

**NLWJC - KAGAN**

**EMAILS RECEIVED**

**ARMS - BOX 046 - FOLDER -005**

**[03/02/1999]**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 21:35:10.00

SUBJECT: VP on class size over next 2 days

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

As I mentioned, the VP will go to NYC Thursday where he'll call on the Senate to enact the Murray-Kennedy class size measure. Here's our plan for the next couple of days, assuming you're OK with it.

1) Tomorrow, OVP press office will work with the President's press office to advance the story of the VP's visit with state-by-state press releases that will include 7-year estimates of teachers to be hired and \$ spent. I think we can get stories on this around the country in Thursday's newspapers, since no one has yet picked up these #s. It would be great if one of you could put in a word with (the president's) press office about really helping with this. It will take some work faxing press paper out to all of the states.

2) Riley will release the state-by-state NAEP scores Thursday morning. Education's press paper won't make a tight link to the class size initiative because of concern about "overpoliticizing" the NAEP #s, but Riley's office says his remarks will use the NAEP scores to make the argument for the class size initiative.

3) The VP will do the event Thursday where he'll focus on the NY and CT class size #s, and use the NAEP reading scores to underscore the message that we're headed in the right direction, but we need to pick up the pace of progress, and that's why Congress needs to enact the President's class size initiative. The First Lady will mention this in her education events Wednesday and Thursday as well.

4) The VP will not do a conference call Thursday, because the Education Dept argues (convincingly) that by Thursday, reporters will be writing about the state-by-state NAEP scores.

5) Julie Green will continue to pitch the class size story to reporters and editorial writers.

Finally, the VP has a slot for an education event next Wednesday that I am trying to move ahead one day to be sure the event happens before the vote. He would again call for the Senate to enact the Murray-Kennedy amendment, and we could try to get time on his schedule for a conference call that day as well.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 19:20:27.00

SUBJECT: Random Items for tomorrow morning

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

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

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

TEXT:  
BR/EK:

Unanticipated Crime Hearing. Tomorrow the House Government Reform Committee (Chairman Dan Burton) will host a hearing on successful crime reduction programs, with Mayor Guiliani of New York as the star witness. I don't know if this will make any news or not, but it has the potential to make raise issues related to our COPS proposal, the police brutality issue, etc. Also testifying will be Commissioner John Timoney of Philadelphia (and formerly of New York) and Harry Shorestein, the DA of Jacksonville, Florida. Rep. Blagojevich of Chicago, IL, will be there to pitch for our community prosecutors initiative.

Reorganization of the Office of Justice Programs. Tomorrow at 11:30am, Chuck Ruff, Bob Nash and I will meet w/DOJ reps on a proposed reorganization of the Office of Justice Programs (OJP). As you know, OJP oversees most state and local crime programs (minus COPS) and maintains a high degree of independence from main Justice. The proposed reorganization would help centralize OJP's authority (good for us), but would also do away with 5 PAS slots at DOJ (not good for us, or at least not for WH Personal). I don't necessarily have strong feelings about the proposal, but Bob Nash might. The AG has not made any final decisions and wants to know our thoughts. The report is due to DOJ's appropriators at the start of next week.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 18:39:45.00

SUBJECT: Federal tobacco claims

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

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

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

TO: 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: Devorah R. Adler ( CN=Devorah R. Adler/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:

Here's how we've responded to date to the "how can these be Medicaid claims" question

A few additional facts that might be helpful:

The nation's leading expert on tobacco-related costs, Leonard S. Miller of the University of California, estimated that tobacco cost Medicaid \$13 billion in 1993 -- far less than the \$8 billion a year the states settled for. (The article was published in the March/April 1998 Public Health Reports and was cited by CBO in its tobacco analysis last year. Miller is the same expert the states relied upon to provide state estimates that formed the basis of their settlement formula).

The states gave up both state and federal Medicaid claims in exchange for the tobacco settlement funds -- the November settlement document releases the tobacco companies from all claims that the states "directly, indirectly, derivatively, or in any other capacity ever had, now have, or hereafter can, shall or may have" against the tobacco companies -- which includes Medicaid claims. Thus all states gave up their Medicaid claims in exchange for the settlement funds they received.

The Medicaid statute (Title XIX of the Social Security Act) says:

The state plan must provide that "the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties.... that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the state can reasonably expect to recover exceeds the costs of such recovery, the state or local agency will seek reimbursement for

such assistance to the extent of such legal liability." (section 1925(a)(25) of the Social Security Act)  
 "Expenditures for which payments were made to the state under subsection (a) shall be treated as an overpayment to the extent that the state or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1902(a)(25)." (section 1903(d)(2)(B) of the Social Security Act)

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

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

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D34]MAIL47172856H.036 to ASCII,  
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**Tobacco and Medicaid in California  
February 22, 1999 POTUS**

**Q: How do you answer Governor Gray Davis's comments that California is not getting reimbursed at all for Medicaid costs because they took Medicaid out of their suit?**

**A:** Both the Justice Department and HHS have analyzed the issue of tobacco recoupment carefully and concluded that the settlement is for Medicaid claims.

First, states have an obligation under Medicaid law to pursue funds owed to the Medicaid program. Thus, states that sued for tobacco-related health costs should have included tobacco-related Medicaid claims in their suits -- as all or almost all did. Moreover, states cannot sue only for state Medicaid costs; they are obliged by Medicaid law to sue for the federal costs at the same time. Since the federal government pays on average 57 percent of Medicaid claims, the states are obliged to share those recoveries with the federal government.

Second, the states gave up both state and federal Medicaid claims in exchange for the tobacco settlement funds. For example, the November 1998 settlement document releases the tobacco companies from all claims that the states "directly, indirectly, derivatively, or in any other capacity ever had, now have, or hereafter can, shall or may have" against the tobacco companies -- which includes Medicaid claims. Thus all states gave up their Medicaid claims in exchange for the settlement funds they received.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 17:33:39.00

SUBJECT: IDEA/Class Size Meetings

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:

1. Education Meeting on IDEA

Sec Riley will meet with the heads of 5 organizations -- NEA, AFT, the National School Boards, Chief State School Officers and the School Administrators (Superintendents) tomorrow at 5PM at the Department.

The main purpose of the meeting is to explain to them what is going-on with IDEA -- but the Secretary will also talk to them about class size.

2. WH meeting on Class Size

ED continues to push back on the scheduling -- and see Friday meeting with lobbyist as more effective with the groups, than one tomorrow. Susan is going to call you shortly to explain her rationale for Friday. Her main points to me were that (1) ED will talk to the heads of the lead organizations when they meet with Riley tomorrow (2) we shouldn't take the lobbyists off the hill to come meet with on Wed, wait until Fri when they are free; (3) the groups are already working this issue, and we won't lose time by waiting until Friday and will ensure that we have better turnout.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 17:10:06.00

SUBJECT: Slater call

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

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

TEXT:

Rodney called right back to apologize for the leaks on car seats and 211, as well as for the mix-up on letting the VP do it Monday. He says the leaks are inexcusable and he's trying to get to the bottom of them.

He also brought up that he'd seen the squib in the WSJournal about our interest in a Passengers Bill of Rights, and wondered what we were doing on that. He agreed to work with us on it, so Tom, you should check in with his people and get something going. (We'll need to include NEC and OMB.)

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 16:56:48.00

SUBJECT: CONGRESSMAN ALLEGES ADMINISTRATION SET TO VIOLATE ...

TO: Scott Busby ( CN=Scott Busby/OU=NSC/O=EOP @ EOP [ NSC ] )  
 READ:UNKNOWN

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

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

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

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

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

TEXT:

More info on the Smith letter.

----- Forwarded by Irene Bueno/OPD/EOP on 03/02/99 04:55  
 PM -----

SHIMABUKUR\_L @ A1  
 03/02/99 04:33:00 PM

Record Type: Record

To: Irene Bueno

cc:

Subject: CONGRESSMAN ALLEGES ADMINISTRATION SET TO VIOLATE ...

Date: 03/02/99 Time: 15:59

ICongressman alleges administration set to violate immigration law

WASHINGTON (AP) A Texas congressman accused the Clinton administration of planning to grant amnesty to thousands of illegal immigrants without congressional approval.

``Stop before you break the law,'' Rep. Lamar Smith, R-Texas, said Tuesday. ``Do not throw out 30 years of legal precedent for political gain.''

Smith expressed objections to a plan that would grant illegal immigrants from Central America eligibility for amnesty under a blanket ``presumption of hardship,'' instead of requiring each immigrant to prove hardship.

In 1997, Congress passed a law granting amnesty to some Nicaraguans and Cubans who had been in the United States since Dec. 1, 1995, and allowing them to apply for status as legal permanent residents.

Under the law, Guatemalans and Salvadorans who had been in the

country for seven year would be considered for a suspension of deportation under less-stringent rules that existed before 1996 immigration legislation. It was to be on a case-by-case basis requiring them to prove ``extreme hardship'' if they were returned to their home countries.

Smith said the proposal for a blanket presumption of hardship goes against the intent of the 1997 law.

``We knew full well how to give amnesty,'' Smith said. ``We gave it to certain Nicaraguans and Cubans who were our allies in the Cold War against communism. If we wanted to give it to other groups, we would have.''

The Immigration and Naturalization Service has not yet made a final decision on presumption of hardship, agency spokeswoman Maria Cardona said.

Immigrant advocacy groups have lobbied in support of a rule presuming hardship, and a Clinton administration official said members of Congress also have submitted written comments that mostly favor the idea.

But Smith said a blanket presumption would give as many as 240,000-plus illegal aliens a benefit that Congress declined to give them in 1997. He and 28 other House members signed a letter to President Clinton asking him to reject the idea.

``The White House is shamelessly bowing to special interests and thumbing its nose at Congress, the American people and every legal alien who played by the rules and waited his or her turn to come to America,'' Smith said.

``Obviously, when someone received an unexpected benefit, amnesty in this case, they feel indebted to those who provided the benefit. The White House is looking at long-term political support.''

APNP-03-02-99 1617EST



Schedule Proposal

2-24-99

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ACCEPT

REJECT

PENDING

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TO: Stephanie Streett

FROM: Mary Beth Cahill  
Minyon Moore  
Bruce Reed  
Charles Ruff  
Larry Stein

REQUEST: For the President to host a White House event with the bi-partisan Senate and House co-sponsors of the Hate Crimes Prevention Act, on the occasion of its re-introduction in Congress. The event to include participation from and to highlight the increasingly broad and bi-partisan support the legislation has in the law enforcement and civil rights communities. MTV is prepared to release a poll on the day of the event relating to youth and hate crimes.

PURPOSE: To amplify the President's unity and reconciliation themes and to demonstrate the Administration's commitment to the legislation.

BACKGROUND: The President announced his sponsorship and the introduction of this legislation at the White House Conference on Hate Crimes on November 10, 1997. The legislation would strengthen the ability of the Justice Department to prosecute hate crimes based on race and religion by removing needless jurisdictional requirements and give the Department the power to prosecute hate crimes committed because of the victim's sexual orientation, gender, or disability. A recent CNN/Gallup/USA Today poll found that 70 of respondents favor hate crimes laws and that 83 and 75 , respectively, favor coverage for women and gays.

PREVIOUS PARTICIPATION: As indicated above.

DATE AND TIME: March

BRIEFING TIME: 10 minutes.

DURATION: 50 minutes.

LOCATION: East Room or 450 OEOB.

PARTICIPANTS: The Attorney General  
Senators Specter, Kennedy, Schumer and others  
Congressman Conyers and others  
Hate crime survivor or family member of victim  
(possibly Judy Shepard)  
Representatives of law enforcement community  
Civil rights organizations

OUTLINE OF EVENTS: Remarks by participants.

REMARKS REQUIRED: Yes.

MEDIA COVERAGE: Open press.

FIRST LADY'S ATTENDANCE: No.

VICE PRESIDENT'S ATTENDANCE: Optional.

SECOND LADY'S ATTENDANCE: No.

RECOMMENDED BY: As indicated above.

CONTACT: Richard Socarides 6-1611.

ORIGIN OF PROPOSAL: Office of Public Liaison.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 16:45:13.00

SUBJECT: Drilling Royalties

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

TEXT:

----- Forwarded by Thomas L. Freedman/OPD/EOP on 03/02/99  
 04:45 PM -----

jcoleman @ ps-b.com (Jenifer Coleman)  
 03/02/99 04:19:40 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP  
 cc:  
 Subject: Drilling Royalties

March 1, 1999

#### Lawmakers Want To Reserve Oil Cash

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 A.P. INDEXES: TOP STORIES | NEWS | SPORTS | BUSINESS |  
 TECHNOLOGY | ENTERTAINMENT  
 -----

Filed at 1:32 a.m. EST

By The Associated Press

WASHINGTON (AP) -- More than \$4 billion in annual offshore oil-drilling royalties collected by the federal government has become a tempting windfall for lawmakers.

Legislation in both houses of Congress would designate about half the cash for states and the environment -- \$1.9 billion next year under the Senate formula and \$2.1 billion under the House plan.

Six states -- Louisiana, Texas, Alaska, California, Mississippi and Alabama -- would be the biggest winners because they have offshore oil drilling.

Louisiana would get the most next year, \$359 million under the Senate plan, and Texas would finish second with \$196 million.

But coastal states without offshore rigs also would benefit. New York would take in \$79 million and Washington state would net \$31 million under the Senate formula. And every state and U.S. territory would get something.

``This bill will improve the lives of every American,''  
Rep. Don Young, R-Alaska, said in introducing the House measure last month. The Senate bill was introduced in January by Sen. Mary Landrieu, D-La.

Royalties from drilling more than six miles off U.S. coasts now go to the U.S. Treasury to finance an array of programs. A portion, about \$300 million annually in recent years, finances the land and water conservation fund, used by the federal government to buy environmentally sensitive land.

Some royalties would continue to go to the Treasury under both bills -- 50 percent in the Senate measure and 40 percent in the House version.

The rest would be split three ways.

--Both bills would allocate 27 percent to 30 states and five territories bordering oceans and the Great Lakes. The lawmakers say coastal states have special needs to fight erosion, improve water quality and address offshore-drilling impact. Coastal states with offshore drilling, extensive coastlines and large populations would get the lion's share.

--About one-fourth of the money in the House bill, less in the Senate version, would go to the conservation fund and for urban parks and recreation. Based on expected royalties next year, the Senate formula would allocate about \$661 million to the conservation fund, while the House bill would provide \$900 million.

--One-tenth of the money in the House bill, less in the Senate, would go to fish-and-game programs in all 50 states.

The proposals are among the most closely watched pieces of environmental legislation in the 106th Congress -- especially since Young, chairman of the House Resources Committee, and another supporter, Sen. Frank Murkowski, R-Alaska, head of the Senate Energy and Natural Resources Committee, have been criticized by environmentalists in the past for not doing enough to protect wildlife.

They're winning praise by those groups now for trying to increase revenues going to the land and water conservation fund.

``What I really like is we're going to do something,''  
said Rindy O'Brien, vice president for policy at The Wilderness Society.  
``You've got all the right people lined up.''

The proposal also has caught the eye of state officials.

``We've got a lot of people paying attention to this,''

said Carol Jolly, a policy adviser for Washington Gov. Gary Locke. She said the revenues would be useful for salmon restoration and local acquisition of land for parks and trails.

But the bills are drawing fire from private-property groups. By mid-February, about 100 groups had formed a new organization called the Keep Private Lands in Private Hands Coalition to fight the proposals.

''What is astounding here is that this is an effort led by some Republicans who are going desperately astray,'' said R.J. Smith, senior environmental scholar at the Competitive Enterprise Institute, a public policy think tank here.

The opponents say the government already owns too much land, especially in the West. Setting aside money for more land purchases will infringe on landowners' rights and hurt rural economies, they say.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 16:38:12.00

SUBJECT: S. 280 - ED FLEX DRAFT SAP

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

READ:UNKNOWN

TO: Caroline R. Fredrickson ( CN=Caroline R. Fredrickson/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Charles Konigsberg ( CN=Charles Konigsberg/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

TEXT:

Below is the revised SAP for S. 280, the Education Flexibility Partnership Act of 1999. The bill is expected on the Senate floor tomorrow morning (Wed. 3/3). Barbara Chow has approved this version. Please provide final comments/clearance by c.o.b. tonight so that we can send the SAP early tomorrow morning. 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. 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.

In order to ensure consistency between ed-flex authority and the Elementary and Secondary Education Act of 1965 (ESEA), which will be

undergoing reauthorization this year, the Administration urges Congress to sunset this legislation upon enactment 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).

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.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 15:55:06.00

SUBJECT: For next week

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

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

TO: 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

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

TEXT:  
BR/EK:

Per your request...This isn't perfect, but here's a quick and dirty on the major health care provisions. The telemarketing stuff is less substantive, I think...jc3

Health Care Fraud. The VP could announce/leak the provision to crackdown on health care fraud that will be included in the Presidents upcoming crime bill. These include:

- Tougher penalties. The crime bill will increase from 5 to 10 years the maximum penalty for providing false statements in relation to health care matters and for obstructing a health care fraud investigation. It also directs the Sentencing Commission to review and amend, if appropriate, the penalties for health care fraud.

- Kickback schemes. To better crack down on health care kickback schemes, the crime bill proposes expanding the law in the following 3 ways: (1) granting federal prosecutors the authority to enjoin kickback schemes while they are in progress; (2) allowing the AG to pursue civil actions in kickback schemes against federal health plans; and (3) applying the current penalties for kickback schemes not just to federal health providers (Medicare, Medicaid, and CHAMPUS), but to private health insurance plans as well.

- AG's ability to issue subpoenas in civil cases. Under current law, in investigating civil health care fraud cases the AG/Justice Department must rely on subpoenas issued by HHS' Inspector General. The crime bill will make clear that DOJ has the authority to issue subpoenas and pursue wrongdoers in any health care fraud cases.

- Sharing of grand jury information. Current law allows government attorneys in criminal cases to share grand jury information with other government attorneys involved in civil actions commenced to enforce the banking laws. The crime bill would allow government attorneys to similar share information in health care fraud cases.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 15:48:41.00

SUBJECT: NACARA

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

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

TEXT:

Today, Representative Lamar Smith along with 28 other Republican members sent a letter to the President urging that the INS not publish a final rule that contains "presumption of extreme hardship" for Guatemalans and Salvadorans covered under NACARA.

I will have copies delivered to your office.

Please let me know if you have any questions.

Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 2-MAR-1999 14:53:24.00

SUBJECT: states and tobacco

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Was speaking to Ken Salazar, AG for Colorado, who asked about President's comments to governors as to what states could spend money. his point is that the new republican governor is saying that clinton said solong as money is spent on kids, he's okay and so governor wants to spend on capital improvments for schools, education, etc. Will one of you please fax him whatever the President said on tobacco at NGA and/or our most recent iteration of our position on how states should spend their money--number is 303-866-4745. . thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 14:16:39.00

SUBJECT: Riley told me we can delay IDEA reg till next wk. bruce

TO: BRODERICK (Pager) #JOHNSON ( BRODERICK (Pager) #JOHNSON [ UNKNOWN ] )  
READ:UNKNOWN

TO: BARBARA A. (Pager) #CHOW ( BARBARA A. (Pager) #CHOW [ UNKNOWN ] )  
READ:UNKNOWN

TO: ELENA (Pager) #KAGAN ( ELENA (Pager) #KAGAN [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-MAR-1999 13:50:08.00

SUBJECT: 211 to VP

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

READ:UNKNOWN

TEXT:

Transportation says the VP's office said you (Bruce) were fine with the VP doing 211 next Monday. Given my experience over there, confirm?



Talking Points

- The state tobacco settlement is a real step in the right direction.
- I know we all share a commitment to reducing youth smoking. Every day, 3,000 children become regular smokers and 1,000 have their lives shortened as a result.
- We also all share a commitment to protecting tobacco farmers. The President is pleased that the states and industry were able to negotiate a package to compensate farmers and we remain committed to doing more to protect tobacco farmers and their communities.
- While the state settlement is a great first step, the President believe we must do more to protect children and reduce youth smoking. We will continue to push for legislation to increase the price of cigarettes so fewer young people start to smoke, hold the tobacco companies accountable for their youth marketing practices, and reaffirm the Food and Drug Administration's authority to regulate tobacco products. In addition, as you know, the federal government is bringing suit to recover from the tobacco companies the health care costs incurred by Medicare and other federal programs as a result of smoking.
- On the question of tobacco recoupment, we have an obligation under current Medicaid law to recoup the federal share of the tobacco settlement. As you know the federal government pays an average of 57 percent of Medicaid costs, and states routinely reimburse us for the federal share of Medicaid collections.
- But we want you to know that as the President has said all along, he is committed to working with you and with the states to change the law, to enact legislation to settle the federal government's claims in exchange for a commitment by the states to use tobacco money to prevent youth smoking, protect tobacco farmers, improve public health, and assist children. The President's budget specifically assumes no recoupment until FY 2001 so that we can reach an agreement this year. I hope we can start work on this kind of legislation as soon as possible.
- The President will, however, vigorously oppose any legislation which would completely give up the federal share of the states' tobacco settlement -- without any commitment by the states to use these monies to prevent youth smoking, protect tobacco farmers, improve public health, or assist children. We know that most states want to do the right thing with this money, but we also know that Governors and legislatures will come under tremendous pressure to spend this on things that have nothing whatsoever to do with children or tobacco farmers or reducing youth smoking. Look at what happened in the Congress debate last year. It would be a national tragedy if this landmark state settlement went by without any real assurance that we are going to do everything we can to reduce youth smoking and help tobacco farmers.

Q&A

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

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

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

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

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

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

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

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

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

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

**Q:** **How do you answer some governors' charges that their settlements were not for Medicaid costs because they took Medicaid out of their suit?**

**A:** The Justice Department has analyzed the issue of tobacco recoupment carefully and concluded that the settlement is for Medicaid claims.

First, states have an obligation under Medicaid law to pursue funds owed to the Medicaid program. Thus, states that sued for tobacco-related health costs should have included tobacco-related Medicaid claims in their suits -- as all or almost all did. Moreover, states cannot sue only for state Medicaid costs; they are obliged by Medicaid law to sue for the federal costs at the same time. Since the federal government pays on average 57 percent of Medicaid claims, the states are obliged to share those recoveries with the federal government.

Second, the states gave up both state and federal Medicaid claims in exchange for the tobacco settlement funds. For example, the November 1998 settlement document releases the tobacco companies from all claims that the states "directly, indirectly, derivatively, or in any other capacity ever had, now have, or hereafter can, shall or may have" against the tobacco companies -- which includes Medicaid claims. Thus all states gave up their Medicaid claims in exchange for the settlement funds they received.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Carolyn T. Wu ( CN=Carolyn T. Wu/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 2-MAR-1999 11:27:24.00

SUBJECT: Policy/Message Mtg.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

READ:UNKNOWN

CC: Sharon H. Yuan ( CN=Sharon H. Yuan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

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

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

TEXT:

Karen will be holding a follow-up long term policy/message meeting on Thursday (3/4) at 10:30 AM. Location TBD. She would like paper for review on Wednesday (3/3). Please let me know if you or your principal are unable to attend. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 2-MAR-1999 09:36:42.00

SUBJECT: Education Meeting

TO: Scott\_Fleming ( Scott\_Fleming @ ed.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

TO: Mike\_Cohen ( Mike\_Cohen @ ed.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

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

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

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

TO: Susan\_Frost ( Susan\_Frost @ ed.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

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

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

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

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

CC: Ilia V. Velez ( CN=Ilia V. Velez/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

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

TEXT:

Bruce Reed will be having an education meeting today at 11:00 a.m. This meeting will be held in his office, 2 Floor/West Wing.