

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 045 - FOLDER -011

[02/26/1999] [1]

MEMORANDUM FOR THE PRESIDENT

Automated Records Management System
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From:

Subject: Individuals with Disabilities Education Act (IDEA)

This memo provides you with background on two issues concerning the Individuals with Disabilities Education Act (IDEA): the potential controversy surrounding the impending publication of regulations implementing the 1997 amendments; and criticism by the National Governors Association and others that, in light of extensive federal requirements, the federal government does not adequately support the cost of educating students with disabilities.

General Background

In 1975, Congress passed the Education for All Handicapped Children Act, which guaranteed a free, appropriate public education for all students with disabilities. That law, now known as the IDEA, has been amended several times since, most recently in 1997.

The IDEA Amendments of 1997 substantially reflected the Administration's own reauthorization proposals, and were the result of detailed negotiation with Hill leadership. The reauthorization retained the civil rights component of the law by still requiring States to provide all children with disabilities a "free appropriate public education" designed to meet their individual needs. This requirement applies without regard to the cost of the services or the size of the federal appropriation. The 1997 amendments added a focus on improving educational outcomes for children with disabilities. For instance, they required States to develop educational achievement goals for children with disabilities, and to include children with disabilities on State and district-wide assessments.

IDEA has always been controversial because it imposes prescriptive and costly administrative mandates on States, and because States want the federal government to pay a larger share of special education costs. States are not required to accept IDEA funding and its related federal mandates, but none have seriously threatened to withdraw from participation.

IDEA Regulations

The regulatory development process has been lengthy and contentious. After publishing the proposed rule in October 1997, the Department of Education (ED) received extensive criticism from State lawmakers, school officials, and the majority in Congress. State lawmakers and school officials complained that the proposed rule was complex and difficult to understand, limited flexibility at the local level, and created overly prescriptive and costly requirements. The majority in Congress echoed these concerns, and charged that the rules created policies inconsistent with the carefully worked out bipartisan agreements that characterized the enactment of the IDEA Amendments of 1997.

In response to these concerns, the Department reviewed the rule's content across the board to find ways to ease requirements where possible, and to make the final rule easier to understand. The Department's rewrite of the rule involved extensive consultations with the Hill as well as members of the public.

Even with the significant changes and improvements to final rule (see below), it should be noted that the IDEA statute itself is complex and prescriptive. Thus, while ED was able to achieve some regulatory relief in the rewrite of the final rule, the law itself is the source of the vast bulk of the administrative burden.

While the NGA did not comment on the proposed regulations, ED notes that one individual governor did, Pete Wilson of California. His issue concerned services required for young people aged 18-21 who are incarcerated in prisons. According to ED, former Governor Wilson's concern could not be accommodated because it was contrary to the IDEA statute.

ED hopes to publish a final rule in early March (publication is being delayed pending final review of the issues). Following recent negotiations and subsequent agreements with the Hill on the issues described below, the Department now believes the final rule strikes an appropriate balance

between all of the interested parties, including those in the disability community, school officials, State lawmakers, and Members of Congress in both parties. However, Hill staff cannot guarantee that all members will refrain from attacking the Administration on discipline or other issues

The Department's main substantive changes in response to criticism are in the provisions relating to: discipline of a disabled student who is violent or troublesome; in what kind of classroom setting to place a child during a dispute over his/her current placement ("pendency"); the services required after a student graduates; and when to include special education students in regular education classrooms. Each is discussed below.

Discipline: IDEA allows school personnel to suspend students with disabilities for up to 10 school days before the suspension is deemed a "change in placement." A change in placement requires the school district to do three things: (1) reevaluate the educational services provided to the student, as determined through the student's Individualized Education Plan (IEP); (2) establish a "behavioral assessment plan," for the student (i.e., a set of services and strategies designed to address and improve the student's behavior), if one does not already exist; and (3) determine whether the student's behavior is a manifestation of their disability. These are expensive and time-consuming requirements.

In the NPRM, ED defined "10 days" as meaning "10 cumulative days in a school year." Past practice used a definition of "10 consecutive days," a definition preferred by most school officials because it is less proscriptive. ED changed the definition because both they and the disability community were concerned that school officials could abuse the "10 consecutive days"

definition by repeatedly suspending a student for less than 10 days in order to circumvent the “change in placement” requirement. For instance, under the “10 consecutive days” definition, a school official could suspend a student for nine straight days, allow the student to come back for one day, and then suspend him/her for nine more days, without causing a “change in placement.”

The NPRM’s “10 cumulative day” approach would have triggered the expensive IEP changes and manifestation determinations more frequently, and both school officials and Republican members of Congress strongly objected to the change. As a compromise between them and the disability community, in the final rule the Department proposes to only require schools to establish a “behavioral assessment plan” following the 10th cumulative day, with the intent that these behavior modification services will keep the student from repeating his/her class disruptive behavior. At the same time, ED retained the full “change in placement” review requirements for a suspension lasting 10-consecutive days, which is not controversial.

Discipline may be the lead topic of renewed criticism under the proposed final rule; many in Congress and many school systems will believe that the schools are given too little flexibility in addressing disruptive children with disabilities.

Pendency: The IDEA statute sets up a hearing process to arbitrate between a parent and a school when there is a disagreement over a child’s placement (e.g., whether a child should be moved from a special education class to a regular education setting). During such a disagreement, the statute requires the child to remain in his/her current placement unless the school and parent agree otherwise.

The contentious issue in the NPRM regarded the placement of the child following the first hearing officer’s review and the pending appeal. The NPRM stipulated that if the hearing officer sided with the placement, then the child would be placed where the parents want him/her placed; if the hearing office sided with the school, the child would remain in his/her current placement pending further review. In the public comment, objections were raised that this procedure did not treat parents and schools equally. However, ED set the NPRM up this way deliberately [in order to give the parent the benefit of the doubt, and to encourage their involvement in their child’s education.]

As a compromise, in the proposed final rule the Department would mandate the above process only when the child’s case was being heard by a State hearing officer (a less frequent occurrence). In all other cases, the child would be placed according to the decision of the first hearing officer pending appeal.

High School Graduation: In the NPRM, ED required that graduating students be reevaluated to determine whether additional services should be provided, and provided non-binding guidance that a student would have to graduate with a regular diploma (i.e., not a certificate of attendance) in order for eligibility of services to terminate. ED included these requirements because it was

concerned that some school districts were “graduating” students from high school with a less than regular high school diploma in order to stop providing services to these students.

In response to complaints about the NPRM’s proscriptive graduation policies, the Department would change the final rule to state that students with disabilities do not have to be reevaluated when they graduate with a regular high school diploma, and that they must continue to receive services only if they graduate with less than a high school diploma until they reach the maximum age set in State law (States have different maximum ages for when they stop providing special education services to students, ranging from age 18 to 21).

Placement of Special Education Students in Regular Education Classrooms: A major focus of the IDEA statute is placing special education children, to the maximum extent possible, in a general education environment. The rationale behind this focus is to provide special education students with an opportunity to socialize with regular education students and have the opportunity to strive for the same academic goals as their nondisabled peers. Some commenters on the proposed rule felt that including special education students in regular classrooms is too disruptive, because it requires teachers to spend an disproportionate amount of time with the special education students.

ED’s position in the final rule reflects long standing Department policy on this issue, which is: (1) whenever appropriate, special education students should be placed with their nondisabled peers; (2) schools can remove special education students from general education classrooms if it is found that the student is not making satisfactory educational progress, even with supportive special education services; and (3) schools are prohibited from removing special education students from a classroom only because the child requires a modification to curriculum currently being taught in that class.

Special Education Funding

Critics, most particularly the Governors, argue that federal funding does not live up to the IDEA statute’s commitment that the federal government will provide States with 40 percent of the average per pupil expenditure for each disabled student. In fact, the IDEA makes no such commitment. The statute only limits the maximum grant a State can receive in a year to this 40 percent level. The highest percentage ever reached was 12.5 percent in 1979; 1999 funding should cover about 11.2 percent.

While federal funding for special education State Grants (the primary federal special education program) has increased by \$2.2 billion or 110 percent during this Administration, from \$2.1 billion in FY 1993 to \$4.3 billion in FY 1999, these increases were not requested by this Administration. Congressional Republicans in recent years have seized on IDEA as a defining issue on education, demonstrating their concern for the “mandate” and for the burden placed on States, by providing large annual increases. We believe this pattern will be repeated for FY 2000.

Whatever amount we might propose for IDEA, the Republicans will always be able to offer more, because they will not, at least initially, fund our other education and training priorities at the levels we seek, such as Title I or the Workforce Investment Act. Instead, we argue that we are in fact substantially aiding children with disabilities with many of our other high priority investments. These children benefit from the smaller classes in our Class Size Reduction initiative, from modern school facilities in our School Modernization Bonds proposal, and from our early intervention initiatives such as America Reads and Head Start.

In the FY 2000 budget we propose a targeted increase for special education of \$116 million for early intervention programs and to help States take advantage of research on effective practices, but virtually no increase for the major state grant. The total budget request for all parts of IDEA is \$5.4 billion, of which \$4.3 billion is for the state grant.

It should also be noted that the IDEA Amendments of 1997 imposed a "trigger" engaged when federal funding reached \$4.1 billion, allowing an LEA to divert up to 20 percent of their maintenance of effort funding away from special education if the allocation exceeded that of the prior year. Therefore, federal IDEA increases do not increase spending on children with disabilities dollar for dollar.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Karin Kullman (CN=Karin Kullman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:26-FEB-1999 10:54:23.00

SUBJECT: Check the Date: June 7

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

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

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

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

TO: Teresa M. Jones (CN=Teresa M. Jones/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Neera Tanden (CN=Neera Tanden/OU=WHO/O=EOP @ EOP [WHO])
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: 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: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Sarah A. Bianchi (CN=Sarah A. Bianchi/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

TEXT:

Just kidding.... Please check both

Monday, June 7, 1999

and

Monday, June 14, 1999

for the WH Conference on Mental Health. Please respond to me by NOON on Monday.

Thanks!

----- Forwarded by Karin Kullman/OPD/EOP on 02/26/99

09:55 AM -----

Charles J. Payson

02/26/99 10:48:47 AM

Record Type: Record

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

cc:

Subject: Check the Date: June 7

We may have to change the date of the White House Conference on Mental Health to the following:

Monday, June 7

Please respond to the Scheduling Office by COB MONDAY to indicate whether your office knows of any conflicts with this date.

Thanks!

Message Sent

To:

Ann F. Lewis/WHO/EOP

Kevin S. Moran/WHO/EOP

Douglas B. Sosnik/WHO/EOP

Nancy V. Hernreich/WHO/EOP

Phillip Caplan/WHO/EOP

Cathy R. Mays/OPD/EOP

Sara M. Latham/WHO/EOP
Marjorie Tarmey/WHO/EOP
Maria Echaveste/WHO/EOP
Patricia Solis-Doyle/WHO/EOP
Stephanie S. Streett/WHO/EOP
Capricia P. Marshall/WHO/EOP
Eric P. Hothem/WHO/EOP
HILLIARD_B @ A1 @ CD @ LNGTWY
Jeffrey A. Forbes/WHO/EOP
Elisa Millsap/WHO/EOP
Todd Stern/WHO/EOP
Jennifer M. Palmieri/WHO/EOP
Beth A. Viola/CEQ/EOP
Michele Jolin/CEA/EOP
Melinda N. Bates/WHO/EOP
Ruby Shamir/WHO/EOP
Jonathan A. Kaplan/OPD/EOP
Paul E. Begala/WHO/EOP
Bob J. Nash/WHO/EOP
Ruth A. Eaglin/WHO/EOP
Kim B. Widdess/WHO/EOP
Maritza Rivera/WHO/EOP
Stacie Spector/WHO/EOP
Brian A. Barreto/OPD/EOP
Jeffrey M. Smith/OSTP/EOP
Wendy Hartman/OVP @ OVP
Linda Ricci/OMB/EOP
Maya Seiden/WHO/EOP
Lisa A. Berg/OVP @ OVP
Dominique L. Cano/WHO/EOP
Patrice L. Stanley/WHO/EOP
Mona G. Mohib/WHO/EOP
Melissa G. Green/OPD/EOP
Jonathan Orszag/OPD/EOP
Minyon Moore/WHO/EOP
Cheryl M. Carter/WHO/EOP
Mary Morrison/WHO/EOP
Laura K. Demeo/WHO/EOP
Lisa J. Levin/WHO/EOP
Betty J. Fountain/OSTP/EOP
Jocelyn A. Bucaro/WHO/EOP
Steve Ricchetti/WHO/EOP
Linda L. Moore/WHO/EOP
Craig Hughes/WHO/EOP
Cynthia M. Jasso-Rotunno/WHO/EOP
Bridget T. Leininger/WHO/EOP
Andrew J. Mayock/WHO/EOP
Simeona F. Pasquil/WHO/EOP
James T. Heimbach/WHO/EOP
Susan L. Hazard/WHO/EOP
Theresa F. Granger/WHO/EOP
John Dankowski/WHO/EOP
Jacquelyn J. Bennett/WHO/EOP
Karin Kullman/OPD/EOP
Charles J. Payson/WHO/EOP
Richard L. Siewert/WHO/EOP
Maurice Daniel/OVP @ OVP
Monica M. Dixon/OVP @ OVP
Patricia Solis-Doyle/WHO/EOP
Marsha Scott/WHO/EOP

Skye S. Philbrick/WHO/EOP
Rebecca L. Walldorff/WHO/EOP
Sharon K. Gill/WHO/EOP
Mary E. Cahill/WHO/EOP
Rachel A. Redington/WHO/EOP
Heather L. Davis/WHO/EOP
Ilia V. Velez/WHO/EOP
Sean P. O'Shea/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Karin Kullman (CN=Karin Kullman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:26-FEB-1999 11:03:14.00

SUBJECT: DPC Planning Calendar

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

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

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

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])
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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: 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: 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: Irene Bueno (CN=Irene Bueno/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: J. Eric Gould (CN=J. Eric Gould/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Teresa M. Jones (CN=Teresa M. Jones/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

TEXT:

I would like to put together a DPC Planning Calendar. My hope is to create a calendar that we can all use as reference for anticipating and planning events we would like to end up on the President's schedule. I would like to include the following information on the calendar:

- anniversary dates (ie, anniversary of significant POTUS bill signings, milestone anniversaries on issues we cover)
- conference dates (if we know a Cabinet Agency will be holding a conference or if a group will be in town for their legislative conferences, etc.)
- annual events (ie, Kick Butts Day, etc.)
- anything else you think we should be aware of!

Please send me suggestions for this calendar. I would like to put it together in the couple of weeks, so if I could get information from you by Friday, March 5th (end of next week) that would be great! I will put the calendar together and distribute it regularly.

Also, this is something I will constantly update, so if something comes across your desk that you think we should know about, please pass it on.

Thank you and feel free to call me with any questions.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 11:48:42.00

SUBJECT: Let's be WAC-y...

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

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

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

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

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

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

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

TO: Cathy R. Mays (CN=Cathy R. Mays/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: Minyon Moore (CN=Minyon Moore/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: Thurgood Marshall Jr (CN=Thurgood Marshall Jr/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: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Scott R. Hynes (CN=Scott R. Hynes/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

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

READ:UNKNOWN

TO: Edward A. Rice (CN=Edward A. Rice/OU=NSC/O=EOP @ EOP [NSC])
READ:UNKNOWN

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

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

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

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

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

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

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

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

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

TO: Lael Brainard (CN=Lael Brainard/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: Ilia V. Velez (CN=Ilia V. Velez/OU=WHO/O=EOP @ EOP [WHO])
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

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

TO: Heather M. Riley (CN=Heather M. Riley/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: Neal Lane (CN=Neal Lane/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

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

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

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

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

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

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

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

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

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

TEXT:

...and send the President a Daily Brief while he's traveling domestically. That's right, today (2/26) we'll send the President a memo overviewing the "hot" issues we're tracking here at the White House. (Note: these issues should be time sensitive topics, less presing items can be put in your weekly reports.) All bullets must be in to me by 4pm this afternoon.

(If you were wondering why the W.A.C. reference in the subject header, it's to honor the President's delivery of his foreign policy speech at the World Affairs Council. To satisfy your never ending data desires, I've included additional WAC information below.)

Located in downtown San Francisco, the World Affairs Council is actively involved in informing the public about international issues. WAC of Northern California was established in 1947 as a non-profit organization. It does not "take positions on issues," but instead promotes knowledge of and encourages discussion of foreign affairs. Each year, WAC hosts hundreds of forums, seminars, study groups, and conferences. In cooperation with Stanford University, the Council supports the Bay Area Global Education Program, which provides about 3,000 educators with "intensive" training on foreign affairs.

WAC offers publications, services, and access to its 6,500-volume library for members. Memberships range from \$55-\$10,000, depending on the level of involvement desired. Students may join at a reduced rate of \$25; educators pay \$35. Students members get in all regular programs free of charge (regular programs are served without food). Discounted rates are provided for all other programs and conferences. Full-time students are eligible for scholarships to attend most of WAC's lectures, programs, and conferences free of charge.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Melissa N. Benton (CN=Melissa N. Benton/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:26-FEB-1999 11:50:44.00

SUBJECT: Statement of Administration Policy on HR221 A bill to amend the Fair Labor

TO: John E. Thompson (CN=John E. Thompson/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Sarah S. Lee (CN=Sarah S. Lee/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Broderick Johnson (CN=Broderick Johnson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Stuart Shapiro (CN=Stuart Shapiro/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Larry R. Matlack (CN=Larry R. Matlack/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Sandra Yamin (CN=Sandra Yamin/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

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

READ:UNKNOWN

TO: David J. Haun (CN=David J. Haun/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Janet R. Forsgren (CN=Janet R. Forsgren/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Robert G. Damus (CN=Robert G. Damus/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Peter Rundlet (CN=Peter Rundlet/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO: Maureen T. Shea (CN=Maureen T. Shea/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO: Sarah Rosen (CN=Sarah Rosen/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO: Debra J. Bond (CN=Debra J. Bond/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Barry White (CN=Barry White/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

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

TEXT:

NOTE TO EOP STAFF: YOU WILL NOT RECEIVE A HARD COPY OF THIS LRM.
----- Forwarded by Melissa N. Benton/OMB/EOP on 02/26/99
11:43 AM -----
Total Pages: _____

LRM ID: MNB21
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, February 26, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melissa N. Benton
PHONE: (202)395-7887 FAX: (202)395-6148

SUBJECT: Statement of Administration Policy on HR221 A bill to amend the Fair Labor Standards Act of 1938 to permit certain youth to perform certain work with wood products.

DEADLINE: 3 p.m. Friday, February 26, 1999
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: H.R. 221 is scheduled to be considered by the House on Tuesday, March 2nd, under suspension of the rules.

The deadline is firm. If we do not hear from you, we will assume you have no comments.

DISTRIBUTION LIST

- AGENCIES:
- 52-HHS - Sondra S. Wallace - (202) 690-7760
 - 62-LABOR - Robert A. Shapiro - (202) 219-8201
 - 61-JUSTICE - Dennis Burke - (202) 514-2141
 - 25-COMMERCE - Michael A. Levitt - (202) 482-3151
 - 107-Small Business Administration - Mary Kristine Swedin - (202) 205-6700

- EOP:
- Barbara Chow
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 Kate P. Donovan
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 Janet R. Forsgren
 James J. Jukes
 David J. Haun
 John E. Thompson
 Elena Kagan

LRM ID: MNB21 SUBJECT: Statement of Administration Policy on HR221 A bill to amend the Fair Labor Standards Act of 1938 to permit certain youth to perform certain work with wood products.

RESPONSE TO
 LEGISLATIVE REFERRAL
 MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Melissa N. Benton Phone: 395-7887 Fax: 395-6148
 Office of Management and Budget
 Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT - NOT FOR RELEASE
February 26, 1999
(House)

H.R. 221 - Amending the Fair Labor Standards Act to Permit Certain Youth to Perform Certain Work with Wood Products
(Pitts (R) PA and 16 others)

The Administration has deep respect for the cultural and religious traditions of the Amish and similar communities, and recognizes the well-intentioned efforts of the bill's sponsors to accomodate these traditions. The Administration, however, has serious concerns that H.R. 221 could:

expose young workers to sawmills and other hazardous workplace conditions in the wood processing industry, which has an occupational fatality rate five times higher than the national private-industry average; and

run afoul of the Establishment and Religion Clauses of the First Amendment.

Pay-As-You-Go Scoring

H.R. 221 would reduce receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. The Office of Management and Budget's preliminary scoring estimate is that the net reduction would be insignificant.

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This position was developed by LRD (Benton) in consultation with EIML (Matlack/Bond). TCJS (), OIRA (), the Small Business Administration (), and the Departments of Labor (), Justice (), and Commerce () have reviewed the proposed position and have either no comment or no objection.

Legislative History

H.R. 221 was introduced on January 6, 1999. The Education and the Workforce Committee ordered the bill reported on February 10th, by voice vote without amendment. The Committee report was filed on February 26th.

H.R. 221 is identical to legislation passed by the House during the 105th Congress.

Administration Position To Date

On February 9th, 1999, the Department of Labor sent a letter to the House Education and the Workforce Committee expressing serious concerns about H.R. 221. Labor stated that "while we are sensitive to the cultural and religious traditions of the Amish and similar American communities, we believe the benefits of facilitating those traditions must be balanced against the Nation's longstanding concern for the safety and welfare of

children."

The Department of Justice also sent a letter on February 9th citing concerns about H.R. 221. Justice's letter stated that the bill would raise serious concerns under the Establishment Clause of the First Amendment to the Constitution, arguing that "exemptions from otherwise generally-applicable prohibitions must be drawn on a religion-neutral basis in order to pass muster under the Establishment Clause." Justice's letter stated that where a statutory exception is sought, it should be "crafted in a manner that is directly related to the alleviation of burden."

Justice's letter also raised concerns about the bill's condition that minors be supervised by an adult who is a relative or member of the same religious sect or division. Justice's letter argues that this "would, in essence, require sawmill operators to hire, as supervisors of the excepted minors, "members of the same religious sect or division as the [minors]."" Justice asserts that this would violate the Religion Clauses of the First Amendment, which prohibit the government from "establishing religious tests as a condition of employment."

Background

Amish children attend school only through the eighth grade (generally until age 14 or 15). For the remainder of their adolescent years, they are expected to work alongside members of their family and community in order to develop their work ethic and skills. In the past, this work was typically agricultural -- work that is generally permitted under the FLSA for post-school Amish children. As farmland has become more scarce in Amish areas, however, an increasing number of Amish families in these areas have turned to non-agricultural businesses such as lumber and wood processing. The FLSA, however, prohibits minors from working in manufacturing, including the wood processing industry. This has led to a conflict between the Amish and the Labor Department regarding the application of the FLSA's child labor provisions.

As part of a recent child labor compliance initiative targeting hazardous industries, the Labor Department assessed penalties on several Amish sawmills in Pennsylvania, Ohio, and Indiana for FLSA violations. Subsequent to that action, the Amish sought special accommodation for their sawmills and wood processing operations, arguing that the current requirements interfered with their cultural and religious practices. Rep. Pitts, Chairman Specter, and other members of the Pennsylvania delegation attempted to intervene on behalf of the Amish community through informal negotiations with the Department of Labor. Labor, however, has refused to make administrative exceptions for the Amish, asserting that the requested accommodations could not be made under current law. According to the bill's sponsors, H.R. 221 would provide a legislative fix to allow Amish children to work alongside members of their family and community in wood processing businesses.

Summary of H.R. 221 as Reported

H.R. 221 would amend the FLSA to state that it is not considered oppressive child labor for an individual who is: (1) between the ages of 14 and 18 and (2) a member of a religious sect whose established teachings do not permit formal education beyond the eighth grade to be employed in businesses that use wood processing machinery, as long as four conditions are met. First, underage employees must be supervised by adults who are members of their family or religious sect. Second, they cannot operate or

assist in the operation of power-driven woodworking machines. Third, they must be protected from flying debris by a barrier or other means. Fourth, they must use protective equipment to limit their exposure to noise and sawdust.

Pay-As-You-Go Scoring

According to EIML (Bond) and BRD (Lee), H.R. 221 would reduce receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB estimates that the net effect of this bill would be insignificant.

LEGISLATIVE REFERENCE DIVISION DRAFT
February 26, 1999 - 11:18 a.m.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:26-FEB-1999 12:58:26.00

SUBJECT: IDEA memo status

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

TEXT:

Barbara Chow has looked at the latest draft and sent it back to her staff to respond to an issue that you raised regarding the 10-day rule and to add a paragraph that discusses what is happening in states/communities in the absence of any regulations being issued.

Barbara expects them to turn around another draft later in the afternoon. I have been commenting directly to her staff on each version. Barbara wasn't sure whether this next version would be "final", (she still plans to add some language to the introduction that isn't currently reflected) but she welcomed your review of either these interim versions or the "final" draft .

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 13:14:01.00

SUBJECT: Class Size Letter

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

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

TO: Christopher S. Lehane (CN=Christopher S. Lehane/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

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

TO: Jessica L. Gibson (CN=Jessica L. Gibson/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: Patricia M. Ewing (CN=Patricia M. Ewing/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

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

TEXT:

I talked to Joe and he supports the Klain/Kagan plan --- leaking class size letter (assuming leg affairs is okay with that) to the Washington Post for Monday and having the VP talk to the Post as a follow-up to his Sunday event.

We would recommend giving the story to Chuck Babington -- the Post's new WH correspondent and former Gore Post-person. Are you Gore people okay with that plan?

Babington is in SFO, so Toiv can talk to him. Please let me know if everyone is okay with this and I will ask BT to connect with Babington.

Thanks, all.

February 26, 1999

MEMORANDUM TO JOHN PODESTA

FROM:

SUBJECT: MEDICAID PROVIDER TAXES AND DONATIONS ENFORCEMENT

In the absence of any direction from the White House, HHS is planning to take the first steps towards sanctioning those states that are apparently using illegal provider taxes and donations to help maximize Federal Medicaid matching dollars (and minimize state expenditures.) HHS has been threatening to take enforcement actions against states out of statutory compliance since the beginning of the Administration, but for a variety of reasons have not been very aggressive or successful in doing so. The tax liability associated with these States is estimated to be \$4.6 billion retrospectively and they are expected to incur an additional \$427 million annually for each year that we delay action. Because of the magnitude of this problem, as well as its implications for tobacco recoupment and state relations in general, we are seeking your guidance on this issue.

BACKGROUND

Provider Taxes and Donations in Medicaid. During the late 1980s, many states established financing schemes that had the effect of increasing their Federal Medicaid funds without using additional state resources. Typically, states would raise funds from health care providers (through provider taxes or "donations"), then pay back those providers through increased Medicaid payments. Since the Federal government pays at least half of Medicaid payments, the provider taxes or donations would be repaid in large part by Federal matching payments. Using this mechanism, the state was left with a net gain because it only had to repay part of the provider tax or donation it originally received. The widespread use of these financing mechanisms contributed to the extraordinary increases in Federal Medicaid expenditures in the early 1990s. One report found that provider tax revenue rose from \$400 million in six states in 1990 to \$8.7 billion in 39 States in 1992. There was a similar increase in Federal Medicaid spending, which more than doubled between 1988 and 1992, with a staggering average annual rate of over 20 percent.

Because provider taxes and donations were effectively siphoning off potentially billions of dollars from the Federal Treasury, the Congress limited states' use of these schemes in a bill enacted by President Bush in 1991. The subsequent regulatory interpretation of these limits was negotiated with the states and the National Governors' Association in 1993.

States' continued reliance on impermissible provider taxes and our enforcement record.

Since the publication of the regulations, there have been several actions but no initiation of the enforcement process. The Administration formally notified those states which appeared to be out of compliance that they were in danger of being audited in 1993 and 1996. The issue resurfaced in the Balanced Budget Act, which included a provision that legalized New York's provider tax. Because BBA singled out New York for special treatment and created an extremely troubling precedent, the President line-item vetoed this provision. Although the Supreme Court subsequently over-rode the line item veto, making New York's taxes permissible, there remain at least 15 states that are out of compliance with the provider tax and donation law.

Recognizing the difficulty of attempting to collect all the potential state liabilities, the Administration (in late 1997) urged the Congress to pass legislation to give HHS the authority, (which it does not now have), to forgive past Medicaid debts if the states came into prospective compliance. Because Congress was split between some Members wanting no legislation (because the good guy states believe that HCFA should be aggressively pursuing "crooks") and the "bad guy" states (who saw no reason to rock the boat with legislation that explicitly still requires them to come into full compliance), the Congress ended up taking no action. As a result, it appears that numerous states are still utilizing "bad" taxes and donations primarily because they have little to no fear that HCFA will enforce the law. Even if they do, most states still figure they can come to appeal to the White House or the Congress for relief.

HHS and DoJ believe the current statute requires that they proceed with enforcement actions. HHS believes its lack of enforcement has undermined its credibility as an effective administrator of Medicaid. Moreover, DoJ believes that continued inaction leaves the Federal Government open to *qui tam* suits.

PROPOSED PLAN. Without any intervention from us, HHS plans to proceed with its enforcement plan. Under this plan, HHS will: (1) enforce the statute in those states that have used illegal taxes as part of recycling schemes, beginning with those states that are currently out of compliance; and then (2) move on to those states that have collected taxes which illegally target specific groups of providers. In order to do so, it will first have to audit suspected states and, if necessary, the individual state would be penalized (most likely through subsequent reductions in Federal Medicaid payments). [This can be, and usually is, a long, drawn-out process. States have the ability to appeal Administration decisions and can -- and frequently do -- take us to court if they disagree with our ruling. They also have the right to retain the disputed funds until the end of the appeals process. As a consequence, these disputes routinely take years to resolve.]

PHASE ONE: ENFORCEMENT IN STATES THAT HAVE USED RECYCLING SCHEMES

- **Notification of states suspected to have operated recycling schemes.** In mid March, HHS expects to notify those states (Tennessee, Louisiana, Illinois, Missouri, Maine, and Hawaii) that have recycled provider taxes in an effort to leverage more Federal funding that they will be audited and subject to a disallowance if found to be out of compliance.
- **Audits of those states currently operating recycling schemes.** Immediately after these

letters are sent, HHS will begin audits in Tennessee and Louisiana, the two States felt to be most seriously out of compliance. There is strong evidence that they are operating "granny grant" schemes, which cycle impermissible taxes through nursing homes; HHS estimates that these two states alone have collected \$500 million in impermissible taxes since 1992. The prospective liability from these states is projected to be over \$100 million a year.

- **Audits of those states who previously operated recycling schemes.** In late April, HHS is planning to begin auditing Illinois, Missouri, Maine, and Hawaii, who had similar taxing schemes, but now appear to be in compliance. As mentioned above, without new statutory authority, HHS cannot forgive past actions that were illegal -- even if the states have moved aggressively to come into compliance. HHS estimates that these states have collected \$1.6 billion in impermissible taxes since 1992.

PHASE TWO: ENFORCEMENT IN STATES THAT HAVE TARGETED PROVIDER TAXES

- **Denial of waivers of the broad based and uniformity requirement.** At about the same time, HHS plans to inform Alabama, Connecticut, Florida, Hawaii, Massachusetts, New Hampshire, Nevada, Tennessee, and Utah that because their waivers fail the statutory test, their requests for a waiver of the statutory requirement that provider taxes be broad-based and uniform are denied. Although Hawaii, Tennessee, Utah and Nevada have ended their tax programs, the remaining states have been collecting impermissible taxes while waiting for Federal approval of their waivers.
- **Audit of states who have been or who are currently imposing targeted provider taxes.** HHS plans to initiate audits of these States in late May and early June, beginning with those States that are currently out of compliance. HHS estimates that these states have collected approximately \$2.5 billion in impermissible taxes since 1992, and will collect \$326 million in 1999 and subsequent years.

In addition, HHS believes that almost every state in the nation has licencing fee schedules that violate the broad-based and uniform tax requirement. This primarily results because states do not consider such fees as "provider taxes" and thus subject to the restrictions. HHS currently has no time frame under which to audit these states and bring them into compliance, and no estimate of the amount that these states have collected in impermissible licencing fees. However, when and if it starts enforcement actions in this area, we can expect a very aggressive "push-back" from the National Governors' Association.

ISSUES

Given the amount of the money involved (\$4.6 billion retrospectively and an additional \$427 million annually), enforcing the provider tax and donation laws will be highly contentious. Some advocates and many Governors charge that recouping these funds through reduced Federal Medicaid spending could cause states to cut back on Medicaid eligibility. Moreover, HHS

anticipates a difficult, resource-intensive process once the initial letters are sent, with low prospects for recouping the money in the end. States, clearly, have opposed any effort to begin enforcement -- but have shown no interest in our legislative proposal to forgive retrospective liability in exchange for ending illegal practices.

However, OMB, DOJ, and HHS have repeatedly expressed concern over this lingering problem. The lack of enforcement of this law will lead states to believe that we do not have the political will to enforce this -- or any other -- Medicaid law. HHS also believes that to delay enforcement further would undermine the authority of the Secretary, since HHS has been informing States of its readiness to enforce the 1991 law for some time. In addition, our reluctance to act here could have a direct bearing on the tobacco recoupment debate. States could understandably conclude that our poor Medicaid provider tax enforcement record would suggest that they not take us seriously on the tobacco recoupment issue. In other words, why should the states fear us on tobacco recoupment when we have not enforced impermissible Medicaid provider taxes in the last 6 years?

POLICY OPTIONS

OPTION ONE: Proceed along the enforcement time frame suggested by HHS. Under this option, HHS will continue to advocate for legislation providing the Secretary with the authority to forgive past Medicaid debts if the states came into prospective compliance.

Pros:

- Provides HHS with the necessary authority to enforce the statute as planned.
- Protects HHS from the criticism that they are unable to effectively administer the Medicaid program and promotes our effectiveness as an enforcement agency.
- Places the level of pressure on states that is necessary to pass legislation providing HHS with the authority to strike acceptable tax liability settlements with states.
- Non-enforcement is currently construed as tacit approval of these impermissible taxes.
- Makes the threat of tobacco recoupment more credible.

Cons:

- Assures multiple and frequent confrontations with states over outstanding provider tax liabilities.
- Highlights the fact that the Administration has failed to enforce the statute for 6 years and exposes us to the charge that states had little reason to believe that they were out of compliance.
- If fully enforced, some States may be placed in financial jeopardy which may undermine the level or scope of services offered to Medicaid beneficiaries.
- When the HCFA actuary and CBO are presented with tangible evidence (such as the issuance of a disallowance letter) that HHS will recoup funds, they are likely to score a percentage of the savings from the recoupment on our baseline, based on the individual state circumstances. These savings will then have to be offset in any legislation that

provides more flexibility in settlements to States.

- Because the likelihood of legislation on this front is slim, we will be put in the difficult position of disallowing funds for past tax liability that we would have waived if we had the authority.

OPTION TWO: Initiate intensive advocacy for legislation that provides the Secretary with more authority to negotiate with states who have outstanding bad taxes and request that HHS implement its enforcement activities more slowly.

Pros:

- Helps shift some of the blame for the Administration's enforcement record onto Capitol Hill by resending the legislative language and publicly calling on Congress to help.
- Avoids an immediate confrontation with States who have outstanding tax liability.

Cons:

- Any legislation will not be seen as credible, given our history on this issue, and almost inevitably stagnate in Congress if pursued independent of outside enforcement pressure from HHS.
- Advocating for legislation will open us up to individual states being "fixed" in a piecemeal fashion, similar to the relief that New York received in the BBA.
- If pursued independent from outside enforcement pressure from HHS, states which are not seriously out of compliance will resent that others are allowed to continue their current recycling schemes. This will be reflected in the committees of jurisdiction.
- CBO currently assumes that we are recouping a percentage of the funds associated with impermissible taxes in their baseline and would score legislation that forgave all retrospective tax liability as a cost.

OPTION THREE: Ask HHS for a much more comprehensive review of the issue prior to initiating enforcement.

Recognizing the difficulties of enforcement and the likelihood of limited success, one option would be to hold back on dedicating resources to this activity until we have an even better understanding of the scope and degree of the problem. Such an action would be consistent with the OMB Medicaid baseline, which assumes no recoupment savings in its current projections.

Pros:

- Avoids a major confrontation with the states at a time when we are also dealing with the issue of tobacco recoupment.
- Avoids a long shot battle to obtain necessary authority to sign off on settlements with states, which will inevitably require the expenditure of a good deal of political capital.
- Because of our past history and lack of enforcement, our failure to recoup funds from states that are out of compliance is currently not scoring on our baseline. Although recoupment has the potential to help the baseline, failing to recoup these funds will not

hurt it.

Cons:

- This undermines our present and future credibility when enforcing state violations of the Medicaid statute and sends a poor signal to our career staff charged with enforcement.
- Although the likelihood of an individual filing a *qui tam* suit is slim, it is theoretically possible that an individual with independent knowledge of a State recycling scheme could file a suit under the False Claims Act. No one has ever attempted to file a *qui tam* suit to recoup impermissible provider taxes.

RECOMMENDATIONS

HHS, OMB and DOJ favor the first option of initiating the enforcement process on provider taxes and donations -- although there is a willingness to simultaneously pursue the second option.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Waldman (CN=Michael Waldman/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:26-FEB-1999 14:17:00.00

SUBJECT: Jim Pinkerton's column

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

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

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

TEXT:

Washington Isn't Fit to Be a Sub Teacher

IF THE ANCIENT Trojans were well advised to beware of Greeks bearing gifts, America's governors should be wary of Washingtonians bearing funds.

"I want to work with you." So said President Bill Clinton to the National Governors Association at the White House on Tuesday as he touted a host of programs that would be directed by his Department of Education. Meanwhile, from the other side of the aisle and the other end of Pennsylvania Avenue, Sen. Pete Domenici (R-N.M.), chairman of the Senate Budget Committee, proposed a \$40-billion increase in federal education spending during the next five years.

And so it goes. While 93 percent of the budget for K-12 public schools comes from state or local sources, Uncle Sam is determined to grab a larger share of political brownie points, gripping the issue with both his Democratic left hand and his Republican right hand. And why not? If the polls show that education is a top-tier issue, why would any politician want to let go? Why let concerns over competence get in the way of taking credit?

Once upon a time, when regional disparities were far greater, perhaps the federal government needed to step in. In 1950, for example, per capita income in Mississippi was just 50.4 percent of the national average. But by 1980 it had grown to 68.9 percent, and has continued to increase since.

But from a federal government perspective, it's always good to federalize an issue. And so it was in 1958 that Republican President Dwight Eisenhower and the Democratic Congress joined together to help win the Cold War by passing the National Defense Education Act. And although most Republicans opposed the creation of a cabinet-level education ministry in 1979, once President Ronald Reagan found that he could not abolish "DoEd," he found a new use for it: as a bully pulpit for conservative ideas on "excellence." In 1988, another Republican, George Bush, pledged to be "the education president" and the following year convened an education summit with the 50 governors to set "national goals" for America's students.

Of course, it was hard to see the added value that the feds could offer, other than simply added funding, which has usually flowed toward the politically muscular, not the educationally meritorious. Moreover, if national Republicans wanted to start a bidding war over education bragging rights, national Democrats were always ready to bid higher.

In Clinton's fiscal-year 2000 budget, he proposes about \$35 billion in federal education spending, including initiatives for everything from constructing new schools to hiring more teachers. All these seem like nice ideas; indeed, a cynic might say these individually wrapped initiatives owe more to pollsters than to policy wonks.

Consider, for example, the administration's proposal to spend \$600 million to "help" schools end the practice of social promotion. Has no one outside the Beltway thought of a way to deal with that problem? Even Gov. Parris Glendenning, a liberal Democrat from Maryland, a liberal state, told The Baltimore Sun, "For a lot of governors, there's a natural fear that goals and standards might become federal regulations controlling local schools."

Republicans might take a principled stand against such micro-management, but then again they might not. On Tuesday, Gov. John Engler (R-Mich.) told the Senate Education Committee that if Washington wanted to improve education,

it would replace the current weed patch of special-interest-driven "categorical" programs with a single "block grant" to each of the states. "Consolidate 600 programs, shrink the bureaucracy, cut the waste and put the responsibility squarely on the governors' shoulders," Engler exhorted the Capitol Hillians.

Engler's argument squared with everything that's known about effective program management in the '90s, but the committee's chairman, Sen. Jim Jeffords (R-Vt.) would have none of it. Jeffords spent a quarter century in Congress before he got to chair a full committee. From a Beltway perspective, he would be a fool to cede his turf to 50 governors.

Happily, the schools nationwide are improving. Governors, realizing that their careers are on the line, have muscled their legislatures into making real reforms, even as Washington concentrates on what it does bipartisanly best: check-writing, cheerleading and, of course, credit-taking.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 15:12:07.00

SUBJECT: President's Trip to New Jersey

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

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

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

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

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

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

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

TO: George T. Frampton (CN=George T. Frampton/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

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

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

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: Jon P. Jennings (CN=Jon P. Jennings/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: Beth A. Viola (CN=Beth A. Viola/OU=CEQ/O=EOP @ EOP [CEQ])

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

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

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

READ:UNKNOWN

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

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

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

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

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

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

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

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

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

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

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

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

TO: Barry J. Toiv (CN=Barry J. Toiv/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: Dan K. Rosenthal (CN=Dan K. Rosenthal/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: Sara M. Latham (CN=Sara M. Latham/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TEXT:

On Wednesday, March 3, the President will travel to New Jersey to attend a "Robert Torricelli for Senate" reception. Deadlines for the Trip Book are as follows:

Background Memos (NJ): DUE MONDAY, MARCH 1, 6:00 P.M.

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

Event Memo: DUE TUESDAY, MARCH 2, 6:00 P.M.

- Torricelli Reception/Meet-and-Greet/Photo Receiving Line

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

--David Goodfriend

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:26-FEB-1999 15:21:52.00

SUBJECT: update on child care legislation

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

READ:UNKNOWN

TEXT:

We are finalizing the Administration legislation to give to Rep. Cardin, who, as we've discussed, plans to introduce it as early as next week and certainly in advance of the 2/16 child care hearing. Cardin's strategy was to introduce the pieces of the Administration's bill within the Ways and Means jurisdiction -- which of course excludes the after-school piece.

The HHS pieces of the bill (subsidies increase and the Early Learning Fund) are in fine shape and haven't changed substantially from last year. As we discussed, we are not re-submitting the three discretionary programs for which we secured general quality dollars in the budget last year (i.e. the Standards Enforcement Fund, the Research Fund, and the Scholarship program). Mary Bourdette strongly advises that to advance legislation that adds strings to the money we won last year would needlessly anger the appropriators. We did, however, add "Standards Enforcement" as an allowable activity in the Early Learning Fund, and understand that the Dept of Education plans to include an early childhood education initiative as a part of the ESEA reauthorization package. Therefore, we have maintained markers in each of these areas.

On the tax side, Treasury is finalizing the specs for its three pieces (DCTC, Stay-at-home DCTC, and Business Tax Credit), and we plan to sit down with Treasury and Cardin staff on Tuesday. We also plan to work with Cardin to help identify other original co-sponsors for this legislation -- Mary's thinking is to secure key Ways and Means members. FYI, Janet Murguia has been in the loop on these discussions.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Robert L. Nabors (CN=Robert L. Nabors/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:26-FEB-1999 15:25:43.00

SUBJECT: Tobacco Hearing

TO: Daniel N. Mendelson (CN=Daniel N. Mendelson/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

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

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

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

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

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

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

CC: Ingrid M. Schroeder (CN=Ingrid M. Schroeder/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

TEXT:

Senate Finance just called to invited Lew to testify before the Full Committee on March 10 re: tobacco recoupment. Also testifying would be Nancy Ann Min, Dan Crippen (CBO), and 2 state AGs. Lew does not think he has much of a choice but to testify. He wanted to make sure that you concurred.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jeanne Lambrew (CN=Jeanne Lambrew/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:26-FEB-1999 15:39:15.00

SUBJECT: Tobacco recoupment hearing: 3/10

TO: Cynthia A. Rice (CN=Cynthia A. Rice/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: 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

TEXT:

Hello,

I just got a heads-up from Finance Committee staff that they are planning a hearing on this issue. They are inviting Nancy Ann and Jack Lew, and there will be a panel of AGs discussion how much of their settlements are tobacco-related.

Jeanne

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:26-FEB-1999 15:56:16.00

SUBJECT: latest IDEA memo

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

TEXT:

The latest draft -- it incorporates comments that Barbara and I made earlier today.

----- Forwarded by Tanya E. Martin/OPD/EOP on 02/26/99
03:53 PM -----

David Rowe

02/26/99 03:44:15 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: latest IDEA memo

Message Sent

To:

Barbara Chow/OMB/EOP
Sandra Yamin/OMB/EOP
Barry White/OMB/EOP
Tanya E. Martin/OPD/EOP
Daniel J. Chenok/OMB/EOP

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT: [ATTACH.D46]MAIL476636262.036 to ASCII,
The following is a HEX DUMP:

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38275E01094DD0D2FB0DC687E3A50B42D456C2F93831DE3F0018D62050F9FC3C6B0BB49749F3A0
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MEMORANDUM FOR THE PRESIDENT

From:

Subject: Individuals with Disabilities Education Act (IDEA)

OMB has before it for final clearance regulations to implement the 1997 amendments to the Individuals with Disabilities Education Act (IDEA). The initial proposed rulemaking in 1997 generated substantial adverse reaction from the majority in Congress, from schools, and from States, primarily centered on the administrative burdens the draft rule would have imposed. The current version is the result of a lengthy process of public comment and negotiation with Congress and reflects substantial compromise from the earlier version. States and Congress have also complained about the delay in publication of the final rule. Involved majority Congressional staff have given preliminary indications that they believe this version of the rule is an adequate response to their concerns, but they note that some members may still attack the rule as overly prescriptive. Secretary Riley has publicly committed to publication by March 15th.

We believe the current rule offers a balance between protecting children with disabilities and mitigating burden on the States and the schools within the context of a law which all agree is burdensome. This memorandum explains the issues in more detail, describes the improvements made to date, and at the end, summarizes the equally contentious issue of IDEA funding.

General Background

In 1975, Congress passed the Education for All Handicapped Children Act, which guaranteed a "free appropriate public education" for all students with disabilities, and outlined the required procedures States and local school districts must follow in implementing their Special Education programs. That law, now known as the IDEA, has been amended several times since, most recently in 1997.

The IDEA Amendments of 1997 were the result of detailed bipartisan negotiation with Congress.

The reauthorization retained the civil rights component of the law by still requiring States to provide all children with disabilities (also referred to as special education students) a free appropriate public education designed to meet their individual needs. This requirement applies without regard to the cost of the services or the size of the federal appropriation. The 1997 amendments added a focus on improving educational outcomes for children with disabilities. For instance, they required States to develop educational achievement goals for children with disabilities, and to include children with disabilities on State and district-wide assessments.

IDEA has always been controversial because it imposes prescriptive and costly administrative requirements on States. Because of these statutory requirements, States want the federal government to pay a larger share of special education costs. In recent years, the controversy has centered around IDEA's requirements regarding the discipline of special education students.

States are not required to accept IDEA funding and its related federal mandates, but none have seriously threatened to withdraw from participation.

IDEA Regulations

The regulatory development process has been lengthy and contentious. After publishing the Notice of Proposed Rulemaking (NPRM) in October 1997, the Department of Education (ED) received extensive criticism from State lawmakers, school officials, and the majority in Congress. State lawmakers and school officials complained that the proposed rule was complex and difficult to understand, limited flexibility at the local level, and created overly prescriptive and costly requirements. The majority in Congress echoed these concerns, and charged that the rules created policies inconsistent with the carefully worked out bipartisan agreements that characterized the enactment of the IDEA Amendments of 1997.

In response to these concerns, the Department reviewed the rule's content across the board to find ways to ease requirements where possible, and to make the final rule easier to understand. The Department's rewrite of the rule involved extensive consultations with the Hill as well as members of the public.

Even with the significant changes and improvements to final rule (see below), it should be noted that the IDEA statute itself is complex and prescriptive. Thus, while ED was able to achieve some regulatory relief in the rewrite of the final rule, the law itself is the source of the vast bulk of the administrative burden.

While the NGA did not comment on the proposed regulations, ED notes that one individual governor did, Pete Wilson of California. His issue concerned services required for young people aged 18-21 who are incarcerated in prisons. According to ED, former Governor Wilson's concern could not be accommodated because it was contrary to the IDEA statute.

ED hopes to publish a final rule in early March (publication is being delayed pending final review of the issues). There has been intense pressure on the Department from Hill members and school officials to publish the rules as soon as possible. Without rules, schools must implement their special education programs based only on interpretations of the IDEA statute. There is consensus agreement that special education rules are necessary to forestall litigation resulting from local disputes over statutory interpretations.

Following recent negotiations and subsequent agreements with the Hill on the issues described below, the Department believes, and we concur, that the final rule strikes an appropriate balance between all of the interested parties, including those in the disability community, school officials, State lawmakers, and members of Congress in both parties. However, Hill staff cannot guarantee that all members will refrain from attacking the Administration on discipline or other issues.

The Department's main substantive changes in response to criticism are in the provisions relating to: (1) discipline of a disabled student who is violent or troublesome; (2) in what kind of classroom setting to place a child during a dispute over his/her current placement ("pendency"); and (3) the services required after a student graduates. Further, in the rewrite of the final rule ED clarified its policy with regard to whether special education students should be included in regular education classrooms. Each issue discussed below.

Discipline: The IDEA amendments allows school personnel to suspend students with disabilities for up to 10 school days before the suspension is deemed a "change in placement." The amendments define a "change in placement" as either (A) a removal of 10 consecutive days or more; or (B) a pattern of short term removals that amount to a change in placement.

The amendments further require that when a "change in placement" occurs, the school district must do three things: (1) reevaluate the educational services provided to the student, as determined through a review of the student's Individualized Education Plan (IEP) by a group composed of the special education teacher, parent, regular education teacher, and principal; (2) establish a "behavioral assessment plan," for the student (i.e., a set of services and strategies designed to address and improve the student's behavior), if one does not already exist; and (3) determine whether the student's behavior is a manifestation of their disability. While these are expensive and time-consuming requirements, they are statutory. The amendments do not, however, define "10 days" as being consecutive or cumulative.

Past practice used a definition of "10 consecutive days," a definition preferred by most school officials because they would only have to provide the "change of placement" services in the most extreme cases (i.e., an individual suspension of 10 or more school days). Under this standard, school officials could abuse the "10 consecutive days" definition by repeatedly suspending a student for less than 10 days in order to circumvent the "change in placement" requirement. Furthermore, ED found that schools did not use the "pattern of short term removal" standard to provide services, and therefore some children with disabilities were not being served appropriately. In response to these concerns, in the NPRM ED defined "10 days" as meaning "10 cumulative days in a school year" (e.g., five separate two-day suspensions in the same school year would amount to 10 cumulative days). Thus, under the NPRM, schools would have been required to provide "change in placement" services after the 11th cumulative day of a suspension, without regard to the pattern of removals concept.

School officials and the majority in Congress strongly objected to the "cumulative day" definition because it would have triggered the expensive "change in placement" services more frequently. As a compromise, the final rule no longer requires "change in placement" services after the 10th cumulative day. Instead, after the 10th cumulative day, schools are required to assess whether to provide a less burdensome, streamlined set of services designed to address the behavior problems early in the process, rather than the extensive "change in placement" services. For example, under the final rule, schools will no longer have to determine whether the student's behavior is a manifestation of their disability. Further, ED retained the full "change in

placement” review requirements for suspensions lasting 10 consecutive days, which is not controversial. While this compromise results in significant cost savings to schools, disability advocates are likely to view the streamlined services as inadequate.

In addition to these significant changes, the final rule also clarifies the following discipline issues which were points of confusion in the proposed rule: (1) school officials can suspend disabled children for more than 10 days in a school year; and (2) school officials do not need to provide any services to disabled children during the first 10 days of a suspension.

Pendency: The IDEA statute sets up a hearing process to arbitrate between a parent and a school when there is a disagreement over a child’s placement (e.g., whether a child should be moved from a special education class to a regular education setting). Until the disagreement is settled, the statute requires the child to remain in his/her current placement unless the school and parent agree otherwise.

The contentious provision in the proposed rule provides the following: in the event that a **parent** seeks to change their child’s placement, and the hearing officer agrees with the **parent**, the child is immediately moved to the **new** placement. However, in the event that a **school** seeks to change the child’s placement, and the hearing officer agrees with the **school**, the child remains in the **original** placement pending further review. Thus, hearing officer agreements with parents carry more weight than the hearing officer agreements with schools. Public commenters were concerned that this process did not treat parents and schools equally. However, this provision was designed to equal the balance of power between schools and parents in the implementation of special education services for children.

As a compromise, in the final rule this “pendency” provision does not take effect until the child’s case reaches the State hearing officer (a far less frequent occurrence). In all other cases, the child would be placed according to the decision of the first hearing officer pending appeal.

High School Graduation: In the proposed rule, ED required that graduating students be reevaluated to determine whether additional services should be provided, and provided non-binding guidance that a student would have to graduate with a regular diploma (i.e., not a certificate of attendance) in order for eligibility of services to terminate. ED included these requirements because of the concern that some school districts were “graduating” students with a less than regular high school diploma in order to stop providing services to them.

In response to complaints about the proposed rule’s prescriptive graduation policies, the final rule states that students with disabilities do **not** have to be reevaluated when they graduate with a regular high school diploma. However, students with disabilities must continue to be eligible for services if they graduate with less than a high school diploma.

Placement of Special Education Students in Regular Education Classrooms: A major focus of the IDEA statute is on placing special education children, to the maximum extent possible, in a

general education environment. The rationale behind this focus is to provide special education students with an opportunity to socialize with regular education students and have the opportunity to strive for the same academic goals as their nondisabled peers. Some commenters on the proposed rule felt that including special education students in regular classrooms is too disruptive, because it requires teachers to spend an disproportionate amount of time with the special education students.

The final rule reflects the statutory requirements on this issue: (1) whenever appropriate, special education students should be placed with their nondisabled peers; (2) schools can remove special education students from general education classrooms if it is found that the student is not making satisfactory educational progress, even with supportive special education services; and (3) schools are prohibited from removing special education students from a classroom only because the child requires a modification to curriculum currently being taught in that class.

Special Education Funding

Critics, most particularly the Governors, argue that federal funding does not live up to the IDEA statute's commitment that the federal government will provide States with 40 percent of the average per pupil expenditure for each disabled student. In fact, the IDEA makes no such commitment. The statute only limits the maximum grant a State can receive in a year to this 40 percent level. The highest percentage ever reached was 12.5 percent in 1979; 1999 funding should cover about 11.2 percent.

While federal funding for special education State Grants (the primary federal special education program) has increased by \$2.2 billion or 110 percent during this Administration, from \$2.1 billion in FY 1993 to \$4.3 billion in FY 1999, these increases were not requested by this Administration. Congressional Republicans in recent years have seized on IDEA as a defining issue on education, demonstrating their concern for the "mandate" and for the burden placed on States, by providing large annual increases. We believe this pattern will be repeated for FY 2000.

Whatever amount we might propose for IDEA, the Republicans will always be able to offer more, because they will not, at least initially, fund our other education and training priorities at the levels we seek, such as Title I or the Workforce Investment Act. Instead, we argue that we are in fact substantially aiding children with disabilities with many of our other high priority investments. These children benefit from the smaller classes in our Class Size Reduction initiative, from modern school facilities in our School Modernization Bonds proposal, and from our early intervention initiatives such as America Reads and Head Start.

In the FY 2000 budget we propose a targeted increase for special education of \$116 million for early intervention programs and to help States take advantage of research on effective practices, but virtually no increase for the major state grant. The total budget request for all parts of IDEA is \$5.4 billion, of which \$4.3 billion is for the state grant.

It should also be noted that the IDEA Amendments of 1997 imposed a “trigger” engaged when federal funding reached \$4.1 billion, allowing an LEA to divert up to 20 percent of their maintenance of effort funding away from special education if the allocation exceeded that of the prior year. Therefore, federal IDEA increases do not increase spending on children with disabilities dollar for dollar.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Neera Tanden (CN=Neera Tanden/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:26-FEB-1999 16:53:06.00

SUBJECT: after-school

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

READ:UNKNOWN

TEXT:

The exact number is 1.146 million kids, fyi.

Ed-Flex Amendments

Senate

1. Proposed Manager's Package (Republican)

- ◆ Clarifies that state cannot waive requirements on itself.
- ◆ Clarifies that, in order to be eligible, state must have a process for providing technical assistance and taking other corrective actions consistent with Sec. 1116 of ESEA.
- ◆ Requires that a state show how its flexibility plan is coordinated with its comprehensive reform plan or, if it lacks such a plan, with its Title 1 plan.
- ◆ Clarifies that LEA's seeking a waiver must describe how the waiver will help improve student achievement.
- ◆ Requires SEA to periodically review performance of LEA that has been granted a waiver, and terminate the waiver if it determines that performance has been unsatisfactory.
- ◆ Requires SEA and LEA's to provide adequate public notice and opportunity for public comment regarding waiver applications.
- ◆ Clarifies that SE may not waive the standards and assessments required in Title 1.
- ◆ Clarifies that original 12 Ed-Flex states retain Ed-Flex under original requirements. (But it is not clear if, when these states reapply for continuation of Ed-Flex, they apply under new or old rules.).
- ◆ Requires biennial progress reports from Secretary to Congress regarding (a) federal requirements that have been waived, (b) state requirements that have been waived, and (c) the effects of waivers on implementation of state and local reforms and on student achievement.

Note: all of the above are acceptable to ED

2. Proposed Democratic Additions to Manager's Package

- ◆ Require states to provide a detailed description of how it will evaluate student achievement, using disaggregated data, on an annual basis.

- ◆ Require state and local applications to describe how they will meet public notice requirements.
- ◆ Clarify that state applications must show how they will monitor student achievement in districts that receive waivers.
- ◆ Require annual, rather than periodic, reviews of performance in districts receiving waivers.
- ◆ Require states to show that waivers have led to increased student achievement in order to extend Ed-Flex status beyond initial 5 years.
- ◆ Require states to make public comments available for public review.
- ◆ Requires that the first biennial progress report from the Secretary be submitted within one year of enactment, and requires that progress reports must show how underlying purposes of federal programs are, or are not, being met.
Note: All of the above are acceptable to ED.

3. Civil Rights Groups Amendments

- ◆ Clarifies that waivers may not be granted to Title 1 requirements regarding standards, assessments, components of schoolwide and targeted assistance programs, accountability, and corrective actions.
Note: ED is ok with clarifying that requirements for standards and assessments can't be waived, but believes that provisions related to schoolwide and targeted assistance programs should continue to be subject to waiver (though no one has ever requested waivers from these requirements. The schoolwide provisions require that schools using a schoolwide approach use strategies that are based on proven practices, use highly qualified teachers, promote parental involvement, provide extended learning time to kids who need extra help, etc. The targeted assistance program (for schools that focus only on Title 1 kids, not the whole school), are comparable. ED believes these should remain subject to waiver because, other than requirements for allocating funds, these are about the only provisions left to be waived. Eliminating these would truly take the flex out of ed-flex.
- ◆ Requires that a state be in compliance with Title 1 standards and accountability requirements in order to be eligible for Ed-Flex.
*Note that the underlying bill requires that states (1) have met all standards and accountability requirements under Title 1 (some of which do not have to be met under law until 2001) or (2) show that they have made substantial progress toward that end, in order to be eligible. This proposal appears to replace both of these with a standard that is midway in between the two – the state would be required to meet those requirements whose deadline has passed when it applies, but would not require the state to meet deadlines still in the future.
ED supports this. We think it is better than a proposal from House Dem's (below) that would eliminate the "substantial progress" provision and therefore require*

states to meet some Title 1 requirements ahead of schedule—a requirement that would eliminate virtually all states from immediate contention.

- ◆ Requires Secretary to provide written, public explanation of the facts demonstrating that the State has met requirements in above amendment, if the Secretary approves state application for Ed-Flex.
ED is ok with this in principal, though we generally don't support provisions that place requirements on the Secretary.
- ◆ Requires Secretary to terminate Ed-Flex if he determines that the state is no longer meeting Title 1 requirements, and requires state to show it is meeting current Title 1 requirements when it applies for extension of Ed-Flex authority.
ED is ok with this.
- ◆ Adds to public notice requirements by requiring Secretary to publish State application in Federal Register.
ED is ok with making application widely available—but thinks it would be more effective to put it on the web than in the Federal Register.

Other Ed-Flex Issues in Play

- ◆ Some interest by D's to prohibit schoowide projects in schools below 35% poverty.
- ◆ Dodd may pursue amendments to strengthen maintenance of effort provisions in order to ensure that states don't reduce services to low income students.

Other Possible Senate Amendments

- ◆ From Republicans, we are likely to see a Coverdell-type amendment, a voucher amendment and a block grant amendment, perhaps as a second degree to Class Size.
- ◆ McCain and Robb may offer Troops to Teachers.
- ◆ Feinstein is considering an amendment to end social promotion.
NOTE: WE HAVE TO TALK FEINSTEIN OUT OF THIS. DASCHLE WILL HELP.
- ◆ There may be a Democratic amendment to require school report cards.
- ◆ Bingaman wants to do something on dropouts.

House

- ◆ The Castle bill restricts the ability of states to waive provisions regarding the selection of schools to participate in Title 1, to schools that are within 5% of the poverty rate for the lowest eligible school in a district.

- ◆ House Dems. want our support for amendments that would:
 - ◆ Eliminate provision that makes states eligible for ed-flex if they are making substantial progress toward Title 1 standards and assessment requirements.
ED prefers the approach the civil rights groups are taking, rather than this.
 - ◆ Restrict waivers for schoolwide projects.
Riley would probably support restricting schoolwide projects to schools that are at least 40% poverty.

- ◆ Sunset Ed-Flex upon enactment of ESEA.
ED thinks we should strongly support this.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 09:31:09.00

SUBJECT: Corrected statistic on numbers of injuries per year prevented by child saf

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

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

TEXT:

Transportation called this morning to correct the number of injuries prevented each year by this new child safety seat rule from 20,000 to 3,000. The following are the changes to the announcement and the Q&A:

In his radio address today, President Clinton will announce a major step to protect our children -- a new rule requiring a single standardized system for installing child safety seats in cars and light trucks. Under the rule, all new child seats will have three standard attachments -- one on top and two at the base -- and all new cars and light trucks will have standard anchors in the back seat designed to link to these child seat attachments. The rule is expected to prevent as many as 50 deaths and 3,000 injuries of children each year.

Q: How many lives will this rule save? How many injuries will this rule prevent?

A: Annually, motor vehicle crashes result in 600 child fatalities and 70,000 injuries for children less than five years old. Even though child safety seats are very effective in reducing death and injury, their effectiveness is substantially reduced due to incorrect use and occasional incompatibility with the vehicle seat and belt systems. This rule is expected to prevent as many as 50 child deaths and 3,000 injuries each year. ===== ATTACHMENT 1 =====

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D33]MAIL48100816E.036 to ASCII,
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*PRESIDENT CLINTON ANNOUNCES NEW RULE
TO IMPROVE SAFETY OF CHILDREN IN VEHICLES
February 27, 1998*

In his radio address today, President Clinton will announce a major step to protect our children -- a new rule requiring a single standardized system for installing child safety seats in cars and light trucks. Under the rule, all new child seats will have three standard attachments -- one on top and two at the base -- and all new cars and light trucks will have standard anchors in the back seat designed to link to these child seat attachments. The rule is expected to prevent as many as 50 deaths and 3,000 injuries of children each year.

Current System Puts Children at Risk

Child safety seats are the most effective safety device to protect very young children traveling in automobiles. When properly installed, they reduce the risk of death or serious injury to infants by 70 percent, and they cut the fatality and injury rate for children aged 1 to 4 in half. But according to the National Highway Traffic Safety Administration (NHTSA), child safety seats are not properly installed over 70 percent of the time, subjecting children to needless risk of death or injury. With over 100 models of child seats and 900 models of passenger cars now on the road, some car seats simply do not fit safely in some vehicles. And even when child safety seats can fit properly in a vehicle, installation methods are often time-consuming and difficult, and the wide variety of these methods confuses many parents.

New Standardized System Will Save Lives

The new rule will require all new child safety seats to have three standard attachments, one on top and two at the base. The rule also will require all new vehicles to have two sets of standard anchors installed in the back seat that will link to the child seat attachments. The anchors in the vehicle will be clearly visible and easily accessible, and parents will be able to attach child seats safely to the anchors in a matter of moments. The rule will be phased in over a period of three years; in the interim, new child seats will remain installable with seat belts, to ensure compatibility with older vehicles. According to NHTSA estimates, this new standardized system for installing child safety seats, when fully phased in, will save as many as 50 children from death and 20,000 children from injury every year.

New Rule Builds on Prior Efforts to Promote Safety on the Road

This new rule is the latest in a series of actions by President Clinton to promote safety on the road. In May 1995, the Administration launched a comprehensive plan to preserve the benefits of air bags while eliminating their risks. In June 1995, the President called on Congress to pass legislation requiring all states to pass zero-tolerance laws for youth who drink and drive; a few months later, Congress passed that legislation, the President signed it, and today all states have zero tolerance laws. And in November 1998, the Administration announced a Blue Ribbon Passenger Safety Panel that will recommend strategies to increase the use of booster seats for children 4 to 8 years and the use of seat belts for children 8 to 16 years.

Child Restraint Q&As
2/24/99

Automated Records Management System
Hex-Dump Conversion

Q: What did the President announce today?

A: The President announced a final rule to require a new universal method of installing child safety seats in cars and light trucks. Currently, parents use the vehicle seat belts to install child seats, with different models of seats requiring different methods for installation. The variety of methods confuse many parents, and using seat belts to attach seats is often difficult and time-consuming. In the future, each new child seat will have three standard attachments (one at the top and two at the base). New cars and light trucks will be equipped with standard anchors in the back seat designed to link to these child seat attachments. The seats can be attached to the anchors in moments, ensuring that children are fully protected when they ride in vehicles.

Q: How many lives will this rule save? How many injuries will this rule prevent?

A: Annually, motor vehicle crashes result in 600 child fatalities and 70,000 injuries for children less than five years old. Even though child safety seats are very effective in reducing death and injury, their effectiveness is substantially reduced due to incorrect use and occasional incompatibility with the vehicle seat and belt systems. This rule is expected to prevent as many as 50 child deaths and 3,000 injuries each year.

Q: When will this rule take effect for cars and light trucks? For child seats?

A: For vehicles, eighty percent of new cars will be equipped with the top tether attachment points starting September 1, 1999, and all new vehicles (cars and light trucks) will be equipped with the top tether attachment points by September 1, 2000. The lower anchorages are phased in over 3 years, covering 20% of vehicles beginning September 1, 2000, 50% of vehicles by September 1, 2001, and all vehicles after September 1, 2002.

For the child seats all new child seats will be equipped with an upper tether by September 1, 1999, and all new child seats will be equipped with the two lower attachments by September 1, 2002. New child seats will also remain installable with regular vehicle seat belts to ensure compatibility with older vehicles and aircraft.

Q. How effective are child safety seats?

A. According to the National Highway Traffic Safety Administration (NHTSA), when properly used, child safety seats reduce the risk of fatality for infants by 70% and for toddlers by over half.

Q: How much will child seats increase in price as a result of this rule? How much will vehicle prices increase?

A: According to NHTSA, the additional amount that consumers will have to spend on a new child seat will be as low as \$15. Typically, child safety seats range in price from \$50 to \$100. The additional cost for a vehicle as a result of this rule is estimated at between \$3 and \$7.

Q: How does this differ from what the Administration proposed earlier?

A: The Notice of Proposed Rulemaking (NPRM), announced by the President on February 15, 1997, proposed that every vehicle and child safety seat be equipped with either dedicated "mini-seat belts" for installing child safety seats, or two fixed rigid one-inch bars in the vehicle's back seat to which a child seat would attach. The final rule requires the latter approach. People commenting on the NPRM overwhelmingly favored having the government deciding on a single, universal attachment system.

***A NATIONAL EFFORT TO REDUCE CLASS SIZE:
SMALLER CLASSES WITH WELL-PREPARED TEACHERS***

February 23, 1999

AN OPPORTUNITY FOR BIPARTISAN PROGRESS IN EDUCATION. Last year, President Clinton proposed a historic initiative to reduce classsize in the early grades -- when children learn to read and get a solid foundation in the basics -- by hiring 100,000 well-prepared teachers over seven years. Congress enacted a down payment on this request last year with bipartisan support, providing a one-time \$1.2 billion appropriation to help communities hire approximately 30,000 teachers nationwide. This week, Congress has the opportunity to build on its bipartisan efforts to reduce class size and finish the job by passing legislation authorizing this initiative for the next six years.

SUPPORTING EFFECTIVE LOCAL PLANNING. Under the initiative enacted into law last year, school districts will begin to receive funding this July 1 in order to hire teachers to begin reducing class sizes this fall. While last year's one-year appropriation provided an important start on President Clinton's seven-year initiative, Congress has the chance to support effective local planning by giving school districts the confidence they need that funding will be available under this initiative for years to come. Rejecting this legislation this week will send a dangerous message to school districts about the prospects for continued funding just when they are beginning to make decisions about how to implement this new initiative.

INCREASED FUNDING FOR COMMUNITIES ACROSS THE NATION. In this year's budget, President Clinton and Vice President Gore proposed \$1.4 billion to hire a total 38,000 teachers.

- This initiative would provide [STATE] with [STATE ALLOCATION] to support [NUMBER OF TEACHERS] to reduce class size in early grades across the state.

SMALL CLASSES MAKE A DIFFERENCE. Studies show that smaller classes help teachers provide more personal attention to students and spend less time on discipline; as a result students learn more and get a stronger foundation in the basic skills. According to studies, students from smaller classes in North Carolina, Wisconsin, Indiana, Tennessee, and across the nation outperformed their peers in larger classes. Moreover, research shows that reduced class size makes the greatest difference for minority and disadvantaged students. For example, a national study of 10,000 4th graders and 10,000 8th graders found the greatest impact of smaller classes on innercity youth.

SUPPORT FROM MAJOR EDUCATION ORGANIZATIONS. Major education organizations have said that the President's class size initiative is the kind of initiative that has the potential to make a real difference in raising the academic achievement of young Americans. These organizations include the American Association of School Administrators (AASA), the American Federation of Teachers (AFT), the Council of Chief State School Officers (CCSSO), the Council of Great City Schools (CGCS), Federal Advocacy for California Education, the National Association of Elementary School Principals (NAESP), the National Association of State Boards of Education (NASBE), the National Association of State Directors of Special Education, the National Education Association (NEA), the National Parent Teacher Association (PTA), the National School Boards Association (NSBA), NAACP, the National Association of School Psychologists, the International Reading Association (IRA), and the Executive Director of the Council of Scientific Society Presidents.

This is an important turning point in American education. We have an historic opportunity to work together to make the targeted investments needed to improve our schools and help prepare all of our children for the 21st century.

I welcome the idea of greater flexibility in education for states and school districts; and the Senate should approve ed-flex legislation this week that provides for greater flexibility and accountability in education, and it should approve an amendment to strengthen accountability in this program. But we must do more to give our children a world-class education.

Senators Kennedy and Murray and others will offer an amendment to the ed-flex bill to build on our bipartisan efforts begun last year to reduce class size and finish the job by authorizing the class size reduction initiative for the next six years. Last year, I proposed this initiative to reduce class size in the early grades -- when children learn to read and get a solid foundation in the basics -- by hiring 100,000 well-prepared teachers over seven years. Congress enacted a down payment on this request with bipartisan support, providing a one-time \$1.2 billion appropriation to help communities hire approximately 30,000 teachers nationwide.

Under the initiative enacted into law last year, school districts will begin to receive funding this July 1 in order to hire teachers to begin reducing class sizes this fall. While last year's one-year appropriation provided an important start on our initiative, The measure to be offered by Senators Kennedy and Murray would authorize a total of \$12.6 billion over seven years to help communities across the nation support 100,000 well-prepared teachers.

For the sake of our children and our schools, I am asking you to support this effort to reduce class sizes across this nation for years to come.

This measure will give local school districts full confidence in our resolve to fund this initiative in the coming years. It will support effective local planning by signalling our bipartisan commitment just when school districts are beginning to make decisions about how to implement this new initiative. Most importantly, it will help reduce class size and improve performance in reading and basic skills in schools across the nation.

As parents and teachers across America understand, smaller classes can make a profound difference for our children. Studies show that smaller classes help teachers provide more personal attention to students and spend less time on discipline; as a result students learn more and get a stronger foundation in the basic skills. Students from smaller classes outperform their peers in larger classes, and reduced class size can make the greatest difference for minority and disadvantaged students.

There is no better way to prepare for the 21st century than investing in quality education for all of our children. I look forward to working with you to seize this opportunity to improve education by approving this important measure and, as the year progresses, on a broad agenda to strengthen the quality of our public schools.

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 10:23:20.00

SUBJECT: We're all square with the leak

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

TEXT:

Jodi Sakol of the VP's press office has put a call into Robert and is awaiting a return call. She's faxing the VP release and Wirthlin survey right now (we'll fax you now too).

She and Andrea will call him to talk on background; they will also refer him to Eli to get on the record quotes from him and hiring businesses. We will not have him call Bruce for quotes -- the VP's office thinks its "unnecessary."

February 27, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

Health Care -- Medicare Commission prescription drug benefit update. Senator Breaux is now indicating that he would like to find a way to integrate a prescription drug benefit into his Commission's recommendations. Beyond believing that drug coverage is important to the program, he knows that including a viable benefit is critical to having any chance of enticing Laura Tyson and Stuart Altman to support his plan. Laura and Stuart have explicitly rejected Senator Breaux's option because they do not believe it assures access to affordable prescription drugs for all beneficiaries. More specifically, because the Senator is limiting his option to low-income beneficiaries and those in private health plans, it is clear that millions of beneficiaries -- particularly in rural areas -- might be left without access to any affordable drug benefit. This is because many rural areas will not attract private health plans to offer coverage. This helps explain why Laura and Stuart are so adamant that the traditional Medicare fee-for-service plan offer a drug coverage option as well. (They also believe that to ensure fair competition this benefit should be available in both traditional Medicare program and private insurers.) In response to Senator Breaux's request for assistance, Laura and Stuart are trying to design the parameters of a prescription drug benefit. It is likely to be a mid-range priced plan, in which the benefit is optional, has a 50 percent rather than a 75 percent subsidy, and a \$250 or \$500 deductible with a \$1,500 or \$2,000 cap on the value of the overall benefit. (This is a much more modest package than a lot of the advocates were hoping for, but it is probably much more realistic from a financial and political perspective.)

Health Care -- Prescription drug comments are raising concerns: You should be aware that your comments on Thursday about prescription drug benefits were construed by many as opening the door to a partial drug benefit that is strongly opposed by all your base Democrats and even Laura Tyson and Stuart Altman. We have responded that, consistent with the views of Laura and Stuart, an appropriately structured and modestly subsidized benefit (which assures the drug benefit would be affordable) would eliminate the need to make the coverage mandatory. As such, an optional drug benefit would allow those few Americans fortunate enough to have retiree health benefits to not be forced to purchase a Medicare drug benefit they do not need. One last point; opponents of a drug benefit (or those who wish to limit it) point to the fact that 65 percent of beneficiaries have a drug benefit already, so that a drug benefit would substitute public dollars for private dollars, and waste a

large amount of money. Ironically, a break out of this number illustrates why limiting the drug benefit to certain populations just does not work. Of the 65 percent of beneficiaries with some type of coverage, 20 percent already have Medicare or Medicaid coverage (so there would be no substitution of Federal dollars), another 28 percent have employer-based retiree health coverage, which is declining in unprecedented degrees and is tax subsidized, and 10 percent have Medigap coverage, which is underwritten, expensive and declining. The remaining 7 percent are transitioning in and out of Medicare and Medicaid mostly. As a result, a decent drug benefit that is accessible to all beneficiaries would not substitute many Federal for private dollars, would be a far more substantive and affordable benefit, and -- as Laura Tyson says -- would be far more efficient from an economic perspective. Without a doubt, however, this issue is extremely complicated; we are carefully contemplating options and will be forwarding you additional information shortly.

Crime -- Assault Weapons: The Justice Department is preparing to release a report from the National Institute of Justice on the impact of the 1994 assault weapons ban. The report's findings are encouraging about the effectiveness of the ban, but are limited due to the relatively short study period (24 months post-enactment), with some analyses conducted with only one year of postban data. Among the key findings were:

- (1) Decline in criminal use of the banned guns. Law enforcement requests for ATF traces on assault weapons used in crimes decreased by 20 percent in the first year after the ban took effect, as compared to a 11 percent decrease for all guns.
- (2) Ban likely contributed to reduction in gun murder rate. Even controlling for other factors (e.g., pre-existing state assault weapons bans, juvenile handgun bans, California's three-strikes laws, New York's quality of life policing), the study estimates that gun murder rates were between 6.7 to 10 percent lower the year after the ban's enactment.
- (3) Reduction in assault weapons used to kill police. Murders of police by offenders armed with assault weapons declined from an estimated 16 percent of gun murders of police in 1994 to early 1995, to 0 percent (none) in the latter half of 1995 and early 1996. However, such incidents are extremely rare to begin with, and researchers could not conclude the ban's impact on the general reduction in gun murders of police.
- (4) Significant but temporary market effects. The ban triggered speculative, sharp price increases and additional production of the banned firearms prior to the law's implementation. The increases were followed by a substantial drop in prices once the law took effect returning prices to pre-ban levels. The report suggests that the market effects made the banned weapons less accessible to criminals.
- (5) No impact on reducing average number of victims per gun murder incident, or multiple gunshot wound victims.

Crime -- Diallo Shooting: This week, you inquired about the recent shooting in New York City. On February 4, 1999, Amadou Diallo, an immigrant from Guinea, was shot in front of his apartment building in New York City by four white officers of the New York City Police Department. A total of 41 shots were fired, and Mr. Diallo died at the scene. The officers did not find a weapon on or near Mr. Diallo. The four officers were part of a specialized street crime unit reportedly searching for a rapist. Working with the White House Counsel we have learned the following: (1) the FBI has opened an investigation into the shooting and is assisting with forensic analysis; (2) DOJ's Civil Rights and Criminal Divisions, and the U.S. Attorney for the Southern District of New York have been working closely with the Bronx District Attorney's Office on the investigation; and (3) the Community Relations Service has conducted conciliation services in Harlem, including attending the recent memorial service and demonstration on February 12. Additionally, for almost two years, the U.S. Attorney's Office for the Eastern District of New York -- with the cooperation of the New York Police Department -- has undertaken a review into whether the department has engaged in a pattern or practice of police misconduct.

Education -- Ed-Flex Bill and Class Size Amendment: The Senate is expected to take up Ed-Flex on Tuesday. We are continuing our efforts to forge a bipartisan agreement to strengthen the bill's accountability provisions. If we fail, Democrats will offer their own accountability amendments. In addition, Senators Kennedy and Murray will offer an amendment to authorize our class size initiative for the next six years. The Vice President will join Murray in Washington State on Sunday to urge passage of this amendment, and we intend to release a letter from you to Senators Lott and Daschle on Monday to reiterate this message. Daschle is trying hard to keep other Democratic amendments to a minimum, so that we can keep the focus on the class size issue.

Education -- NAEP Reading Scores: On Thursday, the National Center for Education Statistics will release state-by-state reading scores from the 1998 National Assessment of Educational Progress "Reading Report Card." Earlier this month, Vice President Gore and Secretary Riley announced the national scores from this report, which showed that for the first time in nearly 30 years of testing, there were small but statistically significant gains in average reading scores in the 4th, 8th, and 12th grades between 1998 and 1994: 4th and 12th grade scores returned to 1992 levels after a drop between 1992 and 1994, but the new 8th grade scores were up even from 1992. The state-by-state data is still being compiled, but the Education Department expects that most states will show improvements over the past four years. Secretary Riley will hold a press conference in Washington D.C., and Vice President Gore will highlight New York and Connecticut scores in an event in New York City.

Education -- "Read Across America" Day: On Tuesday, the NEA is holding its annual "Read Across America" day, celebrating Dr. Seuss' birthday and focusing the nation's attention on the importance of reading.

Education -- Release of National Title I Assessment: On Monday, the Department of Education is scheduled to release the National Assessment of Title I , which is a Congressionally mandated report examining the impact of the 1994 amendments to the program -- namely, the progress being made toward the goal of having all children served under Title I meet high academic standards. The National Assessment examines the progress of students served by the program and the implementation of key Title I provisions at the state, district and school level. The National Assessment will report on progress in improving achievement for students enrolled in high-poverty schools, in increasing the number of Title I schools using standards-based reform and in accelerating state and local efforts to assist Title I schools. Revisions to the Title I program that were made as part of the 1994 ESEA reauthorization -- such as allowing schools to use their Title I funds for schoolwide improvements and pool their funding from all sources -- have made it more challenging for the National Assessment to track the use of Title I funds and blurred the distinction between program participants and other children. At this time, we are still working with the Education department to clarify what are the actual conclusions of this very important report; according to the Department of Education, the results are somewhat mixed.

Education -- Bipartisan discussions about a centrist education agenda: Senator Lieberman and Senator Gorton are working with a number of centrist outside groups and individuals to develop principles for a bipartisan approach to reauthorizing ESEA. They are hoping to secure support for these principles from about 5 Democrat and 5 Republican Senators, as well as some leading education experts from outside the Administration and Congress. The principles are likely to include a focus on accountability, teacher quality, public school choice, and some consolidation of existing federal education programs. These principles are very much under development , but at this point would apparently not include school construction, block grants, or private school vouchers.

Welfare Reform -- Vice President's Welfare to Work Event: The Vice President is scheduled to release on Monday the results of a new survey, conducted by Wirthlin Worldwide, showing that businesses participating in the Welfare to Work Partnership have now hired 410,000 welfare recipients. The survey shows that welfare recipients hired by these companies are generally doing well: most companies (65 percent) report that welfare hires stay on the job at the same rate or higher rates than other entry-level employees. The survey also shows that welfare hires have opportunities to advance: 60 percent of the companies report some promotion of former welfare recipients in the past year, which is generally consistent with the companies' promotion rates for other hires. In addition, 77 percent of the companies hire individuals for promotion-track jobs, and 91 percent offer training that could lead to promotion. The survey found a positive correlation between formal mentoring programs and high promotion rates for former welfare recipients. Companies that have entered into partnerships with community-based organizations to do mentoring have the highest rate of promotion.

Welfare -- Reporting on Working Families in Poverty: On Thursday, the research group Child Trends put out a report on working poor families. The report, based on 1996 Census data, found that children of working parents were much less likely to be poor. Only 9 percent of children whose parents work were poor, compared to 63 percent with parents who didn't work. Thus, children in non-working families were seven times more likely to be poor as children in working families. The study defined working as at least 20 hours per week for a single parent family and 35 hours for a two parent family (the same as required by the welfare law).

The report also found that working does not guarantee an escape from poverty, at least by the official poverty definition. The study found 35 percent of poor children have working parents. However, the report used the official measure of poverty, which does not include as income the Earned Income Tax Credit or non-cash supports such as Food Stamps. Many analysts have calculated how EITC and Food Stamps help provide families with resources to move above the poverty line. As the Council of Economic Advisers has reported, the EITC lifted 4.3 million people out of poverty in 1997 and over half the decline in child poverty between 1993 and 1997 can be explained by changes in taxes most importantly in the EITC. The Center on Budget and Policy Priorities has calculated that a family of four can reach the \$17,100 poverty line through a full time minimum wage job (\$9,800), the EITC (\$3,700), and Food Stamps (\$3,600).

Immigrant Benefits -- Declining Participation: The Urban Institute will issue a report on Monday showing evidence of a "chilling effect" that has resulted in fewer immigrant families, compared to citizen families, accessing an array of public benefits. The study found welfare use by noncitizens declined by 35 percent from 1994 to 1997 while use by citizens declined 15 percent. While Medicaid use by citizen households under 200 percent of poverty did not change significantly, non-citizen family participation dropped 19 percent. Since most legal immigrants were still eligible for benefits in 1997, these effects may be the result of the publicity surrounding the debate over welfare and immigration reform leading people to think they were ineligible or that accepting benefits would affect their immigration status. As you know we have been working closely with the Department of Justice and HHS on these issues, and we expect the INS will issue guidance in the near future to provide clarity on what type of benefits an immigrant can accept without being labeled a "public charge." Clearer guidance on public charge policies, along with our proposals to restore additional health, nutrition, and disability benefits to vulnerable legal immigrants, will allow us to begin sending clearer messages to immigrant families regarding their eligibility for benefits.

Tobacco -- Cigar Use: The HHS Inspector General issued a report Friday calling for the Federal Trade Commission to require that cigars carry warning labels. The recommendation came in the context of a report focusing on the use of cigars among teenagers. The report, based on focus group evidence, found that more than a third of teenagers have smoked a cigar in the past 30 days and that 54 percent have smoked a cigar in their life. According to the report, most teens who smoke cigars also smoke cigarettes, and

some teens create modified cigars called "blunts" by removing the cigar's core tobacco and replacing it with marijuana. As you may know, our budget imposes the same percentage tax increase on cigars as on cigarettes. The FDA rule, however, does not apply to cigars, principally because there is insufficient evidence of cigars' addictiveness to support the assertion of regulatory authority.

Economic Development -- Yankee Stadium: We have contacted Representative Rangel's staff regarding the Congressman's interest in preserving Yankee Stadium and keeping the Yankees in the Bronx for the foreseeable future. It appears that the Congressman is looking for support to identify existing and new funds to improve transportation access (both highway and rail links), and to promote commercial development in the area surrounding the stadium. His staff indicated they are not looking to utilize federal funds to help rehabilitate the stadium. Along with the NEC, OMB, and other relevant agencies, we will be discussing whether there is an appropriate role for federal involvement and if so, what are some of the possible tools and resources we can make available for the project.

Children and Families -- Child Care. The House Ways and Means Subcommittee on Human Resources will hold a hearing on child care on March 16, which is significant because the last Congress refused to hold even a single hearing on the issue. The Administration will lead off the hearing testimony. Also, the Subcommittee's ranking Democrat, Rep. Ben Cardin (D-MD), plans to introduce a child care bill largely based on the Administration's proposals prior to the hearing.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 10:26:48.00

SUBJECT: equal pay

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

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

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

TEXT:

O.K. team -- we have an obligation to get back to the congressional staff (and groups?) in about three weeks and work in earnest toward "the event" circa April 8th, give or take a day or two.

equal pay has been more a dpc than an nec thing, though something i've cared about -- so i appreciate your letting me play

john seems to think i have something to contribute on the data collection piece -- i'm happy to help. for now, tom and mary have this process going which i gather is quite productive. should you want extra counsel or advice, you know where to find me. it strikes me that we ought to have a clear idea, fully vetted within the administration, of how far we want to/can go on data collection in the next 10 days, two weeks (p.s. by that time, i should be allowed phone privileges).

finally, on the substance -- i just wanted to let you know that i stopped heidi afterwards and confirmed that the 74 cents on the dollar disparity in pay -- revised by cea to 85 cents on the dollar taking into account experience, longevity, etc. -- was for the same job -- not a comparable worth study -- thereby establishing that even though some think that "no employer is stupid enough to pay the man sitting next to the woman more money for the same job," there is a lot of that still happening and that the daschle bill would in fact help (by 15 cents on the dollar).

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Karin Kullman (CN=Karin Kullman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:26-FEB-1999 10:36:18.00

SUBJECT: Mental Health Conference

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

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

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: 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: 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: 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: J. Eric Gould (CN=J. Eric Gould/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Teresa M. Jones (CN=Teresa M. Jones/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

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

TEXT:

Scheduling is trying to set a date for the White House Conference on
Mental Health. Does anyone see a problem with the date of:

June 14, 1999

Please respond to me ASAP (no later than this afternoon) if you foresee any
conflict with this date.

Thanks!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 10:37:28.00

SUBJECT: Copy of radio address to Slater

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

READ:UNKNOWN

TEXT:

Slater's office is asking for a copy of the radio address. I hadn't sent it over yet because of the problems with leaks that we have had with folks at Transportation. In addition, the radio address doesn't mention their safety conference, but Ann Lewis told them again this morning that it will not be mentioned. I was going to fax over a copy of the speech for the Secretary's briefing unless you had a problem with it. Thanks, Mary