

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 099 - FOLDER -006

[09/09/1998-09/18/1998]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-SEP-1998 15:44:47.00

SUBJECT: Women's Mtg

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

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

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

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

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

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

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

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

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

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

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

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

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

TO: Lucia F. Gilliland (CN=Lucia F. Gilliland/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

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

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

READ:UNKNOWN

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

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

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

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

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

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

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

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

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

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

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

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

TEXT:

There will be a Women's Mtg on Thursday at 9:00am in room 100. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-SEP-1998 16:46:22.00

SUBJECT: LABOR Report on Amendment to Increase the Minimum Wage

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: Steven N. Braun (CN=Steven N. Braun/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN

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

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

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

TO: Jonathan Orszag (CN=Jonathan Orszag/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: Ronald E. Jones (CN=Ronald E. Jones/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: Karen Tramontano (CN=Karen Tramontano/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Justine F. Rodriguez (CN=Justine F. Rodriguez/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Brian S. Mason (CN=Brian S. Mason/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

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

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

TEXT:

Total Pages: _____

LRM ID: MNB225
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, September 9, 1998

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 Report on Amendment to Increase the Minimum Wage

DEADLINE: 11 a.m. Thursday, September 10, 1998

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: The subject amendment may be offered by Senator Kennedy to the consumer bankruptcy reform bill (S. 1301) being considered by the Senate.

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EOP:

Barbara Chow
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Debra J. Bond
Sarah Rosen
Jonathan Orszag
Elena Kagan
Tracey E. Thornton
Brian S. Mason
Elizabeth Gore
Justine F. Rodriguez
Joseph J. Minarik
Karen Tramontano
Steven N. Braun
Janet R. Forsgren
James J. Jukes
Ronald E. Jones

John E. Thompson
LRM ID: MNB225 SUBJECT: LABOR Report on Amendment to Increase the
Minimum Wage

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

Honorable James Jeffords
Edward Kennedy
Chairman
Ranking Member
Committee on Labor and Human Resources
Resources
United States Senate
United States Senate

Honorable
Committee on Labor and Human

Washington, D.C. 20510
D.C. 20510

Washington,

Dear Chairman Jeffords/Senator Kennedy:

I am writing in strong support of [Senator Kennedy's/your] amendment to legislation under consideration in the Senate that would increase the minimum wage to \$6.15 an hour by January 1, 2000. Earlier this year, President Clinton strongly endorsed raising the minimum wage to "help ensure that we pay people a decent wage and that parents who work hard and play by the rules can lift their children and themselves out of poverty. It's right for America and right for America's workers."

When we last raised the minimum wage and expanded the earned-income tax credit, we took important steps to reward work and help millions of Americans raise their families with dignity. The real value of the minimum wage had fallen to nearly a 40-year low by the time President Clinton signed the last increase in 1996. But even after that increase, the minimum wage's purchasing power remains well below its historic value in the 1960's and 1970's. It does not provide enough to lift a family of [three or two ?] out of poverty. The time has come to give our lowest paid working families this raise.

Many of us are benefitting from the strongest economy in a generation, and we can well afford to share our prosperity through another increase in the minimum wage. Inflation and unemployment are low and steady, and family incomes have begun to grow with corporate profits. But millions of people are still struggling to make ends meet -- the people who clean our offices, sew our clothes, serve our food, and care for our children and our infirm parents. [The Kennedy/your] amendment offers 12 million Americans a greater opportunity to share in our nation's prosperity. Seventy percent of all workers who would benefit are adults, age 20 or over, and about three out of five are women, many of whom are the sole breadwinners for their families.

As people move from welfare to work, one of the most important lessons they can learn is that work pays. A full-time worker earning the current minimum wage for 50 weeks of work receives only \$10,300. This is not enough to move families from dependency to self-sufficiency and create a long-term attachment to the workforce. Without this minimum wage increase, too many of these hard-working families will continue to fall below the poverty line. The minimum wage should be the first rung on the ladder of opportunity, not a dead end for the working poor.

A one-dollar increase in the minimum wage would make an enormous difference in the lives of these workers and their families. It would mean an additional \$2,000 a year for someone working year-round, full-time -- enough to buy an average family of four 6.5 months of groceries, or pay for almost 7.5 months rent, or three-quarters of the tuition and fees at a two-year college.

Opponents of a minimum wage increase argued two years ago, and seemingly in every previous debate over increasing the minimum wage, that it would cause inflation and job loss. But since President Clinton signed the last minimum wage increase into law in August 1996, the economy has created more than 6 million new jobs, and the inflation rate has been cut nearly in half. The unemployment rate is at 4.5% and has been below 5% for more than 14 consecutive months. Unemployment rates this low have not been seen for almost three decades. For teenagers, African Americans, and women, unemployment is trending down and employment rates are trending up. In

fact, almost 330,000 more teenagers are employed than in October 1996, and employment is up by nearly 90,000 for African-American teens.

[I urge you to support Senator Kennedy's amendment/I strongly support your amendment.] Our bipartisan efforts to overhaul the education and job training system and expand the Earned Income Tax Credit have significantly advanced our common goal of assuring every worker a good job at a fair wage. Working together, we can make work pay for America's minimum wage workers.

The Office of Management and Budget advises that there is no objection to presentation of this report from the standpoint of the Administration's program.

Sincerely,

Alexis M. Herman

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:11-SEP-1998 20:01:22.00

SUBJECT: H2A Deputy's Meeting -- MONDAY AT 2PM

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

There will be a Deputy's meeting on Monday, September 14th at 2:00pm in Room 211 re: reform to the H2A agricultural guestworker program. I hope to see you there.

Outside Participants

Richard Rominger -- USDA
Kitty Higgins -- DOL
James Castello -- DOJ
Robert Bach -- INS

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Lisa M. Jones (CN=Lisa M. Jones/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:14-SEP-1998 11:19:58.00

SUBJECT: Heads-up Memo

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

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

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

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

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

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

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

TO: Janet L. Yellen (CN=Janet L. Yellen/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN

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

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

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

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

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

TEXT:

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Jack Lew

FROM: Donald R. Arbuckle

SUBJECT: Heads up on HHS Proposed Rule on Medicaid Managed Care

HHS is preparing to submit a proposed rule which substantially alters the Medicaid managed care program, implementing key provisions in the Balanced Budget Act (BBA) of 1997. The rule streamlines the administration of the program for States, adds patient protections and creates a number of new quality-related requirements on managed care organizations (MCOs). The rule is complicated because it was developed working with three, often differing constituencies: beneficiaries (advocates), States and MCOs. Chris Jennings (DPC) is organizing an event on the 17th around the rule. HHS is hoping to submit the rule to OMB early next week but is struggling to gain closure on a number of issues.

Relying on both the BBA and the Patient Bill of Rights, the rule establishes new beneficiary protections in areas such as quality assurance, grievance rights and coverage of emergency services. The rule eliminates the waiver process, leaving States free to mandate enrollment of beneficiaries into managed care (with the exception of vulnerable populations, such as the disabled) and other impediments to managed care such as the enrollment composition requirement. As required by law, the rule also creates a quality assessment and performance improvement program to monitor and evaluate the quality of MCO service provided.

Although HHS has done fairly extensive outreach to affected constituencies, it is unclear how patient advocates, States, and the managed care industry will react. Patient advocates will be pleased with the adoption of the patient and consumer rights provisions. States, although happy to avoid waivers, have expressed concern over the remaining conditions and limitations on them. The MCOs may find the quality assessment provisions somewhat burdensome, but have indicated that they are pleased that these provisions are consistent with the Medicare Plus Choice regulations promulgated earlier this year.

cc: Maria Echaveste
Rahm Emanuel
Larry Stein
Ron Klain
Thurgood Marshall, Jr.
Ann Lewis
Sally Katzen
Minyon Moore
John Podesta
Bruce Reed
Gene Sperling
Elena Kagan
Barry Toiv
Michael Waldman
Janet Yellen
Mickey Ibarra
Danny Mendelson

Automated Records Management System
Hex-Dump Conversion

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

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

SUBJECT: Background for H-2A Meeting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THIS IS AUTO DATE]
March 3, 2010

H-2A Discussion Document

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

Background

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

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

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

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

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

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

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

Issues Regarding H-2A Reform

Issue #1

Use of the Adverse Effect Wage Rate

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

Current Law:

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

Wyden-Graham Bill:

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

Issue #2

Employer Recruitment -- Use of Proposed Registry

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

Current Law:

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

Wyden-Graham Bill:

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

Issue #3

Housing

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

Current Law:

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

Wyden-Graham Bill:

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

Issue #4

The 3/4 Guarantee

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

Current Law:

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

Wyden-Graham Bill:

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

Issue #5

Repatriation Incentive

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

Current Law:

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

Wyden-Graham Bill:

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

Issue #6

Transportation Reimbursement

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

Current Law:

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

Wyden-Graham Bill:

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ronald E. Jones (CN=Ronald E. Jones/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:15-SEP-1998 10:47:30.00

SUBJECT: Draft SAP for Senate Bankruptcy Bill -- No hard copy will be sent

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

TO: Gary L. Bennethum (CN=Gary L. Bennethum/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Debra J. Bond (CN=Debra J. Bond/OU=OMB/O=EOP@EOP [OMB])
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TO: Jonathan Orszag (CN=Jonathan Orszag/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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

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

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

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READ:UNKNOWN

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READ:UNKNOWN

TO: Pamula L. Simms (CN=Pamula L. Simms/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Thomas P. Stack (CN=Thomas P. Stack/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

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READ:UNKNOWN

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READ:UNKNOWN

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

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

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READ:UNKNOWN

TO: Douglas W. Elmendorf (CN=Douglas W. Elmendorf/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN

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READ:UNKNOWN

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READ:UNKNOWN

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

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

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

TEXT:

Total Pages: _____

LRM ID: REJ573
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, September 15, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Jeffrey A. Weinberg/OMB/EOP (for) Assistant Director for
Legislative Reference

OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: Statement of Administration Policy on S1301 Consumer
Bankruptcy Reform Act of 1997

DEADLINE: 4:00 PM Tuesday, September 15, 1998

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: We understand S. 1301 will be brought up on the Senate floor tomorrow. Therefore, if we do not hear from you by the 4:00 PM deadline we will assume you have no objection to the proposed SAP.

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EOP:

Michelle Peterson
Robert N. Weiner
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LRM ID: REJ573 SUBJECT: Statement of Administration Policy on S1301
 Consumer Bankruptcy Reform Act of 1997

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: Ronald E. Jones Phone: 395-3386 Fax: 395-3109
 Office of Management and Budget
 Branch-Wide Line (to reach legislative assistant): 395-3454

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

September

?, 1998

(Senate)

S. 1301 - Bankruptcy Reform Act of 1998
(Grassley (R) Iowa and Sen. Durbin (D) Illinois)

The Administration supports bankruptcy reform that asks responsibility of debtors and creditors alike. Debtors who genuinely have the ability to repay a portion of their debts should remain responsible for those debts. But creditors must also be responsible in their treatment of debtors, recognizing the inherent inequality of information and bargaining power that the two possess.

As initially reported from committee, S. 1301 focused primarily on purported debtor abuse, with little to curtail abuses by creditors. However, if changes incorporated in the managers' package of amendments are adopted, the Senate bill will take significant steps to address abusive practices by both debtors and creditors. Essential changes include new disclosure requirements to ensure that credit card companies provide consumers with the information about their accounts that they need to manage their budgets and procedural protections to avoid inappropriate and unwise reaffirmations of unsecured and certain secured consumer debts. We particularly appreciate modifications made to the nondischargeability provisions in the bill so that the bill no longer inappropriately puts credit card debt in competition with child support, alimony, and other societal priorities like educational loans and taxes.

The Administration also prefers the discretionary approach to limiting access to Chapter 7 used in S. 1301 over the rigid and arbitrary approach in the House bill. We appreciate changes made by the Senate bill to ensure that those debtors denied access to Chapter 7 under Section 707(b) of the Bankruptcy Code are those that have a strong likelihood of success under a Chapter 13 plan.

More can and should be done to produce a truly balanced bill. We must address the potentially coercive effect of allowing creditors to bring 707(b) motions for any reason, improve consumer understanding of the effect of granting security interests, and ensure that the protections against coercive reaffirmations are effective.

The Administration would support passage of S. 1301, if it is further amended in conference to improve the balance between reforms targeting debtors and reforms targeting creditors, and if the essential reforms incorporated by the managers' package of amendments are preserved.

The Administration also supports financial contract netting provisions in the bill that are important to reducing systematic risk in our financial markets.

Finally, the Senate will vote on an amendment to raise wages of 12 million Americans and help ensure that parents who work hard and play by the rules do not have to raise their children in poverty. Two years ago, the President signed into law a similar moderate increase in the minimum wage. The results of that action are clear: it raised wages and did not cost jobs. Now we must continue to take actions to ensure that all Americans are benefitting from our prospering economy. That is why the Administration strongly supports raising the minimum wage by \$1 over two years.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL) .

CREATOR: Lisa M. Jones (CN=Lisa M. Jones/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:15-SEP-1998 11:31:24.00

SUBJECT: Heads-up memo

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TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP@EOP [OPD])
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TO: Thurgood Marshall Jr (CN=Thurgood Marshall Jr/OU=WHO/O=EOP@EOP [WHO])
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TO: Lawrence J. Stein (CN=Lawrence J. Stein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

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

TEXT:

Memo was signed on Monday, September 14, 1998

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

TEXT:

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September 14, 1998

Automated Records Management System
Hex-Dump Conversion

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Jack Lew
FROM: Donald R. Arbuckle
SUBJECT: DOT Rule on Intercity Buses

We have nearly completed our review of a final Department of Transportation (DOT) rule that will provide improved access for wheelchair-bound passengers to intercity buses. The rule will require intercity fixed-route bus companies (i.e., Greyhound, Peter Pan) to provide wheelchair lifts on their buses. At least one-half of each company's buses must be made wheelchair accessible within 6 years, with the remainder accessible within 12 years. Small companies are subject to much less stringent requirements. The costs of the rule have been reduced substantially from the proposal -- about \$25 million in annual costs as compared to \$50 million at the proposed stage. Most of this reduction is in relief to smaller carriers and charters.

I have talked with representatives of both the disabled community and the industry. The disability community strongly supports the rule and has been fighting ardently for the wheelchair lift requirement for years. Smaller companies and charter operators (about 3500 companies) will also be reasonably satisfied. However, the largest companies, such as Greyhound, who have argued most strongly against the rule, will not be happy. Greyhound has been advocating a much less costly plan that would provide reasonable accommodation to the disabled on 48 hours notice. Disability groups regard this as "discriminatory", since non-handicapped passengers can purchase tickets without a 48-hour notice. In addition, these groups do not believe Greyhound's plan will work. DOT agrees.

The final rule is under a September 15 court ordered deadline and we are working with DOT to complete our review asap.

cc: Maria Echaveste
Rahm Emanuel
Larry Stein
Ron Klain
Thurgood Marshall, Jr.
Ann Lewis
Sally Katzen
Minyon Moore
John Podesta
Bruce Reed
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Automated Records Management System
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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ronald E. Jones (CN=Ronald E. Jones/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:15-SEP-1998 17:17:32.00

SUBJECT: Bankruptcy vote has been put off until next week --per Sarah Rosen

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

TO: karen.dorsey (karen.dorsey @ treas.sprint.com @ inet [UNKNOWN])
READ:UNKNOWN

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READ:UNKNOWN

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READ:UNKNOWN

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READ:UNKNOWN

TO: John S. Radzikowski (CN=John S. Radzikowski/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Pamula L. Simms (CN=Pamula L. Simms/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Thomas P. Stack (CN=Thomas P. Stack/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Alice Veenstra (CN=Alice Veenstra/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: Emil E. Parker (CN=Emil E. Parker/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: Sarah Rosen (CN=Sarah Rosen/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Douglas W. Elmendorf (CN=Douglas W. Elmendorf/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN

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

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

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

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

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

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:16-SEP-1998 15:00:12.00

SUBJECT: Women's Mtg

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

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

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

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

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

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

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

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

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

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

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

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

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

TO: Lucia F. Gilliland (CN=Lucia F. Gilliland/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

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

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

READ:UNKNOWN

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

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

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

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

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

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

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

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

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

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

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

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

TEXT:

There will be a Women's Mtg on Thursday at 9:00am in room 100. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Sean P. Maloney (CN=Sean P. Maloney/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:18-SEP-1998 11:54:34.00

SUBJECT: Weekly Reports

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

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

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

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

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

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

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

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

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

READ:UNKNOWN

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

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

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

TEXT:

Because of the President's travel/weekend schedule, we'd like to ask that all offices submit weekly reports before tomorrow morning (i.e., sometime this evening) so that the President can have time to see them early tomorrow. Thanks for your help; please let me know if this'll be a problem.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: "Christopher Edley, Jr." <edley@law.harvard.edu> ("Christopher Edley, Jr."

CREATION DATE/TIME:18-SEP-1998 19:18:30.00

SUBJECT: Draft POTUS memo on race book

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

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

TO: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO: Edward W. Correia (CN=Edward W. Correia/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP [PIR])
READ:UNKNOWN

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

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

TO: Michele Cavataio (CN=Michele Cavataio/OU=PIR/O=EOP [PIR])
READ:UNKNOWN

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

TO: Francis S. Redburn (CN=Francis S. Redburn/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO: Charles F. Ruff (CN=Charles F. Ruff/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

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

TO: terry.edmonds@ssa.gov (terry.edmonds@ssa.gov [UNKNOWN])
READ:UNKNOWN

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

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

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

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

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Draft v6

September 9, 1998

MEMORANDUM FOR THE PRESIDENT

From: Christopher Edley, Jr.
Professor of Law

Through: Maria Echaveste
Deputy Chief of Staff

Re: Progress Report on the Race Book, and Request for Interim Guidance

This memorandum is organized in the following sections:

- I. Introduction, process and organization of the effort
- II. The Vision (book chapter 2), and basic themes
- III. The Workplan (chapter 6)
- IV. Leadership (chapter 7)
- V. Next steps, and summary of decisions requested

I. INTRODUCTION, PROCESS AND ORGANIZATION OF THE EFFORT

The purpose of this memorandum is to review our progress, confirm our general direction, and solicit interim guidance on a few substantive matters. Most important, Part II is a first attempt to sketch your "vision" of One America with racial justice and equal opportunity in the 21st century. Then, Part III adds some flesh to key portions of the "workplan" chapter outline you have already seen, offering a partial menu of ideas.¹ We want to know if this conceptual

¹The current detailed (and daunting) outline of the book is at Tab A. The chapter outline is:
Introduction: One America in the 21st Century
Chapter I: Where Is America On Race, And Where Are We Going?

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framework makes sense, and if we are heading for the right mix of bold and pedestrian, thematic and programmatic. White House policy staff are fully engaged and have both contributed to this workplan material and reviewed this memorandum. Important disagreements and special concurrences are noted in this document or accompanying memoranda.

We hope to complete the workplan menu within two weeks and, based on your tentative approval of several ideas, proceed with more detailed policy development between now and early November. This is key: I want these first stages of developing the workplan to emphasize thoughtfulness and boldness in the selection of the challenges, goals, themes and general strategies, connecting those to the vision. The next step, for greater detail over the next two months, is to figure out more concretely what ought to be done by whom (federal government? parents?). Throughout, Maria Echaveste will ensure that the interests of the policy councils are well regarded, that the formal clearance process is used when appropriate, and that I can appeal to you with any conflicts we cannot resolve in a timely way.

We have four working groups to help prepare the policy, or “workplan” chapter. These are co-led by the appropriate NEC or DPC staff and me. As yet, they do not span the entire range of subjects you may want to cover, but they are a good start:

- Education
- Economic Development and Employment Opportunity
- Criminal Justice and Community Security
- Civil Rights Enforcement

We also have less elaborate collaborative discussions moving forward on: Health, Strengthening Families, Native Americans, and Democracy/Civic Engagement. The “book team” includes a handful of PIR staff, and the addition soon of Terry Edmonds. I’m confident that several White House and OMB staff will also play critical roles, as they have in preparation of this document.

Outreach: Finally, Maria has assigned Minyon Moore and OPL the overall responsibility for coordinating external consultations by the outreach offices and, through Cabinet Affairs, conversations with key appointees in the agencies. Throughout September, many members of your staff will be making calls or conducting meetings with some 400 individuals, asking about

Chapter 2:	More Than A Dream: Racial And Ethnic Justice In The 21 st Century
Chapter 3:	Wrestling Lessons: Honest, Constructive Engagement Of Our Vexing Differences
Chapter 4:	Promising Practices: How To Build Bridges That Connect People Across Lines Of Class And Color, Creating Community And Opportunity
Chapter 5:	The Record Of The Clinton-Gore Administration
Chapter 6:	A Workplan For Our Nation
Chapter 7:	Leadership For One America
Chapter 8:	Conclusion

the proposed framework for your report, the most important actions you should take after the Advisory Board's work, and any elements they think it is especially important for you to communicate in your report. We will share some of the substantive responses with you, but all of them will be weighed by the book team.

**

II. THE VISION CHAPTER, AND BASIC THEMES

This section summarizes my best sense of your central vision for the book -- chapter 2 in the current outline. It builds on earlier material sent to you by Sidney Blumenthal and by me, as well as previous statements by you. In the book, the vision discussion will be preceded by an introduction and by the chapter describing where America has been and is on race, including demographics, discrimination, disparities, and intergroup relations. While not yet in your language, what follows is an effort to capture the key ideas and their interrelationships. At the end of the section, we also want to engage you on some cross-cutting questions, such as the role of government.

(a) *Why is this subject so important for us to tackle?*

Renewing America for the new century: For six years, I have worked to prepare America for the challenges of the 21st century. We have put our fiscal house in order, taken important steps to strengthen the international economic system, worked at home and abroad to create a post-cold war national security framework, launched an investment program in vital areas of education, training, new technologies and environmental protection. One additional area, without which we cannot succeed in the decades ahead, is overcoming the divisions of race and ethnicity so that we can be One America, united in a web of mutuality that gives us the strength to be our best as individuals, as communities and as a nation.

Global and historical context: The difficulty of the problem is evident not only from our own national history, but from events around the world – even today. The conflict is commonplace, as differences give rise to hatreds and then bloodshed. As President, I've seen it over and over again, and struggled to find ways that, through our actions and example, this nation could help troubled societies see their shared humanity and find peace. But make no mistake: This struggle to build peace and strength out of differences is a struggle against deep failings and sinfulness that seem inherent in the human spirit. In

my own religious tradition, sin can be overcome through struggle and faith, and it is a never-ending struggle. We should expect no easier a task when it comes to dealing with our differences here in America.

The stakes: On a more practical plane, making diversity a source of strength rather than division promises great rewards in social peace and home and economic success globally.

New complexity: The civil rights movement of three and four decades ago was largely framed in black and white, but led to bursts of energy and progress for other minorities and for women. Today's diversity gives us great opportunities, but also more complex challenges.

Cause for confidence: There is cause for confidence, because our ideals and values are far more than words locked behind glass in the National Archives. They are an incandescent beacon for peoples worldwide, and the lodestar by which we chart our own course and criticize our missteps. Our noblest moments and wisest leaders are marked not by the exploitation of difference, but by recalling us to the commitments of equality, tolerance, opportunity and justice. In my life, I have seen this most profoundly in the struggle against racial segregation and bigotry. No nation matches our capacity for moral greatness.

- (b) *What would it mean to have a full measure of racial justice and opportunity in America? What would our relationships be like, and what would society look like?*

Vision of community: [Celebration of our diversity, not mere tolerance of our differences; building inclusive communities and organizations to take advantage of the benefits and strengths that flow from diversity. (Examples from forums, correspondence, etc.)]

“One America” does not mean that we lose our ethnic identities, becoming some homogenized undifferentiated mass. We can be proud of our cultural identities and distinctiveness, and at the same time be proud of and loyal to America – indeed, that is one of the most important elements of our nation's greatness.

In religion, for example, scholars tell us that we are the most observant of developed nations, and that freedom of religion and separation of church and state are important parts of the explanation. We are a nation full of religious individuals, yet we do not all worship in the same way. Indeed, our civic values are that we tolerate and respect different religious traditions, and celebrate the legal and civic values that make diversity

possible. We are proud of that diversity, and together with tolerance, recognize it as a defining greatness of America. And much of the rest of the world recognizes this too.

So, too, with our racial and ethnic diversity. Our greatness in the decades ahead depends not merely on overcoming prejudice and bigotry rooted in our differences, and not only in tolerating differences. We must instead celebrate those differences as a source of richness and strength. Our personal lives are enriched by this diversity, and our society and economy are strengthened by it.

In the community of America, the things that connect us must be stronger than those that divide us. A "community" means shared interests. But we must also have a shared concern for our collective advancement, and mutual concern for each other. Transcending differences, while respecting them, is part of creating such a community.

So there is a delicate balance, because we have far too much to lose if we retreat into ethnic enclaves – walled off from one another by prejudice, stereotypes or even simple ignorance and misunderstanding. We sacrifice greatness and goodness, richness and riches, if by circumstance or choice we separate ourselves into subcommunities along the very fracture lines that have traced our national racial tragedies since Europeans arrived on these shores.

Vision of opportunity: [Opportunity enjoyed so equally that there is no discernable legacy of slavery, colonization or conquest; of Jim Crow or internment. (Examples from forums, correspondence etc.)]

We have legacies of slavery, conquest and colonialism; of Jim Crow and racist immigration quotas. The inheritance is evident in the patterns of our lives: the racially isolated communities, the gaping disparities in educational achievement, employment, criminal victimization and wealth; the still too-rare close friendships across lines of race. This inheritance is a burden to our spirits and a tax on our prosperity. Perhaps most tragically, for too many of our fellow citizens, the legacy has shackled dreams that are every American's inalienable right. This is wrong, and we can do better.

One way our children and grandchildren will know when we have achieved racial justice and opportunity is that the evidence of America's legacy of inequality will be found only in history books, and not in brutal social and economic disparities surrounding them.

Vision of responsibility: Responsibilities of citizenship; responsibility to reach out to others; responsibility of each of to combat whatever stereotypes and fears we may have;

and responsibility to take advantage of opportunities. (Examples from forums, letters, etc.)

We must do this for our children and their children. We must do this to honor those who have sacrificed over the generations in earlier battles, including civil rights battles, to put our sacred civic values into practice. And I believe we must do this to honor the God who has created us all equal, and blessed our nation in so many countless ways.

(c) *Why is this vision preferable to alternative, competing visions?*

Why embracing “equal opportunity” is necessary, but insufficient alone to produce a full measure of justice and fairness in One America.

Why color blindness makes sense, and why it doesn't.

Why assimilation as Americans is important, but not an assimilation that seeks to erase our diverse identities. Is tolerance of differences sufficient, or must there be more?

**

III. THE WORKPLAN CHAPTER

The purpose of this chapter is to explain the most important steps the nation must take over the next decade in pursuit of your vision of racial justice and opportunity, as described earlier in the book. As with the promising practices chapter, you want to provide inspiring “news you can use” to people in communities and organizations across the nation who are looking for ideas. The workplan is organized by policy sectors, and within each sector it will contain federal, state, local, private and personal elements. This is *not* just about the federal government, or government generally. Few items will have FY 2000 budget impacts, although several will have “down payments” in Administration accomplishments and earlier proposals. (The ideas which follow reflect substantial contributions from DPC, NEC and OMB; this memorandum has been through an accelerated clearance process. Comments from your advisors are noted in this document or in appended memoranda.)

The book should be highly thematic, avoiding an exhaustive and mind-numbing recitation of comprehensive programmatic details. But it must contain just enough pointed recommendations to leave the reader with a sense that you have provided concrete direction, not just rhetoric. This also entails being very selective – not *every* good idea for addressing *every* important problem. In areas where thoughtfulness or clarity requires more program detail, the final document can use

textual boxes set apart from the flow of the narrative.

Two final points. The boldness you have requested in policy ideas seems in some cases to come in the statement of a national goal (“close disparities in education achievement by X percent”), and in other cases may not be evident until we offer specific public or private interventions to advance the goal. Relatedly, in the stating the goals we have repeatedly between brave aspirations and statements that are more cautious and achievable. We need your general guidance on this.

*

§ 6.2 THE EDUCATION SECTION OF THE WORKPLAN

Apart from the economy, I assume that education will be the clear first-among-equals in your workplan for the nation, receiving disproportionate emphasis throughout the book. Despite improvements over the last several decades, racial disparities in opportunity and achievement persist throughout the education pipeline, and these disparities are powerful obstacles to achieving your vision. We’ve tolerated it for too long. It is wrong. Therefore, the workplan focuses on areas of significant disparity that have the greatest impact on educational outcomes. It also emphasizes the instrumental and ethical necessity of heightened responsibility and accountability.

In addition, racial isolation, often in combination with poverty concentration, remains a problem both among and within our schools, presenting barriers to achievement, excellence, and to your vision of mutual understanding and community. This is the third pillar of the education workplan.

-- *Outline of the section*

Introduction/Context

- Education is primary [only central?] to achieving my vision. This requires:
 - (1) eliminating racial disparities in educational opportunity and achievement;
 - (2) reinforcing responsibility and strengthening accountability for administrators, teachers and students, as well as for the political institutions governing education; and
 - (3) promoting racial and economic integration in education.

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- These problems have long gone unsolved because they are difficult and because race has divided us, but also because we need to reassess the roles of the different levels of government and of the family in education. The old formulas need revision, the old problems need new thinking, and the old values need new life.
- We need to provide every family, regardless of race or zip code, with an Education Bill of Rights.²

(a) **Close the racial gap in opportunity and achievement.** Notwithstanding important progress, significant racial disparities in achievement persist. We must close these gaps and raise the bar for everyone. This means overcoming racial disparities in the educational opportunity available to every child – including both resources and expectations – and simultaneously insisting on high standards for achievement. Beyond this, we must improve our ability to make targeted, individualized efforts to ensure that every child succeeds to his or her full potential. Among the key elements of an education bill of rights for equal opportunity and achievement:

Parenting and early childhood: Ensure that every child has a parent or other adult actively engaged in that child's learning, and that every young child has access to early learning opportunities.

Teaching: Improve the quality of teacher training, ensure that high-quality teachers are equitably distributed, and ensure that teachers promote high expectations for students of all races.

Curriculum and standards: Ensure that every child has access to challenging curricula tied to high standards, and that tracking does not prevent any child from achieving his or

² Such a Bill of Rights might include the following:

- (1) Every child shall have a parent or other adult actively engaged in his/her learning and have access to support services to help that child achieve to his/her full potential.
- (2) Every child shall have access to early learning opportunities.
- (3) All parents have the right to send their children to equitably funded schools that are accountable for their child's learning.
- (4) Every child shall have access to high-quality teachers.
- (5) Every child shall be held to high expectations and standards and have access to challenging curricula.
- (6) Every child shall have access to adequate facilities and modern technology.
- (7) Every LEP child shall have access to the tools necessary to help him/her learn English within three years.
- (8) Every child shall learn in a safe environment.
- (9) All parents and children shall have the right to choose to attend racially and ethnically integrated schools.
- (10) Every high school graduate shall have the financial support and opportunity to go to college.

her full potential. Students of color are often tracked into special education and out of honors courses.

English acquisition: Guarantee each LEP child an effective opportunity to master English, and hold students and educators accountable for success.

Infrastructure: Close the racial disparity in full access to adequate facilities and modern technology.

Post-secondary attainment: Overcome racial disparities in high school graduation rates, and in college participation, retention and graduation rates.

- (b) **Institute greater accountability and heightened responsibility for administrators, teachers, students and public officials.** Without much stronger mechanisms for accountability, the goals of closing disparities in opportunity and achievement are mere aspirations, not commitments. Moreover, to break the back of inertia and complacency we will have to design interventions that target the political, bureaucratic and jurisdictional impediments to sustained reform. The Voluntary National Test is such an intervention, as is public school choice, and we must build on such approaches while providing needed safeguards against abuses.

Tests and accountability: Use the best assessment methods, including national tests, to build broader and deeper systems that will hold administrators, teachers, and students accountable for educational achievement. The accountability should flow “up” from parents and “down” from Federal taxpayers and presidential leadership. The range of tools, both carrots and sticks, should stretch from more effective parental action, to political mobilization, to school reconstitution or receivership, to fiscal incentives – and everything in between.

Governance and leadership: If eliminating the disparities in opportunity and achievement require modifications of our traditional structure of roles and authority, so be it. We need new ways to think about old problems.

- (c) **Promote integration and diversity in education to enrich the learning experience for all students.** We also care about integration, so that students have the opportunity to learn together in ways that dissolve stereotypes and improve race relations. Parents and students should have a right to chose an integrated education. But, after a burst of progress in the late 1960s and early 1970s, segregation in K-12 education is worsening. For example, a recent study reports that one-third of black and Hispanic students attend schools with more than 90 percent minority enrollment, and almost nine in 10 of those

schools are predominantly poor. High-quality integrated schools provide a more complete educational experience for all students than high-quality segregated schools. Conversely, ineffective, racially isolated schools in high-poverty areas present our greatest obstacle to closing the disparities in opportunity and achievement.

Educate the public on the value of inclusion, diversity and integration -- reviving that ideal: An inclusive community of students and educators can: improve teaching and learning by enriching the learning environment with diverse perspectives; strengthen students' critical-thinking skills by challenging their existing perspectives; teach students how to interact comfortably with people different from themselves and thereby how to function as good neighbors, colleagues and citizens in our diverse democratic society; improve students' preparation for employment by teaching them the value of diverse perspectives, how to function in diverse business settings, and how to communicate effectively in our increasingly diverse domestic marketplace and the expanding global marketplace; and foster the advancement of knowledge by spurring study in new areas of concern.

Reduce racial segregation and isolation among schools: This is not a call for massive, federally mandated strategies where there is no constitutional violation demanding court-supervised remedies. Instead, parents and educators should make use of a range of measures such as magnet schools, multidistrict transfer programs, and so forth. Most important, we must better appreciate the important stake we have in making diversity work in the world of our children. Schools of unquestioned excellence are the easiest to make and keep diverse.

Reduce segregation within schools: Even in diverse schools, evidence shows that students are often re-segregated into racially homogenous classes through tracking and other mechanisms, thereby reducing their opportunities to learn together and have positive cross-racial interactions.

Inclusion in higher education: Promote access and diversity in higher education, and foster the educational benefits of diversity. Mend, don't end, affirmative action. And wherever possible, use creative race-neutral mechanisms in admissions and in the K-12 pipeline. Ensure that in sustaining the crucial role of HBCUs, HSIs, and Tribal colleges (which are integrated) we don't "excuse" historically white institutions from the principle of excellence-through-inclusion.

-- Discussion issues on the education workplan

Are you comfortable with the three major pillars: closing the race gap in opportunity and achievement; accountability and governance; attacking racial isolation?

- Do the bulleted items capture your personal priorities? Are any high priorities missing? Can any of them be demoted for attention in textual boxes rather than in your narrative?
- Can we explore some rethinking of the federal role in order to tackle these disparities?

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§ 6.4 CRIMINAL JUSTICE AND COMMUNITY SECURITY

From hate crimes to crack houses, from police misconduct to police hiring, from disparate incarceration rates to racial profiling -- barely a week goes by without some aspect of crime and criminal justice standing as a lightning rod for racial and ethnic tensions. No area is more freighted with divisive stereotypes and misunderstanding. Yet it must be tackled with vigor because victimization and criminality destroy communities and families, just as they fuel alienation and division.

-- Outline of the section

Introduction/Context

- Racial disparities exist in both the realities and perceptions of crime and the administration of justice: communities of color disproportionately bear the social, economic, and personal costs of crime, and, according to polls, have less confidence in the fairness of the criminal justice system than do whites.
 - Building One America requires building a criminal justice system that serves and treats Americans of all races fully and fairly, and thereby closes the trust gap while making community security a right enjoyed equally.
- (a) **Community Security: Eliminate racial disparities in victimization.** The right to be secure cannot be discounted by race. Every American is entitled to live in a safe community, and the race of residents shouldn't tell us the crime rate. From 1992 to 1997, rates of violent crime in America have decreased, but disparate victimization rates persist. Tackling this problem directly is part of the opportunity agenda, as well as a matter of decent fairness. The Administration's record has numerous elements, which we can build upon and target to close the disparities.
- (b) **Keep young people out of the criminal justice system, and for those who have contact with it, make it their last.** Racial minorities, especially young, black males, are more likely than whites to be both the offenders and victims of certain crimes, including

violent crimes. Furthermore, one third of young, black men are presently under the supervision of the criminal justice system (on probation, in prison, or on parole), and the chance that a young, black male will go to prison during his lifetime is nearly 30%. The realities are flatly inconsistent an American vision of racial justice and equal opportunity.

- (c) **Build greater fairness and trust in the criminal system.** Several past and present factors contribute to mistrust in our criminal justice system among persons of color, including negative interactions, disparities in the administration of justice (incarceration, sentencing, death penalty), and lagging diversity in law enforcement (police, prosecutors, judges, juries). Without more trust, creating safe communities is impossible, because legitimacy, support and cooperation don't come free.

- *Prohibit the use of racial profiling:*³ No American should be subject to disparate application of the state's policing power because of his/her race. Statistically efficient allocation of resources, some claim, justifies impositions on innocent persons, while perpetuating stereotypes and contributing to tensions. Targeting based on color, without individualized evidence, is rarely if ever fair and just.

- *Pursue zero tolerance for racially suspect police misconduct and brutality:* While the vast majority of police are dedicated public servants who deserve our respect and support, several high-profile cases illustrate that incidents of police misconduct and brutality motivated by racial animus still occur. We are deeply divided in perceptions of the magnitude of the problem.

- *Eliminate racial discrimination and unjustified disparities in incarceration, sentencing, and imposition of the death penalty.*

- *Increase diversity and representation in the criminal justice system.*

-- Discussion issues on the criminal justice workplan

- Can we speak of community safety as a "right", and the racial disparities in victimization as flatly inconsistent with your vision? If so, are disparities a fair index of this aspect of racial justice and opportunity?

- Should we "prohibit" racial profiling, or "restrict" it?

³Profiling will also be considered in the "Wrestling Lessons" chapter, as one of the hard questions that forces us to think about differences in values and perceptions.

- Similarly, should we tackle disparities in rates of incarceration, presumably with targeted attention to prevention, diversion and post-incarceration?
- Can we assume that the primary public sector role is state and local, or do you envision continued growth in the federal role?

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§ 6.7 THE CIVIL RIGHTS ENFORCEMENT SECTION OF THE WORKPLAN

We have considered distributing the civil rights law enforcement issues in several sectoral subsections – as components of the education or jobs strategies, for example. But for now, I want to press ahead as sketched below because the audience will appropriately expect some attention to the traditional antidiscrimination enforcement agenda. This also permits you to teach about this unfinished work. Moreover, the best opportunities for boldness are in cross cutting issues, among them: policy judgments about the lawfulness under Title VI of persistent resource disparities; retooling agency enforcement strategies to emphasize proactive technical assistance and voluntary action; and rethinking the legal framework and enforcement priorities to reflect our 21st century diversity.

We are joined at the hip with Chuck Ruff, and will cooperate in his effort to put before you suggested civil rights enforcement priorities for the next two years.

– Outline of the section

Introduction/Context

- Persistence of discrimination, and of enforcement backlogs.
 - We have opportunities to strengthen and more aggressively enforce civil rights principles, and also support appropriate voluntary actions that promote equal opportunity and access. This includes defending disparate impact doctrine, and defending affirmative action.
 - The traditional agenda needs renovation to (i) increase its efficiency at handling the retail problem of discrimination; (ii) contribute more directly to the opportunity agenda in education, jobs and community economics; (iii) reflect our 21st century diversity.
- (a) **Overcome racial disparities in opportunity by expanding the use of civil rights enforcement.** Civil rights enforcement can play an especially important role in

overcoming barriers to educational and economic opportunity, and we should strengthen and focus civil rights enforcement to complement the opportunity agenda.

Strengthen antidiscrimination laws and enforcement procedures: For example, we could amend Title II, which prohibits discrimination in public accommodations, to include businesses that provide goods and services. At present, racial discrimination in retail sales (e.g., the Eddie Bauer case in which a black teenager was ordered by a security guard to strip off his shirt because he did not have a sales receipt) does not raise a strong federal cause of action. We nearly abandoned pattern and practice investigations during the 1980s. That was wrong.

Use Title VI to address racial disparities: No federal money should be spent in a manner that supports unjustified racial disparities in opportunity. For example, in education, Title VI prohibits policies and practices that have an unjustified disparate impact on select racial groups in terms of access to educational resources, tracking into challenging courses, the use of unvalidated high stakes tests, and more. We should strengthen Title VI enforcement.

How much discrimination is there? We should expand research on the extent of racial discrimination, using the best available methodologies (testers where appropriate), in such areas as employment, housing, and access to capital. The results of such testing should be published in an annual report card.

(b) Fully address all forms of discrimination affecting our increasingly diverse population by strengthening civil rights laws and enforcement. We must retool our civil rights laws and refocus enforcement efforts to fully address civil rights issues affecting our diverse citizenry.

New immigrants: Strengthen laws and enforcement to promote the rights of new immigrants. For example, in immigration and employment, we could expand enforcement against labor abuses in “sweatshops,” the victims of which are often new immigrants of Hispanic or Asian origin, and amend present laws to stabilize the immigration status of persons who report labor abuses so those persons do not fear reprisal, official or private.

Language acquisition: Promote the rights of LEP populations. For example, in education, we could develop regulations to clarify the *Lau* standard concerning what legal requirements schools must meet in educating LEP students.

Learning your rights: Educate immigrant and LEP populations about civil rights laws and mechanisms. We should promote outreach to immigrant and LEP populations whose rights are protected but who are underutilizing civil rights laws.

- (c) **Address discrimination and disparities by promoting voluntary efforts in conjunction with enforcement of civil rights laws.** In addition to reacting to civil rights complaints, civil rights enforcement agencies should act proactively to encourage and support voluntary compliance with civil rights laws and values.
- Expand civil rights consultations and clarify legal standards:* There are civil rights areas where both the law and policy are unclear and where people of good will may be managing inappropriate programs. We should act to clarify legal standards and to encourage actors to seek guidance concerning their civil rights obligations. We could promote laws or regulations encouraging voluntary consultations with civil rights agencies. If an actor voluntarily submits his/her practice for civil rights review, he/she is safe harbored and/or any agreement approved by the civil rights agency following that review would be defended by the federal government if later challenged by a third party.
- Expand proactive enforcement:* Absent a formal complaint, where potential civil rights violations are discovered, civil rights agencies should follow up with the party to correct the injustice. If discussions are not fruitful, the enforcement agency reserves the right to launch a more formal civil rights enforcement examination. For example, in education, the Department of Education's Office of Civil Rights (OCR) recently learned of a Georgia education policy that placed students into gifted and talent programs based solely on IQ test scores, despite the fact that the IQ test was not validated for that purpose nor validated to be the *sole* factor for any purpose. This policy led to a disproportionately low number of minority students being admitted to gifted and talented programs. OCR consulted with Georgia officials, and the policy was properly amended.
- (d) **Mend, don't end, affirmative action as enforcement remedy and voluntary measure to promote access and inclusion**
- (e) **[Hate crimes.]**

-- *Discussion issues on the civil rights workplan*

After further interagency discussion, we will need policy guidance about a number of Title VI issues.

Should we develop a package addressing "the new diversity"?

How much technical assistance should be done proactively to implement “mend don’t end” in various sectors?

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IV. THE LEADERSHIP CHAPTER

Following the workplan chapter, you can challenge leaders in a range of sectors to do their part, and combine this with a vision of locally-based efforts to use the promising practices and devise locally-oriented workplans. Finally, in this chapter you should describe the ongoing mechanism within the White House to help support the sectoral leadership, community-based leadership, and the Federal government elements of your workplan.

(a) *Challenges for sectoral leadership*

We expect, by the publication date, to have worked successfully with leadership groups in a few sectors, prompting them to develop a list of action steps tailored to their sector, and a practical strategy for implementation. A brief status report on what we have initiated follows.

Higher Education: With staff support from the American Council on Education, a core group of college and university presidents is working to establish a broader coalition that will lead a coordinated campaign to educate the public about the value of diversity in higher education and to share campus practices that promote diversity. We expect them to launch the effort, designed with Frank Greer as lead consultant, sometime this fall. (There is a possibility of using a White House event to bless the undertaking.)

Faith Community: **Sandy Cloud of the National Conference for Community and Justice has agreed to lead a steering committee in convening, on October 22 and October 23, an implementation summit at which a group of faith leaders will write and commit to a practical work plan for both national and community-based action, and devise a coalition mechanism for follow through. This will include special efforts to reach those faith communities that have not traditionally been leaders in racial justice. In addition, at your September 11 breakfast for religious leaders, you will have an opportunity to mention Sandy Cloud’s leadership, and encourage those in the room to respond positively to the effort.**

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Corporate: Secretary Daley will informally convene a group of CEOs in October to identify the most appropriate elements of a corporate sector initiative, and strategies for enlisting support from key executives. In preparation for that session, White House and agency staff will brainstorm with some current and former Administration officials in corporate leadership.

Youth: We are organizing a team of White House staff and representatives from national youth-oriented organizations to prepare a workplan intended for widespread endorsement and dissemination. (The outside collaborators will include USSA, Young Democrats, Young Republicans, the youth divisions of the NAACP, Urban League, La Raza and the Congress of Asian Pacific American Youth.) Tentatively, we think the plan's three major components will be: (i) a national campaign to educate the youth sector about the intricacies and history of race and racism; (ii) an initiative to improve race-related curriculum and teaching in grades K-16; and (iii) a mechanism to ensure youth sector involvement.

(b) Options for an ongoing structure to carry out your work plan

While the work plan is not yet completed, we know that there will be some general components which will require continuity and should compose the major responsibilities of the new entity:

- Policy making (including research and data collection)
- Outreach and leadership development (including technical assistance to communities)
- Communication campaign (including an awards program)
- Support for promising practices (such as a clearinghouse, conferences, grant funding)

The work plan lays out an ambitious agenda that will require the involvement of several players. With such an extensive scope of work, a coordinating body for the federal sector, and for liaison with non-federal actors is needed to ensure continued momentum and follow up from outside efforts. Non-federal leaders engaged on the workplan will expect a central point of contact and technical assistance.

Option A: President's Council for One America

AI: President's Council for One America Plus an External Advisory Committee

The continuing effort could take a form similar to the Council for Environmental Quality or the Office of Science and Technology Policy. This arrangement would be short of the ONDCP model which has a large staff, a significant budget, and substantial operating

authority. The council, created by Executive Order, would be run by an Assistant to the President (as Executive Director) with a small staff and a blue ribbon advisory committee.

A council staff should include a policy component, which would work with existing White House policy offices and federal agencies to promote data collection and research and to develop and monitor policies to overcome disparities and eliminate discrimination.

It would also have a communications component, which would help lead a public education campaign, support a promising practices clearinghouse, and conduct outreach to help improve race relations.

- Pros:
- Location places the Presidency squarely behind racial reconciliation effort
 - Relatively stable structure
 - Staff appointed by you ensures White House control
 - Advisory committee offers opportunity for showcasing diverse leadership, provides credibility in building partnerships

- Cons:
- Location and staffing make the stakes high
 - Advisory committee requires support and nurturing; the familiar headaches

A2: *President's Council for One America, No Advisory Committee*

This option would be the same as option A1 but it would not include an Advisory Committee.

- Pros:
- Staff would not be distracted by the day-to-day demands of managing an Advisory Committee

- Cons:
- Lacks the outside validation that an Advisory Committee can provide

Option B: Dedicated Staff reporting to the Office of the Chief of Staff

An Assistant to the President with a small staff, reporting to the Chief of Staff's office, could take responsibility for managing Administration efforts.

- Pros:
- Closely linked to you and the White House
 - At the center of activity

- Cons:
- Not a formal structure, may not be stable
 - May not be viewed publicly as a significant enough commitment

Option C: Private Foundation Model

C1: *One America Foundation*

The structure could take the form of a private foundation, established at your urging and supported to varying degrees by the federal government, similar to the Points of Light Foundation. The goals of the foundation could include promoting research on issues of race, promoting a public education campaign to support racial reconciliation, and supporting community efforts to improve race relations. Such a foundation could perhaps best complement a separate policy-making effort within the federal government.

- Pros:
- Serves as umbrella to coordinate several areas of activity
 - Independence
 - Ability to raise money

- Cons:
- May not be viewed as closely connected to the White House
 - Requires someone's time and attention to pull together

C2: *Clinton Library Model*

This option is similar to the Foundation model above except that it would be an endeavor for you after your final term ends, possibly as part of the Clinton library. Staff could begin immediately to design the structure.

- Pros:
- More time to put together the funding and structure
 - You will have more time to devote to it

- Cons:
- Delays significant Presidential involvement for a few more years
 - May be partisan resistance to participating in activities because of close alignment with this Administration

V. *NEXT STEPS*

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Attachments:

Current book outline.

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NEC memorandum on employment issues
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