

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 090 - FOLDER -006

[02/26/1999]

RECORD TYPE; PRESIDENTIAL (NOTES MAIL)

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

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

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

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

READ:UNKNOWN

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

READ:UNKNOWN

CC: June Shih (CN=June Shih/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

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

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

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D33]MAIL48100816E.036 to ASCII, The following is a HEX DUMP:

FF5750430A040000010A02010000000205000000A4160000000200007E00EA6C095D78A573DA8D
1A1262A5F51142134EB3C3B394530716CD273B72B567922485E0E7EDE33F03C025D9F57D0EC022
24B89667D763F9830A80062B4EC46DE0B23558E63D224D0881860F92ED59072C1CCA60BFBC0099
D86235688BC31E16554B1850CFE5136327CB2482F600B951127E0645281B696CD467E4B4F8B9E7

*PRESIDENT CLINTON ANNOUNCES NEW RULE
TO IMPROVE SAFETY OF CHILDREN IN VEHICLES*

February 27, 1998

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

Current System Puts Children at Risk

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

New Standardized System Will Save Lives

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

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

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

Automated Records Management System
Hex-Dump Conversion

Child Restraint Q&As
2/24/99

Q: What did the President announce today?

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

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

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

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

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

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

Q. How effective are child safety seats?

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

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

**Automated Records Management System
Hex-Dump Conversion**

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: We're all square with the leak

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: Copy of radio address to Slater

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

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

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

TEXT:

NOTE TO EOP STAFF: YOU WILL NOT RECEIVE A HARD COPY OF THIS LRM.

----- Forwarded by Melissa N. Benton/OMB/EOP on 02/26/99

11:43 AM -----

Total Pages: _____

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

Friday, February 26, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

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

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

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

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

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

DISTRIBUTION LIST

AGENCIES:

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62-LABOR - Robert A. Shapiro - (202) 219-8201
61-JUSTICE - Dennis Burke - (202) 514-2141
25-COMMERCE - Michael A. Levitt - (202) 482-3151
107-Small Business Administration - Mary Kristine Swedin - (202) 205-6700

EOP:

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Sandra Yamin
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Stuart Shapiro
Sarah Rosen

Karen Tramontano
 Maureen T. Shea
 Broderick Johnson
 Peter Rundlet
 Kate P. Donovan
 Robert G. Damus
 Sarah S. Lee
 Janet R. Forsgren
 James J. Jukes
 David J. Haun
 John E. Thompson
 Elena Kagan

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

RESPONSE TO
 LEGISLATIVE REFERRAL
 MEMORANDUM

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

You may also respond by:

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

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

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

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

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

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

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

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

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

expose young workers to sawmills and other hazardous workplace conditions in the wood processing industry, which has an occupational fatality rate five times higher than the national private-industry average; and
run afoul of the Establishment and Religion Clauses of the First Amendment.

Pay-As-You-Go Scoring

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

* * * * *

(Do Not Distribute Outside Executive Office of the President)

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

Legislative History

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

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

Administration Position To Date

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

children."

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

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

Background

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

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

Summary of H.R. 221 as Reported

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

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

Pay-As-You-Go Scoring

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: Jim Pinkerton's column

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Washington Isn't Fit to Be a Sub Teacher

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

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

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

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

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

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

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

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

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

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 14:28:22.00

SUBJECT:

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

READ:UNKNOWN

TEXT:

FYI- Bruce is holding at 65584

RECORD TYPE: PRESIDENTIAL (EXTERNAL MAIL)

CREATOR: Dag Vega@EOP@LNGTWY@EOPMRX

CREATION DATE/TIME:26-FEB-1999 16:35:00.00

SUBJECT: Fact Sheet: Certification of Major Drug Producing and Transit C

TO: 1=US (1=US@2=WESTERN UNION@5=ATT.COM@*ELN\62955

READ:NOT READ

TO: BARBUSCHAK_K

(BARBUSCHAK_K@A1@CD) (OA)

READ:NOT READ

TO: INFOMGT

(INFOMGT@A1@CD) (SYS)

READ:NOT READ

TO: JOHNSON_WC

(JOHNSON_WC@A1@CD) (OA)

READ:NOT READ

TO: SULLIVAN_M

(SULLIVAN_M@A1@CD) (WHO)

READ:NOT READ

TO: SUNTUM_M

(SUNTUM_M@A1@CD) (WHO)

READ:NOT READ

TO: WOZNIAK_N

(WOZNIAK_N@A1@CD) (NSC)

READ:26-FEB-1999 18:19:11.08

TO: GRAY_W

(GRAY_W@A1@CD) (NSC)

READ:NOT READ

TO: NAPLAN_S

(NAPLAN_S@A1@CD) (NSC)

READ:NOT READ

TO: WEINER_R

(WEINER_R@A1@CD) (DON)

READ:NOT READ

TO: GRIBBEN_J

(GRIBBEN_J@A1@CD) (WHO)

READ:NOT READ

TO: RILEY_R

(RILEY_R@A1@CD) (OA)

READ:NOT READ

TO: tnewell

(tnewell@ostp.eop.gov@INET)

READ:NOT READ

TO: HEMMIG_M

(HEMMIG_M@A1@CD) (WHO)

READ:NOT READ

TO: RUNDLET_P

(RUNDLET_P@A1@CD) (WHO)

READ:NOT READ

TO: BUDIG_N

(BUDIG_N@A1@CD) (NSC)

READ:NOT READ

TO: meglynn

(meglynn@usia.gov@INET)

READ:NOT READ

TO: Christine A. Stanek

(Christine A. Stanek@EOP@LNGTWY@EOPMRX)

READ:NOT READ

TO: Lori E. Abrams
READ:NOT READ

(Lori E. Abrams@EOP@LNGBTWY@EOPMRX)

TO: Anne M. Edwards
READ:NOT READ

(Anne M. Edwards@EOP@LNGBTWY@EOPMRX)

TO: David E. Kalbaugh
READ:NOT READ

(David E. Kalbaugh@EOP@LNGBTWY@EOPMRX)

TO: Julie E. Mason
READ:NOT READ

(Julie E. Mason@EOP@LNGBTWY@EOPMRX)

TO: Elisa Millsap
READ:NOT READ

(Elisa Millsap@EOP@LNGBTWY@EOPMRX)

TO: Cheryl D. Mills
READ:NOT READ

(Cheryl D. Mills@EOP@LNGBTWY@EOPMRX)

TO: G. Timothy Saunders
READ:NOT READ

(G. Timothy Saunders@EOP@LNGBTWY@EOPMRX)

TO: Laura D. Schwartz
READ:NOT READ

(Laura D. Schwartz@EOP@LNGBTWY@EOPMRX)

TO: Douglas B. Sosnik
READ:NOT READ

(Douglas B. Sosnik@EOP@LNGBTWY@EOPMRX)

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THE WHITE HOUSE

Office of the Press Secretary
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For Immediate Release

February 26, 1999

FACT SHEET

Overview of Annual Presidential Certification of
Major Drug Producing and Transit Countries

Under the Foreign Assistance Act (FAA) of 1961, the President must identify and notify the Congress of those countries he has determined are major illicit drug producing and/or drug transit countries. President Clinton identified the current list of 28 major illicit drug producing and/or transit countries and dependent territories and notified the Congress in December 1998. Pursuant to the FAA, the United States is required to impose substantial restrictions on assistance to these countries unless, not later than March 1st of each year, the President makes certain determinations and certifies them to the Congress. The FAA also provides that the United States must vote against loans to a majors list country by any of six specified multilateral development banks, unless that country is certified.

The President may determine and certify to Congress that a majors list country is cooperating fully with the United States, or has taken adequate steps on its own, to achieve the goals and objectives of the 1988 UN Drug Convention. In reaching this determination, the President is required to consider each country's performance in areas such as stemming illicit cultivation, extraditing drug traffickers, and taking legal steps and law enforcement measures to prevent and punish public corruption that facilitates drug trafficking or impedes prosecution of drug-related crimes. The President must also consider efforts taken by these countries to stop the production and export of, and reduce the domestic demand for, illegal drugs.

On February 26th, President Clinton certified that 22 of the countries and dependent territories on the majors list cooperated fully with United States or took adequate steps on their own with respect to the goals and objectives of the 1988 UN Drug Convention. These countries or dependent territories are: Aruba, The Bahamas, Belize, Bolivia, Brazil, China, Colombia, Dominican Republic, Ecuador, Guatemala, Hong Kong, India, Jamaica, Laos, Mexico, Pakistan, Panama, Peru, Taiwan, Thailand, Venezuela, and Vietnam.

The President may also determine and certify to the Congress that the vital national interests of the United States require that a country be certified -- even if that country does not fully meet the criteria for a certification based on full cooperation. The basis for such a determination is that, on balance, the sanctions that would otherwise be imposed under the FAA should not be imposed for reasons related to our vital national interests. The President has certified four countries on this basis: Cambodia, Haiti, Nigeria, and Paraguay.

The President did not certify two countries that do not meet the statutory standard for certification: Afghanistan and Burma. Decertification results in substantial restrictions on most types of U.S. assistance to these countries.

#

Ed-Flex Amendments

Senate

1. Proposed Manager's Package (Republican)

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

Note: all of the above are acceptable to ED

2. Proposed Democratic Additions to Manager's Package

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

**Automated Records Management System
Hex-Dump Conversion**

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

3. Civil Rights Groups Amendments

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

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

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

Other Ed-Flex Issues in Play

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

Other Possible Senate Amendments

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

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House

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: equal pay

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

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

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

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

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

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

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

TEXT:

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

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: Mental Health Conference

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

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

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

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

TEXT:

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

June 14, 1999

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

Thanks!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 10:37:51.00

SUBJECT: the latest IDEA draft

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:

I just got the latest draft -- attached. It will go to barbara Chow for review at 11:00 am.

----- Forwarded by Tanya E. Martin/OPD/EOP on 02/26/99 10:37 AM -----

David Rowe

02/26/99 10:33:51 AM

Record Type: Record

To: Tanya E. Martin/OPD/EOP

cc: Barry White/OMB/EOP, Leslie S. Mustain/OMB/EOP

Subject: the latest IDEA draft

We're still touching it up. The final draft will go to Chow by 11:00.

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D53]MAIL41428026C.036 to ASCII,

The following is a HEX DUMP:

FF57504322070000010A02010000000205000000FC42000000020000E5F842538F8D62A6938D62
A61E28D7E82E65931D4A19119C8AD3243FF03C40DFEC62111F0C26704DF957D2BFDAC7BA2B89A0
1A24719A1CD88624C14640A4691A46ECAB703210F58810C9BA538CC8F1ED1C971B9830A5D4667A
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269F9864DD56A6DF9259E2FD9B7AA0A72FC34C90FEC6AD7DEBBF59BBACD89B4E924ED54033ED6F

MEMORANDUM FOR THE PRESIDENT

From:

Subject: Individuals with Disabilities Education Act (IDEA)

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

General Background

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

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

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

IDEA Regulations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Special Education Funding

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

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

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 10:50:38.00

SUBJECT: pls hold off on dewar, want to check with joe, will confirm later. tx jen

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

READ:UNKNOWN

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: Check the Date: June 7

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

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

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

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

TEXT:
Just kidding.... Please check both

Monday, June 7, 1999

and

Monday, June 14, 1999

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

Thanks!

----- Forwarded by Karin Kullman/OPD/EOP on 02/26/99
09:55 AM -----

Charles J. Payson
02/26/99 10:48:47 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Check the Date: June 7

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

Monday, June 7

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

Thanks!

Message Sent

To: _____
Ann F. Lewis/WHO/EOP
Kevin S. Moran/WHO/EOP
Douglas B. Sosnik/WHO/EOP
Nancy V. Hernreich/WHO/EOP
Phillip Caplan/WHO/EOP
Cathy R. Mays/OPD/EOP

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: DPC Planning Calendar

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

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

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

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

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

TEXT:

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

-anniversary dates (ie, anniversary of significant POTUS
bill signings, milestone anniversaries on issues
we cover)

-conference dates (if we know a Cabinet Agency will be
holding a conference or if a group will be in town
for their legislative conferences, etc.)

-annual events (ie, Kick Butts Day, etc.)

-anything else you think we should be aware of!

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TO: Thurgood Marshall Jr (CN=Thurgood Marshall Jr/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

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

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

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

READ:UNKNOWN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

READ:UNKNOWN

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

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

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

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

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

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

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

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

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

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

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

TEXT:

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

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: IDEA memo status

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: Class Size Letter

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

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

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

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

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

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

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

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

TEXT:

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

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

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

Thanks, all.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Devorah R. Adler (CN=Devorah R. Adler/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:26-FEB-1999 13:57:46.00

SUBJECT: draft of provider tax memo

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

for your review -- please call with questions --

Devorah

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D38]MAIL496334267.036 to ASCII,

The following is a HEX DUMP:

FF5750436B040000010A02010000000205000000204D000000020000003AA713CB4D0F22DFA9F3F
D0C60C793FB5E022764F01DC8EB5940D9CA1F8E4D7CF2635842FDE970A83CFD164C5C1AC4D0C7E
E52AC635593ED4E4B32F3EC8546E94766FAB8B891AED8E9A33DA49996B13337C04702547E9346F
10FBF1E6025EC9101704A51E1713A9213A99DD6D4DC5737F2CA4440879905BFE391B42E8B3E5FD

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February 26, 1999

MEMORANDUM TO JOHN PODESTA

FROM:

SUBJECT: MEDICAID PROVIDER TAXES AND DONATIONS ENFORCEMENT

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

BACKGROUND

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

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

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

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

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

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

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

PHASE ONE: ENFORCEMENT IN STATES THAT HAVE USED RECYCLING SCHEMES

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

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

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

PHASE TWO: ENFORCEMENT IN STATES THAT HAVE TARGETED PROVIDER TAXES

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

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

ISSUES

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

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

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

POLICY OPTIONS

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

Pros:

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

Cons:

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

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provides more flexibility in settlements to States.

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

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

Pros:

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

Cons:

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

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

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

Pros:

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

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hurt it.

Cons:

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

RECOMMENDATIONS

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: update on child care legislation

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 15:25:18.00

SUBJECT: Please let me know if you will be submitting anything for today's Daily Re

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Thurgood Marshall Jr (CN=Thurgood Marshall Jr/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

READ:UNKNOWN

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

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

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

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

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

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

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

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

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

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

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

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: Tobacco Hearing

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

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

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

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

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

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

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

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

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

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

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

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

TEXT:

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Essence P. Washington (CN=Essence P. Washington/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 26-FEB-1999 15:25:46.00

SUBJECT: DPC PHONE LIST

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

READ: UNKNOWN

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

READ: UNKNOWN

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

READ: UNKNOWN

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

READ: UNKNOWN

TO: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/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: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])

READ: UNKNOWN

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

READ: UNKNOWN

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

READ: UNKNOWN

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

READ: UNKNOWN

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

READ: UNKNOWN

TO: WEINSTEIN_P@A1@CD@VAXGTWY (WEINSTEIN_P@A1@CD@VAXGTWY @ VAXGTWY [UNKNOWN]) (O

READ: UNKNOWN

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

READ: UNKNOWN

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

READ: UNKNOWN

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

READ: UNKNOWN

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

READ:UNKNOWN

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

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

TEXT:

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D38]MAIL42517526J.036 to ASCII,
The following is a HEX DUMP:

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DOMESTIC POLICY COUNCIL (DPC)
STAFF PHONE LISTAutomated Records Management System
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<u>Person</u>	<u>Phone</u>	<u>Fax</u>	<u>Location</u>
ADLER, Devorah Assistant Director	65707	65557	216, OEOB
BIANCHI, Sarah Associate Director & Senior Health Care Adviser to the Vice President	65585	65557	217, OEOB
CERDA, Jose Special Assistant to the President	65568	67028	224R, OEOB
OPEN Special Assistant to the President	65575	65581	218L, OEOB
EMMETT, Laura Policy Assistant	65565	62878	2 FL/WW
BUENO, Irene Special Assistant to the President	66558	65581	217R, OEOB
FREEDMAN, Tom Special Assistant to the President	65587	67431	213, OEOB
GOULD, Eric Associate Director	67871	65581	210 OEOB
JENNINGS, Chris Deputy Assistant to the President	65560	65557	216L, OEOB
JONES, Teresa Policy Assistant	65594	65557	216, OEOB
KAGAN, Elena Deputy Assistant to the President & Deputy Director DPC	67928/65584	62878	218L, OEOB/ 2 FL/WW
KANE, Andrea Associate Director	65573	67431	212L, OEOB
LAMBREW, Jeanne (NEC) Senior Director	65377	67431	209, OEOB
OPEN Special Assistant	65543	65581	217, OEOB
MARTIN, Tanya Associate Director	65228	65581	220, OEOB
MAYS, Cathy Executive Assistant to the Director	66515	62878	2 FL/WW
RABNER, Nicole Special Assistant to the President & Senior Policy Adviser to the First Lady	67263	66244	2 FL/WW
REED, Bruce Assistant to the President & Director DPC	66515	62878	2 FL/WW
RICE, Cynthia Special Assistant to the President	62846	67431	212R, OEOB

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KULLMAN, Karen Director For Communications & Events	62823	67431	207, OEOB
SCHNUR, John Associate Director & Senior Education Adviser to the Vice President	65567	65581	218R, OEOB
SHIMABUKURO, Leanne Associate Director	65574	67028	224L, OEOB
SMITH, Mary Associate Director	65571	67431	213 1/2 , OEOB
TANDEN, Neera Associate Director & Senior Policy Adviser to the First Lady	66275	66244	2 FL/WW
WASHINGTON, Essence Policy Assistant	67732	67028	224, OEOB
WEINSTEIN, Paul Special Assistant to the President & Chief of Staff DPC	65577	65581	214, OEOB

GENERAL DPC NUMBER	62216	
DPC CONFERENCE ROOM	65564	211, OEOB
RAINES, Ashley	62023	145, OEOB
COMPUTER SUPPORT	57370	
WH COMMENT LINE	61111	
WAVES CENTER	66742	

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: latest IDEA memo

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

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

David Rowe

02/26/99 03:44:15 PM

Record Type: Record

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

cc:

Subject: latest IDEA memo

Message Sent

To:

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

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

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

TEXT:

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CAA89E537FC9337347EFAEDCB0D234921E08DE69D4AE099DC2BAC10FE5EAA348463F62371C0B35

MEMORANDUM FOR THE PRESIDENT

From:

Subject: Individuals with Disabilities Education Act (IDEA)

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

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

General Background

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

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

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

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

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

IDEA Regulations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Special Education Funding

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

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

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Essence P. Washington (CN=Essence P. Washington/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:26-FEB-1999 16:09:59.00

SUBJECT: FY2000 BUDGET

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/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: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: WEINSTEIN_P@A1@CD@VAXGTWY (WEINSTEIN_P@A1@CD@VAXGTWY @ VAXGTWY [UNKNOWN]) (O

READ:UNKNOWN

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

READ:UNKNOWN

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

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READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

If you need a copy of the budget, you can pick them up in Paul's room.
Hurry! Hurry! We have a limited supply!

Thanks

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: after-school

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

READ:UNKNOWN

TEXT:

The exact number is 1.146 million kids, fyi.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 17:09:44.00

SUBJECT: LABOR Testimony on S385 Safety Advancement for Employees (SAFE) Act of 199

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

READ:UNKNOWN

TO: John Kamensky (CN=John Kamensky/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: William H. White Jr. (CN=William H. White Jr./OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO: Daniel LaPlaca (CN=Daniel LaPlaca/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Bruce D. Long (CN=Bruce D. Long/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

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

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

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

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

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

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

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

READ:UNKNOWN

TO: Cordelia W. Reimers (CN=Cordelia W. Reimers/OU=CEA/O=EOP@EOP [CEA])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Lisa B. Fairhall (CN=Lisa B. Fairhall/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Courtney B. Timberlake (CN=Courtney B. Timberlake/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: David J. Haun (CN=David J. Haun/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: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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

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

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

CC: ola (ola @ opm.gov @ inet [UNKNOWN])
READ:UNKNOWN

CC: dodlrs (dodlrs @ osdgc.osd.mil @ inet [UNKNOWN])
READ:UNKNOWN

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

CC: cla (cla @ sba.gov @ inet [UNKNOWN])
READ:UNKNOWN

CC: lrm (lrm @ os.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

CC: valrm (valrm @ mail.va.gov @ inet [UNKNOWN])
READ:UNKNOWN

CC: dot.legislation (dot.legislation @ ost.dot.gov @ inet [UNKNOWN])
READ:UNKNOWN

CC: oshrc (oshrc @ oshrc.gov @ inet [UNKNOWN])
READ:UNKNOWN

CC: clrm (clrm @ doc.gov @ inet [UNKNOWN])
READ:UNKNOWN

CC: justice.lrm (justice.lrm @ usdoj.gov @ inet [UNKNOWN]) (OA)
READ:UNKNOWN

TEXT:

NOTE TO EOP STAFF: YOU WILL NOT RECEIVE A HARD COPY OF THIS LRM.

----- Forwarded by Melissa N. Benton/OMB/EOP on 02/26/99

05:04 PM -----

Total Pages: _____

LRM ID: MNB22

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

Friday, February 26, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

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

SUBJECT: LABOR Testimony on S385 Safety Advancement for Employees (SAFE) Act of 1999

DEADLINE: 3 p.m. Monday, March 1, 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: To follow is testimony to be delivered by Labor (Jeffress) before the Employment, Safety, and Training Subcommittee of Senate Health, Education, Labor, and Pensions on Thursday, March 4th.

Please note veto threat on p. 4 of the testimony.

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LRM ID: MNB22 SUBJECT: LABOR Testimony on S385 Safety Advancement for Employees (SAFE) Act of 1999

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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

You may also respond by:

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

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

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

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

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

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D36]MAIL46686726K.036 to ASCII,
The following is a HEX DUMP:

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```

===== ATTACHMENT 2 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

S 385 IS

106th CONGRESS

1st Session

S. 385

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 6, 1999

Mr. ENZI introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE- This Act may be cited as the `Safety Advancement for Employees Act of 1999' or the `SAFE Act'.

(b) REFERENCE- Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

SEC. 2. PURPOSE.

Section 2(b) of the Act (29 U.S.C. 651(b)) is amended--

(1) in paragraph (13), by striking the period and inserting `; and'; and

(2) by adding at the end the following:

`(14) by increasing the joint cooperation of employers, employees, and the Secretary of Labor in the effort to ensure safe and healthful working conditions for employees.'.

SEC. 3. THIRD PARTY CONSULTATION SERVICES PROGRAM.

(a) PROGRAM- The Act (29 U.S.C. 651 et seq.) is amended by inserting

after section 8 the following:

`SEC. 8A. THIRD PARTY CONSULTATION SERVICES PROGRAM.

`(a) PURPOSE- Recognizing that--

- `(1) employee safety is of paramount concern;
- `(2) employers are overburdened by regulations and are unable to read through, understand and effectively comply with the voluminous requirements of this Act; and
- `(3) the Secretary is unable to individually satisfy the compliance needs of each employer and employee within its jurisdiction;

it is the purpose of this section to encourage employers to conduct voluntary safety and health audits using the expertise of qualified safety and health consultants and to proactively seek individualized solutions to workplace safety and health concerns.

`(b) ESTABLISHMENT OF PROGRAM-

`(1) IN GENERAL- Not later than 18 months after the date of enactment of this section, the Secretary, in consultation with the advisory committee established under section 7(d), shall establish and implement, by regulation, a program that qualifies individuals to provide consultation services to employers to assist employers in the identification and correction of safety and health hazards in the workplaces of employers.

`(2) ELIGIBILITY- The following individuals shall be eligible to be qualified under the program under paragraph (1) as certified safety and health consultants:

`(A) An individual who is licensed by a State authority as a physician, industrial hygienist, professional engineer, safety engineer, safety professional, or occupational nurse.

`(B) An individual who has been employed as an inspector for a State plan State or as a Federal occupational safety and health inspector for not less than a 5-year period.

`(C) An individual who is qualified in an occupational health or safety field by an organization whose program has been accredited by a nationally recognized private accreditation organization or by the Secretary.

`(D) Other individuals determined to be qualified by the Secretary.

`(3) GEOGRAPHICAL SCOPE OF CONSULTATION SERVICES- A consultant qualified under the program under paragraph (1) may provide consultation services in any State.

`(4) LIMITATION BASED ON EXPERTISE- A consultant qualified under the program under paragraph (1) may only provide consultation services to an employer with respect to a worksite if the work performed at that worksite coincides with the particular expertise of the individual.

`(c) SAFETY AND HEALTH REGISTRY- The Secretary shall develop and maintain a registry that includes all consultants that are qualified under the program under subsection (b)(1) to provide the consultation services described in subsection (b) and shall publish and make such registry readily available to the general public.

`(d) DISCIPLINARY ACTIONS- The Secretary may revoke the status of a consultant qualified under subsection (b), or the participation of an employer under subsection (b) in the third party consultation program, if the Secretary determines that the consultant or employer--

`(1) has failed to meet the requirements of the program; or

`(2) has committed malfeasance, gross negligence, collusion or fraud in connection with any consultation services provided by the qualified consultant.

`(e) PROGRAM REQUIREMENTS-

`(1) FULL SERVICE CONSULTATION- The consultation services described in subsection (b), and provided by a consultant qualified under the program under subsection (b)(1), shall include an evaluation of the workplace of an employer to determine if the employer is in compliance with the requirements of this Act, including any regulations promulgated pursuant to this Act. Employers electing to participate in such program shall contract with a

consultant qualified under subsection (b)(2) to perform a full service visit and consultation covering the employer's establishment, including a complete safety and health program review. Following the guidance as specified in this section, the consultant shall discuss with the employer the elements of an effective program.

`(2) CONSULTATION REPORT-

`(A) IN GENERAL- After a consultant conducts a comprehensive survey of an employer under a program under this section, the consultant shall prepare and submit to the employer a written report that includes an action plan identifying any violations of this Act, and any appropriate corrective measures to address the violations that are identified using an effective safety and health program.

`(B) ELEMENTS- A consultation report shall contain each of the following elements.

`(i) ACTION PLAN-

`(I) IN GENERAL- An action plan under subparagraph (A) shall be developed in consultation with the employer as part of the initial comprehensive survey. The consultant and the employer shall jointly use the onsite time in the initial visit to the employer's place of business to agree on the terms of the action plan and the time frames for achieving specific items.

`(II) REQUIREMENTS- The action plan shall outline

the specific steps that must be accomplished by the employer prior to receiving a certificate of compliance. The action plan shall address in detail--

`(aa) the employer's correction of all identified safety and health hazards, with applicable time frames;

`(bb) the steps necessary for the employer to implement an effective safety and health program, with applicable time frames; and

`(cc) a statement of the employer's commitment to work with the consultation project to achieve a certificate of compliance.

`(ii) SAFETY AND HEALTH PROGRAM- An employer electing to participate in a program under this section shall establish a safety and health program to manage workplace safety and health to reduce injuries, illnesses and fatalities that complies with paragraph (3). Such safety and health program shall be appropriate to the conditions of the workplace involved.

`(3) REQUIREMENTS FOR SAFETY AND HEALTH PROGRAM-

`(A) WRITTEN PROGRAM- An employer electing to participate shall maintain a written safety and health program that contains policies, procedures, and practices to recognize and protect their employees from occupational safety and health hazards. Such procedures shall include provisions for the identification, evaluation and prevention or control of workplace hazards.

`(B) MAJOR ELEMENTS- A safety and health program shall include the following elements, and may include other elements as necessary to the specific worksite involved and as determined appropriate by the qualified consultant and employer:

`(i) EMPLOYER COMMITMENT AND EMPLOYEE INVOLVEMENT-

• `(I) IN GENERAL- The existence of both management leadership and employee participation must be demonstrated in accordance with subclauses (II) and (III).

`(II) MANAGEMENT LEADERSHIP- To make a demonstration of management leadership under this subclause, the employer shall--

`(aa) set a clear worksite safety and health policy that employees can fully understand;

`(bb) set and communicate clear goals and objectives with the involvement of employees;

`(cc) provide essential safety and health leadership in tangible and recognizable ways;

`(dd) set positive safety and health examples; and

`(ee) perform comprehensive reviews of safety and health programs for quality assurance using a process which promotes continuous correction.

`(III) EMPLOYEE PARTICIPATION- With respect to employee participation, the employer shall demonstrate a commitment to working to develop a comprehensive, written and operational safety and health program that involves employees in significant ways that affect safety and health. In making such a demonstration, the employer shall--

`(aa) provide for employee participation in actively identifying and resolving safety and health issues in tangible ways that employees can clearly understand;

`(bb) assign safety and health responsibilities in such a way that employees can understand clearly what is expected of them;

`(cc) provide employees with the necessary authority and resources to meet their safety and health responsibilities; and

`(dd) provide that safety and health performance for managers, supervisors and employees be measured in tangible ways.

`(ii) WORKPLACE ANALYSIS- The employer, in consultation with the consultant, shall systematically identify and assess hazards in the following ways:

`(I) Conduct corrective action and regular expert surveys to update hazard inventories.

`(II) Have competent personnel review every planned or new facility, process material, or equipment.

`(III) Train all employees and supervisors, conduct routine joint inspections, and correct items identified.

`(IV) Establish a way for employees to report hazards and provide prompt responses to such reports.

`(V) Investigate worksite accidents and near accidents.

`(VI) Provide employees with the necessary information regarding incident trends, causes and means of prevention.

`(iii) HAZARD PREVENTION- The employer, in consultation with the consultant, shall--

`(I) engage in timely hazard control, working to ensure that hazard controls are fully in place and communicated to employees, with emphasis on engineering controls and enforcing safe work procedures;

`(II) maintain equipment using operators who are trained to recognize maintenance needs and perform or direct timely maintenance;

`(III) provide training on emergency planning and preparation, working to ensure that all personnel know immediately how to respond as a result of effective planning, training, and drills;

`(IV) equip facilities for emergencies with all systems and equipment in place and regularly tested so that all employees know how to communicate during emergencies and how to use equipment; and

`(V) provide for emergency medical situations using employees who are fully trained in emergency medicine.

`(iv) SAFETY AND HEALTH TRAINING- The employer, in consultation with the consultant, shall--

`(I) involve employees in hazard assessment, development and delivery of training;

`(II) actively involve supervisors in worksite analysis by empowering them to ensure physical protections, reinforce training, enforce discipline, and explain work procedures; and

`(III) provide training in safety and health management to managers.

`(4) REINSPECTION- At a time agreed to by the employer and the consultant, the consultant may reinspect the workplace of the employer to verify that the required elements in the consultation report have been satisfied. If such requirements have been satisfied, the employer shall be provided with a certificate of compliance for that workplace by the qualified consultant.

`(f) EXEMPTION FROM CIVIL PENALTIES FOR COMPLIANCE-

`(1) IN GENERAL- If an employer enters into a contract with an individual qualified under the program under this section, to provide consultation services described in subsection (b), and receives a certificate of compliance under subsection (e)(4), the employer shall be exempt from the assessment of any civil penalty under section 17 for a period of 1 year after the date on which the employer receives such certificate.

`(2) EXCEPTIONS- An employer shall not be exempt under paragraph (1)--

`(A) if the employer has not made a good faith effort to remain in compliance as required under the certificate of compliance; or

`(B) to the extent that there has been a fundamental change in the hazards of the workplace.

`(g) RIGHT TO INSPECT- Nothing in this section shall be construed to affect the rights of the Secretary to inspect and investigate worksites covered by a certificate of compliance.

`(h) RENEWAL REQUIREMENTS- An employer that is granted a certificate of compliance under this section may receive a 1 year renewal of the certificate if the following elements are satisfied:

`(1) A qualified consultant shall conduct a complete onsite safety and health survey to ensure that the safety and health program has been effectively maintained or improved, workplace hazards are under control, and elements of the safety and health program are operating effectively.

`(2) The consultant, in an onsite visit by the consultant, has determined that the program requirements have been complied with and the health and safety program has been operating effectively.

`(i) NON-FIXED WORK SITES- With respect to employer worksites that do not have a fixed location, a certificate of compliance shall only apply to that worksite which satisfies the criteria under this section and such certificate shall not be portable to any other worksite. This section shall not apply to service establishments that utilize essentially the same work equipment at each non-fixed worksite.'

SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COMMITTEE.

Section 7 of the Act (29 U.S.C. 656) is amended by adding at the end the following:

`(d)(1) Not later than 6 months after the date of enactment of this subsection, the Secretary shall establish an advisory committee (pursuant to the Federal Advisory Committee Act (5 U.S.C. App.)) to carry out the duties described in paragraph (3).

`(2) The advisory committee shall be composed of--

`(A) 3 members who are employees;

`(B) 3 members who are employers;

`(C) 2 members who are members of the general public; and

`(D) 1 member who is a State official from a State plan State.

Each member of the advisory committee shall have expertise in workplace safety and health as demonstrated by the educational background of the member.

`(3) The advisory committee shall advise and make recommendations to the Secretary with respect to the establishment and implementation of a consultation services program under section 8A.'

SEC. 5. CONTINUING EDUCATION AND PROFESSIONAL CERTIFICATION FOR CERTAIN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION PERSONNEL.

Section 8 of the Act (29 U.S.C. 657) is amended by adding at the end the following:

`(h) Any Federal employee responsible for enforcing this Act shall,

not later than 2 years after the date of enactment of this subsection or 2 years after the initial employment of the employee involved, meet the eligibility requirements prescribed under subsection (b)(2) of section 8A.

`(i) The Secretary shall ensure that any Federal employee responsible for enforcing this Act who carries out inspections or investigations under this section, receive professional education and training at least every 5 years as prescribed by the Secretary.'

SEC. 6. EXPANDED INSPECTION METHODS.

(a) PURPOSE- It is the purpose of this section to empower the Secretary of Labor to achieve increased employer compliance by using, at the Secretary's discretion, more efficient and effective means for conducting inspections.

(b) GENERAL- Section 8(f) of the Act (29 U.S.C. 657(f) is amended--

(1) by adding at the end the following:

`(3) The Secretary or an authorized representative of the Secretary may, as a method of investigating an alleged violation or danger under this subsection, attempt, if feasible, to contact an employer by telephone, facsimile, or other appropriate methods to determine whether--

`(A) the employer has taken corrective actions with respect to the alleged violation or danger; or

`(B) there are reasonable grounds to believe that a hazard exists.

`(4) The Secretary is not required to conduct an inspection under this subsection if the Secretary determines that a request for an inspection was made for reasons other than the safety and health of the employees of an employer or that the employees of an employer are not at risk.'

SEC. 7. WORKSITE-SPECIFIC COMPLIANCE METHODS.

Section 9 of the Act (29 U.S.C. 658) is amended by adding at the end the following:

`(d) A citation issued under subsection (a) to an employer who violates section 5, any standard, rule, or order promulgated pursuant to section 6, or any other regulation promulgated under this Act shall be vacated if such employer demonstrates that the employees of such employer were protected by alternative methods that are equally or more protective of the safety and health of the employees than the methods required by such standard, rule, order, or regulation in the factual circumstances underlying the citation.

`(e) Subsection (d) shall not be construed to eliminate or modify other defenses that may exist to any citation.'

SEC. 8. TECHNICAL ASSISTANCE PROGRAM.

(a) IN GENERAL- Section 21(c) of the Act (29 U.S.C. 670(c)) is amended--

- (1) by striking '(c) The' and inserting '(c) (1) The';
- (2) by striking '(1) provide' and inserting '(A) provide';
- (3) by striking '(2) consult' and inserting '(B) consult'; and
- (4) by adding at the end the following:

(2)(A) The Secretary shall, through the authority granted under section 7(c) and paragraph (1), enter into cooperative agreements with States for the provision of consultation services by such States to employers concerning the provision of safe and healthful working conditions.

(B)(i) Except as provided in clause (ii), the Secretary shall reimburse a State that enters into a cooperative agreement under subparagraph (A) in an amount that equals 90 percent of the costs incurred by the State for the provision of consultation services under such agreement.

(ii) A State shall be reimbursed by the Secretary for 90 percent of the costs incurred by the State for the provision of--

(I) training approved by the Secretary for State personnel operating under a cooperative agreement; and

(II) specified out-of-State travel expenses incurred by such personnel.

(iii) A reimbursement paid to a State under this subparagraph shall be limited to costs incurred by such State for the provision of consultation services under this paragraph and the costs described in clause (ii).

(b) PILOT PROGRAM- Section 21 of the Act (29 U.S.C. 670) is amended by adding at the end the following:

(d)(1) Not later than 90 days after the date of enactment of this subsection, the Secretary shall establish and carry out a pilot program in 3 States to provide expedited consultation services, with respect to the provision of safe and healthful working conditions, to employers that are small businesses (as the term is defined by the Administrator of the Small Business Administration). The Secretary shall carry out the program for a period of not to exceed 2 years.

(2) The Secretary shall provide consultation services under paragraph (1) not later than 4 weeks after the date on which the Secretary receives a request from an employer.

(3) The Secretary may impose a nominal fee to an employer requesting consultation services under paragraph (1). The fee shall be in an amount determined by the Secretary. Employers paying a fee shall receive priority consultation services by the Secretary.

(4) In lieu of issuing a citation under section 9 to an employer for a violation found by the Secretary during a consultation under paragraph (1), the Secretary shall permit the employer to carry out corrective measures to correct the conditions causing the violation. The Secretary shall conduct not more than 2 visits to the workplace of

the employer to determine if the employer has carried out the corrective measures. The Secretary shall issue a citation as prescribed under section 5 if, after such visits, the employer has failed to carry out the corrective measures.

(5) Not later than 90 days after the termination of the program under paragraph (1), the Secretary shall prepare and submit a report to the appropriate committees of Congress that contains an evaluation of the implementation of the pilot program.'.

SEC. 9. VOLUNTARY PROTECTION PROGRAMS.

(a) COOPERATIVE AGREEMENTS- The Secretary of Labor shall establish cooperative agreements with employers to encourage the establishment of comprehensive safety and health management systems that include--

(1) requirements for systematic assessment of hazards;

(2) comprehensive hazard prevention, mitigation, and control programs;

(3) active and meaningful management and employee participation in the voluntary program described in subsection (b); and

(4) employee safety and health training.

(b) VOLUNTARY PROTECTION PROGRAM-

(1) IN GENERAL- The Secretary of Labor shall establish and carry out a voluntary protection program (consistent with subsection (a)) to encourage and recognize the achievement of excellence in both the technical and managerial protection of employees from occupational hazards.

(2) PROGRAM REQUIREMENT- The voluntary protection program shall include the following:

(A) APPLICATION- Employers who volunteer under the program shall be required to submit an application to the Secretary of Labor demonstrating that the worksite with respect to which the application is made meets such requirements as the Secretary of Labor may require for participation in the program.

(B) ONSITE EVALUATIONS- There shall be onsite evaluations by representatives of the Secretary of Labor to ensure a high level of protection of employees. The onsite visits shall not result in enforcement of citations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(C) INFORMATION- Employers who are approved by the Secretary of Labor for participation in the program shall assure the Secretary of Labor that information about the safety and health program of the employers shall be made readily available to the Secretary of Labor to share with employees.

(D) REEVALUATIONS- Periodic reevaluations by the Secretary of Labor of the employers shall be required for continued participation in the program.

(3) EXEMPTIONS- A site with respect to which a program has been approved shall, during participation in the program be exempt from inspections or investigations and certain paperwork requirements to be determined by the Secretary of Labor, except that this paragraph shall not apply to inspections or investigations arising from employee complaints, fatalities, catastrophes, or significant toxic releases.

(4) INCREASED SMALL BUSINESS PARTICIPATION- The Secretary of Labor shall establish and implement, by regulation, a program to increase participation by small businesses (as the term is defined by the Administrator of the Small Business Administration) in the voluntary protection program through outreach and assistance initiatives and developing program requirements that address the needs of small businesses.

SEC. 10. PREVENTION OF ALCOHOL AND SUBSTANCE ABUSE.

The Act (29 U.S.C. 651 et seq.) is amended by adding at the end the following:

SEC. 35. ALCOHOL AND SUBSTANCE ABUSE TESTING.

(a) PROGRAM PURPOSE- In order to secure a safe workplace, employers may establish and carry out an alcohol and substance abuse testing program in accordance with subsection (b).

(b) FEDERAL GUIDELINES-

(1) REQUIREMENTS- An alcohol and substance abuse testing program described in subsection (a) shall meet the following requirements:

(A) SUBSTANCE ABUSE- A substance abuse testing program shall permit the use of an onsite or offsite testing.

(B) ALCOHOL- The alcohol testing component of the program shall take the form of alcohol breath analysis and shall conform to any guidelines developed by the Secretary of Transportation for alcohol testing of mass transit employees under the Department of Transportation and Related Agencies Appropriations Act, 1992.

(2) DEFINITION- For purposes of this section the term 'alcohol and substance abuse testing program' means any program under which test procedures are used to take an analyze blood, breath, hair, urine, saliva, or other body fluids or materials for the purpose of detecting the presence or absence

of alcohol or a drug or its metabolites. In the case of urine testing, the confirmation tests must be performed in accordance with the mandatory guidelines for Federal workplace testing programs published by the Secretary of Health and Human Services on April 11, 1988, at section 11979 of title 53, Code of Federal Regulations (including any amendments to such guidelines). Proper laboratory protocols and procedures shall be used to assure accuracy and fairness and laboratories must be subject to the requirements of subpart B of the mandatory guidelines, State certification, the Clinical Laboratory Improvements Act of the College of American Pathologists.

`(c) TEST REQUIREMENTS- This section shall not be construed to prohibit an employer from requiring--

`(1) an applicant for employment to submit to and pass an alcohol or substance abuse test before employment by the employer; or

`(2) an employee, including managerial personnel, to submit to and pass an alcohol or substance abuse test--

`(A) on a for-cause basis or where the employer has reasonable suspicion to believe that such employee is using or is under the influence of alcohol or a controlled substance;

`(B) where such test is administered as part of a scheduled medical examination;

`(C) in the case of an accident or incident, involving the actual or potential loss of human life, bodily injury, or property damage;

`(D) during the participation of an employee in an alcohol or substance abuse treatment program, and for a reasonable period of time (not to exceed 5 years) after the conclusion of such program; or

`(E) on a random selection basis in work units, locations, or facilities.

`(d) CONSTRUCTION- Nothing in this section shall be construed to require an employer to establish an alcohol and substance abuse testing program for applicants or employees or make employment decisions based on such test results.

`(e) PREEMPTION- The provisions of this section shall not preempt any provision of State law to the extent that such State law is inconsistent with this section.

`(f) INVESTIGATIONS- The Secretary is authorized to conduct testing of employees (including managerial personnel) of an employer for use of alcohol or controlled substances during any investigations of a work-related fatality or serious injury.'.

SEC. 11. DISCRETIONARY COMPLIANCE ASSISTANCE.

Subsection (a) of section 9 of the Act (29 U.S.C. 658(a)) is amended to read as follows:

`(a)(1) Nothing in this Act shall be construed as prohibiting the Secretary or the authorized representative of the Secretary from providing technical or compliance assistance to an employer in correcting a violation discovered during an inspection or investigation under this Act without issuing a citation.

`(2) Except as provided in paragraph (3), if, upon an inspection or investigation, the Secretary or an authorized representative of the Secretary believes that an employer has violated a requirement of section 5, of any regulation, rule, or order promulgated pursuant to section 6, or of any regulations prescribed pursuant to this Act, the

Secretary may with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of a violation, including a reference to the provision of the Act, regulation, rule, or order alleged to have been violated. The citation shall fix a reasonable time for the abatement of the violation.

`(3) The Secretary or the authorized representative of the Secretary--

`(A) may issue a warning in lieu of a citation with respect to a violation that has no significant relationship to employee safety or health; and

`(B) may issue a warning in lieu of a citation in cases in which an employer in good faith acts promptly to abate a violation if the violation is not a willful or repeated violation.'.

END

===== END ATTACHMENT 2 =====

**STATEMENT OF CHARLES N. JEFFRESS
ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH
U.S. DEPARTMENT OF LABOR
BEFORE
THE SUBCOMMITTEE ON EMPLOYMENT, SAFETY AND TRAINING
HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE
UNITED STATES SENATE**

March 4, 1999

Mr. Chairman, Members of the Subcommittee, thank you for inviting me to testify about S. 385, the SAFE Act, a proposal to amend the Occupational Safety and Health Act of 1970. I appreciate the opportunity to express OSHA's views on this bill. I would also like to take this opportunity to express my appreciation to you, Mr. Chairman, for your efforts to find common ground on these important issues. Although you have modified your proposal, the Department remains unable to support your bill.

OSHA Works

OSHA's core mission is to ensure a safe and healthy workplace for every working man and woman in the Nation. We are most pleased by the latest occupational injury and illness statistics. For the fifth consecutive year the rate of injuries and illness declined. In fact, the rate for 1997 was the lowest since the Bureau of Labor Statistics (BLS) began reporting this information in the early 1970s. The improvement is particularly impressive in a booming economy when many new and inexperienced workers are coming into the workforce. Historically, new employees have been more likely to get hurt on the job than more experienced workers. Much of the credit for the improvement can be attributed to millions of employers and employees working every day to eliminate on-the-job hazards. I am proud that OSHA has been

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a catalyst to help these private sector efforts, using results-driven enforcement efforts, compliance assistance and standard setting to bring about workplace improvements.

Many challenges remain, but this message is clear. The New OSHA works. In the 4 years since President Clinton announced the "New OSHA" initiative, which combines targeted enforcement with partnerships and compliance assistance, we have developed a broad range of successful partnership programs. The New OSHA is doing more to promote cooperative partnership efforts between employers, workers and government.

OSHA joined with industry last November to hold a partnership conference celebrating the positive impact strategic partnerships, the Safety and Health Achievement Recognition Program (SHARP) and the Voluntary Protection Program (VPP) have on protecting employees and lowering workers' compensation costs for employers. In one success highlighted during the conference, OSHA worked with the Steel Erectors' Safety Association of Colorado (SESAC) to change a historically adversarial relationship into an effective partnership. According to the president of Ridge Erectors, a SESAC participant, the partnership has "effectively taken an adversarial position that's been historic between business and OSHA and turned it into a partnership agreement where we work together to enhance education and we work together to provide a safe workplace." Many of the SESAC members have reduced injuries and illnesses at their workplaces and have lowered their workers' compensation costs. Calcon Constructors, for example, reduced their workers' compensation rate by almost two-thirds (saving sixty-three cents on every dollar in workers' compensation costs) as a result of its partnership with OSHA.

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Another successful partnership is happening in Port Arthur, Texas where the Huntsman Petrochemical Aromatics and Olefins Plant is a member of OSHA's Voluntary Protection Programs (VPP). Workers at this site have repeatedly credited VPP participation as one vital factor contributing to improved management and employee relations. The plant's current three-year injury incidence rate is 74 percent below the industry average and its lost workday rate is 99 percent below average.

Many companies are commenting that their impression of OSHA has changed. In one example, an employer in OSHA's Maine 200 program said, "When I have a question for OSHA, I'll call them." He said that when other agencies call him, "I'll call my lawyers first[.]" Similarly, in New Jersey, the head of Barnard Construction said, "I think OSHA is trying to get on a path of not just knocking people out of business, but educating them." He went on to add, "Their attitude has definitely changed." Comments like these demonstrate OSHA is making progress.

In addition to partnership efforts, OSHA is making enforcement programs smarter and fairer by spending more time at the most hazardous workplaces and less time at safer ones. OSHA is using BLS data to identify industries with the highest injury and illness rates and is using information gathered from our own Data Initiative to target inspections at specific workplaces. In doing so, we have been able to discover serious violators in less time. At the same time, employers whose attention to safety has already paid off in the form of lower injury and illness rates are less likely to see an OSHA inspector.

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Over the past several years, we also have measured results, where possible, not by numbers of citations or penalties, but by real improvements in the lives of working people, such as reduced injury and illness rates. The five-year decline in injury and illness rates is evidence that this combination of approaches is working.

Finally, OSHA has redoubled its commitment to small business. Immediately after I leave this hearing, I will be participating in a forum that OSHA is holding, entitled "OSHA and Small Business: New Ways of Working." The forum will showcase information and services available to help small businesses improve workplace safety and health. The program will involve a half-day seminar and a question-and-answer session with a panel of OSHA senior staff. We will cover several topics, including how small businesses can receive compliance assistance and technical advice, the role of the Small Business Regulatory Enforcement and Fairness Act, and partnership opportunities.

The SAFE Act

Mr. Chairman, while I appreciate your cooperative spirit and hope that we can continue to work together to improve worker safety and health, OSHA cannot support the legislation before the Subcommittee today. Last year, the Department stated its intent to recommend a veto if the SAFE Act passed the Congress. Despite the changes that have been made since then, we believe the new SAFE Act, if enacted, would undermine the agency's ability to protect workers. Consequently, if S. 385 were passed, as written, the Department would recommend a veto.

Third Party Consultation

S. 385 would establish a new system for OSHA to certify private-sector, for-profit, third party consultants. Consultants would contract with employers and provide them with a certificate that would exempt them from OSHA civil penalties for one year.

OSHA opposes the third party consultation provision. First, OSHA strongly disagrees with the opinions stated in the new "Purpose" section, which we believe are wholly inappropriate and inaccurate. Second, the provision creates conflict-of-interest and accountability problems. Finally, we are concerned that employers could, in effect, negotiate compliance agreements that fail to meet the requirements of the OSH Act.

Purpose

The seemingly innocuous "Purpose" section of the third party consultation provision could cripple the agency. This section would codify the erroneous opinion that employers are incapable of compliance with OSHA regulations and that OSHA is unable to enforce them. Some employers would attempt to use this provision to avoid compliance. While we strongly agree that employee safety and health are "of paramount concern," subsections two and three of this section would undermine that spirit.

Conflicts of Interest

Private safety and health consultants provide an important service and OSHA encourages employers to use them as a valuable resource. OSHA also provides free consultation for small

businesses in each of the fifty states, the District of Columbia and three territories. However, there are significant differences between employers using consultants voluntarily to self-inspect and using them to purchase immunity from OSHA penalties. While OSHA encourages employers to make use of non-OSHA consultants, the private sector is driven by the market, not a mandate to protect employee safety and health. Therefore, the program would be vulnerable to conflict of interest and accountability problems.

The third party consultation provision creates a powerful incentive for consultants to please employers in order to create and maintain business. The consultant's business interest in conducting inspections and granting penalty exemptions could place him or her at odds with the interests of employee safety and health. This tension could ultimately cast doubt on the legitimacy of the exemptions the consultant grants. The consultant would feel pressured to sell penalty exemptions without rigorously inspecting workplaces in order to create business. Likewise, employers may feel obligated to purchase unnecessary services in order to curry favor with the consultant.

Accountability

The bill provides OSHA with little recourse against consultants whose improper certifications put workers at risk. Under this provision, the only option OSHA would have for dealing with consultants who commit fraud, collusion, malfeasance or gross negligence would be to expel them from the program. Such serious offences warrant more than mere removal from the program. Worse yet, OSHA would have no meaningful recourse against a consultant who was

overly generous in granting penalty exemptions due to incompetence or negligence. Even though workers would continue to be exposed to hazards in the workplace, the consultant could continue to grant exemptions and the certificates of compliance he or she issued would still stand. If, on the other hand, OSHA finds that one of its compliance officers is not performing to our standards, we have the ability to correct the situation. The disciplinary provisions of this program are simply insufficient to redress the harm consultants could inflict on thousands of working Americans.

Employer- Negotiated Compliance

Section 3 would allow an employer whose workplace was found to have safety and health hazards to negotiate compliance efforts and requirements with the consultant. The provision requires that the employer and consultant agree to the terms and timeframes of the Action Plan. Agreements necessitate compromise. It is entirely possible that, under the language of this legislation, an employer and consultant would agree to an Action Plan in which the employer is not required to come into full compliance with the OSH Act for many years. For example, an employer and consultant may compromise on how quickly a guardrail must be fixed although employees would remain exposed to a significant fall hazard in the meantime. OSHA cannot support legislation that would allow an employer to avoid compliance and endanger workers.

Safety and Health Programs

OSHA is pleased that the new bill emphasizes the importance of safety and health programs by including many elements of OSHA's SHARP program. However, this change does not

overcome OSHA's significant objections to the third party consultation provision.

The bill encourages employers to use third party consultants by offering them a one-year moratorium on penalties for violations of the law. We strongly disagree with this approach. If employers, acting in good faith, engage qualified consultants and correct all of the violations the consultants find, they should have no reason to be concerned about penalties and fines. A penalty waiver will be an incentive only to an employer who does not intend to put an effective safety program in place and who does not intend to correct all violations. The SHARP program, on which section 3 is modeled, does not offer a penalty waiver. Rather, in recognition of the fact that the participating employer has received significant attention from OSHA, SHARP provides for a one-year exemption from programmed inspections. If, however, OSHA is called in for a complaint or fatality investigation and discovers uncorrected violations, the SHARP employer will be subject to citation and penalties. I believe that employers will be less likely to comply with the law if we tell them in advance that they may violate the law without fear of a penalty. In addition, the proposal in S. 385 would allow a company with an injury and illness rate twice the average for its industry to receive a certificate of compliance and the resulting penalty exemption.

I would like to take this opportunity to highlight several of OSHA's other concerns with the SAFE Act. I will limit my comments to a few provisions that I find particularly troubling. Among these are the technical assistance, worksite-specific compliance, and discretionary

compliance assistance provisions. My limited discussion of these few provisions of the bill, should not be taken to imply that OSHA supports the remainder of the bill. But in the interest of time, I will forgo commenting on those issues in my testimony. The Department's comprehensive analysis of the bill is attached to my testimony.

Technical Assistance

Section 8 would amend the recently enacted provisions that govern OSHA's consultation program. Just months ago, OSHA supported enactment of H.R. 2864, a bipartisan bill sponsored by Congressman Cass Ballenger of North Carolina, that codified OSHA's consultation program with enhanced employee protections. We are proud that our cooperative efforts added OSHA consultation to the Act. We believe that no amendments to the new law are needed at this time. The fee-for-service element of S. 385 would give priority to those who can afford to pay for consultation, not those who need it most. Consultation is and should remain prioritized for small, high-hazard employers, not for large, wealthy ones.

Worksite-Specific Compliance

Section 7 would require citations to be vacated if the employer can prove that its employees were protected "by equally or more protective" means than those required by OSHA standards. This new employer defense could turn every enforcement action into a time-consuming standards litigation effort, imposing substantial burdens on agency resources and the court system. OSHA standards would become mere guidelines open for debate whenever an employer wants to contest

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OSHA standards, and routine enforcement cases would be turned into exercises in rulemaking. For this and other reasons, courts have held repeatedly that employers must comply with OSHA standards in the manner specified in the standards. As the United States Court of Appeals for the Eleventh Circuit has noted, "An employer must follow the law even if it has a good faith belief that its own policy is wiser."

Discretionary Compliance Assistance

Section 11 would allow OSHA to issue warnings in lieu of citations, even for violations that have killed employees, as long as the employer agrees to abate the violation promptly. This section is unnecessary and could lead to reductions in employer compliance with the law. OSHA already has the discretion to decline to issue citations in appropriate circumstances. For example, OSHA has used this discretion to establish programs such as Maine 200. In addition, OSHA has created a "quick fix" policy in which a compliance officer does not issue citations where the employer immediately abates a hazard that was not likely to cause harm to an employee.

This provision sends a message that employers need not necessarily concern themselves with potential OSHA fines for violating its law. If employers believe that OSHA's enforcement ability is weakened, they will be less likely to comply with OSHA standards. Further, if employers believe they get one free pass before receiving a penalty, many could be lulled into complacency regarding safety and health requirements until finally being inspected. This provision is particularly troubling because it could actually influence employers not to remain in compliance with the OSH Act.

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When I evaluate legislative proposals to amend the OSH Act, my first question is always the same: will the change tend to make workers safer and healthier? There is no doubt in my mind that a provision that removes an important incentive for employers to comply with the law fails that simple test.

Mr. Chairman, I believe you have made a good faith effort to improve upon last year's version of the SAFE Act by eliminating certain controversial provisions. Unfortunately, the remaining provisions continue to raise serious concerns that would necessitate a veto recommendation by the Secretary of Labor.

Protecting Workers *Better*

Mr. Chairman, there are a variety of ways to strengthen the protection provided to workers under the OSH Act. We would, for example, support legislation that strengthens the whistleblower protection of the OSH Act. It is fundamental that workers must feel free to inform their employer or the government when dangerous working conditions threaten their life or safety. There is a good deal of evidence, however, that many employees do not feel free to complain about unsafe conditions and that too many employers feel they can retaliate against whistleblowers with impunity. The provisions in place today in section 11(c) of the Act are too weak and too cumbersome to discourage employer retaliation or to provide an effective remedy for the victims of retaliation. A recent report by the Inspector General of the Department of

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Labor found that “whistleblowers” frequently face retaliation for exposing unsafe or unhealthy working conditions. A nurse at Skyline Terrace Nursing Home, for example, complained about the home’s lack of gloves, which are required to protect employees from bloodborne pathogens. Four days after an inspection, she was fired in retaliation for the complaint. Another company, Hahner, Foreman & Harness, Inc., fired an employee for refusing to go up in a gondola three or four stories above the ground. The gondola had been malfunctioning and the employee believed it to be unsafe. When the employee refused to risk his safety, his superintendent instructed him that if he did not go back up into the malfunctioning gondola, somebody else would. He was fired for his refusal. If you wish to strengthen the safety and health protection available to workers, I suggest this as a place to begin.

In 1993, the North Carolina legislature, in a comprehensive review of our State plan following the Hamlet fire, took several steps that greatly strengthened whistleblower protection. The changes included a longer statute of limitations, a private right of action and a provision for treble damages. I believe these changes have played an important part in the progress North Carolina has made in reducing injury, illness and fatality rates over the last five years.

A second area this Subcommittee may want to consider is protections for public employees. The OSH Act currently does not effectively protect Federal employees and, in states that do not operate an OSHA-approved State plan, does not protect state and local employees (maintenance workers, construction workers, firefighters, etc.). Consequently, with the exception of the 25 states that actively provide public sector coverage under State OSHA programs, OSHA has little

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ability to require positive change on the part of public employers. As a consequence, this limited authority hinders OSHA's success in reducing illness, injuries and fatalities on the job. Congress last year enacted legislation supported by the Chairman and the Administration to subject the U.S. Postal Service to OSHA penalties. Experience with this new requirement has shown that future action in expanding OSHA protections is not only feasible but advisable.

There are numerous examples of on-the-job tragedies that occurred primarily because safety and health protections do not apply to public employees. These tragedies could have been prevented by compliance with OSHA rules. In addition, studies have shown that the overall cost of providing OSH Act coverage for these employees is small, especially compared with the amount of money which would be saved by reducing the cost of worker injuries.

Finally, the Subcommittee should increase the criminal penalty for an employer whose willful conduct causes the death of an employee. We would urge that these violations not be classified as misdemeanors, but felonies, which carry with them the possibility of incarceration for periods in excess of one year. Classifying willful workplace safety and health violations that lead to an employee's death as misdemeanors is woefully inadequate to address the harm caused. Classifying such crimes as felonies would more justly reflect the severity of the offense.

Conclusion

While OSHA appreciates the Chairman's attempts to improve this bill, those attempts have not

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overcome OSHA's opposition to the SAFE Act. By diminishing OSHA's enforcement authority, the bill weakens worker safety and health. We believe the Subcommittee's efforts would be better directed toward efforts on which a consensus is possible. Such discussion can most effectively help achieve our mandated goal of safer and healthier workplaces.

Attachment

Section 3. Third Party Consultation Services Program

Section 3 requires the Secretary to establish a program to “qualify” individuals who could then serve as consultants to employers to assist them in identifying and correcting safety and health hazards in their workplaces. An employer who contracted and received such services and who was declared by the consultant, after the initial visit to the workplace, agreement on an Action Plan, and a possible follow-up “reinspection” visit, to be in compliance with the Act, would be exempt from any assessment of a civil penalty under the Act for a period of one year, with certain limited exceptions.

The Department of Labor strongly opposes this section. While the proposal presents numerous problems, the Department is most concerned about the one-year exemption that the bill would provide from civil penalties for violations of the OSH Act.

The incentives created by coupling the third party consultation provision with a penalty exemption leave the program extremely vulnerable to conflict-of-interest and accountability problems. At the most obvious level, a consultant paid by an employer would be likely to feel pressured to approve the employer’s program or to fail to recommend costly engineering controls even when they were necessary to prevent an injury or illness. Likewise, businesses may feel obligated to purchase unnecessary services proposed to them by their consultant in order to ensure being granted a certificate of compliance. In addition, the provision permitting employers and consultants to agree upon the terms of the Action Plan would invite abuses that could result in seriously delayed abatement, if abatement is agreed to at all. Further, there is no provision in the bill that would prevent an employer from utilizing one of its own employees, or a former employee, to provide consulting services. Though this is no doubt not the intent of the bill’s authors, section 3 would in effect enable employers to “purchase” immunity from OSHA inspections and penalties.

Reliance on the private sector for in-compliance declarations, coupled with exemptions from the possibility of an OSHA inspection with penalties for employers who receive such declarations, would leave the agency without sufficient recourse if an inspection is necessary within the exemption period. For example, even if conditions in a certified workplace had undergone major change during the exemption period, a penalty could only be levied if OSHA could demonstrate the occurrence of a “fundamental change in the hazards” of the workplace or that the employer had not made a good faith effort to remain in compliance. The only large-scale study to date that correlates worksite injury data with worksite inspection history over time has shown that inspections in which penalties are assessed result in a significant reduction in injuries at the inspected site for three years following the inspection, and that inspections without penalties have no appreciable impact (Wayne Gray and John Scholz, “Does Regulatory Enforcement Work? A Panel Analysis of OSHA Enforcement,” *Law and Society Review*, pages 177-213 (July 1993)).

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The new version of the SAFE Act has been modified to include a safety and health program component. This is a positive addition to the bill, but does not cure flaws inherent in the third party consultation proposal. OSHA's Safety and Health Achievement Recognition Program (SHARP), part of OSHA's consultation program, exempts employers from a *programmed inspection* only after the employer requests and receives a full-service consultation visit, and works with the consultation program for a period of at least a year from the date of the initial visit to correct and abate all hazards, implement a fully effective worksite safety and health program and lower the lost workday and accident rates to a level at or below the national average for their industry. Unlike S.1237 in the 105th Congress, S. 385 incorporates a requirement for employers to implement a safety and health program before they can receive a certificate of compliance. However, unlike OSHA's SHARP program, there is no guarantee that all hazards will be abated before a certificate is granted. In addition, the ability of private, for-profit consultants to provide *penalty* exemptions, rather than the exemptions from programmed inspections that the SHARP program provides, gives those private, for-profit consultants power well beyond any power granted to an OSHA compliance officer or a state consultant. SHARP companies never receive blanket exemptions from penalties. Finally, under the SHARP program, OSHA has the final say over whether companies should receive SHARP recognition. This system provides an additional check to ensure that a workplace is safe and has an effective safety and health program before it becomes exempt from a *programmed inspection*.

The Department remains concerned that the bill is completely silent about a consultant's obligations when an employer is found NOT to be in compliance. This means that the consultant then has the option of refusing to provide a declaration, which leaves the employer free to seek out another consultant. While the bill now requires the consultant to identify violations of the OSH Act and possible corrective measures, there is still no clear requirement that employers abate the identified hazards or that consultants report to OSHA in the event of an employer's refusal to abate. Moreover, because reinspections are not necessarily required, there is no way for the consultant, employees or OSHA to verify either abatement or whether the elements of an effective safety and health program have been fully implemented.

The Department is concerned that the bill could allow an employer to receive a certificate of compliance even if it has not yet completed the process of hazard abatement. This would allow an employer that is out of compliance with the law to be declared in compliance. The problem is further compounded because an employer with a certificate of compliance who has not yet abated hazards identified in the written plan could not be penalized by OSHA for one year. Finally, unlike OSHA's abatement verification rule, the employer would not have to "inform affected employees and their representatives about abatement activities" the employer had promised to undertake. Elimination of a mandatory reinspection requirement augments this problem. Without reinspection, an employer could obtain a certificate without having to show that it has abated a single hazard. In the event that a reinspection does actually occur, there is no provision for further action if the employer has not satisfied all the elements in the consultation report.

In addition, relying on the private sector for such certifications, while at the same time exempting the employer's worksite from the possibility of a penalty, would deprive the agency of sufficient "quality control" over both certifications and the safety and health audits performed by federally sanctioned, certified individuals. The only oversight granted to OSHA under this bill is meaningless. The bill requires OSHA to maintain a registry of safety and health consultants it deems qualified, but hamstring the agency in the event problems occur. In addition, maintaining a registry would place a substantial burden on the agency's already limited resources. Those resources should be targeted toward making workplaces and workers safer, not toward policing a new army of consultants.

These problems are compounded because the disciplinary action anticipated by this legislation is insufficient to redress or deter the abuses for which S.385 creates an incentive. Removal of a consultant from participation in the program is simply not enough to prevent or punish abuses such as fraud or collusion. Further, the circumstances under which an employer or consultant could be disciplined are so limited that the bill would permit a consultant to continue to participate where injuries and illnesses continue to occur as a result of incompetence or simple negligence. In addition, it appears that a consultant's failure to identify a hazard would exempt the employer from penalties for that hazard.

Further compounding these problems is the bill's failure to clearly identify the minimal qualifications for a consultant. For example, section 8A(b)(2)(A) identifies practitioners of certain state-licensed occupations as "eligible to be qualified" as consultants, but neglects others and does not specify what experience in hazard identification and occupational safety and health eligible consultants must have. OSHA is further concerned that this provision may create an unfunded mandate for states to create licensing programs for safety and health professionals.

The Department is unaware of any concrete evidence that a third party certification program would be successful. At the outset of this Administration, the idea of third-party audits was raised at a meeting of OSHA's stakeholders, where it met with little enthusiasm from either labor or business representatives. More recently, a State of North Carolina survey demonstrated a resounding preference on the part of employers for an OSHA consultant over a private consultant. Cost, as well as suspicion that the private consultant might attempt to sell an employer unnecessary services, were among the reasons given in support of OSHA consultants.

Finally, the Department is compelled to object to the new "purpose" that has been added to this section. The new "purpose" statement would codify the erroneous opinion that all employers are unable to read, understand and comply with the OSH Act. It would further codify the opinion that OSHA is unable to satisfy the compliance needs of each employer and employee within its jurisdiction. The addition of such sentiments to the OSH Act is, at best, inappropriate.

Section 4. Establishment of Special Advisory Committee

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Section 4 would require the Secretary to establish a new advisory committee consisting of employees, employers, members of the general public, and an official from a state plan state. The committee would advise and make recommendations to the Secretary concerning the establishment and implementation of third-party consultation services programs under section 8A of the bill.

Section 7(a) of the current statute establishes the National Advisory Committee on Occupational Safety and Health (NACOSH), which exists to make recommendations on matters relating to the administration of the current Act. Mandating the establishment of a new advisory committee dealing with the new consultation program in section 8A of the bill would duplicate part of the existing jurisdiction of NACOSH and, as such, would be redundant and not in keeping with the concept of reinvention and streamlining. In the event the Secretary needs to consult with experts on the specifics of consultation programs, Sections 7(c)(1) and (2) of the OSH Act now give the Secretary broad powers to hire consultants and experts, and to utilize the services of experts from other federal agencies and states. If the Secretary wishes to obtain advice through the instrumentality of an advisory committee, she may establish such a committee pursuant to the requirements of the Federal Advisory Committee Act.

Section 5. Continuing Education and Professional Certification for Certain Occupational Safety and Health Administration Personnel

Section 5 requires Federal employees who enforce the Act to meet the eligibility requirements established under new section 8A(a)(2) for third-party consultants. In addition, these employees must receive professional education and training every five years.

OSHA agrees that effective training of enforcement personnel is vitally important. OSHA and the State Plans conduct a wide range of training programs to ensure that compliance officers conduct fair and effective investigations.

The OSH Act is not industry-specific; it applies to a wide variety of workplaces throughout the nation. Therefore, it has been OSHA's experience that individuals with broad professional backgrounds become the best inspectors. During their first three years of employment, new Compliance Safety and Health Officers (CSHOs) are teamed with experienced inspectors and are given over 250 hours of training on investigative techniques at the OSHA Training Institute (OTI) in Des Plaines, Illinois. Additional training is mandatory for experienced CSHOs at least once every three years. Finally, whenever new standards are promulgated, OTI offers specialized training in these standards.

As this discussion illustrates, OSHA does train and educate its employees, but not in a manner that matches the bill's inflexible requirements. We are concerned that the bill is unclear about which employees would be required to receive this training. For example, would the agency's attorneys be considered "responsible for enforcing this Act"? We are further concerned about

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the cost of providing the required training.

Finally, we note that the bill contains no specific training requirements for the consultants for the program created under section 5, whose inspections and reports may result in employer exemptions from civil monetary penalties.

Section 6. Expanded Inspection Methods

Section 6 of the bill would allow OSHA to investigate an alleged violation or danger by telephone or facsimile. The bill also states that OSHA is not required to conduct complaint inspections if “a request for inspection was made for reasons other than the safety and health of the employees of an employer” or if OSHA determines that workers are not at risk.

OSHA has two major concerns about this section. First, although investigation of complaints by telephone, facsimile and other similar methods is desirable in many situations, these methods should not replace a worker’s fundamental right to an inspection. In the past two years, OSHA has reduced the time from the filing of a complaint to abatement of hazards by using telephone and facsimile methods for investigating *informal* complaints. In addition, several offices have experimented with these methods for investigating *formal* worker complaints, but only where the complaining worker agrees. However, these methods should not be allowed to interfere where a worker seeks to exercise his or her statutory right to an inspection.

Second, section 6 would allow OSHA to forgo a complaint inspection if it determines that the complaint was made for reasons other than safety and health -- even if the information provided by the complainant suggests that the workers in question may be substantial risk. Again, the agency’s determination as to whether to inspect following a formal complaint should be based on the likelihood that workers are at risk -- not on the motivation of the complainant. Where workers face substantial hazards, OSHA should act -- and is compelled by statute to act -- to protect them. Moreover, it would be very difficult for OSHA to determine the complainant’s motivation. This exercise would consume scarce agency resources and delay inspections. Ultimately, the agency should continue to inspect where it has reasonable cause to believe that workers are at risk.

Section 7. Worksite-Specific Compliance Methods

Section 7 would create an entirely new statutory defense to an OSHA citation, based on an employer's demonstration that employees were protected by alternate methods equally or more protective than those required by the standard the employer violated.

The OSH Review Commission and the courts have held repeatedly that when OSHA's standards require employers to adopt specific precautions for protecting employees, employers must comply in the manner specified. Under current law, employers have the right to select

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alternative means of compliance when literal compliance is impossible or would pose a greater hazard to employees. In "greater hazard" cases, the Commission requires an employer to show that a variance has either been sought or would be inappropriate.

Under these rules, the contest rate has remained relatively low; less than ten percent of all citations are currently contested. Under this provision of S. 1237, however, virtually every employer cited for violations of the OSH Act or OSHA standards could claim that an alternative means of compliance was as effective as the standard in question. In effect, standards would become guidelines, subject to challenge -- and potential waiver -- in every individual contested case. This provision could seriously undermine OSHA's standards, turn every enforcement action into a costly and time-consuming variance proceeding, and impose substantial burdens upon agency resources, the OSH Review Commission, and the federal courts.

Section 8. Technical Assistance Program

Section 8 amends the OSH Act's "Training and Employee Education" provision to require cooperative agreements between OSHA and States to provide consultation programs. The Department questions the wisdom of amending the new consultation law Congress passed last year with bipartisan support after extensive negotiations between Congress and the Department.

We are particularly concerned with further amending the program in the way contemplated by section 8. Under section 8, the Secretary must establish a pilot program in three states for a duration of up to two years, the purpose of which would be to test a fee-for-service system. The fifty state agencies that already administer the consultation program have expressed very strong reservations about charging fees in the consultation program. The Administration shares these concerns. Those who could pay would be visited first, defeating the philosophy that this service is aimed at small or highly hazardous businesses that cannot afford to hire other consultants.

Section 9. Voluntary Protection Program

Section 9 attempts to codify OSHA's Voluntary Protection Program, requiring the Secretary to establish cooperative agreements with employers, who would create and maintain comprehensive safety and health management systems. The bill requires enhanced OSHA efforts to include small businesses in the VPP. Participation in this program would result in exemptions from inspections and certain paperwork requirements.

OSHA has supported codifying the VPP program, but we do not support this provision as drafted. The VPP has traditionally been, and should remain, a program for *work sites*, not employers. Although there are references to "the worksite" in the section, this vital mainstay of the program must be emphasized. OSHA is also concerned that codification could jeopardize the high standards of the program currently in operation. As drafted, this provision does not

reflect the idea that the VPP program is reserved exclusively for those employers who have demonstrated the highest commitment to worker safety and health. Ideally, any codification of this program should limit participation to employers who have truly superior safety and health records, but should allow OSHA the flexibility to define (and modify as necessary) the specific criteria for participation in the program. We further note that the bill does not include a program requirement for VPP participants to provide meaningful employee involvement in safety and health matters, which we believe to be an important component of the program.

Section 10. Prevention of Alcohol and Substance Abuse

Section 10 authorizes the Secretary to test employees and management for drugs and alcohol following any work-related fatality or serious injury. It also permits employers to institute their own testing programs conforming to HHS and federal workplace guidelines. Testing is permissible on a for-cause basis, as part of a scheduled medical examination, where an accident involving actual or potential loss of human life, bodily injury, or property damage has occurred, during participation in a drug treatment program, or on a random basis.

OSHA strongly supports measures that contribute to a drug-free work environment and reasonable programs of drug testing within a comprehensive workplace program for certain workplace environments, such as those involving safety-sensitive duties, and which take into consideration employee rights to privacy. However, OSHA is concerned that it may not have the resources to oversee drug and alcohol programs.

Section 11. Discretionary Compliance Assistance

This section provides that the Secretary may issue warnings in lieu of citations where the violation has no significant relationship to safety or health or where the employer has acted in good faith to promptly abate the violation. The Secretary may not exercise this discretion where the violation has a "significant relationship to employee safety or health" or where the violation is willful or repeated.

Currently, the OSH Act provides that OSHA "shall" issue a citation for each violation it discovers during an inspection. This provision would change this provision to "may." As a practical matter, the impact of this proposed change is unclear. Federal case law demonstrates that OSHA possesses a greater degree of prosecutorial discretion than was recognized in the early years of the agency's existence. The agency has discretion under existing law to establish programs in which it does not issue a citation for every violation it finds. For example, OSHA has used this discretion to establish programs such as Maine 200.

Nonetheless, OSHA is concerned that the change proposed in this section might be misunderstood by some employers as a limitation on OSHA's authority to issue citations. Among other things, OSHA is particularly troubled by paragraph 3(B), which allows the issuance

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of a "warning in lieu of a citation" for violations that the employer "acts promptly to abate[.]" Even though it allows OSHA the discretion to issue citations in such circumstances, this provision may signal employers that they need not take preventive steps to protect their workers prior to an OSHA inspection. As such, this provision could undermine both the preventive purpose as well as the deterrent effect of OSHA's enforcement program.

Prompt abatement of hazards should be encouraged, but it should be encouraged through penalty reductions, not by eliminating any citations whatsoever for violations. Otherwise, employers who make good faith efforts to protect workers before an OSHA inspector arrives at their door will be treated the same as neglectful employers who have ignored their workers' safety until the inspection.

Finally, the limitations on the Secretary's discretion are so narrow that they could lead to outrageous results. For example, the Secretary's discretion is not limited to cases in which an employer has shown good faith by implementing a safety and health program or in which no employee has been killed or seriously injured because of the employer's violation. Rather, the bill authorizes the Secretary to issue a warning in lieu of a citation if the employer "acts promptly to abate the violation" even if the employer has a long history of previous violations and causes the death of several employees.

Ed-Flex Amendments

Senate

1. Proposed Manager's Package (Republican)

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

Note: all of the above are acceptable to ED

2. Proposed Democratic Additions to Manager's Package

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

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

3. Civil Rights Groups Amendments

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

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

- ◆ Requires Secretary to provide written, public explanation of the facts demonstrating that the State has met requirements in above amendment, if the Secretary approves state application for Ed-Flex.

ED is ok with this in principal, though we generally don't support provisions that place requirements on the Secretary.

- ◆ Requires Secretary to terminate Ed-Flex if he determines that the state is no longer meeting Title 1 requirements, and requires state to show it is meeting current Title 1 requirements when it applies for extension of Ed-Flex authority.

ED is ok with this.

- ◆ Adds to public notice requirements by requiring Secretary to publish State application in Federal Register.

ED is ok with making application widely available—but thinks it would be more effective to put it on the web than in the Federal Register.

Other Ed-Flex Issues in Play

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

Other Possible Senate Amendments

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

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House

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

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 17:28:59.00

SUBJECT: Complete Weekly Report

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

READ:UNKNOWN

TEXT:

includes the items we revised for the daily===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

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February 27, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 17:44:38.00

SUBJECT: class size letter

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

TEXT:

The actual authorization level in the Murray class size bill is \$11.435 billion.

Our current letter says \$11.4 billion. Is that OK, or should I get Sean to change it from \$11.4 billion to \$11.435 billion?

Automated Records Management System
Hex-Dump Conversion

February 27, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

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

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

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

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

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

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

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

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

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 18:15:55.00

SUBJECT: Reminder--comments on Labor draft bill (Hazard Reporting Protection Act of

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

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])

READ:UNKNOWN

TO: Alan B. Rhinesmith (CN=Alan B. Rhinesmith/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

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

READ:UNKNOWN

LRM JUSTICE (LRM JUSTICE [UNKNOWN])

READ:UNKNOWN

LRM HHS (LRM HHS [UNKNOWN])

READ:UNKNOWN

LRM COMMERCE (LRM COMMERCE [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

Please provide any comments no later than 3 p.m. Monday, March 2nd, 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: "Jason H. Schechter"@lmgate3.eop.gov ("Jason H. Schechter"@lmgate3.eop.gov

CREATION DATE/TIME:26-FEB-1999 18:16:22.00

SUBJECT: Embargoed Radio Address Paper

TO: Jade L Riley (CN=Jade L Riley/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Veronica DeLaGarza (CN=Veronica DeLaGarza/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO: Abigail C. Smith (CN=Abigail C. Smith/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO: Sean P. O'Shea (CN=Sean P. O'Shea/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO: Lorrie McHugh (CN=Lorrie McHugh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO: "Jordan D. Matyas"@lmgate4.eop.gov ("Jordan D. Matyas"@lmgate4.eop.gov [UNKNOW

READ:UNKNOWN

TO: " ("/R=EOPMRX/R=LNGTWY/R=news.wsj.com/U=bob.davis/FFN=bob.davis/"@mr.eop.gov [

READ:UNKNOWN

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

READ:UNKNOWN

TO: Victoria L. Valentine (CN=Victoria L. Valentine/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Bridget T. Leininger (CN=Bridget T. Leininger/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO: Orson C. Porter (CN=Orson C. Porter/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: " ("/R=EOPMRX/R=LNGTWY/R=inet/R=elsoldetexas.com/U=info/FFN=info/"@mr.eop.gov [

READ:UNKNOWN

TO: " ("/R=EOPMR

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-FEB-1999 18:18:50.00

SUBJECT: class size letter- most recent version

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D29]MAIL446540367.036 to ASCII,
The following is a HEX DUMP:

FF57504370040000010A020100000002050000004D110000000200008174C0E599303BDF64D81A
20F6DD132BE883DF4D1EF6C65C73E9DF858BF1C6F79B6D6E00F476EE485E0CDB4F37CBFD05D349
36560720DC992FE4A2A710C50CC7A8550440E07F73E01C2A566F0EA252873C047DFCC1E5595F6A
B57E06E6F17742C619A9C3061BE31CBE7ABDE448C4D72BD4252BC52347DACFB73772DFA8306B10
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1AD619306E37915C40888F5EDBE9E25904A67F1819D6B286113C7961EA482652F146EE9C7F0F03
20A66162ED2640C140F1F8F797077BE74AD48DA8F676AFABD2BEAE118601C5CA966271153D2C38

**Automated Records Management System
Hex-Dump Conversion**

This year, we have an important opportunity to work together, across party lines, to bring true progress to America's public schools. We should start right now to make the reforms and targeted investments we need to prepare our children for the 21st century.

I welcome the idea of greater flexibility in education for states and school districts, tied to greater accountability for results. For this reason, I urge the Senate to pass an Ed-Flex bill this week that provides both expanded flexibility and strengthened accountability in education.

But we must do more to give our children a world-class education. That is why I strongly support the amendment that Senators Kennedy and Murray will offer this week to build on our bipartisan efforts of last year to reduce class size in the early grades. As you recall, Congress voted across party lines to provide a down payment on my class size reduction initiative in the FY 1999 budget, by appropriating \$1.2 billion to help communities hire about 30,000 teachers. The Kennedy-Murray amendment would finish the job by authorizing \$1.4 billion more over six years to help communities hire 100,000 well-prepared teachers to bring class size in the early grades down to a national average of 18 students.

As parents and teachers across America understand, smaller classes can make a profound difference for our children. Studies show that teachers in smaller classes give more personal attention to students and spend less time on discipline; as a result, students in these classes learn more and get a stronger foundation in the basics. Across the country, students in smaller classes outperform their peers in larger classes. And reduced class size makes the greatest difference for minority and disadvantaged students.

It is important that we act now on a long-term commitment to reduce class size, because communities will soon begin to receive the funds we appropriated last year for this purpose. Communities will not be able to use these funds as effectively as possible unless they have confidence that Congress will provide continued support to reduce class size for years to come. Passage of the Kennedy-Murray amendment will ensure effective local planning as school districts move to put this new initiative into effect.

I am asking you to show continued and long-term support for this effort to reduce class size across the nation. There can be no better way to demonstrate a commitment to work together in this Congress to strengthen the quality of education.