

**NLWJC - KAGAN**

**EMAILS RECEIVED**

**ARMS - BOX 100 - FOLDER -003**

**[04/29/1999-06/14/1999]**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-APR-1999 18:02:10.00

SUBJECT: Daschle set to introduce new equal pay bill tomorrow

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

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

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

TO: Carl Haacke ( CN=Carl Haacke/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

TEXT:

Caroline Fredrickson just called and said that Daschle is expected to introduce the new Paycheck Fairness Act with the data collection provision tomorrow. They aren't planning on doing any press on it.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-APR-1999 12:27:11.00

SUBJECT: Final Version of the Revised Daschle Equal Pay bill

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

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

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

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

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

TEXT:

Daschle's staff has confirmed that they will introduce it today.

----- Forwarded by Mary L. Smith/OPD/EOP on 04/30/99  
12:26 PM -----

Carmel Martin @ daschle.senate.gov (Carmel Martin)  
04/30/99 12:22:52 PM

Record Type: Record

To: Mary L. Smith/OPD/EOP, Caroline R. Fredrickson/WHO/EOP  
cc:  
Subject: Final Version

- Bai99.fin.wpd

Let me know if you would like a hard copy.

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

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D69]ARMS23065653E.136 to ASCII,  
The following is a HEX DUMP:

FF57504357060000010A02010000000205000000754C0000000200009DC2498949596CDA316A6C  
DA9B321CD1198F7A097424DA98EA9D4B228A54CA72ECD89C7CD88BB5A011B20F2D387E2F1FC01E  
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31863C197541EC6760936B622924057124A6E4FCC5EB25E23EF25C1465AD778159D8821B67EDE1  
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106th CONGRESS

1st Session

Automated Records Management System  
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S. 74

IN THE SENATE OF THE UNITED STATES

Mr. Daschle (for himself, Mr. Kerry, Mr. Leahy, Ms. Mikulski, Mrs. Murray, Mr. Reid, Mr. Wyden, Mrs. Boxer, Mr. Lautenberg, Mr. Kennedy, Mr. Kerrey, Mr. Durbin, Ms. Landrieu, Mr. Reed, Mr. Robb, Mr. Torricelli, Mr. Breaux, Mr. Wellstone, Mrs. Feinstein, Mr. Hollings, Mr. Dodd, Mr. Akaka, Mr. Feingold, and Mr. Johnson) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

⊙To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, 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.

This Act may be cited as the ``Paycheck Fairness Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Women have entered the workforce in record numbers.

(2) Even in the 1990's, women earn significantly lower pay than men for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions. These pay disparities exist in both the private and governmental sectors. In many instances, the pay disparities can

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only be due to continued intentional discrimination or the lingering effects of past discrimination.

(3) The existence of such pay disparities\_

(A) depresses the wages of working families who rely on the wages of all members of the family to make ends meet;

(B) prevents the optimum utilization of available labor resources;

(C) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of the several States;

(D) burdens commerce and the free flow of goods in commerce;

(E) constitutes an unfair method of competition in commerce;

(F) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce;

(G) interferes with the orderly and fair marketing of goods in commerce; and

(H) in many instances, may deprive workers of equal protection on the basis of sex in violation of the 5th and 14th amendments.

(4) (A) Artificial barriers to the elimination of discrimination in the payment of wages on the basis of sex continue to exist more than 3 decades after the enactment of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

(B) Elimination of such barriers would have positive effects, including\_

(i) providing a solution to problems in the economy created by unfair pay disparities;

(ii) substantially reducing the number of working women earning unfairly low wages, thereby reducing the dependence on public assistance; and

(iii) promoting stable families by enabling all family members to earn a fair rate of pay;

(iv) remedying the effects of past discrimination on the basis of sex and ensuring that in the future workers are afforded equal protection on the basis of sex; and

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(v) ensuring equal protection pursuant to Congress' power to enforce the 5th and 14th amendments.

(5) With increased information about the provisions added by the Equal Pay Act of 1963 and wage data, along with more effective remedies, women will be better able to recognize and enforce their rights to equal pay for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.

(6) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.

(a) Required Demonstration for Affirmative Defense. Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended by striking ``(iv) a differential'' and all that follows through the period and inserting the following: ``(iv) a differential based on a bona fide factor other than sex, such as education, training or experience, except that this clause shall apply only if\_

``(I) the employer demonstrates that\_

``(aa) such factor\_

``(AA) is job-related with respect to the position in question;  
or

``(BB) furthers a legitimate business purpose, except that this item shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice; and

``(bb) such factor was actually applied and used reasonably in light of the asserted justification; and

``(II) upon the employer succeeding under subclause (I), the employee fails to demonstrate that the differential produced by the reliance of the employer on such factor is itself the result of discrimination on the basis of sex by the employer.

``An employer that is not otherwise in compliance with this paragraph may not reduce the wages of any employee in order to achieve such compliance.''.

(b) Application of Provisions. Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended by adding

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at the end the following: ``The provisions of this subsection shall apply to applicants for employment if such applicants, upon employment by the employer, would be subject to any provisions of this section.''

(c) Elimination of Establishment Requirement. Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended\_

(1) by striking `` , within any establishment in which such employees are employed, '' ; and

(2) by striking ``in such establishment'' each place it appears.

(d) Nonretaliation Provision. Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended\_

(1) by striking ``employee'' the first place it appears and inserting ``employee (or applicant for employment in the case of an applicant described in section 6(d))'' ;

(2) by inserting ``(or applicant)'' after ``employee'' the second place it appears;

(3) by striking ``or has'' each place it appears and inserting ``has'' ; and

(4) by inserting before the semicolon the following: `` , has inquired about, discussed, or otherwise disclosed the wages of the employee or another employee, or because the employee (or applicant) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or action under section 6(d)'' .

(e) Enhanced Penalties. Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended\_

(1) by inserting after the first sentence the following: ``Any employer who violates section 6(d) shall additionally be liable for such compensatory or punitive damages as may be appropriate, except that the United States shall not be liable for punitive damages.''

(2) in the sentence beginning ``An action to'' , by striking ``either of the preceding sentences'' and inserting ``any of the preceding sentences of this subsection'' ;

(3) in the sentence beginning ``No employees shall'' , by striking ``No employees'' and inserting ``Except with respect to class actions brought to enforce section 6(d), no employee'' ;

(4) by inserting after the sentence referred to in paragraph (3) ,

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the following: ``Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.''; and

(5) in the sentence beginning ``The court in''\_

(A) by striking ``in such action'' and inserting ``in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection''; and

(B) by inserting before the period the following: `` , including expert fees''.

(f) Action by Secretary. Section 16(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amended\_

(1) in the first sentence\_

(A) by inserting ``or, in the case of a violation of section 6(d), additional compensatory or punitive damages,' ' before ``and the agreement''; and

(B) by inserting before the period the following: `` , or such compensatory or punitive damages, as appropriate'';

(2) in the second sentence, by inserting before the period the following: ``and, in the case of a violation of section 6(d), additional compensatory or punitive damages'';

(3) in the third sentence, by striking ``the first sentence'' and inserting ``the first or second sentence''; and

(4) in the last sentence\_

(A) by striking ``commenced in the case'' and inserting ``commenced\_

``(1) in the case'';

(B) by striking the period and inserting ``; or''; and

(C) by adding at the end the following:

``(2) in the case of a class action brought to enforce section 6(d), on the date on which the individual becomes a party plaintiff to the class action''.

SEC. 4. TRAINING.

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The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 9(b), shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

SEC. 5. RESEARCH, EDUCATION, AND OUTREACH.

The Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women, including\_

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the

general public the findings resulting from studies and other materials, relating to eliminating the pay disparities;

(3) sponsoring and assisting State and community informational and educational programs;

(4) providing information to employers, labor organizations, professional associations, and other interested persons on the means of eliminating the pay disparities;

(5) recognizing and promoting the achievements of employers, labor organizations, and professional associations that have worked to eliminate the pay disparities; and

(6) convening a national summit to discuss, and consider approaches for rectifying, the pay disparities.

SEC. 6. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNITION PROGRAM.

(a) Guidelines.\_

(1) In general.\_The Secretary of Labor shall develop guidelines to enable employers to evaluate job categories based on objective criteria such as educational requirements, skill requirements, independence, working conditions, and responsibility, including decisionmaking responsibility and de facto supervisory responsibility.

(2) Use.\_The guidelines developed under paragraph (1) shall be designed to enable employers voluntarily to compare wages paid for

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different jobs to determine if the pay scales involved adequately and fairly reflect the educational requirements, skill requirements, independence, working conditions, and responsibility for each such job with the goal of eliminating unfair pay disparities between occupations traditionally dominated by men or women.

(3) Publication. The guidelines shall be developed under paragraph (1) and published in the Federal Register not later than 180 days after the date of enactment of this Act.

(b) Employer Recognition.

(1) Purpose. It is the purpose of this subsection to emphasize the importance of, encourage the improvement of, and recognize the excellence of employer efforts to pay wages to women that reflect the real value of the contributions of such women to the workplace.

(2) In general. To carry out the purpose of this subsection, the Secretary of Labor shall establish a program under which the Secretary shall provide for the recognition of employers who, pursuant to a voluntary job evaluation conducted by the employer, adjust their wage scales (such adjustments shall not include the lowering of wages paid to men) using the guidelines developed under subsection (a) to ensure that women are paid fairly in comparison to men.

(3) Technical assistance. The Secretary of Labor may provide technical assistance to assist an employer in carrying out an evaluation under paragraph (2).

(c) Regulations. The Secretary of Labor shall promulgate such rules and regulations as may be necessary to carry out this section.

SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR PAY EQUITY IN THE WORKPLACE.

(a) In General. There is established the Robert Reich National Award for Pay Equity in the Workplace, which shall be evidenced by a medal bearing the inscription "Robert Reich National Award for Pay Equity in the Workplace". The medal shall be of such design and materials, and bear such additional inscriptions, as the Secretary of Labor may prescribe.

(b) Criteria for Qualification. To qualify to receive an award under this section a business shall

(1) submit a written application to the Secretary of Labor, at such time, in such manner, and containing such information as the Secretary may require, including at a minimum information that demonstrates that the business has made substantial effort to eliminate pay disparities between men and women, and deserves special

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recognition as a consequence; and

(2) meet such additional requirements and specifications as the Secretary of Labor determines to be appropriate.

(c) Making and Presentation of Award.\_

(1) Award.\_After receiving recommendations from the Secretary of Labor, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) Presentation.\_The President or the designated representative of the President shall present the award under this section with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(d) Business.\_In this section, the term ``business'' includes\_

(1) (A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) an entity carrying out a joint program, formed by a combination of any entities described in paragraph (1) or (2).

SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-8) is amended by adding at the end the following:

``(f) (1) Not later than 18 months after the date of enactment of this subsection, the Commission shall\_

``(A) complete a survey of the data that is currently available to the Federal Government relating to employee pay information for use in the enforcement of Federal laws prohibiting pay discrimination

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and, in consultation with other relevant Federal agencies, identify additional data collections that will enhance the enforcement of such laws; and

``(B) based on the results of the survey and consultations under subparagraph (A), issue regulations to provide for the collection of pay information data from employers as described by the sex, race, and national origin of employees.

``(2) In implementing paragraph (1), the Commission shall have as its primary consideration the most effective and efficient means for enhancing the enforcement of Federal laws prohibiting pay discrimination. Other factors that the Commission shall consider include the imposition of burdens on employers, the frequency of required reports (including which employers should be required to prepare reports), appropriate protections for maintaining data confidentiality, and the most effective format for the data collection reports.''.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Marjorie Tarmey ( CN=Marjorie Tarmey/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:12-MAY-1999 09:33:29.00

SUBJECT: 5:30 Deputies mtg canceled

TO: Michele Jolin ( CN=Michele Jolin/OU=CEA/O=EOP @ EOP [ CEA ] )  
READ:UNKNOWN

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

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

TO: Mark F. Lindsay ( CN=Mark F. Lindsay/OU=OA/O=EOP @ EOP [ OA ] )  
READ:UNKNOWN

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

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

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

TO: Shirley S. Sagawa ( CN=Shirley S. Sagawa/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: 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: Glyn T. Davies ( CN=Glyn T. Davies/OU=NSC/O=EOP @ EOP [ NSC ] )  
READ:UNKNOWN

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

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

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

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

READ:UNKNOWN

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

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

TEXT:

Today's 5:30 Deputies meeting is canceled. Please pass the word.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1999 11:30:43.00

SUBJECT: Meeting Today

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

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

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

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

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

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

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

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

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

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

CC: Alice H. Williams ( CN=Alice H. Williams/OU=CEA/O=EOP@EOP [ CEA ] )  
READ:UNKNOWN

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

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

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

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

TEXT:

You are invited to participate in a meeting Bruce Reed is holding today -- a discussion of Presidential action on FMLA and Unemployment Insurance. This meeting will be held in the Roosevelt Room at 3:00 p.m. There will also be representation from the Departments of Labor and Treasury.



**DRAFT      DRAFT      DRAFT      DRAFT      DRAFT      DRAFT**

**May 21, 1999**

**DECISION MEMORANDUM FOR THE PRESIDENT**

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**FROM:            BRUCE REED**

**SUBJECT:        POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH**

Your Grambling State University commencement address this Sunday focuses on the need to empower parents in this new economy with greater tools to balance their responsibilities to their jobs and their families. You will release a new study by the Council of Economic Advisors that analyzes the “time crunch” that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a “serious health condition,” as defined under the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

The DPC has also led a policy process to examine non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, four States with surpluses in their UI trust funds – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their State legislatures that would do this. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women’s groups to allow States this flexibility; business groups have predictably weighed in strongly against opening up UI for this purpose.

Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families in important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State elected to use its UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that States should consider creative ways to provide paid leave benefits.

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would

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be significant (estimates begin at \$2 billion annually). Second, the breadth of purposes covered by the FMLA raises concerns. The majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this category of leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers may abandon their sick leave benefit programs). Third, while today most UI tax collection is “experience rated” (meaning that employers pay into the system based on their workers’ use of it), the cost of this new policy should be borne as broadly as possible to guard against unintended labor force repercussions on women of child-bearing age.

Your advisors have considered various ways of advancing the policy of paid leave while also mitigating the potential for unintended negative consequences. Ideally, we would issue a regulation that confines the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous, limited categories) and ensures that these new benefits are not “experience rated.” The DOL Solicitor’s office advises that, while issuing regulations will enable us to set important parameters for State programs, we may not have the authority to limit them in these ways (the question is under review). Even if we do not have this authority, however, we believe that we can accomplish much the same goal with a broader regulation encompassing all FMLA applications if (a) you focus on new parents in a directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with model State legislation that guides States in program design, confining this program to new parents and ensuring that the new benefit is not “experience rated.”

This construct does not mitigate all danger of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave. However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process – the NEC, OMB, DOL, CEA, and the First Lady’s Office – agree that this is an exciting and responsible approach to addressing this issue.

**PROCEED**

**HOLD OFF AT THIS TIME**

**LET’S DISCUSS**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-MAY-1999 12:26:55.00

SUBJECT: Daily Report

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

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

TO: Karen Tramontano ( CN=Karen Tramontano/OU=WHO/O=EOP @ EOP [ WHO ] )  
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CC: Marjorie Tarmey ( CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [ WHO ] )  
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CC: Rebecca L. Walldorff ( CN=Rebecca L. Walldorff/OU=WHO/O=EOP @ EOP [ WHO ] )  
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CC: Mindy E. Myers ( CN=Mindy E. Myers/OU=WHO/O=EOP @ EOP [ WHO ] )  
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CC: Kris M Balderston ( CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [ WHO ] )  
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READ:UNKNOWN

TEXT:

We'll be putting together the Podesta Daily Report today for the President. We'd like to keep it short and simple; so, it'd be nice to have a high threshold for submitting bullet points. If there's something you think he needs to know today, please send it electronically (in WordPerfect) to me (w/ a cc: to Barbara Barclay) before 4 p.m. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:28-MAY-1999 12:27:07.00

SUBJECT: FINAL HOUSE PAPER --PLS DISTRIBUTE ASAP ASAP

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TO: Ashley L. Raines ( CN=Ashley L. Raines/OU=OA/O=EOP@EOP [ OA ] )  
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TO: Alison Muscatine ( CN=Alison Muscatine/OU=WHO/O=EOP@EOP [ WHO ] )  
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TO: Anne E. McGuire ( CN=Anne E. McGuire/OU=WHO/O=EOP@EOP [ WHO ] )  
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TO: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP@EOP [ OPD ] )  
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TO: Jonathan A. Kaplan ( CN=Jonathan A. Kaplan/OU=OPD/O=EOP@EOP [ OPD ] )  
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# HOUSE BUDGET ALLOCATIONS DRAMATICALLY CUT KEY PRIORITIES

May 28, 1999

Automated Records Management System  
Hex-Dump Conversion

The House Appropriations Committee has issued its 302(b) allocations – the annual allocations to the 13 subcommittees. After factoring in commitments made in the House budget for defense, NIH, Census, mass transit, and highway construction, and freezing key priorities of special education and VA medical care at 1999 levels – *the remaining programs would have to be slashed*. If we assume across-the-board cuts in remaining programs, the allocations under the House budget could mean cuts from FY 1999 levels, such as the following:

## Education and Training

- The **Reading Excellence** program which helps children learn to read by the 3<sup>rd</sup> grade could be cut \$47 million, from the \$260 million FY 1999 enacted level, and could serve 93,000 fewer students.
- The 21<sup>st</sup> Century Community Learning Centers could be cut by \$36 million from the \$200 million FY 1999 enacted level, denying **after school and summer school programs** to more than 85,000 students.
- Over 100,000 **summer jobs and training opportunities** could be eliminated for low-income young people.
- Between 50,000-85,000 low income children could lose access to **Head Start** compared to FY 1999 level, a reduction of almost 100,000 low income children from the level proposed for FY 2000, making it impossible to reach the goal of serving one million children by 2002.

## Environment and Health

- Cuts to Health Resources and Services Administration's **health services** for women and children, uninsured people and people with AIDS could mean as many as 5.3 million fewer people receiving needed health care services from FY 1999 enacted level and a cut of 6.2 million people served from the FY 2000 request.
- Funding could be eliminated for the clean-up of 15 **Superfund toxic waste** sites below the FY 1999 level -- needlessly jeopardizing public health for citizens living near affected sites and making it more difficult to meet the 900-site cleanup goal in 2002.

## Crime, Housing, and Other Priorities

- **Rental assistance** under the Home Block Grant Program could be cut by \$144 million and deny tenant-based assistance to over 2,100 families compared to FY 1999. Further, funds could be lost for new construction, rehabilitation, or acquisition of about 15,000 affordable housing units.
- The **Federal Bureau of Investigation (FBI)** could be cut over \$300 million from the FY 1999 enacted (outside the Violent Crime Reduction Trust Fund) level of \$2.8 billion, a reduction of over 2,700 FBI agents below the FY 1999 enacted level. The FY 2000 request level could be cut by over \$600 million and over 5,000 agents.
- The **Immigration and Naturalization Service (INS)** would be cut \$144 million from the FY 1999 enacted level (outside the Violent Crime Reduction Trust Fund) of \$1.2 billion for border enforcement. This cut could result in a reduction of approximately 1,300 Border Patrol agents. From the FY 2000 request, this would be a cut of \$378 million and 3,500 agents.
- The **National Park Service** operating budget could be cut by \$240 million below FY 1999. Most seasonal workers could not be hired, resulting in widespread cutbacks in visitor services, seasonal programs, and hours of operations at 378 park units serving almost 300 million visitors annually.

If we assume they are not going to be able to keep their priorities, the effect of across-the-board cuts could reduce the NIH budget by \$1.9 billion. And the 7 percent across-the-board cut to the Veterans Affairs/HUD appropriations bill could seriously hinder the delivery of vital medical care to hundreds of thousands of our Nation's veterans.

## House 302(b) Allocations Shortchange Education and Training

May 28, 1999

**Overall the House 302(b) allocation to the Labor/HHS Subcommittee would require a 18 percent cut from FY 1999 and 21 percent reduction from the President's request in 2000 for many discretionary programs.**

Assuming across the board cuts to Labor/HSS subcommittee, this would have a devastating impact on critical education, training, and other programs for children:

- **21<sup>st</sup> Century Community Learning Centers**, funded at \$200 million in FY 1999, could be cut by \$36 million, denying **after school and summer school** programs to more than 85,000 students.
- The **Reading Excellence** program which helps children learn to read by the 3<sup>rd</sup> grade could be cut \$47 million, from the \$260 million FY 1999 enacted level, and could serve 93,000 fewer students.
- **Head Start** funding could be \$840 million less than FY 1999 levels. A reduction of this magnitude could cut services by between 50,000 and 85,000 low income children below the FY 1999 level, a reduction of almost 100,000 low income children from the level proposed for FY 2000, making it practically impossible to reach the goal of serving one million children in Head Start by 2002.
- **Work Study** could be cut by \$157 million from the FY 1999 level of \$870 million, to the lowest level since FY 1996. The number of students served would decrease by approximately 172,000 below the FY 1999 level and the funding would not support the President's goal of serving 1 million work study students by 2000.
- **GEAR-UP** could be reduced by \$22 million, from \$120 million in FY 1999 denying 21,000 young people services to help them prepare for and succeed in college.
- **Safe and Drug Free Schools and Communities** funding could be reduced by nearly \$102 million from the \$566 million FY 1999 enacted level, reducing funds for drug and violence prevention that benefits children in 97 percent of the nation's schools. It could also eliminate funding for emergency resources and assistance, including crisis counseling and increased security, in schools experiencing violent events, such as the recent tragic shootings in Littleton, Colorado and Conyers, Georgia.
- **Title I, Education for the Disadvantaged** could be slashed by nearly \$1.4 billion, from \$7.7 billion in FY 1999, cutting up to 2.2 million disadvantaged youth from services to help them reach high standards.
- **Dislocated Worker Assistance** could be cut by \$253 million below the FY 1999 enacted level, denying training, job search assistance, and support services to about 133,200 dislocated workers.
- Over 100,000 **training and summer job opportunities for low-income youth** could be eliminated.
- This reduction could terminate **Jobs Corps'** planned 4-center expansion and/or force Job Corps to close 11-12 other centers compared to FY 1999. This could eliminate about 8,000 residential training slots for extremely disadvantaged youth in FY 2000. In addition, this would reduce program effectiveness by postponing necessary repairs, terminating the relocation of dilapidated centers, and modernizing the vocational training programs.
- The **Child Care and Development Block Grant (CCDBG)** would be reduced by \$140 million from FY 1999 enacted level and could provide child care assistance to almost 50,000 fewer children.

## House 302(b) Allocations Sacrificing Our Environment and Public Health

May 28, 1999

The House 302(b) allocation slashes funding by 12 percent for priority domestic programs from their 1999 level. Assuming across-the-board cuts in affected subcommittees, VA/HUD, Labor/HHS, Agriculture, Interior, and Energy and Water, this could have devastating impacts on public health and the environment in such programs as toxic waste clean-up, water and public health programs, global warming prevention, and national parks:

- **Stopping 15 Toxic Waste Cleanups** -EPA's Superfund program could be cut by \$135 million from FY 1999 enacted levels. This could eliminate funding for 15 new federally-led cleanups due to begin during FY 2000, needlessly jeopardizing public health for citizens living near affected sites and making it more difficult to meet the 900-site cleanup goal in 2002.
- **Shutting Down National Parks** - Cuts to the National Park Service could reduce services and hours of operation at 378 parks and other facilities serving almost 300 million visitors a year. The \$240 million below FY 1999 enacted level could shut smaller parks and back-country areas in larger parks, and jeopardize visitor safety by preventing vital maintenance and repairs.
- **Squandering Our Lands Legacy** - By failing to support the President's Lands Legacy initiative, the House allocation could cripple Federal efforts to preserve natural treasures, and deny states and communities \$588 million to protect farmland, coastland, urban parks and other green spaces.
- **Slashing Water and Public Health Protections** - The reduction to EPA operations from the FY 1999 enacted level could severely hamper implementation of the Clean Water Action Plan, which helps communities clean up the 40 percent of surveyed waters still too polluted for fishing or swimming; and could let polluters off the hook by severely limiting EPA's ability to enforce public health protections.
- **Gambling with Global Warming** - Cuts to the Department of Energy and EPA could gut efforts toward cleaner, more efficient energy for homes, transportation, and industry; and keep the Partnership for a New Generation of Vehicles from meeting its goal of new cars three times more fuel-efficient than today's models by 2004.
- **Crippling Wildlife Protections** - Cuts to the Fish and Wildlife Service, National Oceanic and Atmospheric Administration, and Army Corps of Engineers could hamper salmon restoration in the Pacific Northwest, shut down some wildlife refuges, and reduce efforts to restore endangered species.
- **Raising the Risk of Deadly Wildfires** - Cuts to the Forest Service and Bureau of Land Management (19 percent below FY 1999) could close some lands to the public and reduce firefighting capabilities. A total decrease of about \$160 million below FY 1999 in the wildland firefighting requests for Agriculture and Interior in FY 2000 could severely hamper their capabilities to suppress wild fires, jeopardizing lives and property throughout the West.

## House 302(b) Allocations Shortchange Law Enforcement

May 28, 1999

The House 302(b) allocation for Commerce, Justice, State Subcommittee could require a 12 percent cut from the FY 1999 enacted level to many discretionary programs, assuming minimum essential funding for the 2000 Decennial Census. This could have a devastating impact on critical law enforcement programs such as the Drug Enforcement Agency, INS, FBI, prisons, and drug control programs:

- The **Drug Enforcement Agency (DEA)** could be cut \$100 million from the FY 1999 enacted (outside the Violent Crime Reduction Trust Fund) level of \$835 million. This cut could result in a reduction of approximately 780 agents.
- The **Immigration and Naturalization Service (INS)** could be cut \$144 million from the FY 1999 enacted level for border enforcement of \$1.2 billion (outside the Violent Crime Reduction Trust Fund). This cut could result in a reduction of approximately 6,400 detention beds necessary to incarcerate criminal aliens and illegal border crossers, or over 1,300 Border Patrol agents.
- The **Federal Bureau of Investigation (FBI)** could be over \$300 million from the FY 1999 enacted level of \$2.8 billion (outside the Violent Crime Reduction Trust Fund). This cut could result in a reduction of approximately 2,700 agents below the FY 1999 enacted level.
- The **Federal Prisoner Detention** program run by the U.S. Marshals Service could be cut by \$51 million from the FY 1999 enacted level of \$425 million. This cut could result in a reduction of approximately 2,450 criminal detention beds.
- **Drug Control Programs.** The State Department's drug control programs could be cut by \$29 million compared with FY 1999 enacted levels. This could underfund the State Department programs recently authorized in the **Western Hemisphere Drug Elimination Act** and could necessitate grounding operating aircraft and stop the deployment of assets newly acquired with 1999 drug supplemental funds. As a result, efforts to diminish illicit crop cultivation in Peru, Columbia, and Bolivia could suffer.

**House 302(b) Allocations**  
**Shortchange Urban America**  
May 28, 1999

The House 302(b) allocations reflect a 9 percent cut in funding from the FY 1999 enacted level to discretionary programs and would have a devastating impact on programs critical to our urban areas. Assuming across the board cuts to VA/HUD appropriations subcommittee, key programs such as rental assistance, housing vouchers, and community development efforts would be cut.

- From the FY 1999 enacted level of \$1.6 billion, \$144 million could be cut denying tenant-based **rental assistance** to over 2,100 families. Further, funds could be lost for new construction, rehabilitation, or acquisition of about 15,000 affordable housing units.
- It could eliminate 50,000 **welfare to work housing vouchers** enacted in the FY 1999 budget. The cuts could wipe out the Administration's proposal of adding 100,000 new housing vouchers, including 25,000 to help move families from welfare to work, 18,000 for the homeless, and 15,000 for extremely low-income elderly.
- The **Community Development Financial Institutions Fund (CDFI)** could be reduced by nearly \$9 million from the FY 1999 enacted level of \$95 million. This could result in 12 fewer community development institutions (CDFIs) receiving capital funding and 9 fewer financial institutions receiving Bank Enterprise Act grants compared with the FY 1999 enacted level.
- **Community Development Block Grant Program (CDBG)** could be cut by 9 percent or \$428 million from the FY 1999 enacted level and could translate into a loss of assistance to over 35,000 homes and loss of support for over 54,000 jobs in low-income areas. The CDBG Program is one of the most popular and flexible sources of funds that mayors and governors use to improve economic opportunity and housing in low-income communities. Thousands of local neighborhood improvement efforts could be jeopardized.
- A cut of 9 percent in HUD's discretionary housing subsidy puts **low-income tenants** at risk of losing their housing subsidies and virtually eliminates the Administration's efforts to assist more needy families and the elderly. In addition, the Administration's successful effort to reform public housing by tearing down boarded-up units and replacing them with proper housing could be jeopardized.
- A cut of 9 percent to HUD's **Brownfields** funding could severely slow the efforts in cities to revitalize vacant, abandoned, or underutilized commercial and industrial sites. In turn, this could hamper efforts to create more jobs and revitalize urban areas.

### 302(b) ALLOCATION ASSUMPTIONS

- Total Defense spending for all subcommittees will be what the House and Senate Appropriations Committees indicated in their 302(b) allocations.
- Highways, transit, and crime (Violent Crime Reduction Trust Fund) will all be funded at the level of the caps. The appropriators have no discretion to change these amounts, which appear in separate sub-caps. (The highway and transit funding is above 1999, crime is below.)
- Census will be funded at the minimum amount needed to conduct the census.
- VA medical care will be frozen at the FY 99 level. (See, e.g., statements of Rep. Chambliss in the *Congressional Record* of April 14, 1999, at page H1990, Rep. Stump at page H1995, and Rep. Hill at page H1988.)
- NIH will be increased by \$2 billion. (See, Subcommittee Chairmen Porter and Specter's cosponsorship of the "Biomedical Revitalization Resolution of 1999," H. Res. 89 and S.Res. 19 respectively, which call for a \$2 billion increase.)
- Special education will be frozen at 1999 levels.

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Following is LRM ID: OGG21. Please read and respond to it by 3:00 p.m.,  
Tomorrow, Tuesday, June 15, 1999.

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Monday, June 14, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution  
below  
FROM: Janet R. Forsgren (for) Assistant Director for  
Legislative Reference  
OMB CONTACT: Oscar Gonzalez  
PHONE: (202)395-7754 FAX: (202)395-6148  
SUBJECT: LABOR Testimony on OSHA's Draft Safety and Health Program  
Rule

DEADLINE: 3:00 Tuesday, June 15, 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: Attached is prepared testimony to be presented before the House  
Committee on Small Business by Charles Jeffress, the Assistant Secretary  
of Labor for Occupational Safety and Health, on Thursday, June 17 at 10:30  
am.

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LRM ID: OGG21 SUBJECT: LABOR Testimony on OSHA's Draft Safety and Health Program Rule  
RESPONSE TO  
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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: Oscar Gonzalez Phone: 395-7754 Fax: 395-6148  
Office of Management and Budget  
Branch-Wide Line (to reach legislative assistant):  
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FROM: \_\_\_\_\_ (Date)  
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 \_\_\_\_\_ (Agency)  
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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

- shptest4.wpd===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:  
Unable to convert ARMS\_EXT: [ATTACH.D14]ARMS26365527X.136 to ASCII,  
The following is a HEX DUMP:

**draft -- June 14, 1999 -- 11:15 am**

**STATEMENT OF CHARLES N. JEFFRESS  
ASSISTANT SECRETARY OF LABOR  
FOR OCCUPATIONAL SAFETY AND HEALTH  
before the  
HOUSE COMMITTEE ON SMALL BUSINESS**

**June 17, 1999**

Mr. Chairman, Members of the Committee, thank you for inviting me to testify about OSHA's effort to promulgate a rule on safety and health programs. Safety and health programs are systematic, common sense approaches to managing workplace safety and health to provide effective protection for workers. They are widely recognized as fruitful ways to reduce the number of job-related injuries and illnesses and the number of job-related fatalities. And in the words of Occidental Chemical's Vice President for Health, Safety and Responsible Care, Stephen Kemp, safety and health programs "not only help you improve safety, but [also help] in many other areas of your business. We firmly believe that good safety performance leads to higher productivity, better product quality and overall improved performance as a company." However, even with OSHA's growing emphasis on safety and health programs, widespread action at the State level, and strong insurance company encouragement, many employers either are not aware of the benefits of such programs or have not elected to establish their own programs voluntarily.

OSHA's interest in workplace safety and health programs has grown steadily since the early 1980's, when the Agency first developed its Voluntary Protection Program (VPP) to recognize companies in the private sector with outstanding records in the area of worker safety and health. It became apparent that these worksites, which had achieved injury and illness rates

draft -- June 14, 1999 -- 11:15 am

markedly below those of other companies in their industries, were relying on safety and health programs to produce those results. At VPP worksites, which today routinely achieve injury and illness rates as much as 60 percent below those of other firms in their industry, safety and health programs--and thus the protection of the safety and health of the workforce--have become self-sustaining systems that are fully integrated into the day-to-day operations of the facility. At these worksites, worker safety and health, instead of being relegated to the sidelines or delegated to a single individual, is a fundamental part of the company's business, a value as central to success as producing goods and services or making a fair profit.

The evidence has continued to accumulate as OSHA's stakeholders from industry, labor, State governments, small businesses, trade associations, insurance companies and safety and health organizations have all gained experience with safety and health management systems. OSHA has applied what it learned about safety and health programs from VPP companies and our other stakeholders to smaller businesses, through the addition of the agency's Safety and Health Achievement Recognition Program (SHARP), which is directed at high hazard businesses with 250 or fewer employees.

In 1989, OSHA published its voluntary *Safety and Health Programs Management Guidelines* to help employers establish and maintain management systems to protect their workers. OSHA's guidelines and others like them have helped thousands of companies adopt systematic, ongoing approaches to safety and health, which achieve injury and illness rates markedly below those of other companies in their industries, reduce their workers' compensation costs, improve employee morale, and increase worksite productivity. In fact, OSHA has found

**draft -- June 14, 1999 -- 11:15 am**

that programs implemented by individual employers reduce total job-related injuries and illnesses by an average of 45 percent and lost worktime injuries and illnesses by an average of 75 percent. For example, Mereen-Johnson Machine Co. worked with its 95 employees in Minneapolis, Minnesota to implement a program and achieve a lost workday injury rate 60 percent below the industry average. Applied Engineering, Inc., a manufacturer of specialties materials with 74 employees, located in Yankton, SD, reduced its lost workday injury rate from 6.0 in 1993 to 0.0 in 1997, a success the company's president attributes to implementing a safety and health program.

Today, thirty-two states have some form of safety and health program provision, though few are as comprehensive as OSHA's draft proposed rule. In four States that mandate comprehensive programs that have core elements similar to those in OSHA's draft proposal and that cover businesses of all sizes within the State, injury and illness rates fell by nearly 18% over the five years after implementation, in comparison with national rates over the same period. Several States have studied the effectiveness of these programs and found that average workers' compensation costs were reduced by as much as 20 percent per year, and that these benefits were even greater several years later when the program had matured. For example, Colorado evaluated a program that provides premium discounts to firms instituting safety and health programs. Over 50 percent of the more than 500 participants had fewer than 100 employees. Colorado's review found that in all of the five years after the program was established, lost work-time injury rates declined by at least 10% per year and the costs of workers' compensation claims declined by at least 20% per year. The State of North Dakota determined that participants

draft -- June 14, 1999 -- 11:15 am

in its program, which provided premium discounts to employers who implemented safety and health programs, reduced lost work-time injury claims by 42 percent over 4 years, with significant reductions occurring in each year of the program. The Texas Workers' Compensation Commission implemented requirements for safety and health programs for firms identified as "extra-hazardous." The program averaged 325 participants per year, and these employers reduced injuries and illnesses by an average of 61 percent in each year of the program's existence.

Experience with safety and health programs demonstrates that systematic, common sense efforts to protect workers have a direct impact on workplace injury and illness rates and on compliance with existing worker protections. However, more than 6 million reportable injuries and illnesses continue to occur each year. More than 6000 job-related fatalities are reported to BLS annually, with tens of thousands more job-related fatalities resulting from chronic occupational illnesses. The common sense advantages provided by safety and health programs will reduce these injuries, illnesses, fatalities and associated workers' compensation costs, bringing a clear new benefit to the many establishments that have yet to establish such programs.

### **COMMON SENSE SOLUTIONS**

It is common sense to apply proven solutions to basic problems. Common sense has not only led many businesses to implement safety and health programs, but has also encouraged business associations to adopt their own model programs and recommend them to their members.

The National Federation of Independent Business's (NFIB) Ohio chapter has developed a

**draft -- June 14, 1999 -- 11:15 am**

comprehensive document entitled *Workplace Safety Program Guidelines*, which explains to NFIB members how to design and implement an effective safety program. The guidelines include the same elements that OSHA has identified as the keys to a successful program: leadership by top management; responsibility and accountability by managers, supervisors and employees; training in safety and health; identifying, reporting, investigating and controlling hazards; and involvement of employees. According to the NFIB guidelines, "Serious accidents or injuries can be very disruptive to any successful operation and to the lives of people involved. An important step that an employer can take to effectively prevent these losses is the development of an organized safety plan or accident prevention program."

The Synthetic Organic Chemical Manufacturers Association (SOCMA) has also developed *SOCMA's Model Safety and Health Program*, a document intended to help member companies, many of which are small, implement their own safety and health programs. Like the NFIB guidelines, SOCMA's model program calls for: management commitment and employee involvement; worksite analysis; hazard prevention and control; and safety and health training. The manual recommends that a company tailor its safety and health program to the company's site-specific needs and argues that "SOCMA member companies who incorporate this program into their operations will receive benefits by:

- reducing injuries, illnesses, accidents and property loss;
- saving time and resources by not having to develop a program from scratch;
- demonstrating management commitment to safety and health;
- giving employees an alternative means to address safety and health concerns before calling OSHA
- avoiding a wall-to-wall OSHA inspection;
- assisting in conforming with the Responsible Care Employee Health and Safety Code."

draft -- June 14, 1999 -- 11:15 am

Similar approaches are found in the safety and health programs advanced by other professional associations, trade associations and employers. The National Fire Protection Association, the American Society of Safety Engineers, the American Dental Association, the National Spa & Pool Institute, the BF Goodrich Specialty Chemicals division, the American Industrial Hygiene Association, and Argonaut Insurance Company have all developed model safety and health programs. OSHA has borrowed directly from these associations and employers in fashioning our draft safety and health programs rule. In fact, many companies have already put such model programs to good use. For example, in 1994 the Ryder Company instituted a safety and health program modeled after programs advocated by the International Loss Control Institute, the National Safety Council, and OSHA's own 1989 *Safety and Health Program Guidelines*. Between 1994 and 1998, Ryder reduced lost time cases by 50 percent, lost workdays by 58 percent and its lost workday incidence rate by 42 percent.

Earlier this year, the National Association of Manufacturers, in testimony before the Senate Subcommittee on Employment, Safety and Training, echoed the sentiments of those who proclaim the value of safety and health programs. At the hearing, Robert Cornell from Mon Valley Petroleum in McKeesport, Pennsylvania, told the subcommittee that, "Today, we have an effective safety program resulting in fewer injuries and reduced workers' compensation costs." Mr. Cornell's company used a comprehensive analysis of its safety and health violations and employee involvement proactively to address potential hazards. As a result, they reduced lost workdays from 70 between 1992 and 1994 to zero from 1995 through 1998. Mr. Cornell did not testify on behalf of OSHA's proposal. However, he illustrated quite effectively the value of

instilling safety and health in the culture of his workplace.

Although the preceding examples generally involve companies that implemented programs voluntarily, the results for mandatory programs are equally impressive. Data from the four States with mandates covering most employers in the State show an 18 percent decline in injury and illness rates relative to national rates in the 5 year period after they required employers to adopt safety and health programs. OSHA's enforcement experience, which has emphasized safety and health programs during inspections at establishments of all sizes and in many different industries, also points overwhelmingly to the effectiveness of the programmatic approach. The General Accounting Office, in 1992, concurred with earlier OSHA assessments of the value of comprehensive safety and health programs. GAO also said consideration should be given to requiring high risk employers to have safety and health programs "because the potential number of lives saved or injuries and illnesses averted is high." OSHA believes that every employer, not just high risk employers, should be covered by such a requirement, but is continuing to examine this issue.

At its heart, a safety and health program promotes the exercise of reasonable diligence in the workplace in order to protect workers. When Congress enacted and President Nixon signed the bipartisan OSH Act in 1970, they imposed on employers a general duty to provide employees with a workplace free of serious recognized hazards and a specific duty to adhere to rules promulgated by OSHA. Because State occupational safety and health and workers' compensation laws provided insufficient incentive to protect workers, the OSH Act, as some courts have held, required employers to exercise reasonable diligence in complying with these

draft -- June 14, 1999 -- 11:15 am

duties. Through its draft proposed rule, OSHA seeks to assure that employers exercise reasonable diligence in protecting their workers.

### **THE DRAFT PROPOSED RULE**

OSHA has worked extensively with stakeholders from industry, labor, safety and health organizations, State governments, trade associations, insurance companies and small businesses to develop its draft proposal. The draft rule reflects the experience and suggestions of many of these participants and would require that safety and health programs include five "core" elements: management leadership and employee participation; hazard identification and assessment; hazard prevention and control; training; and evaluation of the program's effectiveness. The elements are simple and straightforward. Reduced to their basic level, the elements require an employer to work credibly with its employees to find workplace hazards and fix them, and to ensure that workers, supervisors and managers can recognize a hazard when they see it. The rule creates no new obligations for employers to control hazards that they have not already been required to control under the General Duty Clause of the OSH Act or existing OSHA standards.

The required elements in OSHA's draft mirror those included in the models produced by the NFIB of Ohio, SOCMA, and many other associations, insurance companies and employers. As those on the front lines have found, the elements all support each other. All five must be present to ensure success. They are common sense.

The Agency recognizes that many companies have already embraced the program

draft -- June 14, 1999 -- 11:15 am

approach to managing safety and health in their workplaces. Because the draft proposed rule only includes those elements that are essential for program effectiveness, and because the rule is framed in broad and flexible performance language, OSHA believes that existing programs that are effective will already meet the proposal's requirements. To reassure those employers, OSHA has incorporated a grandfather clause into the draft proposed rule that would allow such programs to be "grandfathered in."

### **Program Elements**

**Management Leadership and Employee Involvement.** A safety and health program will only work if management is fully committed to it and communicates that commitment to the entire organization. According to Michael Seitel from Norwalt Design, a 38-employee, New Jersey company that manufactures high-speed assembly machinery for the plastics industry, "One of the biggest things, I think, in regard to the safety and health program that a company needs is management commitment ... you're going to save money on your insurance and on workers not being out due to injury."

Employee involvement means actively engaging front-line employees, who are closest to workplace operations and have the highest stake in preventing job-related accidents, in developing, implementing and evaluating the safety and health program. In the words of Bill Harvey, Senior Vice President of Alliant (formerly Wisconsin Power & Light), "you must build a corporate culture that conditions employees to think of safety as their job, not someone else's job." According to the NFIB of Ohio's guidelines, "Many times employees who are most

familiar with a job will be excellent sources of solutions to safety problems, just as they are for production or quality problems.” Employee involvement spreads the responsibility for safety and health and ensures that more eyes seek and identify problems and more perspectives are used to develop solutions. When OSHA held stakeholder meetings on the draft proposal in 1996, there was widespread agreement that employee participation is crucial to an effective safety and health program.

**Hazard Identification and Assessment.** Hazard identification and assessment means, among other things, that the employer reviews workplace safety and health information, inspects the workplace, identifies hazards, and prioritizes covered hazards for elimination or control. Front-line employees are empowered to avert injuries and accidents by identifying and bringing hazards to the attention of their supervisors. In essence, this element calls on employers to look for hazards, decide how serious they are, and prioritize their control or elimination.

**Hazard Prevention and Control.** Once hazards covered by OSHA standards and the general duty clause are identified and assessed, they must be controlled. Put simply, the element calls for a workplace to obey the law as it already exists--fix identified hazards in accordance with the relevant OSHA standards or the general duty clause. Hazard prevention and control provides the solutions to the safety and health problems discovered by the program’s hazard identification and assessment activities. Unless hazards are prevented, controlled or eliminated, workers who are exposed to them will continue to be killed, hurt, or made ill.

**Information and Training.** Information and training ensure that both workers and management have the information, knowledge and skills to recognize identified hazards,

draft -- June 14, 1999 -- 11:15 am

understand what controls are in place to prevent exposure, and understand their roles in preventing or minimizing exposures. People need to know hazards when they see them, so they can protect themselves and their co-workers.

**Program Evaluation.** Program evaluation simply tells an employer to assess how well its safety and health program works, to ensure that it protects workers. Where the employer identifies deficiencies, they should be corrected.

### **ISSUES RAISED BY SMALL BUSINESS**

Since OSHA last testified before the Small Business Committee regarding this issue, a Small Business Advocacy Review Panel has reviewed the draft proposed rule, as required by the Small Business Regulatory Enforcement Fairness Act. The Panel, which consisted of personnel from OSHA, SBA's Office of Advocacy and OMB's Office of Information and Regulatory Affairs, submitted its report to me on December 18, 1998. The panel report was based in part on the advice and recommendations provided by 18 small entity representatives (SERs).

The version analyzed by the SBREFA panel was different from the one OSHA described to you when last we testified before your Committee. At that hearing, members of the Committee raised a number of questions about the rule. Since that time, OSHA has continued to respond to suggestions made by members of this Committee, small businesses and other stakeholders. OSHA incorporated a number of changes into the draft proposed rule the agency ultimately provided to the SBREFA panel. For example, when OSHA testified before you two years ago, the draft called for employers to conduct hazard assessments at a frequency

draft -- June 14, 1999 -- 11:15 am

“appropriate to safety and health conditions at the workplace.” The draft discussed by the SBREFA panel provided that such assessments should occur at least every 2 years and when changes in workplace conditions indicate that a new or increased hazard may be present. The agency also added the “grandfather clause” discussed earlier in my testimony to the version of the draft proposal provided to the SBREFA panel. The grandfather clause responded to concerns raised by the Chairman and various small businesses that employers who already operate effective programs should not be required to change them.

OSHA has been clarifying the regulatory text wherever possible. In part because of the flexibility the rule provides, some small businesses questioned whether it incorporated sufficient guidance to help them comply without unnecessary difficulty. Several recommendations in the Panel’s report suggested that OSHA further clarify certain portions of the rule and its accompanying analyses. For example, the Panel suggested that OSHA should clarify in its preamble how the Safety and Health Program rule interacts with other OSHA rules, with the existing requirements of the General Duty Clause, and with National Labor Relations Act (NLRA) requirements. The Panel also recommended that OSHA “solicit comment on the possibility of providing guidance that contains all cross-references in the rule and explains such concepts as the General Duty Clause so that small firms can understand these issues without having to go to other sources.”

OSHA is responding to the issues raised by SERs and the Panel as it readies the proposal for publication in the *Federal Register*. In some cases, we will provide additional explanations in the preamble to the proposed rule and in the accompanying analyses. In other cases, we are

**draft -- June 14, 1999 -- 11:15 am**

clarifying language in the rule that some SERs thought to be too vague. For example, the draft provided to the SBREFA panel required training to be provided “as often as necessary to ensure that employees are adequately informed and trained.” OSHA is considering a modification that would require training when the employer “has reason to believe” that employees lack the knowledge or understanding they need. With regard to evaluating program effectiveness, the Panel draft included language requiring an evaluation “as often as necessary to ensure program effectiveness.” We likely will replace this requirement with language calling for a review “when the employer has reason to believe” that all or part of the program is ineffective. These changes both clarify that an employer need not guess when a reevaluation or new training should be conducted, but instead must exercise reasonable care. Issues concerning cost and coverage also were raised. The issues raised by SERs and the Panel are important and OSHA is considering them all carefully.

In addition, when the final rule is published in a few years, OSHA will provide a variety of informational and outreach materials to simplify compliance. Materials will include checklists, model programs, decision logics and other materials to help employers determine how to comply and when they have met their obligations under the rule. For example, the agency is already developing a new “Expert Advisor” to provide computerized guidance to employers who are attempting to implement or improve safety and health programs. Last year, OSHA released its Hazard Awareness Advisor, which has received excellent reviews from small businesses and is referenced on the Home Page of the National Federation of Independent Business. In addition to this extensive array of informational materials, small businesses will continue to have

**draft -- June 14, 1999 -- 11:15 am**

available to them free consultation services through OSHA's 50 state consultation programs. OSHA will also provide intensive training to its compliance officers to ensure that their enforcement of the rule is consistent with OSHA's intent to provide maximum flexibility to employers.

Because OSHA has drafted a performance-based rule rather than a one-size-fits all requirement, it has not specified every action a business must take to comply. Nor should it. However, the agency is committed to providing the most instructive materials possible to help small businesses comply with ease. As Bill Pritchard from MASCO, which has facilities ranging in size from 5 to 2,700 employees, points out, "The program must be performance oriented. Give companies the flexibility to allow them to develop the process which will work for each facility. Don't specify the process, specify the key elements... let companies decide the way to implement the elements." Many models similar to the one OSHA is proposing already exist and should prove invaluable as businesses develop their own programs. Clearly, the flexibility OSHA has built into its draft proposal is preferable to a one-size-fits-all approach.

A particular area of interest to small businesses where the rule will provide significant flexibility is documentation. The program for small businesses, for example, need not be written. And employers with fewer than 10 employees are exempt even from those minimal requirements. Although some small businesses have expressed skepticism, feeling they will need to maintain written records regardless of this exemption, that is emphatically not OSHA's intent. Small businesses will have many ways to demonstrate their compliance. For example, they can simply describe to a compliance officer the hazards that have been or are being

draft -- June 14, 1999 -- 11:15 am

identified and what has been or is being done to identify, assess and control them. They may also demonstrate their compliance using receipts, order forms and other documents developed or obtained in the normal course of business.

Some small business stakeholders have questioned whether the rule should be universally applicable. OSHA believes there is strong evidence to support such coverage. Many stakeholders have expressed a similar point of view. For example, John Cheffer of the Travelers Insurance Company testified in 1995 before the National Advisory Committee on Occupational Safety and Health that, "We consider any proposed safety and health standard to be the centerpiece from which all other rules and standards flow, in effect, the ultimate safety and health guideline document for the nation. If that view is accepted, by its very nature it must be generic, flexible and universally applicable." Another significant reason for applying the rule to establishments of all sizes is the risk currently posed to employees working in small businesses. Although small businesses with 10 or fewer employees account for only about 15 percent of employees, 30 percent of all work-related fatalities reported to the BLS in 1997 occurred in these very same workplaces. By comparison, businesses with 100 or more employees accounted for approximately 45 percent of employees, but experienced only 20 percent of all work-related fatalities in 1997. Based on these numbers, the risk of fatalities in businesses with 10 or fewer employees is 4 to 5 times higher than the risk in businesses with 100 or more employees. Although most stakeholders opposed exempting small businesses from coverage, they agreed with OSHA that every effort should be made to ease compliance burdens for small businesses. The compliance assistance materials that OSHA is now developing will address that need.

### CONCLUSION

Safety and health programs already make a significant difference in the lives of many of our nation's workers and in the financial bottom line of many businesses. But many businesses have yet to recognize their value. To fill this gap, OSHA is designing a rule that provides a general framework for employers to follow but leaves each individual employer free to add workplace-specific procedures and to adopt management practices that suit the characteristics of that particular workplace. Safety and health programs are common sense for the workplace. OSHA is committed to working with employers of all sizes, both during and after development of its rule, to ensure that the rule provides sufficient flexibility, OSHA's compliance guidance furnishes suitable information to meet the compliance needs of employers, and that workers are protected.