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EMAILS RECEIVED

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[03/01/1999] [2]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Constance J. Bowers (CN=Constance J. Bowers/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME: 1-MAR-1999 16:07:05.00

SUBJECT: LRM CJB 14 = EDUCATION Draft Bill on Indian Education Amendments = part of

TO: Constance J. Bowers (CN=Constance J. Bowers/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

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

LRM INTERIOR (LRM INTERIOR [UNKNOWN])

READ:UNKNOWN

LRM JUSTICE (LRM JUSTICE [UNKNOWN])

READ:UNKNOWN

TEXT:

Below are files containing the text of ED's proposed amendments to the Indian Education part of the ESEA. Please provide comments by:
cob, Thursday, March 4, 1999

Note: This material will be faxed to you along with a copy of the current law marked up to show ED's proposed changes. That material is not available to send electronically.

click here for bill text:

- indians.doc

click here for sectional analysis text:

- indian-sec.doc

----- Forwarded by Constance J. Bowers/OMB/EOP on
03/01/99 04:01 PM -----

Total Pages: _____

LRM ID: CJB14
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, March 1, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

OMB CONTACT: Constance J. Bowers
PHONE: (202)395-3803 FAX: (202)395-6148
SUBJECT: EDUCATION Draft Bill on Indian Education Amendments =
part of the Elementary and Secondary Education Act Reauthorization (Part A
of Title IX of the ESEA of 1965)

DEADLINE: cob Thursday, March 4, 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: Because of the magnitude of ED's draft bill to reauthorize the
Elementary and Secondary Education Act of 1965, circulation and
interagency review will be handled in separate pieces. The paper copy of
this material contains a markup of current law to show the changes
proposed by the draft bill. This material is not available to send to you
electronically.

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Broderick Johnson
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Jeffrey L. Farrow
Janet R. Forsgren
Richard H. Kodl
James J. Jukes

LRM ID: CJB14 SUBJECT: EDUCATION Draft Bill on Indian Education
Amendments = part of the Elementary and Secondary Education Act
Reauthorization (Part A of Title IX of the ESEA of 1965)

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

DRAFT
MARCH 1, 1999

1 TITLE IX - INDIAN, NATIVE HAWAIIAN, AND ALASKA NATIVE EDUCATION

2 PART ACINDIAN EDUCATION

3 FINDINGS AND PURPOSE

4 SEC. 901. Sections 9101(1)(C), 9102(a), and 9102(b)(1) of the
5 ESEA are each amended by striking out "special" and inserting in
6 lieu thereof "unique".

7 GRANTS TO LOCAL EDUCATIONAL AGENCIES

8 SEC. 902. Section 9112(b)(2) of the ESEA is amended by
9 inserting a comma and "except that any such tribe is not subject
10 to section 9114(c)(4) (parent committee), section 9117(c)
11 (maintenance of effort), or section 9118 (State review of
12 applications)" before the period at the end thereof.

13 AMOUNT OF GRANTS

14 SEC. 903. Section 9113 of the ESEA is amendedC

15 (1) in subsection (b)(2), by striking out "Act" and
16 inserting in lieu thereof "subpart"; and

17 (2) by amending subsection (d) to read as follows:

18 "(d) SCHOOLS OPERATED OR SUPPORTED BY THE BUREAU OF INDIAN
19 AFFAIRS.C(1) In addition to the grants awarded under subsection (a),
20 and subject to subsection (e), the Secretary shall allocate to the
21 Secretary of the Interior an amount equal to the product ofC

22 "(A) the total number of Indian children enrolled
23 in schools that are operated byC

1 "(i) the Bureau of Indian Affairs; or
2 "(ii) an Indian tribe, or an organization
3 controlled or sanctioned by an Indian tribal government, for the
4 children of that tribe under a contract with, or grant from, the
5 Department of the Interior under the Indian Self-Determination Act
6 or the Tribally Controlled Schools Act of 1988; and

7 "(B) the greater ofC

8 "(i) the average per-pupil expenditure of the
9 State in which the school is located; or

10 "(ii) 80 percent of the average per-pupil
11 expenditure in the United States.

12 "(2) Any school described in paragraph (1) that wishes
13 to receive an allocation under this subpart shall submit an
14 application in accordance with section 9114, and shall otherwise
15 be treated as a local educational agency for the purpose of this
16 subpart, except that it shall not be subject to section 9114(c)(4)
17 (parent committee), section 9117(c) (maintenance of effort), or
18 section 9118 (State review of applications).".

19 APPLICATIONS

20 SEC. 904. Section 9114 of the ESEA is amendedC

21 (1) in subsection (b)(2), by amending subparagraph (A)
22 to read as follows:

23 "(A) is consistent with State and local plans under
24 other provisions of this Act; and";

25 (2) by amending subsection (c)(3)(A) to read as follows:

26 "(A) is based on a comprehensive local assessment

1 and prioritization of the unique educational and culturally related
2 academic needs of the American Indian and Alaska Native students
3 to whom the local educational agency is providing an education;"
4 and

5 (3) in paragraph (4) --

6 (A) by amending subparagraph (B) to read as follows:

7 "(B) a majority of whose members are parents of Indian
8 children;"

9 (B) in subparagraph (D)(ii), by striking out "will
10 not diminish" and inserting in lieu thereof "will enhance".

11 AUTHORIZED SERVICES AND ACTIVITIES

12 SEC. 905. Section 9115(b) of the ESEA is amendedC

13 (1) in paragraph (5), by striking out "Applied Technology
14 Education Act" and inserting in lieu thereof "Technical Education
15 Act of 1998";

16 (2) in paragraph (6), by striking out "and" at the end
17 thereof;

18 (3) in paragraph (7), by striking out the period at the
19 end thereof and inserting in lieu thereof a semicolon and "and";

20 and

21 (4) by adding at the end thereof paragraphs (8) through
22 (11) to read as follows:

23 "(8) activities that promote the incorporation of
24 culturally responsive teaching and learning strategies into the
25 educational program of the local educational agency;

26 "(9) activities that incorporate American Indian- and

1 Alaska Native-specific curriculum content, consistent with State
2 standards, into the curriculum used by the local educational agency;

3 "(10) activities to promote coordination and collaboration
4 between tribal, Federal, and State public schools in areas that will
5 improve American Indian and Alaska Native student achievement; and

6 "(11) activities that addresses the special needs of
7 American Indian and Alaska Native students who are gifted and
8 talented.".

9 STUDENT ELIGIBILITY FORMS

10 SEC. 906. Section 9116 of the ESEA is amendedC

11 (1) in subsection (f)C

12 (A) in the second sentence of paragraph (1)(A), by
13 inserting "the" before "size"; and

14 (B) in paragraph (3), by striking out "subsection
15 (d)" and inserting in lieu thereof "subsection (a)";

16 (2) by amending subsection (g) to read as follows:

17 "(g) TRIBAL GRANT AND CONTRACT SCHOOLS. Notwithstanding any
18 other provision of this section, the Secretary, in awarding funds
19 under this subpart to a tribal school that receives a grant or contract
20 from the Bureau of Indian Affairs, shall use only one of the following,
21 as selected by the school:

22 "(1) A count of the number of students in those schools
23 certified by the Bureau.

24 "(2) A count of the number of students for whom the school
25 has eligibility forms that comply with this section."; and

26 (3) by adding at the end thereof a new subsection (h) to

1 read as follows:

2 " (h) TIMING OF CHILD COUNTS. For purposes of determining the
3 number of children to be counted in calculating the amount of a local
4 educational agency's grant under this subpart (other than in the
5 case described in subsection (g) (1)), the local educational agency
6 shallC

7 " (1) establish a date on, or a period not longer than 31
8 consecutive days during which, the agency counts those children,
9 so long as that date or period occurs before the deadline established
10 by the Secretary for submitting an application under section 9114;
11 and

12 " (2) determine that each such child was enrolled, and
13 receiving a free public education, in a school of the agency on that
14 date or during that period, as the case may be.".

15 PAYMENTS

16 SEC. 907. Section 9117(b) of the ESEA is amended by striking
17 out "(or under subpart 1 of the Indian Education Act of 1988)".

18 STATE EDUCATIONAL AGENCY REVIEW

19 SEC. 908. Section 9118 of the ESEA is amended to read as
20 follows:

21 "STATE EDUCATIONAL AGENCY REVIEW

22 SEC. 9118. Before submitting an application to the Secretary
23 under section 9114, a local educational agency shall submit it to
24 the State educational agency, which may comment on it. If the State
25 educational agency comments on the application, it shall comment
26 on all applications submitted by local educational agencies in the

1 State and shall provide those comments to the respective local
2 educational agencies, with an opportunity to respond."

3 IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN

4 SEC. 909. Section 9121(d)(2) of the ESEA is amendedC

5 (1) in subparagraph (A), by striking out "subsection" and
6 inserting in lieu thereof "section"; and

7 (2) in subparagraph (B)C

8 (A) by inserting a comma and "other than an
9 application for a dissemination grant under paragraph (1)(D)," after
10 "subparagraph (A)";

11 (B) in clause (ii), by striking out "and" at the end
12 thereof;

13 (C) by redesignating clause (iii) as clause (v); and

14 (D) by inserting new clauses (iii) and (iv) to read
15 as follows:

16 "(iii) information demonstrating that the
17 proposed program is either a research-based program or such a program
18 that has been modified to be culturally appropriate for the students
19 who will be served;

20 "(iv) a description of how the applicant will
21 incorporate the proposed services into the ongoing school program
22 once the grant period is over; and".

23 PROFESSIONAL DEVELOPMENT

24 SEC. 910. Section 9122 of the ESEA is amendedC

25 (1) in subsection (e)C

26 (A) by striking out paragraph (2); and

1 (B) by striking out the subsection designation "(e)
2 and all that follows through "Each" and inserting in lieu thereof
3 "(e) APPLICATION. Each";

4 (2) in subsection (h) (1), by inserting "preservice" after
5 "receives"; and

6 (3) by adding at the end thereof a new subsection (i) to
7 read as follows:

8 "(i) IN-SERVICE TRAINING FOR TEACHERS OF INDIAN CHILDREN.C(1)
9 GRANTS AUTHORIZED. In addition to the grants authorized by
10 subsection (c), the Secretary may make grants to either of the
11 following, in order to provide high-quality in-service training to
12 teachers in local educational agencies with substantial numbers of
13 Indian children enrolled in their schools:

14 "(A) A consortium of a tribal college and an
15 institution of higher education that awards a degree in education.

16 "(B) A consortium of a tribal college or an
17 institution of higher education that awards a degree in education,
18 or both, and one or more elementary or secondary schools operated
19 by an Indian tribe or funded by the Bureau of Indian Affairs (BIA),
20 local educational agencies serving Indian children; or tribal
21 educational agencies.

22 "(2) USE OF FUNDS.C(A) A consortium that receives a grant
23 under paragraph (1) shall use the grant funds only to provide
24 high-quality in-service training to teachers, including teachers
25 who are not Indian, in local educational agencies with substantial
26 numbers of Indian children enrolled in their schools, in order to
27 better meet the unique educational needs of those children.

1 2".

2 AUTHORIZATION OF APPROPRIATIONS

3 SEC. 913. Section 9162 of the ESEA is amended to read as
4 follows:

5 "AUTHORIZATION OF APPROPRIATIONS

6 "SEC. 9162. (a) SUBPART 1. For the purpose of carrying out
7 subpart 1 of this part, there are authorized to be appropriated such
8 sums as may be necessary for each of the fiscal years 2001 through
9 2005.

10 "(b) SUBPARTS 2 AND 3. For the purpose of carrying out subparts
11 2 and 3 of this part, there are authorized to be appropriated such
12 sums as may be necessary for each of the fiscal years 2001 through
13 2005."

* * * * *

DRAFT

MARCH 1, 1999

TITLE IX B INDIAN, NATIVE HAWAIIAN, AND ALASKA NATIVE EDUCATION

PART A B INDIAN EDUCATION

Part A of Title IX of the bill would make various amendments to Part A of Title IX of the ESEA, which authorizes a program of formula grants to LEAs, as well as certain demonstration programs and related activities, to increase educational achievement of American Indian and Alaska Native students.

Section 901, findings and purpose [ESEA, '9101 and 9102]. Section 901 of the bill would amend the statements of findings and purpose in sections 9101 and 9102 of the ESEA by changing references to the "special educational and culturally related academic needs" of American Indian and Alaska Native students to refer instead to their "unique educational and culturally related academic needs".

Section 902, grants to local educational agencies [ESEA, '9112]. Section 902 of the bill would amend section 9112 of the ESEA, which authorizes formula grants to certain LEAs educating Indian children. Current section 9112(b) provides that when an eligible LEA does not establish the Indian parent committee required by the statute, an Indian tribe that represents at least half of the LEA's Indian students may apply for the LEA's grant and is to be treated by the Secretary as if it were an LEA. The amendment would codify the Department's interpretation that, in that situation, the tribe is not subject to the statutory requirements relating to the parent committee, maintenance of effort, or submission of its grant application to the State educational agency for review. These requirements would be inappropriate to apply to an Indian tribe, as they are, under section 9113(d), for schools operated or supported by the Bureau of Indian Affairs (BIA).

Section 903, amount of grants [ESEA, '9113]. Section 903(1) of the bill would make a technical amendment to section 9113(b)(2) of the ESEA, which allows consortia of eligible LEAs to apply for grants.

Section 903(2) would revise section 9113(d), relating to grants to schools operated or supported by the BIA, to clarify that those schools must submit an application to the Secretary and that they are generally to be treated as LEAs for the purpose of the formula grant program, except that they are not subject to the statutory requirements relating to parent committees, maintenance of effort, or submission of grant applications to the State educational agency for review. These requirements would be inappropriate to apply to these schools, as they would be for Indian tribes that receive grants (in place of an eligible LEA) under section 9112(b).

Section 904, applications [ESEA, '9114]. Section 904(1) of the bill would amend section 9114(b)(2)(A) of the ESEA, relating to the consistency of an LEA's comprehensive program to meet the needs of its Indian children with certain other plans, to remove a reference to the Goals 2000: Educate America Act (which would be consolidated into the new Title II of the

ESEA) and to require that the LEA's plan be consistent with State and local plans under other provisions of the ESEA, not just plans under Title I.

Section 904(2) would amend section 9114(c) of the ESEA to require that the local assessment of the educational needs of its Indian students be comprehensive. This should help ensure that these assessments provide useful guidance to LEAs and parent committees in planning and carrying out projects.

Section 904(3)(A) would amend ambiguous language in section 9114(c)(4)(B) of the ESEA to clarify that a majority of each participating LEA's parent committee must be parents of Indian children.

Section 904(3)(B) would modify the standard for an LEA's use of funds under this program to support a schoolwide program under Title I of the ESEA, as is permitted by section 9115(c). Under the amendment, the parent committee would have to determine that using program funds in that manner would enhance, rather than simply not diminish, the availability of culturally related activities for American Indian and Alaskan Native students.

Section 905, authorized services and activities [ESEA, '9115]. Section 905(1) of the bill would make a conforming amendment to section 9115(b)(5) of the ESEA to reflect the re-naming of the Perkins Act by P.L. 105-332.

Section 905(4) would add four activities to the examples of authorized activities in section 9115(b). These additions would encourage LEAs to address the needs of American Indian and Alaskan Native students in the areas of curriculum development, creating and implementing standards, improving student achievement, and gifted and talented education.

Section 906, student eligibility forms [ESEA, '9116]. Section 906(1) of the bill would make technical amendments to section 9116(f) of the ESEA.

Section 906(2) would amend section 9116(g) to permit tribal schools operating under grants or contracts from the BIA to use either their child counts that are certified by the BIA for purposes of receiving funds from the Bureau or to use a count of children for whom the school has eligibility forms (commonly referred to as "506 forms") that meet the requirements of section 9116. This choice would allow these schools to avoid the burden of two separate child counts.

Section 906(3) of the bill would add a new subsection (h) to section 9116 to allow each LEA to select either a particular date or period (up to 31 days) to count the number of children it will claim for purposes of receiving a grant.

Section 907, payments [ESEA, '9117]. Section 907 of the bill would delete obsolete language from section 9117 of the ESEA, relating to payment of grants to LEAs.

Section 908, State educational agency review [ESEA, '9118]. Section 908 of the bill would rewrite section 9118 of the ESEA, relating to the submission of applications to the Secretary and the review of those applications by SEAs, in its entirety. As revised, section 9118

would not contain current subsection (a), which requires LEAs to submit applications to the Secretary, since that duplicates the requirement in section 9114(a), where it logically belongs. The revised section would also improve the clarity of the requirement that an LEA submit its application to the SEA for its possible review.

Section 909, improvement of educational opportunities for Indian children [ESEA, '9121]. Section 909 of the bill would amend section 9121 of the ESEA, which authorizes support for a variety of projects, selected on a competitive basis, to develop, test, and demonstrate the effectiveness of services and programs to improve educational opportunities for Indian children. In particular, the bill would amend section 9121(d)(2), relating to project applications, to: (1) clarify that certain application requirements do not apply in the case of applicants for dissemination grants under subsection (d)(1)(D); and (2) require applications for planning, pilot, and demonstration projects to include information demonstrating that the program is either a research-based program or that it is a research-based program that has been modified to be culturally appropriate for the students who will be served, as well as a description of how the applicant will incorporate the proposed services into the ongoing school program once the grant period is over.

Section 910, professional development [ESEA, '9122]. Section 910 of the bill would amend section 9122 of the ESEA, which authorizes training of Indian individuals in professions in which they can serve Indian people. Section 910(1) of the bill would repeal section 9122(e)(2) of the Act, which affords a preference to projects that train Indian individuals. This provision, which was carried over from a related program authorized before the 1994 amendments, has no practical effect, since the only projects that have been eligible since 1994 are those that train Indians.

Section 910(2) would amend section 9122(h)(1), which requires individuals who receive training under section 9122 to perform related work that benefits Indian people or repay the assistance they received, so that it would continue to apply to pre-service training, but would not apply to in-service training. Individuals receiving in-service training are already serving Indian people, and that training is relatively inexpensive to the taxpayers, is generally of short duration, and frequently does not involve an established per-person cost of participating, such as the substantial tuition and fees that are charged by colleges for pre-service degree courses and programs.

Section 910(3) of the bill would add to section 9122 a new authority for grants to consortia to provide in-service training to teachers in local educational agencies with substantial numbers of Indian children in their schools, so that these teachers can better meet the needs of Indian children in their classrooms. An eligible consortium would consist of a tribal college and an institution of higher education that awards a degree in education, or either or both of those entities along with one or more tribal schools, tribal educational agencies, or LEAs serving Indian children. This new authority will help ensure that classroom teachers are aware of, and responsive to, the unique needs of the Indian children they teach.

Section 911, repeal of authorities [ESEA, '9123, 9124, 9125, and 9131]. Section 911 of the bill would repeal various sections of Part A of Title IX of the ESEA that have not been

recently funded and for which the Administration is not requesting funds for fiscal year 2000. The goals of these provisions (fellowships for Indian students, gifted and talented education, tribal administrative planning and development, and adult education) are more effectively addressed through other programs. Because Subpart 3 of Part A would be repealed, section 911 would also redesignate the remaining subparts.

Section 912, Federal administration [ESEA, '9152 and 9153]. Section 912 of the bill would make technical amendments to sections 9152 and 9153 of the ESEA, to reflect the proposed repeal of subpart 3 and the redesignation of the remaining subparts.

Section 913, authorization of appropriations [ESEA, '9162]. Section 913 of the bill would amend section 9162 of the ESEA to authorize appropriations for the Indian education program under Part A of Title IX through fiscal year 2005.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-MAR-1999 15:39:00.00

SUBJECT: EEOC to announce Equal Pay settlement tomorrow

TO: Elena Kagan (CN=Elena Kagan/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

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

TEXT:

The EEOC is planning on making two announcements tomorrow:

1. An approximately \$3 million settlement on equal pay where registered nurses from the Phillipines were not being paid like other registered nurses but rather were being paid as LPN's.
2. Also, the EEOC is going to provide guidance to employers on what is a "reasonable accommodations" under the Americans with Disabilities Act.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 1-MAR-1999 15:41:25.00

SUBJECT: FINAL THAT WENT TO STAFF SECY

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

----- Forwarded by Paul J. Weinstein Jr./OPD/EOP on
03/01/99 03:41 PM -----

Melissa G. Green
03/01/99 03:38:53 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FINAL THAT WENT TO STAFF SECY

Message Sent

To: _____
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Mindy E. Myers/WHO/EOP
Carolyn T. Wu/WHO/EOP
Roger S. Ballentine/WHO/EOP
Cathy R. Mays/OPD/EOP
Sarah Rosen/OPD/EOP
Rhonda Melton/OVP @ OVP

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

TEXT:

Unable to convert ARMS_EXT: [ATTACH.D83]MAIL49808546B.036 to ASCII,
The following is a HEX DUMP:

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88CFEC02A612B53F74569C274B4FCE1BDC43DEF121E33C77D2A4FD226084216F36FAC39CA10D4D
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March 1, 1999

MEMORANDUM FOR THE PRESIDENT

CC: THE VICE PRESIDENT

**FROM: ROBERT RUBIN
GENE SPERLING
BRUCE REED
LARRY STEIN**

SUBJECT: Financial Services Legislation

ACTION-FORCING EVENT: On March 4, the House and Senate Banking Committees are both scheduled to mark up major financial services legislation. The House bill, developed by Chairman Leach and Ranking Democrat LaFalce, is generally acceptable. But the Senate bill being developed by Chairman Gramm is seriously flawed. While we expect to see another draft of the Gramm bill later today, the most recent draft would remove outmoded barriers to affiliations among different types of financial services firms, but it would also: (1) weaken the effect of the Community Reinvestment Act (CRA); (2) erode the national bank charter and the Administration's role in financial services policymaking; (3) provide inadequate consumer protections; and (4) provide increased leeway for affiliations between banks and nonfinancial firms.

RECOMMENDED ACTION: That you or John Podesta on your behalf sign the attached letter stating that you would veto the Senate bill in its current form (Attachment A).

Agree _____ Disagree _____ Discuss _____

BACKGROUND: Both Houses of Congress are currently considering legislation to permit the full range of financial services firms—including banks, securities firms, and insurance companies—to affiliate with one another. This memorandum describes the current status of such “financial modernization” legislation and outlines a strategy for countering the most objectionable features of the Senate bill.

Attachment B provides a more detailed discussion of the issues in question.

In General

The 1933 Glass-Steagall Act generally prohibits affiliation between banks and securities firms. The Bank Holding Company Act of 1956 generally prohibits affiliation between banks and insurance companies. Large financial services firms strongly support removing these barriers to affiliation, although consumer and community groups generally

see little benefit in such changes.

Repealing barriers to affiliation among financial services firms has the potential for giving consumers greater choice and lower costs. However desirable the general goal of financial modernization, it does not warrant accepting a seriously flawed bill. Financial modernization is already occurring in the marketplace, and will continue even without legislation.

Over the years, efforts to enact financial modernization legislation have repeatedly failed in the face of infighting among different types of financial services firms. By the end of the last Congress, however, a financial modernization bill known as H.R. 10 had received broad support from the banking, securities, and insurance industries. The bill passed the House but died on the Senate floor for two reasons. First, Senators Gramm and Shelby opposed what they characterized as an expansion of the Community Reinvestment Act. Second, the Administration objected that the bill would have undercut its role in financial services policymaking and had the effect of weakening CRA.

Status of Legislation

As this Congress turns to financial modernization legislation, the inter-industry consensus on the need for such legislation remains intact. Both the Banking Committees are scheduled to mark up financial modernization bills on March 4. Given that early start and the momentum for some sort of legislation, the prospects for passage of legislation are stronger than in the last Congress, though still uncertain.

House. The Leach-LaFalce bill has been developing along very constructive lines, and we anticipate that it will merit our support. As discussed in Attachment B, the bill accomplishes the basic work of financial modernization—allowing affiliations among different types of financial services firms—and does so consistent with our views on the Community Reinvestment Act, banking structure, and other issues. The House Leadership is by all accounts committed to moving some sort of financial modernization bill. The House Commerce Committee, however, may seek changes that could be unacceptable.

Senate. Chairman Gramm is scheduled to release a committee print on March 1. As further described in Attachment B, Gramm's recent draft bill runs counter to our views on CRA, banking structure, consumer protection and promoting a separation between depository institutions and commercial firms. Senator Sarbanes, the Ranking Democrat, is working with the Treasury to unite Banking Committee Democrats behind an alternative bill that will have much in common with the Leach-LaFalce bill. The Committee is likely to approve the Gramm bill on a straight party-line vote.

CRA: The current version of the Leach-LaFalce compromise requires a bank to have and maintain a satisfactory CRA record in order to engage in newly authorized non-banking activities—a requirement not included in the Administration's 1997 bill, but which we have

since argued is essential to maintaining the vitality of CRA. The draft Gramm bill contains no such “have and maintain” requirement, and includes two amendments that would seriously undermine CRA.

Some House Democrats may seek to go on the offensive by proposing to expand CRA. For example, Representative LaFalce may offer an amendment to make explicit that public comment on an institution’s CRA record must be considered in applications for newly authorized activities, an amendment we could support. Last year, Representative LaFalce introduced an amendment requiring financial institutions to report on their progress in meeting publicly announced “commitments” under CRA; currently no such reporting occurs. Other House committee Democrats may offer amendments to extend the reach of CRA to insurance companies and securities firms.

Near-Term Strategy

Our near-term goal is to assist Leach and LaFalce in moving their bill forward, while doing everything possible to block the Gramm bill. This strategy has four advantages. First, we would help advance the better of the two bills. Second, we would take a strong stand against weakening CRA. Third, we would help unite Senate Democrats against the Gramm bill. Fourth, we would be taking a visible stand against a bad “financial modernization” bill, while simultaneously supporting a good bill.

To further this strategy, we recommend that you --as requested by Senator Sarbanes -- or John Podesta on your behalf -- send a short letter stating that you would veto the Gramm bill if it were presented to you in its current form. The proposed letter would cite two reasons from last Congress: The bill’s weakening of the effect of CRA, and the bill’s flawed banking structure issues. It would also cite two new reasons: the bill’s inadequate consumer protections (notably the failure to provide adequate investor-protection safeguards on the sale of securities to bank customers), and its extensive expansion of non-financial firms’ ability to affiliate with banks.

Secretary Rubin would send a letter setting forth a fuller explanation of our reasons for opposing the Gramm bill. He would also send a letter supporting the Leach-LaFalce bill.

Finally, your advisors are discussing the merits of various CRA proposals and how we should respond to amendments that would enhance enforcement of CRA, such as the LaFalce amendments. Some think that supporting something along these lines could strengthen our hand in negotiations later on; moreover, as we provide the industry with new opportunities, they argue, we should insist on some new responsibilities. However, some of these amendments would present an uncomfortable vote for moderate Democrats, have slim prospects for passage, and could possibly jeopardize the CRA provisions already in the House bill.

Attachments

**ATTACHMENT A: PROPOSED LETTER
TO CHAIRMAN GRAMM**

Dear Mr. Chairman:

This Administration has been a strong proponent of financial legislation that would reduce costs and increase access to financial services for consumers, businesses and communities. Nevertheless, we cannot support the "Financial Services Modernization Act of 1999" now pending before your Committee.

In its current form, the bill would undermine the effectiveness of the Community Reinvestment Act, a law that has helped to build homes, create jobs, and restore hope in communities across America. The CRA is working, and we must preserve its vitality as we write the financial constitution for the 21st Century. The bill would deny financial services firms the freedom to organize themselves in the way that best serves their customers, and prohibit a structure with proven advantages for safety and soundness. The bill would also provide inadequate consumer protections. Finally, the bill would expand the ability of depository institutions and non-financial firms to affiliate, at a time when experience around the world counsels caution in this area.

The President [I] agree[s] with you that reform of the laws governing our nation's financial services industry would promote the public interest. However, he [I] will veto the bill if it is presented to him [me] in its current form.

Sincerely,

ATTACHMENT B: KEY ISSUES

1. Community Reinvestment Act

Current Law. CRA requires a bank to serve the convenience and needs of all communities in which it operates. Although banks are examined periodically for CRA compliance, enforcement comes only when a bank files an application to merge with another bank or open a new branch. The regulator must then consider the bank's CRA record in evaluating the bank's application, and the public has an opportunity to comment on the application. A bank's CRA record is not *currently* scrutinized in connection with applications to affiliate with non-banking companies.

Early in your Administration, and at your request, the banking regulators revised the regulations implementing CRA to focus on performance, not paperwork. They now base CRA ratings on a three-pronged test: lending, services, and investments. Regulators also revised and streamlined the examination process, particularly for smaller institutions.

Conditioning Authority to Conduct New Non-banking Activities on Banks Having a Satisfactory CRA Record. We have argued that financial modernization legislation must preserve the relevance of CRA for the 21st century, and must not weaken the effect of CRA. CRA's relevance should be maintained by conditioning authority to conduct new non-banking activities on banks having a satisfactory CRA record. Although the Administration's 1997 bill did not impose a link between CRA and non-banking activities, we have insisted in this Congress that a bank both *have* and *maintain* an adequate CRA record as a condition of engaging in newly authorized non-bank activities. This would provide additional means for enforcing existing CRA obligations. Noncompliance would result in submission of a compliance plan (and ultimately, albeit unlikely, forced divestiture).

The Leach-LaFalce compromise requires the bank to have *and* maintain a satisfactory CRA rating, though amendments (including by Leach himself) are possible. Secretary Rubin has testified that if we wish to preserve the relevance of CRA, at a time when the relative importance of bank mergers may decline and non-bank financial activities are becoming increasingly important, authority to engage in newly authorized non-bank financial activities must be conditioned on satisfactory CRA performance.

Gramm's draft bill imposed no such condition. Gramm views such a requirement as an unprecedented expansion of CRA to non-bank activities, and has told the Secretary that he would prefer no bill to a bill with such a condition. We have argued, though, that the financial services system of the future may include rather fewer banking applications (and therefore fewer opportunities for enforcement of CRA) and more non-banking activities (where an ongoing requirement of a satisfactory CRA record would be a meaningful incentive for compliance). Thus a bill that is silent on CRA (and thus supposedly neutral) would, in our view, tend to weaken the effect of CRA, and we would oppose such a bill.

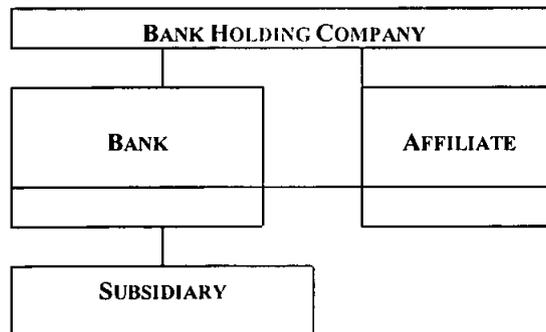
Gramm's Safe Harbor Amendment. Gramm has proposed a safe harbor for applications now subject to CRA. A satisfactory CRA rating at a bank's most recent examination would conclusively establish the bank's CRA performance, unless a public comment provides substantial verifiable information to the contrary. A regulatory agency could not review the bank's CRA record unless there were an adverse public comment meeting the test—even if the previous examination were old or otherwise stale. And Gramm would create a rebuttable presumption favoring approval of the application. In so doing, he would place a significant burden of proof on consumer and community organizations that generally have less access than the bank to relevant information. He would also, in effect, force community groups to stretch their limited resources to comment on many examinations, instead of focusing those resources on major applications (e.g., for mergers or acquisitions). Secretary Rubin has testified that such a safe harbor would tend to eviscerate the effectiveness of CRA, and the Administration has repeatedly threatened vetoes of bills containing safe harbors provisions.

Gramm's Anti-extortion Amendment. Gramm has also proposed a so-called "anti-extortion" provision which may be dropped from the bill. We strongly oppose extortion. Yet laws punishing extortion, bribery, and false statements already protect against misuse of the CRA process. Gramm's broad and vague proposal would criminalize normal, legitimate arms length transactions and cooperation between banks and community groups (e.g., bank grants to support community groups' home ownership counseling programs)—the very sort of activity CRA seeks to foster.

It is important to note that if we should end up opposing a bill, for whatever reason, CRA will be the issue best able to unite Democrats behind us.

2. Allowing Firms the Choice of Operating through Subsidiaries as Well as Affiliates.

Since 1995, the Treasury has advocated giving financial services firms that include banks the option of conducting newly authorized financial activities (e.g., securities underwriting) in through a subsidiary or an affiliate.



The Fed, by contrast, has insisted that new activities be allowed only in Fed-regulated

affiliates.

We have emphasized four points to Members of Congress:

- **Absent a demonstrable public interest to the contrary, financial services firms should have the same freedom as other businesses to organize themselves in the way that best serves their customers.**
- **The subsidiary approach has strong safety and soundness advantages. If the subsidiary prospers and the bank falters, the bank's interest in the subsidiary can be sold to help replenish the bank's capital—or reduce any loss to the FDIC. Yet if the bank prospers and the subsidiary falters, the bank faces no greater risk than if an affiliate faltered. Four past and present Chairmen of the FDIC have strongly agreed with this point, arguing that the subsidiary offers better protection to the FDIC and the taxpayer.**
- **Banks with new financial activities in subsidiaries will have more earning assets, and thus will be stronger and better able to serve their communities under CRA.**
- **The subsidiary/affiliate option would also help preserve the current balance among the regulatory agencies by giving both Treasury/OCC and the Fed a role in supervising new financial activities. In so doing, it would help safeguard the role of the President and the Executive Branch in financial services policy making.**

These efforts appear to be bearing fruit. On the House side, the Leach/ LaFalce compromise includes the subsidiary option, and permits subsidiaries to conduct all financial activities except insurance underwriting. On the Senate side, Chairman Gramm's discussion draft would allow the subsidiary option only to banks with less than \$1 billion in assets—an approach that Secretary Rubin has labeled a non-starter. We understand, however, that several Banking Committee Republicans (Bennett, Grams, Shelby) strongly support our position (and may well be joined by Hagel and Mack). Among the Democrats, Senator Sarbanes, formerly a critic of the subsidiary option, will include the Leach-LaFalce subsidiary in the Democratic substitute.

3. Consumer Protection

We believe that financial modernization legislation should contain appropriate consumer protections, including safeguards relating to the sale of non-banking products to bank customers (e.g., suitability and disclosure requirements). The Leach-LaFalce bill contains such protections. Yet the Gramm bill, although it would significantly expand the potential for affiliations between banks and securities firms, fails to provide adequate investor protections in connection with the sale of securities to bank customers.

4. Banking and Commerce

Considerable controversy has arisen recently over proposals to “mix banking and commerce”, i.e., to allow depository institutions to affiliate with non-financial firms. Secretary Rubin has expressed serious reservations about allowing affiliations of depository institutions and non-financial firms. Experience in Asia raises concerns that mixing banking and commerce can lead to inefficient allocation of resources and exposure of the banking system to risk. Chairman Greenspan has expressed similar sentiments, arguing that we should assess the effect of allowing full affiliation among financial firms before allowing affiliations with non-financial firms. Senator Sarbanes strongly opposes mixing banking and commerce. Assistance on the subsidiary issue was conditioned on our support on this issue. Chairman Leach also opposes mixing banking and commerce.

The draft Gramm bill proposed a significant expansion of banking and commerce. For example, under the Gramm draft, a large banking organization could own a mid-sized commercial firm, and a large commercial firm could own a small bank. Also, any commercial firm would be permitted to own a savings association (thrift) of any size, as under the current “unitary thrift holding company” law.

The Leach-LaFalce bill contains what may be an acceptable compromise. New commercial affiliations would not be permitted, and the unitary thrift holding company would be prohibited going forward (with existing ownership grandfathered). The compromise depends, though, on a slightly broader definition of permissible financial activities, which we will need to negotiate.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-MAR-1999 16:27:17.00

SUBJECT: Reminder--comments on Labor testimony on the SAFE Act (LRM MNNB22) ARE DUE

TO: John T. Carnevale (CN=John T. Carnevale/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN

TO: Courtney B. Timberlake (CN=Courtney B. Timberlake/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: John E. Thompson (CN=John E. Thompson/OU=OMB/O=EOP@EOP [OMB])
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TO: Caroline R. Fredrickson (CN=Caroline R. Fredrickson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

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

TO: William H. White Jr. (CN=William H. White Jr./OU=WHO/O=EOP@EOP [WHO])
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TO: Peter Rundlet (CN=Peter Rundlet/OU=WHO/O=EOP@EOP [WHO])
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TO: David J. Haun (CN=David J. Haun/OU=OMB/O=EOP@EOP [OMB])
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READ:UNKNOWN

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

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

Velma TAYLOR (Velma TAYLOR [UNKNOWN])
READ:UNKNOWN

LRM Small Business Administration (LRM Small Business Administration [UNKNOWN])
READ:UNKNOWN

LRM Occupational Safety & Health Review Commission (LRM Occupational Safety & Health
READ:UNKNOWN

LRM DEFENSE (LRM DEFENSE [UNKNOWN])
READ:UNKNOWN

LRM VETERANS AFFAIRS (LRM VETERANS AFFAIRS [UNKNOWN])
READ:UNKNOWN

TEXT:

This is a reminder that your comments on the subject testimony are due.

Please provide any comments no later than 10 a.m. tomorrow, via fax (5-6148), e-mail, or phone (5-7887). If we do not hear from you, we will assume you have no comments.

Please call if you have any questions. Thanks!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Constance J. Bowers (CN=Constance J. Bowers/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME: 1-MAR-1999 16:38:34.00

SUBJECT: LRM CJB 15 -=EDUCATION Draft Bill on Amendments to State Agency Programs f

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

TO: John E. Thompson (CN=John E. Thompson/OU=OMB/O=EOP@EOP [OMB])
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TO: Broderick Johnson (CN=Broderick Johnson/OU=WHO/O=EOP@EOP [WHO])
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TO: Pamula L. Simms (CN=Pamula L. Simms/OU=OMB/O=EOP@EOP [OMB])
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TO: Rosalyn J. Rettman (CN=Rosalyn J. Rettman/OU=OMB/O=EOP@EOP [OMB])
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TO: Daniel I. Werfel (CN=Daniel I. Werfel/OU=OMB/O=EOP@EOP [OMB])
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TO: William H. White Jr. (CN=William H. White Jr./OU=WHO/O=EOP@EOP [WHO])
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TO: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP@EOP [OPD])
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TO: Wei-Min C. Wang (CN=Wei-Min C. Wang/OU=OMB/O=EOP@EOP [OMB])
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TO: Robert G. Damus (CN=Robert G. Damus/OU=OMB/O=EOP@EOP [OMB])
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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

LRM JUSTICE (LRM JUSTICE [UNKNOWN])

READ:UNKNOWN

Nancy J. Duykers (CN=Nancy J. Duykers/OU=OMB/O=EOP [OMB])

READ:UNKNOWN

TEXT:

The files below contain ED's proposed amendments on "neglected or delinquent children" (Title I, Part D of the ESEA). Please provide comments

by: 10:00 a.m., Friday, March 5, 1999

You will also receive this material by fax, along with a markup of current law to show ED's proposed amendments (that material is not available to send to you electronically.)

click here for bill text:

- N&D.doc

click here for sectional analysis text:

- N&D-sec.doc

----- Forwarded by Constance J. Bowers/OMB/EOP on 03/01/99 04:30 PM -----

Total Pages: _____

LRM ID: CJB15
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, March 1, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

OMB CONTACT: Constance J. Bowers
PHONE: (202)395-3803 FAX: (202)395-6148
SUBJECT: EDUCATION Draft Bill on Amendments to State Agency
Programs for Children and Youth Who Are Neglected or Delinquent - Part of
the Elementary and Secondary Education Act Reauthorization (Title I, Part
D of the ESEA of 1965)

DEADLINE: 10:00 a.m. Friday, March 5, 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: Because of the magnitude of ED's draft bill to reauthorize the
Elementary and Secondary Education Act, circulation and interagency review
will be handled in separate pieces.

DISTRIBUTION LIST

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Howard Dendurent
Broderick Johnson
David J. Haun
John E. Thompson
James J. Jukes
Janet R. Forsgren

LRM ID: CJB15 SUBJECT: EDUCATION Draft Bill on Amendments to State
Agency Programs for Children and Youth Who Are Neglected or Delinquent -
Part of the Elementary and Secondary Education Act Reauthorization (Title
I, Part D of the ESEA of 1965)

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.

DRAFT
MARCH 1, 1999

1 PART D - NEGLECTED AND DELINQUENT

2 PROGRAM NAME

3 SEC. 141. The heading of part D of title I of the ESEA is amended

4to read as follows:

5 "PART D -- STATE AGENCY PROGRAMS FOR CHILDREN AND YOUTH

6 WHO ARE NEGLECTED OR DELINQUENT".

7 FINDINGS; PURPOSE; PROGRAM AUTHORIZED

8 SEC. 142. (a) FINDING. Section 1401(a) of the ESEA is amended

9to read as follows:

10 "(a) FINDINGS. Congress finds the following:

11 "(1) A large percentage of youth in the juvenile-justice
12system have poor academic achievement, are a year or more behind
13grade level, and have dropped out of school.

14 "(2) Many schools and correctional facilities fail to
15communicate regarding a youth's academic needs, and students often
16return to their home school ill-prepared to meet current curriculum
17requirements.

18 "(3) Schools are often reluctant to deal with youth
19returning from facilities and often receive no funds to deal with
20the unique educational and other needs of those youth.

21 "(4) There is a need for federal assistance to support
22State efforts to educate students in State institutions for neglected
23and delinquent children and youth to challenging academic
24standards."

25 (b) PURPOSE. Section 1401(b) of the ESEA is amended—

1 (1) in paragraph (1), by striking out "local and"; and
2 (2) by amending paragraph (3) to read as follows:
3 "(3) to provide youth returning from institutions with
4a support system to ensure their continued education."

5 (c) PROGRAM AUTHORIZED. Section 1401(c) of the ESEA is
6 amended—

7 (1) by striking out "and local educational agencies"; and
8 (2) by striking out "at risk" and all that follows through
9 "graduation".

10 PAYMENTS FOR PROGRAMS UNDER PART D

11 SEC. 143. Section 1402 of the ESEA is amended—

12 (1) by striking out "(a) AGENCY SUBGRANTS—"; and
13 (2) by striking out subsections (b) and (c).

14 ALLOCATION OF FUNDS

15 SEC. 144. Section 1412 of the ESEA is amended—

16 (1) in subsection (a)(1), by inserting "in" before "an
17 amount equal"; and

18 (2) in subsection (b)(1), by striking out "the
19 Commonwealth of Puerto Rico" and inserting in lieu thereof "that
20 agency".

21 STATE PLAN AND STATE AGENCY APPLICATIONS

22 SEC. 145. (a) STATE PLAN. Section 1414(a) of the ESEA is
23 amended—

24 (1) in paragraph (1), by striking out "14306" and
25 inserting in lieu thereof "14307"; and

26 (2) in paragraph (2)—

1 (A) in subparagraph (B), by striking out "as such
2 children would have if such children" and inserting in lieu thereof
3 a comma and "and will be held to the same challenging standards,
4 as they would if they"; and

5 (B) in subparagraph (C) (ii), by striking out "1416"
6 and inserting in lieu thereof "1431".

7 (b) STATE AGENCY APPLICATIONS. Section 1414 (c) (6) of the ESEA
8 of the ESEA is amended by striking out "14701" and inserting in lieu
9 thereof "1431".

10 USE OF FUNDS

11 SEC. 146. Section 1415 (a) (2) (D) of the ESEA is amended by
12 striking out "14701" and inserting in lieu thereof "1431".

13 LOCAL AGENCY PROGRAMS

14 SEC. 147. Part D of title I of the ESEA is further amended
15 by—

16 (1) repealing subpart 2; and

17 (2) redesignating subpart 3 as subpart 2.

18 PROGRAM EVALUATIONS

19 SEC. 148. Section 1431 of the ESEA is amended—

20 (1) in subsection (a)—

21 (A) by striking out "or local educational agency";
22 and

23 (B) by striking out "subpart 1 or 2" and inserting
24 in lieu thereof "subpart 1";

25 (2) by amending subsection (b) to read as follows:

26 "(b) EVALUATION MEASURES. In conducting each evaluation under

1 subsection (a), a State agency shall use multiple measures of student
2 progress that, while consistent with section 1414(a)(2)(B), are
3 appropriate for the students and are feasible for the agency to
4 achieve (considering such factors as the duration of students'
5 participation in the program)."; and

6 (3) in subsection (c), by striking out "and local
7 educational agency".

8 DEFINITIONS

9 SEC. 149. Section 1432 of the ESEA is amended—

10 (1) by striking out paragraph (2) and redesignating
11 paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4).

12 CONFORMING AMENDMENTS

13 SEC. 150. Title XIV of the ESEA is amended—

14 (1) by amending section 14302(a)(2)(B) to read as follows:

15 "(B) the program for neglected or delinquent children
16 under part D of title I;"; and

17 (2) in section 14307(a)(1)(C), by striking out
18 "neglected, delinquent, and at-risk youth" and inserting in lieu
19 thereof "neglected or delinquent youth". **[These amendments will**
20 **be moved to the Title XIV amendments at a later date.]**

* * * * *

PART D – NEGLECTED AND DELINQUENT

Part D of Title I of the bill would amend Part D of Title I of the ESEA, which authorizes assistance to States and, through the States, to local agencies, to provide educational services to children and youth who are neglected or delinquent.

Section 141, program name. Section 141 of the bill would amend the heading of Part D of Title I of the ESEA to read, "State Agency Programs for Children and Youth Who Are Neglected or Delinquent". This name would more accurately reflect the bill's proposed deletion of the authority for local programs in Subpart 2 of Part D.

Section 142 findings; purpose; program authorized [ESEA, §1401]. Section 142(a) of the bill would update the findings in section 1401(a) of the ESEA, and shorten them to reflect the proposed deletion of Subpart 2.

Section 142(b) would amend the statement of purpose in section 1401(b) to reflect the proposed deletion of Subpart 2.

Section 142(c) would amend the statement the program's authorization in section 1401(b) to reflect the proposed deletion of Subpart 2.

Section 143, payments for programs under Part D [ESEA, §1402]. Section 143 of the bill would delete section 1402(b) of the ESEA, which requires that States retain funds generated throughout the State under Part A of Title I (Basic Grants) on the basis of youth residing in local correctional facilities or attending community day programs for delinquent children and youth, and use those Part A funds for local programs under Subpart 2 of Part D. This conforms to the bill's proposal to delete Subpart 2. Section 142 would also make other conforming amendments to section 1402.

Section 144, allocation of funds [ESEA, §1412]. Section 144 of the bill would make editorial amendments to section 1412 of the ESEA, relating to the allocation of Part D subgrants to eligible State agencies.

Section 145, State plan and State agency applications [ESEA, §1414]. Section 145(2)(A) of the bill would amend section 1414(a)(2) of the Act, relating to the contents of a State's plan, to require the plan to provide that participating children will be held to the same challenging academic standards, as well as given the same opportunity to learn, as they would if they were attending local public schools. Section 145 would also correct erroneous citations in section 1414.

Section 146, use of funds [ESEA, §1415]. Section 146 of the bill would correct an erroneous citation in section 1415 of the ESEA, relating to the permissible use of Part D funds.

Section 147, local agency programs [ESEA, §§1421-1426]. Section 147 of the bill would repeal Subpart 2 (Local Agency Programs) of Part D and redesignate Subpart 3 (General

Provisions) as Subpart 2. The local agency program is unduly complicated for States to administer and does not promote effective services for children who are, or have been, neglected or delinquent. Those services are better provided through other local, State, and Federal programs, including other ESEA programs, such as Basic Grants under Part A.

Section 148, program evaluations [ESEA, §1431]. Section 148(1) of the bill would amend section 1431(a) of the ESEA, relating to the scope of evaluations under Part D, to conform to the proposed repeal of Subpart 2.

Section 148(2) would amend section 1431(b) to require that the multiple measures of student progress that a State agency must use in conducting program evaluations, while consistent with section 1414's requirement to provide participating children the same opportunities to learn and to hold them to the same standards that would apply if they were attending local public schools, must be appropriate for the students and feasible for the agency. This modification would recognize that, for a variety of reasons, it may not be appropriate to administer the same tests to students who are, or have been, neglected or delinquent, as are given to children of the same age who are in traditional public schools.

Section 148(3) of the bill would amend section 1431(c), relating to the results of evaluations, to reflect the proposed repeal of Subpart 2.

Section 149, definitions [ESEA, §1432]. Section 149 of the bill would delete the definition of "at-risk youth" in paragraph (2) of section 1432, and renumber the remaining paragraphs. The deleted term is used only in Subpart 2, which would be repealed.

Section 150, conforming amendments [ESEA, §§14302, 14307]. Section 150 of the bill would make conforming amendments to section 14302 and 14307 of the ESEA, to reflect the proposed repeal of Subpart 2 of Part D of Title I of the ESEA.

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CREATION DATE/TIME: 1-MAR-1999 17:12:44.00

SUBJECT: LRM CJB 13 = EDUCATION Draft Bill on Stewart B. McKinney Homeless Assistan

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Please comment on the attached ED draft amendments to the McKinney Homeless Act (part of the ESEA reauthorization) by
cob Thursday, March 4, 1999

The files have been converted into word perfect. If you have difficulty accessing them, please let me knw.

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LRM ID: CJB13
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Monday, March 1, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

OMB CONTACT: Constance J. Bowers

PHONE: (202)395-3803 FAX: (202)395-6148

SUBJECT: EDUCATION Draft Bill on Stewart B. McKinney Homeless Assistance Act Amendments - Part of the Elementary and Secondary Education Act Reauthorization

DEADLINE: cob Thursday, March 4, 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: Because of the magnitude of ED's draft bill to reauthorize the Elementary and Secondary Education Act of 1965, circulation and interagency review will be handled in separate pieces.

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LRM ID: CJB13 SUBJECT: EDUCATION Draft Bill on Stewart B. McKinney

1 Draft 2/26/99

2 TITLE V -- AMENDMENTS TO THE STEWART B. MCKINNEY
3 HOMELESS ASSISTANCE ACT

4
5 AMENDMENTS TO THE STEWART B. MCKINNEY HOMELESS
6 ASSISTANCE ACT

7 SEC. 501. (a) POLICY.--Section 721(3) of the Stewart B. McKinney
8 Homeless Assistance Act (42 U.S.C. 11421 et seq.; hereinafter referred to in
9 this title as the "Act") is amended by striking out "should not be" and
10 inserting in lieu thereof "is not".

11 (b) GRANTS TO STATES FOR STATE AND LOCAL
12 ACTIVITIES.--Section 722 of the Act is amended

13 (1) in subsection (c)--

14 (A) in paragraph (2) (A), by

15 (i) inserting an "and" before "the Commonwealth of";

16 and

17 (ii) striking out "and Palau (until the effective date of
18 the Compact of Free Association with the Government of Palau),"; and

19 (B) in paragraph (3), by --

20 (i) inserting an "and" before "the Commonwealth of";

21 and

22 (ii) striking out "A, or Palau";

23 (2) in subsection (e), by adding a new paragraph (3) to

24 read:

25 A(3) PROHIBITION ON SEGREGATING HOMELESS

26 STUDENTS. "In providing a free, appropriate public education to a

27 homeless child or youth, no State receiving funds under this subtitle shall

1 segregate such child or youth, either in a separate school, or in a separate
2 program within a school, based on such child or youth=s status as
3 homeless, except in accordance with section 723(a)(2)(B)(ii).@;

4 (3) in subsection (f)C

5 (A) by striking out paragraph (1);

6 (B) by amending paragraph (4) to read as followsC

7 A(4) collect and transmit to the Secretary, at such time and in such
8 manner as the Secretary may require, such information as the Secretary
9 deems necessary to assess the educational needs of homeless children
10 and youth within the State;@;

11 (C) by amending paragraph (6) to read:

12 A(6) in order to improve the provision of comprehensive education
13 and related services to homeless children and youth and their families,
14 coordinate and collaborate with--

15 A(A) educators, including child development and preschool
16 program personnel;

17 A(B) providers of services to homeless and runaway children
18 and youth and homeless families (including domestic violence agencies,
19 shelter operators, transitional housing facilities, runaway and homeless
20 youth centers, and transitional living programs for homeless youth);

21 A(C) local educational agency liaisons for homeless children
22 and youth; and

23 A(D) community organizations and groups representing
24 homeless children and youth and their families.@; and

25 (D) by redesignating paragraphs (2) though (6) as paragraphs
26 (1) through (5) respectively; and

27 (4) in subsection (g) --

1 (A) in paragraph (1), by amending subparagraph (H) to read as
2 follows:

3 A(H) contain assurances thatC

4 A(i) State and local educational agencies will adopt
5 policies and practices to ensure that homeless children and youth are not
6 segregated on the basis of their status as homeless or stigmatized; and

7 A(ii) local educational agencies in which homeless
8 children and youth reside or attend school willC

9 A(I) post public notice of the educational rights of
10 such children and youth where such children and youth receive services
11 under this Act (such as family shelters, and soup kitchens); and

12 A(II) designate an appropriate staff person, who
13 may also be a coordinator for other Federal programs, as a liaison for
14 homeless children and youth. @;

15 (B) in paragraph (3), by amending subparagraph (B) to read:

16 A(B) In determining the best interest of the child or youth
17 under subparagraph (A), the local educational agency shall--

18 A(i) to the extent feasible, keep a homeless child or
19 youth in his or her school of origin, except when doing so is contrary to
20 the wishes of his or her parent or guardian; and

21 A(ii) provide a written explanation to the homeless child
22 or youth=s parent or guardian when the local educational agency sends
23 such child or youth to a school other than the school of origin or a school
24 requested by the parent or guardian. @;

25 (C) by amending paragraph (6) to read:

26 A(6) COORDINATION.C(A) Each local educational agency serving
27 homeless children and youth that receives assistance under this subtitle

1 shall coordinate the provision of services under this part with local
2 services agencies and other agencies or programs providing service to
3 homeless children and youth and their families, including services and
4 programs funded under the Runaway and Homeless Youth Act.

5 A(B) Where applicable, each State and local educational
6 agency that receives assistance under this subtitle shall coordinate with
7 State and local housing agencies responsible for developing the
8 comprehensive housing affordability strategy described in section 105 of
9 the Cranston-Gonzales National Affordable Housing Act to minimize
10 educational disruption for children and youth who become homeless.

11 A(C) The coordination required in subparagraphs (A) and (B)
12 shall be designed to C

13 A(i) ensure that homeless children and youth have access
14 to available education and related support services; and

15 A(ii) raise the awareness of school personnel and service
16 providers of the effects of short-term stays in a shelter and other
17 challenges associated with homeless children and youth. @;

18 (D) in paragraph (7)(A)C

19 (i) in the matter before clause (i), by striking out A local
20 educational agency that receives assistance under this subtitle shall
21 designate a homelessness liaison to ensure that @ and inserting in lieu
22 thereof A local liaison for homeless children and youth, designated
23 pursuant to section 722(g)(1)(H)(ii)(I), shall ensure that @;

24 (ii) by amending clause (i) to read as follows:

25 A(i) homeless children and youth enroll in, and have a
26 full and equal opportunity to succeed in, schools of that agency; @;

27 (iii) at the end of clause (ii), by striking out

1 the period and inserting in lieu thereof a semicolon and Aand@;

2 (iv) by adding a new clause (iii) to read as
3 follows:

4 A(iii) the parents or guardians of homeless children and
5 youths are informed of the education and related opportunities available
6 to their children and are provided with meaningful opportunities to
7 participate in the education of their children.@; and

8 (v) by adding a new subparagraph (C) to
9 read as follows:

10 A(C) Local educational agency liaisons for
11 homeless children and youth shall, as a part of their duties, coordinate and
12 collaborate with State coordinators and community and school personnel
13 responsible for the provision of education and related services to homeless
14 children and youth.@; and

15 (E) by striking out paragraph (9).

16 (c) LOCAL EDUCATIONAL AGENCY GRANTS.C Section 723 of
17 the Act is amended --

18 (1) by amending subsection (a)(2) to read:

19 A(2) SERVICES.C(A) Services under paragraph (1)C

20 A(i) may be provided through programs on school
21 grounds or at other facilities;

22 A(ii) shall, to the maximum extent practicable, be
23 provided through existing programs and mechanisms that integrate
24 homeless individuals with non-homeless individuals; and

25 A(iii) shall be designed to expand or improve services
26 provided as part of a school=s regular academic program, but not replace
27 that program.

1 A(B) Where services under paragraph (1) are provided on
2 school grounds, schoolsC

3 A(i) may use funds under this Act to provide the same
4 services to other children and youth who are determined by the local
5 educational agency to be at risk of failing in, or dropping out of, schools,
6 subject to the requirements of clause (ii) as applied to such other children
7 and youth; and

8 A(ii) shall not provide services in settings within a
9 school that segregate homeless children and youths from other children
10 and youths, except as is necessary for short periods of timeC

11 A(I) because of health and safety emergencies; or

12 A(II) to provide temporary, special, supplementary
13 services to meet the unique needs of homeless children and youth. @; and

14 (2) in subsection (b)C

15 (A) by redesignating paragraphs (1) through (4) as paragraphs
16 (2) through (5), respectively; and

17 (B) by adding a new paragraph (1) to read as follows:

18 A(1) an assessment of the educational and related needs of homeless
19 children and youth in their district (which may be undertaken as a part of
20 needs assessments for other disadvantaged groups); @;

21 (3) in subsection (c) --

22 (A) by amending paragraph (1) to read:

23 A(1) IN GENERAL.--The State educational agency shall, in
24 accordance with the requirements of this subtitle and from amounts made
25 available to it under section 726, make competitive subgrants to local
26 educational agencies that submit applications under subsection (b).

27 Such subgrants shall be awarded on the basis of the need of such

1 agencies for assistance under this subtitle and the quality of the
2 applications submitted. @;

3 (B) by redesignating paragraph (3) as paragraph (4); and

4 (C) by adding a new paragraph (3) to read as follows:

5 A(3) QUALITY. C In determining the quality of applications under
6 paragraph (1), the State educational agency shall consider--

7 A(A) the applicant=s needs assessment under subsection (b)(1)
8 and the likelihood that the program presented in the application will meet
9 those needs;

10 A(B) the types, intensity, and coordination of the services to be
11 provided under the program;

12 A(C) the involvement of parents or guardians;

13 A(D) the extent to which homeless children and youth will be
14 integrated within the regular education program;

15 A(E) the quality of the applicant=s evaluation plan for the
16 program;

17 A(F) the extent to which services provided under this subtitle
18 will be coordinated with other available services; and

19 A(G) such other measures as the State educational agency
20 deems indicative of a high-quality program. @.

21 (d) Section 724 of the Act is amended by striking out subsection (f)
22 and adding new subsections (f) and (g) to read as follows--

23 A(f) INFORMATION. C(1) From funds appropriated under section
24 726, the Secretary shall, either directly or through grants, contracts, or
25 cooperative agreements, periodically collect and disseminate data and
26 information on:

27 A(A) the number and location of homeless children and youth;

1 A(B) the education and related services such children and youth
2 receive;

3 A(C) the extent to which such needs are being met; and

4 A(D) such other data and information the Secretary deems
5 necessary and relevant to carry out this subtitle.

6 A(2) The Secretary shall coordinate such collection and dissemination
7 with the other agencies and entities that receive assistance and
8 administer programs under this subtitle.

9 A(g) REPORT.--Not later than four years after the date of the
10 enactment of the [-- Act of 1999,] the Secretary shall prepare and submit to
11 the President and appropriate committees of the House of Representatives
12 and the Senate a report on the status of education of homeless youth and
13 children, which may include information onC

14 A(1) the education of homeless children and youth; and

15 A(2) the actions of the Department and the effectiveness of the programs
16 supported under this subpart.@.

17 (e) Section 726 of the Act is amended to read:

18 AAUTHORIZATION OF APPROPRIATIONS

19 ASEC. 726. For the purpose of carrying out this subtitle, there are
20 authorized to be appropriated such sums as may be necessary for each of the
21 fiscal years 2000 through 2005.@.

#

Draft 2/26/99

TITLE V -- AMENDMENTS TO THE STEWART B. MCKINNEY HOMELESS
ASSISTANCE ACT

Section-by-Section Analysis

Section 501. Section 501 of the bill, AAmendments to the Stewart B. McKinney Homeless Assistance Act,@ would set forth amendments to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421 et seq.; hereinafter referred to as the AAct@).

Among other things, these amendments would improve the McKinney program by: (1) helping ensure that students are not segregated based on their status as homeless; (2) enhancing coordination at the State and local levels; (3) facilitating parental involvement; (4) clarifying that subgrants to local educational agencies are to be awarded competitively on the basis of the quality of the program and the need for the assistance; and (5) enhancing data collection and dissemination at the National level. The program would also be reauthorized for five years.

Section 501(a) of the bill would amend section 721(3) of the Act, AStatement of Policy,@ by changing the current statement to make it clear that homelessness alone is not sufficient reason to separate students from the mainstream school environment. This language, which is reflected in amendments that follow, makes a strong statement against segregating homeless children on the basis of their homelessness. This responds to some local actions being taken around the country to create separate, generally inferior, schools for homeless children. Homeless advocacy groups and State coordinators have strongly encouraged this action.

Section 501(b) of the bill would amend section 722 of the Act, AGrants for State and Local Activities for the Education of Homeless Children and Youth.@ Subsection (b)(1) of the bill would section 722(c)(2) and (3) of the Act, reserving funds for the territories and defining the term AState@, to remove Palau from those provisions. Palau does not participate in the program since its Compact of Free Association was ratified. Subsection (b)(2) of the bill would amend section 722(e) of the Act, AState and Local Grants,@ to add a new paragraph (3) that would prohibit a State receiving funds under this subtitle from segregating a homeless child or youth, either in a separate school or in a separate program within a school, based on that child or youth=s status as homeless, except as is necessary for short periods of time because of health and safety emergencies or to provide temporary, special supplementary services to meet the unique needs of homeless children and youth..

Section 501(b)(3) of the bill would amend section 722(f) of the Act, AFunctions of the State Coordinator.@ Paragraph (3)(A) of the bill would amend section 722(f)(1) of the Act to eliminate the requirement that the coordinator estimate the number of homeless children and youth in the State and the number of homeless children and youth served by the program. Paragraph (3)(B) of the bill would amend section 722(f)(4) of the Act to

eliminate the requirement that the Coordinator report on certain specific information and replace it with a more general requirement that the Coordinator collect and transmit to the Secretary such information as the Secretary deems necessary to assess the educational needs of homeless children and youth within the State. Paragraph (3)(C) of the bill would amend section 722(f)(6) of the Act to make editorial changes and require the Coordinator to collaborate, as well as to coordinate, with certain currently listed entities, as well as with local educational agency liaisons and community organizations and groups representing homeless children and youth and their families.

Section 501(b)(4) of the bill would amend section 722(g) of the Act, AState Plan.@ Paragraph (4)(A) of the bill would amend section 722(g)(1)(H) of the Act to require States in their plans to provide assurances that local educational agencies in which homeless children and youth reside or attend school will: (1) post public notice of the educational rights of such children and youth in places where such children and youth receive services under this Act; and (2) designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a liaison for homeless children and youth. Paragraph (4)(B) of the bill would amend section 722(g)(3)(B) of the Act to require local educational agencies, according to the best interest of the homeless child or youth, to the extent feasible, to keep a homeless child or youth in his or her school of origin, except when doing so is contrary to the wishes of his or her parent or guardian, and to provide a written explanation to the homeless child=s or youth=s parent or guardian when the child or youth is sent to a school other than the school of origin or a school requested by the parent or guardian.

Section 501(b)(4)(C) of the bill would amend section 722(g)(6) of the Act to consolidate the coordination requirements currently in paragraphs (6) and (9) and require that the mandated coordination be designed to ensure that homeless children and youth have access to available education and related support services, and to raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homeless children and youth. Paragraph (4)(D) of the bill would amend section 722(g)(7) of the Act to require each local educational agency liaison, designated pursuant to section 722(g)(1)(H)(ii)(I), to ensure that: (1) homeless children and youth enroll, and have a full and equal opportunity to succeed, in schools of that agency; (2) homeless families, children and youth, receive educational services for which such families, children and you are eligible; and (3) the parents or guardians of homeless children and youths are informed of the education and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children. Section 722(g)(7) would be further amended by adding a new subparagraph (C) requiring local educational agency liaisons, as a part of their duties, to coordinate and collaborate with State coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth. Paragraph (4)(E) of the bill would eliminate section 722(g)(9) of the Act, which would be combined with paragraph (6).

Section 501(c) of the bill would amend section 723 of the Act, ALocal Educational Agency Grants for the Education of Homeless Children and Youth.@

Subsection (c)(1) of the bill would amend section 723(a) of the Act to: (1) make certain editorial changes; (2) clarify that where services under the section are provided on school grounds, schools may use funds under this Act to provide the same services to other children and youth who are determined by the local educational agency to be at risk of failing in, or dropping out of, schools; and (3) prohibit schools from providing services, including those to at-risk children and youth, in settings within a school that segregate homeless children and youth from other children and youth, except as is necessary for short periods of time because of health and safety emergencies or to provide temporary, special supplementary services to meet the unique needs of homeless children and youth.

Section 501(c)(2) of the bill would amend section 723(b) of the Act to require local applications for State subgrants to contain an assessment of the educational and related needs of homeless children and youth in their district (which may be undertaken as a part of needs assessments for other disadvantaged groups). Subsection (c)(3) of the bill would amend section 723(c)(1) of the Act to clarify that State subgrants are to be awarded competitively on the basis of the need of such agencies for assistance under this subtitle and the quality of the application submitted. Subsection (c)(3) of the bill would be further amended by adding a new paragraph (3), requiring a State educational agency, in determining the quality of a local application for a subgrant, to consider: (1) the applicant=s needs assessment and the likelihood that the program presented in the application will meet those needs; (2) the types, intensity, and coordination of the services to be provided under the program; (3) the involvement of parents or guardians; (4) the extent to which homeless children and youth will be integrated within the regular education program; (5) the quality of the applicant=s evaluation plan for the program; (6) the extent to which services provided under this subtitle will be coordinated with other available services; and (7) such other measures as the State educational agency deems indicative of a quality program.

Section 501(d) of the bill would amend section 724 of the Act, ASecretarial Responsibilities.@ Section 501(d) of the bill would replace current subsection (f), AReports,@ with a new subsection (f), AInformation,@ and a new subsection (g), AReport.@ New subsection (f) would require the Secretary, from funds appropriated under section 726, and either directly or through grants, contracts, or cooperative agreements, to periodically collect and disseminate data and information on the number and location of homeless children and youth, the education and related services such children and youth receive, the extent to which such needs are being met, and such other data and information the Secretary deems necessary and relevant to carry out this subtitle. The Secretary would also be required to coordinate such collection and dissemination with the other agencies and entities that receive assistance and administer programs under this subtitle. New subsection (g) would require the Secretary, not later than four years after the date of the enactment of the bill, to prepare and submit to the President and appropriate committees of the House of Representatives and the Senate a report on the status of education of homeless youth and children.

Section 501(e) of the bill would amend section 726 of the Act to authorize appropriations of such sums as may be necessary for each of the fiscal years 2000 through

2005 to carry out the subtitle.

###

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-MAR-1999 17:13:19.00

SUBJECT: Draft SAP on S.280 - Ed Flex bill

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:

OMB has called asking where we stand on the two open issues in the Ed-Flex SAP:

1) which option we prefer for the language discussing strengthened accountability. It seems in the absence of any specific information on a manager's amendment, we should use Option 1.

2) the sunset provision.

OMB is awaiting guidance from us on conversations that they thought Bruce may have been having with Mike regarding the language in the SAP on sunseting ed-flex when ESEA is reauthorized. I have a call into Mike to see where the Dept is on this language. Are you ok with it?

----- Forwarded by Tanya E. Martin/OPD/EOP on 03/01/99
04:59 PM -----

Kate P. Donovan
02/24/99 03:24:29 PM

Record Type: Record

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

cc:

Subject: Draft SAP on S.280 - Ed Flex bill

The draft SAP for S. 280, the Education Flexibility Partnership Act of 1999, is influx right now. The version below has two options. In general, option 1 is more vague and is recommended to be included if we don't find out any details about the possible manager's substitute amendment & the bill hits the floor. Caroline/Broderick-can you keep us posted on whether a manager's substitute amendment is going to be offered and whether we support. The Dept. of Education prefers Option 2.

The timing of the bill is also questionable, but the Senate Democratic cloakroom expects S.280 to come up next week on Monday or Tuesday (the Senate should stay w/ S.4 today & tomorrow along with a human rights resolution with only morning business on Friday). We should have time to work on this SAP; however, in the event that the bill pops sooner on the Senate floor, I need to have your comments for a quick turnaround. This SAP will also need to be cleared with all of the relevant principals.

Please note, there is also an issue on the "sunset" issue that is noted in the 1st paragraph (in bold) below the stars. I will need closure on that

as well. I look forward to your guidance on how to proceed. Thank you.

S. 280 - Education Flexibility Partnership Act of 1999
(Sen. Frist (R) TN and 35 others)

The Administration has long supported the concept of expanding ed-flex demonstration authority to permit all States to waive certain statutory and regulatory requirements of Federal education programs in a manner that will promote high standards and accountability for results, coupled with increased flexibility for States and local school districts to achieve those results.

[OPTION #1 The Administration will support S. 280 as long as the bill's accountability provisions are strengthened to ensure that State waivers of Federal requirements enhance children's educational achievement.]

[OPTION #2 The Administration supports Senate passage of S. 280 only if the Senate adopts the pending manager's substitute that would strengthen the accountability provisions of the bill, to ensure that children's educational achievement is enhanced by State waivers of Federal requirements.]

The Administration also urges adoption of an amendment that would terminate a State's authority to grant waivers on the effective date of the reauthorized Elementary and Secondary Education Act of 1965 (ESEA), so that the Congress can ensure consistency, during its upcoming consideration of the ESEA, between ed-flex authority and the accountability provisions of the ESEA.

The Administration strongly supports an amendment that is expected to be offered to S. 280 that would implement the President's proposal for a long-term extension of the one-year authority to help school districts reduce class size in the early grades, which the Congress approved last year on a bipartisan basis. In order to hire qualified teachers, arrange for additional classrooms, and take other steps that are necessary to reduce class size, school districts need to know, as soon as possible, that the Congress intends to support this initiative for more than one year.

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This draft Statement of Administration Policy was developed by LRD (Connie Bowers) in consultation with the Department of Education (Riddle), EIML (Chow/White/Mustain), and DPC (Schnur). The second paragraph ("The Administration also urges adoption . . .") was drafted by ED staff at the request of OMB/EIML (Barbara Chow), but ED (Michael Cohen) has not agreed to its inclusion and may be discussing it with Bruce Reed.

OMB/LA Clearance:

BACKGROUND

The Education Flexibility Partnership Demonstration ("Ed-Flex") Act was enacted in 1994 as part of the Goals 2000 legislation in order to test the idea of giving States authority to waive Federal statutory and regulatory requirements that impede the development and implementation of education reforms in the State. Originally limited to six States, this demonstration authority was extended to 12 States by the Omnibus Budget

Reconciliation Act of 1996.

During the 105th Congress, a similar bill (S. 2213) was considered, but never voted on, by the Senate. S. 2213 differed from S. 280 in that it would have amended the Goals 2000 Act to expand its education flexibility programs. S. 280 is a freestanding bill that authorizes a new Ed-Flex program. The Administration did not issue a SAP on 2213 because ED opined that most Democrats were not supportive of the legislation.

SUMMARY OF S. 280

S. 280 would authorize the Secretary of Education to carry out an education flexibility program. Under the program, all States (as opposed to the 12 allowed in the current demonstration authority) could apply to waive for at least five years Federal statutory or regulatory requirements applicable to specified education improvement programs, if they demonstrate those requirements could hamper efforts to improve student achievement. To provide accountability, the bill would require States to adopt academic standards and provisions for holding schools accountable for student achievement. The bill would also require that States have authority to waive their own comparable requirements as well.

OTHER CONSIDERATIONS

Congress is scheduled to work this year on the Elementary and Secondary Education Act (ESEA) reauthorization. The Administration is developing an ESEA reauthorization proposal that will contain accountability provisions to strengthen the ESEA and student achievement. By authorizing every State to waive rules, S. 280 as drafted could undermine an ESEA proposal that stresses accountability.

PAY-AS-YOU-GO SCORING

According to EIML (Mustain), S. 280 would not affect direct spending or receipts; therefore, it is not subject to the PAYGO provisions of the Omnibus Budget Reconciliation Act.

LEGISLATIVE REFERENCE DIVISION DRAFT
February 24, 1999 - 2:15 p.m.

Message Sent

To: _____

Barbara Chow/OMB/EOP
Sandra Yamin/OMB/EOP
Elizabeth Gore/OMB/EOP
Charles Konigsberg/OMB/EOP
Charles E. Kieffer/OMB/EOP
Lisa Zweig/OMB/EOP
Jonathan H. Schnur/OPD/EOP
Tanya E. Martin/OPD/EOP
Laura Emmett/WHO/EOP
Broderick Johnson/WHO/EOP
Caroline R. Fredrickson/WHO/EOP
Tracey E. Thornton/WHO/EOP
Janelle E. Erickson/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Irene Bueno (CN=Irene Bueno/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 1-MAR-1999 17:57:53.00

SUBJECT: Urban Report release delayed until 3/8/99

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

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

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

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

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

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

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

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-MAR-1999 18:36:55.00

SUBJECT: Re: please update to reflect today's report & send to me ASAP

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

READ:UNKNOWN

TEXT:

----- Forwarded by Laura Emmett/WHO/EOP on 03/01/99 06:37
PM -----

Tanya E. Martin

03/01/99 06:35:40 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: Re: please update to reflect today's report & send to me
ASAP

National Assessment of Title I Program. Today, the Department of Education released a Congressionally mandated report on the implementation of changes in Title I called for in the 1994 reauthorization. The report generally finds that we are seeing an increase in academic achievement for students in high-poverty schools, as states and districts begin to implement reforms to hold students to high standards, but there is still a substantial gap between these schools and others. The report confirms the need to close this achievement gap and provides provides more evidence of the need for the your accountability proposals in the next ESEA reauthorization.

Specifically, the report shows since 1992, reading scores for 9 year-olds in the highest poverty public schools have improved, reversing a downward trend and bringing scores back to late 1980s levels. An examination of the scores of the lowest-achieving 4th graders -- those most likely to be served by Title I -- showed that there were fairly substantial improvements in reading between 1994 and 1998. Since 1992, math scores have improved for 9 year olds in the highest-poverty schools by almost one grade level. The lowest-achieving 4th grade students also showed substantial improvements in math scores. Data reported by states and local districts also show progress in the percent of students in the highest-poverty schools that meet state and local standards in reading and math.

The Assessment also points out that while the performance of students in high-poverty school is improving, the percentage of these students meeting basic standards in reading and math still lags far behind their peers. In 1998, the percent of high-poverty 4th grade students who met the basic performance level was about half the national rate on NAEP reading tests and two-thirds the national rate on NAEP math tests. The Assessment also shows that schools with high concentrations of poor students are most likely to be low-performing, that states and districts face challenges in turning these failing schools around, that the teachers in high-poverty

schools are not prepared to teach to high standards, and that a significant number of Title I schools continue to allow non-certified aides to provide classroom instruction.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 1-MAR-1999 18:15:06.00

SUBJECT: Re: weekly

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

READ:UNKNOWN

CC: tanya e. martin (CN=tanya e. martin/OU=opd/O=eop @ eop [OPD])

READ:UNKNOWN

TEXT:

We don't know any more about this. This is a little intelligence I picked up from contacts on the hill, but they wouldn't say more. I thought I'd at least flag it for you and Bruce. I may or may now be able to find out more, but I'll try.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-MAR-1999 19:47:15.00

SUBJECT: daily for the POTUS

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

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

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

TEXT:

Medicare Commission Update. Today, Stuart Altman and Laura Tyson sent a list of suggested changes to Chairmen Breaux and Thomas on their reform plan. They have informed us that it is their belief that these changes are not negotiable but, rather, are what would be minimally acceptable for them to even consider voting to report out a Commission plan. Their recommendations are generally consistent with the principles for reform that you outlined. For example, they suggest including the surplus or an analogous proposal, adding an optional prescription drug benefit accessible and affordable to all beneficiaries, ensuring guaranteed benefits, and allowing 62 to 64 year olds to buy into Medicare.

However, the list also includes controversial elements such as raising the age eligibility from 65 to 67 so long as there is a subsidized Medicare buy-in and adding an income-related premium beginning at \$50,000 (which is twice as high as recommended by the Commission but much lower than most of the Democratic base would contemplate). Although consistent with their past statements, the document reiterates their openness to premium support that meets the goals that they outline (e.g., adequate government payment, defined benefits).

This paper was sent confidentially, but we would be surprised if it doesn't soon become public. If it does, Senator Daschle, Congressman Gephardt and others can be expected to be critical on both substantive and political grounds. They will be particularly upset that your appointees continue to negotiate with Senator Breaux and Congressman Thomas at a time when they feel they have disregarded Democratic concerns. Having said this, it is unlikely that Senator Breaux will be able to obtain Republican support for all of Stuart and Laura's recommendations. If this is the case, then the Commission will likely report out with 9 or 10 votes, not the supermajority (11 votes) needed. We will keep you posted on any news.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Irene Bueno (CN=Irene Bueno/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 1-MAR-1999 21:27:32.00

SUBJECT: Civil Rights Coordinating Council Meeting

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC: Jonathan H. Schnur (CN=Jonathan H. Schnur/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:

I attended a Civil Rights Coordinating Council meeting today that was chaired by Maria and Chuck Ruff. It was attended by Ben Johnson, Sylvia Matthews, Chris Edley, Minyon Moore, Eddie Correia, Lisa Brown and others.

The purpose of this council is to set the President's civil rights priorities for the remainder of the term. At a prior meeting with various Agency civil rights officials, they were asked to draft memos that described their civil rights priorities.

During the meeting today, we discussed how we should prepare for the upcoming meeting with agency officials on Thursday and the way we should proceed to develop the priorities. After much discussion of the agency memos, we decided to develop areas of civil rights priorities and to ask the agencies to continue vigor enforcement of existing civil rights laws, to implement current initiatives and to expand on current initiatives and/or develop new initiatives that agencies have already identified.

The priorities identified fall into these two general areas - enforcement/ specific programs and long-term goals.

10 issues areas were identified:

1. Race based admissions in education - defend race-based admissions/ diversity in education
2. K-12 (resource equity/disparate resources) -issue guidance on

disparate resources among school districts associated with race or national origin.

3. Hate Crimes-to develop a nat'l strategy & enact the Hate Crime Prevention Act
4. CRA/Lending - preserve CRA and eliminate discrimination in lending
5. Worker Exploitation - enact legislation and enforce current laws on worker exploitation
6. Wage gap - reduce the wage disparity between men and women
7. Language rights - this issue needs more info from the agencies but this would involve EEOC enforcement and possibly bilingual ed
8. EEOC backlog- we need to put our federal house in order by reduce the backlog of claim.
9. Diversity in the work force - promote diversity in the federal government
10. Enforcement of the Environmental Justice Executive Order - need to take action to follow up on this EO (reports from agencies, etc.).

The issues of police brutality and race profiling have been set aside from this discussions since it's on separate track.

On Thursday, 3/4 a meeting with the agency officials has been scheduled to discuss these priorities. For each of these issues, an agency will identified as the lead, they will be asked to report of their progress, to make recommendations as to the White House's role on these priorities and to identify the areas that need additional resources.

I will continue to update on this council and various priorities areas. Please let me know if you have any questions.

Irene

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 1-MAR-1999 21:39:31.00

SUBJECT: Civil Rights Coordinating Council Meeting

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

TEXT:

2 below seems worth some serious discussion.

----- Forwarded by Jonathan H. Schnur/OPD/EOP on 03/01/99
09:40 PM -----

Irene Bueno
03/01/99 09:26:48 PM
Record Type: Record

To: Bruce N. Reed/OPD/EOP @ EOP, Elena Kagan/OPD/EOP @ EOP
cc: See the distribution list at the bottom of this message
Subject: Civil Rights Coordinating Council Meeting

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diversity in education

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3. Hate Crimes-to develop a nat'l strategy & enact the Hate Crime Prevention Act
4. CRA/Lending - preserve CRA and eliminate discrimination in lending
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I will continue to update on this council and various priorities areas. Please let me know if you have any questions.

Irene

Message Copied

To:

Laura Emmett/WHO/EOP @ EOP
Paul J. Weinstein Jr./OPD/EOP @ EOP
Thomas L. Freedman/OPD/EOP @ EOP
Tanya E. Martin/OPD/EOP @ EOP
Jonathan H. Schnur/OPD/EOP @ EOP
Jose Cerda III/OPD/EOP @ EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Irene Bueno (CN=Irene Bueno/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 1-MAR-1999 22:11:39.00

SUBJECT: Public Charge Update - CLOSE HOLD

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

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

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

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

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

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

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

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

TEXT:

According to James Costello, he gave the AG a draft memo on the public charge issue before she left for Peru. He expects an answer from the AG in a couple of weeks.

They propose a NPRM with a comment period however, OLC is still reviewing the proposal to make the NPRM effective immediately by the AG's exercising her statutory discretion to direct field officers that immigrants should not be found public charge if they would not be considered a public charge under the proposed rule.

Briefly, based on the NPRM an immigrant would be considered a public charge if an immigrant is primarily dependent on cash assistance for income maintenance or if the immigrant is institutionalized in a long-term care facility at government expense. This would clarify that receipt of CHIP benefits and Medicaid (w/ the exception of institutionalized long term care) would not make someone a public charge. On the long-term care issue, INS has assured me that they will not begin to go after immigrants living in nursing homes to deport them but we should make sure that the disability community is informed of this proposal and that they understand.

I spoke to Josh Bernstein of Nat'l Immigration Law Center (NILC) about their expectations. They would like guidance that will set forth clearly and as quickly as possible the benefits for which receipt by an immigrant may result in deportation or exclusion or denial of adjustment. He understands that an NPRM is necessary and he did not have strong feelings whether an interpretative rule or guidance should

accompany the NPRM provided it is effective immediately and clear. He did note that this NPRM would probably need to be issued by both DOJ (INS and EOIR= immigration judges) and the State Department since all these components are responsible for determining public charge in various contexts - admission (State), adjustment and deportation (INS and EOIR). There was a similar situation under IRCA of 1988.

Please let me know if you have any further questions.