevailing wage).

Recommended Administration Position:

The Departments of Labor and Agriculture agree that our goal is to find a way to calculate the wage that both takes into account the depression of wages in areas where there is heavy reliance on illegal and H-2A workers and that isn't so high as to drive employers to hire undocumented workers. Thus, we have agreed to explore proposals to replace the AEWR with some form of an enhanced prevailing wage, so long as the enhancement is adequate. Our preliminary assessment is that 105% of prevailing wage would be an *inadequate* enhancement.

Though we may conclude that a move away from the AEWR could more accurately reflect proper wages in certain sectors, we will likely face significant backlash from the Hispanic and farmworker communities if the new formula results in lower wages in any sector.

Issue #2

Employer Recruitment -- Use of Proposed Registry

Whether we support the creation of a registry system for matching growers to farmworkers that totally replaces an employer's obligation to conduct positive recruitment.

Current Law:

Under current law, if the grower is seeking to employ H-2A workers, he must affirmatively recruit in the private marketplace (known as "positive recruitment") and use the federal-state Job Service to circulate job offers to areas where migrant workers may be located. Thus, the responsibility for farmworker recruitment is shared between the prospective employer and the U.S. Employment Service.

Wyden-Graham Bill:

Under the Wyden-Graham bill, growers seeking to employ H-2A workers would have no obligation to attempt to recruit legal U.S. farmworkers except through a newly-created "job registry." Thus, all responsibility for the recruitment of domestic farmworkers would shift to a new, untried, process for which the government and low-wage workers are entirely responsible. This registry would take years to create, but H-2A workers could be hired within 6 months of the enactment of the bill. Further, because growers would no longer have an obligation to recruit domestically, they would be free to concentrate their worker recruitment efforts abroad.

Recommended Administration Position:

There is general agreement between USDA and DOL that total reliance on a registry (undeveloped; untested) would be unacceptable -- growers must retain some of the responsibility for finding U.S. workers. However, despite these concerns, it may be worthwhile to develop a pilot program to test whether a registry of the kind described in the bill could be an effective tool to assist growers in locating U.S. farmworkers. We could also consider the development of a method of ensuring that those domestic workers whose names are included in the registry are authorized to work (as in the Wyden bill).

Issue #3

Housing

Whether H-2A employers should continue to have an obligation to provide housing to their workers. Also, whether this obligation is met by the issuance of housing vouchers.

Current Law:

Current law requires growers who employ H-2A workers to provide them with free housing.

Wyden-Graham Bill:

The Wyden-Graham bill allows growers to provide a payment voucher (equal to 1/4 of the Fair Market Rate in the applicable county for a two bedroom apartment) in lieu of housing, unless the State certifies that adequate housing is not available in the area. Under this approach, the grower employing H-2A workers would have no obligation to assure that housing is actually available and could be obtained with the voucher.

Recommended Administration Position:

The DOL's chief concern is that the cost of housing not be transferred from the grower to the worker. They also believe that it should remain the grower's responsibility to ensure that housing is available for the workers. USDA remains of the view that the provision of a housing voucher or an increased wage (to reflect the cost of housing) should satisfy the grower's obligation, even if there is no housing available for these workers.

First, there are many areas (particularly in the West) where there simply is not an adequate supply of rural housing to meet the needs of these workers. Second, even if there is some housing available in the area, it is unrealistic to expect low-wage foreign migrant farmworkers to be able to secure housing on their own using a federal voucher. Thus, reliance on a voucher system will leave many workers either without housing or overcrowding any available rental housing.

We recommend not eroding the existing requirement that growers who use the H-2A program provide their workers with housing. However, we may want to consider whether the federal

government could do more to assist growers in creating housing for their farmworkers. Currently, the Department of Agriculture administers a migrant farmworker housing program that we could scale up. Also, it may be possible to find ways to encourage states to use their CDBG or HOME funds to target the creation of farmworker housing. Finally, it may be possible to waive some housing regulations if the H-2A worker were housed in established housing (i.e., a hotel, government housing, etc.). These options would be designed to assist the growers with fulfilling *their* obligation to provide adequate housing for their workers -- not as a shift in responsibility from the growers to the government.

Issue #4

The 3/4 Guarantee

Whether we support the continued use of the 3/4 guarantee.

Current Law:

Under current law, workers must be paid for at least 75% of the work contract period for which they were recruited, except when there is an "act of God." This "three-fourths guarantee" gives migrant workers some indication of their potential earnings and discourages employers from over-recruiting to secure a labor surplus and drive down wages. Under the MSPA (which applies to U.S. migrant farmworkers, but not H-2A workers), workers enjoy a 100% guarantee.

Wyden-Graham Bill:

The Wyden-Graham bill would eliminate this work guarantee for H-2A workers. This change will encourage growers to lure workers from hundreds or thousands of miles away with the promise of potentially high earnings without any obligation to fulfill any part of that promise. This may also encourage growers to recruit more workers than they actually need to hedge against uncertainties.

Recommended Administration Position:

There is agreement within the Administration that the H-2A program should generally track the worker protections included in the Migrant and Seasonal Worker Protection Act (MSPA). As noted, under the MSPA, migrant farmworkers are guaranteed 100% of the work contract period for which they were recruited. Thus, the 3/4 guarantee for H-2A workers is more flexible (and thus better for growers) than the 100% guarantee mandated for those who employ only U.S. workers.

It would seem inconsistent for us to endorse a standard substantially less for the H-2A program than that required under the MSPA. When asked why the growers could live with the 100% guarantee under MSPA, but not the 75% guarantee under the H-2A program, we were told by USDA that it is because the MSPA guarantee is never enforced, and the H-2A guarantee is.

Issue #5

Repatriation Incentive

Whether we support wage-withholding as an incentive for H-2A workers to repatriate.

Current Law:

Under current law, there is no mechanism for ensuring that H-2A workers return to their home country.

Wyden-Graham Bill:

Permits employers to withhold 20% of a worker's wages, to be reclaimed upon the worker's return to his home country.

Recommended Administration Position:

In general, there is agreement within the Administration that we should try to develop an effective way to ensure that guestworkers return to their home country after the termination of the contract. However, this wage deduction is a bad idea that would likely prove ineffective.

First, this would be the first time that the federal government authorized the withholding of worker wages as an incentive toward future behavior. Second, it is unclear whether many of these workers would be able to recover this money from the accounts in their home countries. In addition, there is no evidence that these amounts would serve as a disincentive for employees who intend to stay in the U.S.

According to Sen. Wyden, this provision is not important to the growers, but is key to the viability of his legislation in the Congress. Some members of Congress are concerned that a new guestworker program will lead to an increase in foreign workers in the U.S. and thus an increase in those that do not return to their home country. However, as noted, there is very little reason to believe that a worker who wants to overstay his visa will be deterred by this withholding. Thus, it only would serve to inconvenience (and possibly, disadvantage) those workers who want to work here and return home.

Issue #6

Transportation Reimbursement

Whether employers should continue to be required to provide reimbursement to workers for inbound transportation if they complete 50% of the contract, and for outbound transportation if they complete 100% of the contract.

Current Law:

Under current law, the employer must reimburse the H-2A worker for inbound transportation costs if the worker completes 50% of the contract and for outbound transportation costs if the worker completes 100% of the contract.

Wyden-Graham Bill:

Under the Wyden-Graham proposal, workers may receive such reimbursement from their employer, but the employer is under no obligation to pay. This change would simply shift the cost of transportation to and from the job from the grower to the worker.

Recommended Administration Position:

There is general agreement within the Administration that growers should be responsible for the transportation costs of their H-2A workers. Therefore, we strongly oppose allowing growers to have discretion in reimbursement. However, we could consider giving the grower options on how to reimburse the worker for transportation costs. For example, the grower could have a choice between providing the transportation outright, advancing the cost of transportation to the worker, reimbursing the worker for the transportation, or paying the worker a much higher wage (such as 120% of the prevailing wage) with the intent that the wage “bonus” would be sufficient to cover transportation costs. In addition, there is likely agreement that DOL could develop a pilot program to provide transportation advances for U.S. farmworkers.