

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Donald R. Arbuckle ( CN=Donald R. Arbuckle/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:26-JUN-1997 16:55:57.00

SUBJECT:: Tobacco Sub Group Mtg. #3

TO:Michael A. Fitzpatrick ( CN=Michael A. Fitzpatrick/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Donald R. Arbuckle/OMB/EOP on 06/26/97  
04:55 PM -----

Wendy A. Taylor 06/26/97 02:55:23 PM

Record Type: Record

To: Donald R. Arbuckle/OMB/EOP, Randall W. Lutter/OMB/EOP, Lori Schack/OMB/EOP

cc:

Subject: Tobacco Sub Group Mtg. #3

----- Forwarded by Wendy A. Taylor/OMB/EOP on 06/26/97  
02:45 PM -----

Laura Emmett

06/26/97 01:11:08 PM

Record Type: Record

To: Elizabeth Drye/OPD/EOP, Jerold R. Mande/OSTP/EOP, Wendy A. Taylor/OMB/EOP, Debra J. Bond/OMB/EOP

cc:

Subject: Tobacco Sub Group Mtg. #3

Elena Kagan will lead a working group on environmental tobacco smoke Tuesday, July 1 at 10:30 am in room 211 OEOB. Please let me know if you will be unable to attend. Thanks.

3. Environmental Tobacco Smoke:

HHS/CDC: Rip Forbes ; Mike Erikson, Hyman

EPA: Mary Smith

DOL/OSHA: Jennifer O'Connor; Emily Sheketoff (she may add others)

GSA: Carolyn Fulton will designate someone

OMB: Wendy Taylor and Debra Bond

Kagan, Drye, Mande



RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Robert S. Fairweather ( CN=Robert S. Fairweather/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:19-AUG-1998 15:10:44.00

SUBJECT:: Heads up on Food Safety radio address

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

READ:UNKNOWN

TEXT:

fyi

----- Forwarded by Robert S. Fairweather/OMB/EOP on  
08/19/9803:10PM -----

Mark A. Weatherly  
08/19/98 01:55:15 PM  
Record Type: Record

To: Ruth D. Saunders/OMB/EOP@EOP, Amandeep K. Matharu/OMB/EOP@EOP  
cc: Dana L. Flower Lake/OMB/EOP@EOP, Robert S. Fairweather/OMB/EOP@EOP,  
David A. Bernell/OMB/EOP@EOP, Jim R. Esquea/OMB/EOP@EOP  
Subject: Heads up on Food Safety radio address

I think the DPC is taking the lead on preparing materials for this, and  
we'll largely review...although you never know.

----- Forwarded by Mark A. Weatherly/OMB/EOP on 08/19/98  
01:53PM -----

LINDA RICCI  
08/19/98 01:45:50 PM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Food Safety

The Radio Address will be Food Safety. Elena Kagan is currently working  
on draft of Executive Order that creates a President's Council on Food  
Safety. DPC is aware of our strong interest in this, and promises to  
circulate as soon as it gets out of their internal process.

In addition, the N.A.S. report dealing with the same issues is in  
circulation to reporters today, and is embargoed for tomorrow. Heads Up!  
DPC is preparing Qand A - for quick turnaround this afternoon- so that WH  
press office has response if necessary. You should be getting that draft  
shortly.

(FYI- The NAS report recommends that the food safety system be based on science, that authorizing statutes need reform to reflect concerns of science, and advocates a central framework for food safety (which the Pres would be announcing in Radio Address.)

Message Sent

To:

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T J. Glauthier/OMB/EOP@EOP

Ronald M. Cogswell/OMB/EOP@EOP

Mark A. Weatherly/OMB/EOP@EOP

Trooper Sanders/OVP@OVP

Daniel N. Mendelson/OMB/EOP@EOP

Richard J. Turman/OMB/EOP@EOP

Margaret A. Malanoski/OMB/EOP@EOP

Donald R. Arbuckle/OMB/EOP@EOP

Virginia A. Huth/OMB/EOP@EOP

Sylvia M. Mathews/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Susan M. Carr ( CN=Susan M. Carr/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 14-OCT-1997 16:59:48.00

SUBJECT:: Notes of October 8 meeting

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

READ: UNKNOWN

TEXT:

Last night, Michael Deich and I met with Elena Kagan, Tom Freedman, and Mary Smith of the DPC, Emil Parker from the NEC, Dawn Chirwa and Rob Reiner in WH Counsel's Office, Maria Echeveste, Lin Liu from the PIR, and a few other folks to discuss civil rights enforcement in the FY 1999 Budget.

DPC is now actively engaged in pursuing ideas and strategies for better enforcement, and wants to be able to incorporate proposals into OMB's budget process. The Director's Review session is now scheduled for November 12, from 10-12, to accommodate this additional workload, and it will now be decisional - we plan to go to the Director with ideas for him to review.

To assist this effort, DPC plans to hold meetings with Justice Civil Rights Division, EEOC, HUD, Education, HHS, and Labor over the next two weeks to discuss civil rights enforcement issues. Michael Deich has recommended, and DPC has agreed, that the Agency Budget Officer and the RMO Examiner for each program attend their agency's session with DPC. It is up to each examiner to contact the budget officer. The DPC may contact the RMO examiner for a pre-brief prior to the meeting to discuss current issues, problems, initiatives at each agency. I plan to attend each of these meetings.

DPC is asking for a copy of each agency's budget. I have provided them with copies of the budgets from EEOC and HUD, and will coordinate getting your copy across the street if you want to bring it to my office.

Please let me know if you have any questions.

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:11-AUG-1997 13:51:10.00

SUBJECT:: Child Care Initiative

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

READ:UNKNOWN

TEXT:

Please place in my FY99 binder. Tyhx.

----- Forwarded by Richard J. Turman/OMB/EOP on 08/11/97  
01:49PM -----

Richard J. Turman  
08/11/97 01:51:18 PM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Child Care Initiative

Check out the quality stuff, including the immunizations references.....

I don't think we need to attend these, but GW, could you check with Jennifer when you get back and find out if they have actual wording of how they'd like to make the immunizations link to the CCblockgrant. Thanks.  
----- Forwarded by Richard J. Turman/OMB/EOP on 08/11/97  
01:47PM -----

Corey G. Lee            08/11/97 12:05:17 PM

Record Type: Record

To: Barry T. Clendenin/OMB/EOP, Richard J. Turman/OMB/EOP, Barbara E. Washington/OMB/EOP  
cc: Ann Kendall/OMB/EOP, Thomas Reilly/OMB/EOP  
Subject: Child Care Initiative

Last Thursday, I spoke with Jennifer Friedman in IM about the child care initiative (she is the lead for HRD). As far as I know, so far, some health issues that may be raised in the Child Care Initiative Working Group (see below) are: New immunization regulation for all children receiving federal child care assistance, and the Health Child Care America Campaign to promote partnerships between child care and health agencies (46 states already launched this campaign). However, according to Jennifer, these issues will probably be tangential. HHS has submitted a

draft proposal to the working group (see below). The Child Care Initiative is expected to be included in the FY 99 Budget process.

The following are some information about the Child Care Initiative Working Group and a draft HHS proposal.

#### Child Care Initiative Working Group

DPC has coordinated a working group that comprises of representatives across the government including DPC, WH Cabinet Affairs, WH Legislative Affairs, and OMB. HHS reps are: Olivia Golden, Ann Rosewater, Joan Lombardi, and Mary Bourdette. OMB reps are Keith Fontenot, Jeff Farkas, and Jennifer Friedman.

The purpose of this working group is to attain government-wide feedback, and it has already held its first meeting on July 28. Apparently, HHS has drafted policy options related to child care, and these options were discussed as a starting point during the first meeting.

DPC divided the working group into 3 subgroups: Tax/Subsidy Issues, School-age Care Issues, and Quality issues. The Tax/Subsidy issue group has met last Friday (Jennifer Friedman attended. She will be forwarding a summary to me soon, and I will forward this to you as well). According to Jennifer, health-related issues were not discussed. The school-age care group is meeting today (8/11) at 2pm in rm. 211, OEOB. Jennifer does not foresee any health-related issues being discussed here either. The quality issue group will be meeting tomorrow (8/12) at pm in rm. 211, OEOB. There may be health-related issues discussed here.

HD staff are welcome to these meetings if interested. Jennifer will forward me summaries of these meetings as well. I have also asked Laura Emmet at DPC to forward all meeting information. I will, in turn, forward everything to you.

#### Draft HHS Proposal on Child Care Initiative

Issues summarized in the draft proposal are (I will provide copies for you in your mailboxes):

1. Make the Dependent Care Tax Credit refundable for child care expenses and/or increase the amount of credit available on a sliding scale to reach low and moderate income working families. Approximate cost, \$3 to \$5 billion.
2. Double the number of children from working families receiving child care assistance through the Child Care Development Fund (CCDF) by increasing CCDF funds over five years to reach 2 million children by 2002. Approximate cost, \$500 million.
3. Establish a Quality Incentive Grant Fund to provide grants to States (with match from the private sector) to improve child care for young children based on the military child care model, including support for achieving accreditation. Approximate cost, \$200 million.

4. Launch an Infant/Toddler Family Child Care Initiative by providing additional funds through CCDF or another funding mechanism to encourage communities to establish and support family child care networks. Cost not approximated.
5. Establish a scholarship program for child care professionals by exploring loan forgiveness and scholarship fund. Cost not approximated.
6. Double the number of school age children who have access to quality child care by providing incentive funding to stimulate community-wide school-age child care efforts, with involvement of schools and community-based organizations. Approximate cost, \$300 million.

Below is a summary of the Child Care Initiative Working Group meeting held on July 28. Summary of the tax/subsidy subgroup will be forwarded to you soon.

Please call/e-mail if you have any questions.

-----

Jennifer Friedman  
08/05/97 04:01:50 PM  
Record Type: Record

To: Kathryn B. Stack/OMB/EOP, Kenneth S. Apfel/OMB/EOP, Barry White/OMB/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Child Care Working Group Meeting

The first meeting of the Child Care Working Group was held yesterday. Elena Kagan ran the meeting and others in attendance included Jennifer Klein, Cynthia Rice, Olivia Golden, Joan Lombardi, and representatives from DOD, Dept. of Ed., Treasury, GSA, HHS, Intergovernmental Affairs, VP's office, etc.

The meeting began with a brief discussion of preliminary plans for the President's child care conference in October. Joan Lombardi and Jennifer Klein emphasized the need to recast the issue of child care as a workforce development issue and a child development issue. The conference planners hope to attract the participation of the business community and other groups not typically involved with child care issues.

Elena and others pointed out that the conference will coincide with OMB's review of HHS' budget. They also discussed the fact that any child care initiative that results from this conference would need to be included in the FY 1999 budget and could be unveiled during the State of the Union. Overall, Elena seemed respectful of the fact that any new initiative needs to be included in HHS' budget and go through the regular budget process. Keith spoke with her afterwards and reiterated our concern that any action resulting from the conference must take place in conjunction with regular budget decisions.

Joan Lombardi of the Child Care Bureau then provided an overview of the policy options developed by HHS and presented in the Policy Options Draft Working Paper. She divided the policy options into those that work through the tax system and those that are subsidies. Joan stated that any child care initiative has to address the three issues of affordability, quality, and school-age care. Elena plans to subdivide the group into three smaller groups that will address these issues. A representative from Treasury pointed out that there is a definite trade-off between affordability and quality, and that the subgroups will need to overlap. A DOD representative then pointed out that most parents are worried about quality and asked whether the issue of "standards" would be addressed explicitly. Elena stated that future discussions would address whether quality could be improved through regulatory authority. Overall, there was general agreement that the perception of a child care crisis applies more to infant and school-age care, than to pre-school care.

At the end of the meeting, Elena invited people to suggest other policy ideas. Two options mentioned that were not listed in the policy options draft working paper included: (1) extending the Family and Medical Leave Act; and (2) subsidizing parents who choose to stay at home.

I'll get copies of the handouts around to everyone. Keith suggested we get together internally to discuss how we will cover the taskforce subgroups (the subgroup meetings begin on August 7). Also, someone from the Ed Branch may want to participate in the school-age child care discussions. Is Thursday at 10 am ok for us to meet?

Message Copied

To: \_\_\_\_\_  
Joseph M. Wire/OMB/EOP  
Jill M. Pizzuto/OMB/EOP  
Matthew McKearn/OMB/EOP  
Jeffrey A. Farkas/OMB/EOP  
Edwin Lau/OMB/EOP  
Anil Kakani/OMB/EOP  
Keith J. Fontenot/OMB/EOP

----- Forwarded by Richard J. Turman/OMB/EOP on 08/11/97  
01:47 PM -----

Corey G. Lee                      08/11/97 12:16:30 PM

Record Type: Record

To: Barry T. Clendenin/OMB/EOP, Richard J. Turman/OMB/EOP, Barbara E. Washington/OMB/EOP  
cc: Ann Kendall/OMB/EOP, Thomas Reilly/OMB/EOP  
Subject: Child Care Initiative: Meeting schedule correction

Laura Emmet at DPC just informed me that:

Quality Issues subgroup will meet on Wednesday (8/13) in rm. 211, OEOB.

Not tomorrow.

----- Forwarded by Corey G. Lee/OMB/EOP on 08/11/97 12:12 PM -----

Corey G. Lee 08/11/97 12:05:17 PM

Record Type: Record

To: Barry T. Clendenin/OMB/EOP, Richard J. Turman/OMB/EOP, Barbara E. Washington/OMB/EOP

cc: Ann Kendall/OMB/EOP, Thomas Reilly/OMB/EOP

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Jennifer Friedman  
08/05/97 04:01:50 PM  
Record Type: Record

To: Kathryn B. Stack/OMB/EOP, Kenneth S. Apfel/OMB/EOP, Barry White/OMB/EOP  
cc: See the distribution list at the bottom of this message

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Keith J. Fontenot/OMB/EOP

----- Forwarded by Richard J. Turman/OMB/EOP on 08/11/97  
01:47 PM -----

Corey G. Lee            08/11/97 12:25:42 PM

Record Type: Record

To: Barry T. Clendenin/OMB/EOP, Barbara E. Washington/OMB/EOP, Richard J. Turman/OMB/EOP  
cc: Ann Kendall/OMB/EOP, Thomas Reilly/OMB/EOP  
Subject: Child Care tax/subsidy working group meeting

Summary from Jennifer .....

----- Forwarded by Corey G. Lee/OMB/EOP on 08/11/97 12:22  
PM -----

Jennifer Friedman  
08/11/97 11:53:43 AM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Edwin Lau/OMB/EOP, Anil Kakani/OMB/EOP  
Subject: Child Care tax/subsidy working group meeting

The Child Care tax/subsidy working group met on Friday. Cynthia Rice ran the meeting, and attendees included representatives from the Child Care Bureau, ASL, OMB, CEA and Treasury.

The meeting began with an overview of the Dependent Care Tax Credit (DCTC). Carl Scholtz from Treasury provided a summary sheet of the DCTC, which I will send around to you.

Carl highlighted that the DCTC has not been adjusted for inflation since 1982, and that Treasury would be open to such an adjustment. Possible ways to do this would be to: (1) change the range of incomes eligible for the 30 percent to 20 percent phase-out; (2) make other changes to the

phase-out; or (3) increase the amount of expenses to which the DCTC can be applied. Joan Lombardi and Cynthia Rice asked the Treasury reps to figure out the costs associated with these various proposals.

Turning the DCTC into a refundable credit was also discussed. Treasury is very opposed to this idea and provided a list of pros and cons, which I will send around to you. The one benefit listed was that refundability will increase the share of federally-assisted child care benefits accruing to low-income families. They then listed the following drawbacks to refundability:

- 1) Families need child care assistance in "real time", not at the end of the year when they file tax returns;
- 2) The IRS cannot verify child care expenditures prior to the payment of the credit to the taxpayer; and
- 3) Efforts to create new refundable credits have led to intensified scrutiny of the EITC and its compliance problems.

This last drawback was their main concern. Treasury also expressed fear that a refundable DCTC would experience compliance problems similar to the EITC (EITC noncompliance is approximately 20 percent and Treasury spends \$4 to \$5 billion on EITC compliance).

Cynthia then asked if it would be possible to have a verification process in order to reduce noncompliance. Also discussed was Sen. Jeffords' bill that would make the DCTC refundable for children placed in accredited center-based care.

At this point, someone from Treasury asked Cynthia what the target income range was for any new child care initiative. Cynthia did not answer. The same Treasury rep then asked what the end goal was - serving more kids? improving quality? workforce development? welfare-to-work efforts? The response from Cynthia and Joan was basically "all of the above". They talked about meeting unmet child care need and pursuing this as a workforce development and child development issue.

Everyone agreed that they were not in favor of tax credits targeted at construction and operation of child care centers (proposed by Senator Kohl). Joan Lombardi specifically stated that "if we're going to spend \$3 billion, I wouldn't want it spent on this." Joan then mentioned that some states (e.g., Florida) are setting up public/private partnership funds in order to increase employer-based care.

The group also talked generally about the trade-offs between pursuing a subsidy versus a tax expenditure stating that a tax expenditure can reach more people while subsidies can target money more effectively for less people.

The next meeting is tentatively scheduled for Tuesday, August 19. The CEA is supposed to start a literature review on cost-benefit analyses surrounding child care, and Treasury was asked to cost-out some options for adjusting the DCTC.

Message Sent

To: \_\_\_\_\_  
Kenneth S. Apfel/OMB/EOP  
Barry White/OMB/EOP  
Jeffrey A. Farkas/OMB/EOP  
Matthew McKearn/OMB/EOP  
Kathryn B. Stack/OMB/EOP  
Leslie S. Mustain/OMB/EOP  
Mary I. Cassell/OMB/EOP  
Keith J. Fontenot/OMB/EOP  
Corey G. Lee/OMB/EOP

----- Forwarded by Richard J. Turman/OMB/EOP on 08/11/97  
01:47 PM -----

Barry T. Clendenin  
08/11/97 12:43:22 PM  
Record Type: Record

To: Corey G. Lee/OMB/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Child Care Initiative

Thanks for the report on the Child Care Initiative discussions to date --

Please work with Mark and Richard to determine the best way to stay tied  
into this process.

What was the time of the quality issue group you noted as meeting on 8/12  
in Rm 211 EOB.

BC  
----- Forwarded by Barry T. Clendenin/OMB/EOP on 08/11/97  
12:40PM -----

Corey G. Lee            08/11/97 12:05:17 PM

Record Type: Record

To: Barry T. Clendenin/OMB/EOP, Richard J. Turman/OMB/EOP, Barbara E.  
Washington/OMB/EOP  
cc: Ann Kendall/OMB/EOP, Thomas Reilly/OMB/EOP  
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08/05/97 04:01:50 PM  
Record Type: Record

To: Kathryn B. Stack/OMB/EOP, Kenneth S. Apfel/OMB/EOP, Barry White/OMB/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Child Care Working Group Meeting

The first meeting of the Child Care Working Group was held yesterday. Elena Kagan ran the meeting and others in attendance included Jennifer Klein, Cynthia Rice, Olivia Golden, Joan Lombardi, and representatives from DOD, Dept. of Ed., Treasury, GSA, HHS, Intergovernmental Affairs, VP's office, etc.

The meeting began with a brief discussion of preliminary plans for the President's child care conference in October. Joan Lombardi and Jennifer Klein emphasized the need to recast the issue of child care as a workforce development issue and a child development issue. The conference planners hope to attract the participation of the business community and other groups not typically involved with child care issues.

Elena and others pointed out that the conference will coincide with OMB's

review of HHS' budget. They also discussed the fact that any child care initiative that results from this conference would need to be included in the FY 1999 budget and could be unveiled during the State of the Union. Overall, Elena seemed respectful of the fact that any new initiative needs to be included in HHS' budget and go through the regular budget process. Keith spoke with her afterwards and reiterated our concern that any action resulting from the conference must take place in conjunction with regular budget decisions.

Joan Lombardi of the Child Care Bureau then provided an overview of the policy options developed by HHS and presented in the Policy Options Draft Working Paper. She divided the policy options into those that work through the tax system and those that are subsidies. Joan stated that any child care initiative has to address the three issues of affordability, quality, and school-age care. Elena plans to subdivide the group into three smaller groups that will address these issues. A representative from Treasury pointed out that there is a definite trade-off between affordability and quality, and that the subgroups will need to overlap. A DOD representative then pointed out that most parents are worried about quality and asked whether the issue of "standards" would be addressed explicitly. Elena stated that future discussions would address whether quality could be improved through regulatory authority. Overall, there was general agreement that the perception of a child care crisis applies more to infant and school-age care, than to pre-school care.

At the end of the meeting, Elena invited people to suggest other policy ideas. Two options mentioned that were not listed in the policy options draft working paper included: (1) extending the Family and Medical Leave Act; and (2) subsidizing parents who choose to stay at home.

I'll get copies of the handouts around to everyone. Keith suggested we get together internally to discuss how we will cover the taskforce subgroups (the subgroup meetings begin on August 7). Also, someone from the Ed Branch may want to participate in the school-age child care discussions. Is Thursday at 10 am ok for us to meet?

Message Copied

To: \_\_\_\_\_

Joseph M. Wire/OMB/EOP  
Jill M. Pizzuto/OMB/EOP  
Matthew McKearn/OMB/EOP  
Jeffrey A. Farkas/OMB/EOP  
Edwin Lau/OMB/EOP  
Anil Kakani/OMB/EOP  
Keith J. Fontenot/OMB/EOP

Message Copied

To: \_\_\_\_\_  
Ann Kendall/OMB/EOP  
Thomas Reilly/OMB/EOP  
Richard J. Turman/OMB/EOP  
Barbara E. Washington/OMB/EOP  
Mark E. Miller/OMB/EOP

Message Sent

To: \_\_\_\_\_  
Victoria A. Wachino/OMB/EOP  
Gordon P. Agress/OMB/EOP  
Jim R. Esquea/OMB/EOP  
Wm G. White/OMB/EOP  
Chin-Chin Ip/OMB/EOP  
Barbara A. Menard/OMB/EOP  
Marc Garufi/OMB/EOP  
Molly Finch/OMB/EOP  
Melany Nakagiri/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:12-AUG-1998 11:22:29.00

SUBJECT:: Report on the 8/11 Medicaid/Tobacco Legal Issues Meeting

TO:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Barry T. Clendenin/OMB/EOP on 08/12/98  
11:23 AM -----

Anne E. Tumlinson  
08/12/98 09:43:37 AM  
Record Type: Record

To: Daniel N. Mendelson/OMB/EOP@EOP, Joshua Gotbaum/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Report on the 8/11 Medicaid/Tobacco Legal Issues Meeting

I attended today's 2:30 pm Medicaid/Tobacco legal issues meeting. In attendance were Bruce Reed, Elena Kagan (who ran the meeting), Chris Jennings, Gene Thirolf (DOJ), Gary Claxton (HHS), Kathy King (HCFA), Cynthia Rice (DPC), and various other DOJ and HHS staff. Issues discussed at the meeting are as follows:

Main Question for 8/11 Discussion: Could the Federal Government and an individual State reach an out-of-court settlement on how States could spend the Federal share of the settlements? In other words, under the scenario where a HCFA "disallowance" case was brought to court, could the Federal government and the State come to an agreement on how the State would spend the Federal share (e.g., child care)?

Elena Kagan asked this question at the 7/31 meeting (see Greg White's e-mail). DOJ was asked to look into the issue for today's meeting. DOJ responded initially by saying that the Executive Branch does not have the authority without Congress' approval to decide to take less money in exchange for State spending that it considers agreeable. DOJ said that, under such a scenario, the federal government would be paying the States money it did not owe them.

However, DOJ suggested that if DOJ thought a State could argue successfully to a court that it would pay less money but engage in some good works to reduce youth smoking, DOJ could entertain it in the context of a settlement between the federal government and a State. DOJ restated this as, "federal government can not pay States more than they are statutorily entitled to unless it is related to how a court might decide,"

(and/or if litigation risk is perceived to be high).

DOJ also suggested that if the settlement amount is so large that collecting it could destroy the Medicaid program, DOJ may have some leeway to settle for less in exchange for certain conditions the court might decide. Therefore DOJ made a distinction between trading money for Presidential priority programs and trading money for litigation risk or program survival.

Given this information, Elena Kagan developed five options:

1. Collect the entire amount. Write to States and ask for the entire amount owed to the federal government. Elena suggested that the practical effect of this option is to have States asking Congress to eliminate their tobacco obligation to the federal government.
2. Settle for about half of the entire amount. Assert that the litigation risks are such that going to court is not worth the entire amount owed to the federal government so we will settle for about 57 percent.
3. Settle for even smaller amount. Assert that the litigation risks are so large that federal government will settle for a very small percentage of the amount originally owed by States.
4. Settle for smaller amount plus some set of conditions. Assume that the courts might consider some conditions in exchange for money. Elena asked DOJ to think about what these conditions could possibly be.
5. Reach agreement with States on a smaller amount of money plus a set of conditions and go to Congress for approval.

Comments/Questions about options: Elena stated that the practical effect of options 1 or 2 would be that States would ask Congress for a fix and the President would not get anything --- money or his priorities.

Elena also asked a question about what would it take to reach an agreement with States and go to Congress. There was little consensus but everyone agreed that DOJ would need to negotiate the deal but would probably want to bless it. [We note, for your information, that CBO could score Medicaid costs to legislation forgiving a large amount of tobacco money owed to the federal government.]

Last Remarks and Assignment: Elena Kagan said that everyone should be careful about "pounding on the table" during the last month Congress is in session or we could see a rider in the appropriations bill to "fix" this problem for States. Elena also asked HHS and Chris Jennings to work on developing a clearer picture of the amount of money they believe is involved. Kathy King asserted that this would be simply the settlement amount that States tell HCFA is related to Medicaid smoking costs. However, Cynthia Rice pointed out to Chris that OMB staff had given her a report from researchers on state-by-state Medicaid smoking-related costs.

DOJ is going to further consider the five options and report back.

Message Copied

To: \_\_\_\_\_

Mark E. Miller/OMB/EOP@EOP

Barry T. Clendenin/OMB/EOP@EOP

Gina C. Mooers/OMB/EOP@EOP

Victoria A. Wachino/OMB/EOP@EOP

Wm G. White/OMB/EOP@EOP

Richard J. Turman/OMB/EOP@EOP

Cynthia M. Smith/OMB/EOP@EOP

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:Christine L. Nolin ( NOLIN\_CL ) (OMB)

CREATION DATE/TIME:30-NOV-1995 10:53:53.24

SUBJECT:FYI

TO:Alice E. Shuffield ( SHUFFIELD\_A ) (OMB)

READ:30-NOV-1995 13:11:14.31

TEXT:

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

ATT CREATION TIME/DATE:30-NOV-1995 10:49:00.00

ATT BODYPART TYPE:B

ATT CREATOR:Christine L. Nolin

ATT SUBJECT:Meeting Report

ATT TO:T J Glauthier ( GLAUTHIER\_T )

ATT TO:Ron Cogswell ( COGSWELL\_R )

ATT CC:Mark A. Weatherly ( WEATHERLY\_M )

ATT CC:Ruth D. Saunders ( SAUNDERS\_R )

ATT CC:Janet W. Minkler ( MINKLER\_J )

TEXT:

At TJ's request I attended a meeting with Elena Kagan, Jennifer O'Conner, Tom Jensen and Lois Shiffer regarding Tom's memo for Leon Panetta on timber strategy alternatives. As a result of the meeting Tom will be redrafting the memo and will circulate it.

===== END ATTACHMENT 1 =====

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Lori Schack ( CN=Lori Schack/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:13-AUG-1997 17:10:01.00

SUBJECT:: Executive Order on Employment of People with Disabilities

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Jill M. Pizzuto ( CN=Jill M. Pizzuto/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Rosalyn J. Rettman ( CN=Rosalyn J. Rettman/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Kathryn B. Stack ( CN=Kathryn B. Stack/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Joseph M. Wire ( CN=Joseph M. Wire/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Sarah L. Abernathy ( CN=Sarah L. Abernathy/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Keith J. Fontenot ( CN=Keith J. Fontenot/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

BCC:Lori Schack ( CN=Lori Schack/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Monday I attended a DPC (Elena Kagan) meeting on a proposed Executive Order aimed at improving the employment of people with disabilities. Attending were Kitty Higgins, Deputy Secretary of Labor, John Lancaster of the President's Committee on the Employment of People with Disabilities (PCEPD), Paul Miller of the EEOC, Susan Daniels of SSA, and Howard Moses

of Education, representatives of OMB (Larry Matlack, Roz Rettman, and Sarah Abernathy), DPC (Diana Fortuna), and NEC (Anne Lewis). The meeting was a follow-up to a meeting several months ago between Erskine Bowles and a group of administration appointees with disabilities, led by Tony Coelho of PCEPD, Marca Bristo of the National Council on Disabilities, and Judy Heumann of ED.

The Executive Order proposed by the appointees has yet to be circulated among the departments. The EO would establish an interagency task force to develop and implement a "national agenda" with the goal of "moving toward an employment rate for all adult individuals with disabilities as close as possible to the employment rate of the general adult population". The task force would identify changes to policies and agency programs to increase employment among the disabled. The activities specified in the EO include:

- Working with SSA and Treasury to create incentives for employers to hire people with disabilities and for individuals to leave income maintenance programs;
- Working with DOJ and HHS to ensure that welfare reform is carried out in accordance with the ADA and Rehabilitation Act of 1973.
- Working with OPM to make the federal government a model employer;
- Directing BLS and Census to produce a monthly unemployment rate of people with disabilities within a year;
- Expanding the Defense Department's Computer/Electronics Accommodations Program government-wide at a cost of \$2-6 million.

The appointee group wants to see the Administration address the high unemployment rate among people with disabilities. According to the Census Bureau, 52% of the 30 million working age people with a disability are employed. Of the 14.2 million working age people with severe disabilities, only one quarter are employed. The appointees believe the high unemployment rates result from employers not knowing that they can often accommodate disabled employees for little cost, and disabled individuals facing economic disincentives to work because they lose their benefits. There is significant cost to federal and state governments of unemployment among the disabled. According to the appointees, SSA pays over \$60B a year in SSI and SSDI payments to 9.5M disabled people; when Medicare and Medicaid costs are included the cost to the federal government and the states nearly doubles. The appointees believe 50-60% of the people on the SSA rolls can work.

OMB staff had been concerned about giving a task force implementation powers, particularly for government-wide issues. We also have been concerned that as the draft EO is written, the task force could be taking on entitlement review, and could change federal responsibility for the employment of people with disabilities. We have questioned the need for creating a new entity when several existing agencies address disability issues, and are concerned about providing resources to support a task force. Additionally, obtaining accurate monthly employment data for the disabled probably is not feasible (BLS and Census are looking at this issue).

There was agreement among EXOP staff at the meeting that entitlement review is too big an issue for this task force. Elana Kagan tasked the appointees to do the following:

Work with the DPC to come up with a list of items the task force could do (omitting "entitlement review" issues);

Develop a list of items which could be accomplished soon without the creation of a task force. EXOP will review the lists; and

Draft an Executive Order or Executive Memorandum creating a task force limited to the key agencies of DOL, ED, HHS, SSA, and Treasury and would produce within one year a set of recommendations on further actions that may be necessary. The EO or Memorandum would be issued in late September or early October.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jill M. Pizzuto ( CN=Jill M. Pizzuto/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:13-JAN-1998 11:03:08.00

SUBJECT:: Roe v. Wade Mtg.

TO:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

just an fyi -- it's on JG's calendar.

----- Forwarded by Jill M. Pizzuto/OMB/EOP on 01/13/98

11:02AM -----

Laura Emmett

01/13/98 10:48:13 AM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP

cc: Jill M. Pizzuto/OMB/EOP@EOP

Subject: Roe v. Wade Mtg.

Elena wanted to include Josh as well

----- Forwarded by Laura Emmett/WHO/EOP on 01/13/98 10:47

AM -----

Laura Emmett

01/12/98 07:20:47 PM

Record Type: Record

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

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

Subject: Roe v. Wade Mtg.

Elena Kagan and Ann Lewis will be holding a Roe v. Wade mtg. on Wednesday, January 14 at 12:30 room TBD. Please let me know if you cannot attend.

Thanks

Attendees

Elena Kagan  
Ann Lewis  
Melanne Veveer  
Audrey Haynes  
Jennifer Klein  
Maria Echaveste  
Chris Jennings  
Susan Liss

Message Sent

To: \_\_\_\_\_  
Ann F. Lewis/WHO/EOP  
Audrey T. Haynes/WHO/EOP  
Jennifer L. Klein/OPD/EOP  
Maria Echaveste/WHO/EOP  
Christopher C. Jennings/OPD/EOP  
Susan M. Liss/OVP @ OVP

Message Copied

To: \_\_\_\_\_  
Ruby Shamir/WHO/EOP  
Katharine Button/WHO/EOP  
Miriam H. Vogel/WHO/EOP  
Donna L. Geisbert/OPD/EOP  
Sarah A. Bianchi/OPD/EOP  
Aimee M. Malnati/OVP @ OVP  
Tania I. Lopez/WHO/EOP  
Marjorie Tarmey/WHO/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Michele Cavataio ( CN=Michele Cavataio/OU=PIR/O=EOP [ PIR ] )

CREATION DATE/TIME: 8-AUG-1997 09:28:08.00

SUBJECT:: Re: Mtg today with the Community Empowerment Working Group

TO:KCLMA ( PR\_U=KCLMA @ PR\_L=RSU399 @ MRP @ OPUS @ LNGTWY [ UNKNOWN ] )

READ:UNKNOWN

TO:Marjorie A. Black ( CN=Marjorie A. Black/OU=PIR/O=EOP @ EOP [ PIR ] )

READ:UNKNOWN

TEXT:

Hey M-

How do you like to set up meetings? I know the V. Stroud protocol, but not yours. If I give you the attendees, mtg length, and purpose is that enough?

I'd like some time to prepare so I'd appreciate it if we could do it anytime after Monday.

I would recommend scheduling an hour, though we probably only need 30-45 minutes.

attendees:

Elena Kagan, DPC\*

Jose Cerda, DPC

Sandy Korenman, Council of Economic Advisors\*

Rob

me

\*= most critical

----- Forwarded by Michele Cavataio/PIR/EOP on 08/08/97  
09:23 AM -----

Judith A. Winston

08/07/97 06:49:58 PM

Record Type: Record

To: Michele Cavataio/PIR/EOP

cc: Robert Wexler/PIR/EOP, Marjorie A. Black/PIR/EOP, Audrey M. Hutchinson/PIR/EOP

bcc:

Subject: Re: Mtg today with the Community Empowerment Working Group

Michele: Thanks for the summary. I indicated to Elena Kagan and Jose Cerda that I would like to set up a meeting with Sandy Korenman and the two of them early next week. I would like you to join me, the two Deputy Director -designees and Rob in attending. In anticipation of the meeting,

I need to locate the outline of demographic data to be collected that staff from CEA outlined for Chris Edley and Elena Kagan. Have you seen it (it was an attachment to a memo prepared by Chris Edley, I believe)? Would you take responsibility for setting up the meeting through Marjorie? Thanks. (Forget the part about the outline, Rob just told me he has a copy and provided one to you.)

Michele Cavataio  
08/07/97 05:36:09 PM  
Record Type: Record

To: Judith A. Winston/PIR/EOP  
cc: Audrey M. Hutchinson/PIR/EOP, Robert Wexler/PIR/EOP  
Subject: Mtg today with the Community Empowerment Working Group

The meeting today brought together staff from most of the agencies who have responsibilities for economic development. Paul Weinstein (DPC), Jose Cerda (DPC), Emil Parker (NEC) and Ellen Seidman (NEC) took turns chairing the meeting. This group has met in the past and is reconvening to address three primary objectives:

Identify budget priorities for FY99 for urban and rural economic development  
Come up with policy ideas for the Race Initiative  
Manage the selection process for new Empowerment Zones (15 urban, 5 rural)

The meeting did not include debate on any policy issues or other substantive issues. ( You made a good choice not to attend .) The agenda had three parts:

1. Paul reviewed economic accomplishments in the FY98 budget process:

Brownfields Tax Expensing - tax incentive for private sector environmental cleanups  
Funds for a new round of Empowerment Zones  
DC Revitalization Plan  
Welfare-to-work tax credit - incentive to employers to hire long term welfare recipients  
Jobs Initiative - \$3 bil for job creation, placement and retention of jobs for welfare recipients

2. A few broad ideas were listed as potential policy initiatives:

Sustainable development  
Housing accessibility  
Access to mainstream financial services  
"10 Best" tour highlighting best practices of mayors

3. The agencies were given an assignment to write a short memo of "best ideas" for the Race Initiative, preferably ideas which are low cost

and do not require legislative action. Paul mentioned that the White House wants short term initiatives to unveil on a monthly basis but also wants recommendations for long term policy that can be included in the final report that the President releases to the American people. These memos will be due in early September at which time another meeting will be held.

Jose mentioned that Domestic Policy staff has been assigned to cover the following issues as they relate to race:

Education: Mike Cohen

Health: Chris Jennings

Civil Rights Enforcement: Tom Friedman, Elena Kagan

Crime Control and Prevention: Jose Cerda

Post meeting conversation

Mike Anderson, DAS at the Bureau of Indian Affairs, said he would like to be as helpful as possible. They would like to have a staff member involved in our meetings, and he offered to send over resumes of Native Americans. He also said that they would like to help host a town meeting in an area with a large Indian population.

Sandy Korenman of the Council of Economic Advisors would like to meet with you soon to discuss their data collection efforts. I think that the outline he provided needs some work.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Wm G. White ( CN=Wm G. White/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 3-AUG-1998 10:38:52.00

SUBJECT:: Report on the 7/31 Medicaid/Tobacco Legal Issues Meeting

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

READ:UNKNOWN

TEXT:

We should sit down and talk about this if you would like at your convenience.

----- Forwarded by Wm G. White/OMB/EOP on 08/03/98 10:38 AM -----

Wm G. White  
07/31/98 05:46:25 PM  
Record Type: Record

To: Daniel N. Mendelson/OMB/EOP@EOP, Joshua Gotbaum/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Report on the 7/31 Medicaid/Tobacco Legal Issues Meeting

I attended today's 8:45 am Medicaid/tobacco legal issues meeting. In attendance were Bruce Reed, Elena Kagan (who ran the meeting), Bruce Lindsey (by speaker-phone), Chris Jennings, Gene Thirolf (DOJ), Gary Claxton (HHS), Kathy King (HCFA), Cynthia Rice (DPC), Cynthia Daillard (DPC) and various other DOJ and HHS staff. Issues discussed at the meeting are as follows:

1. Do the State Suits Against the Tobacco Industry Specifically Seek Reimbursement for Damages to their Medicaid Programs?

At Monday's (7/27) Medicaid/tobacco meeting, Josh asked DOJ if they were certain that the States were seeking damages from the tobacco industry for the tobacco-related costs borne by their Medicaid programs. If none of the state suits actually mentioned Medicaid, it could be more difficult for the Federal government to recoup their share of these funds.

Gene Thirolf (DOJ) began today's meeting by stating that virtually all of the individual state lawsuits against the industry mention Medicaid "in a general way." However, very few states actually enumerated a specific amount of money that their Medicaid programs have spent treating tobacco related-illnesses. Typically, the lawsuit would say that the state "has experience increased Medicaid health expenditures as a result of tobacco use."

In addition to seeking reimbursement to Medicaid in these lawsuits, States

typically also seek damages for state employee health costs and punitive damages for unfair trade practices, consumer protection violations, and racketeering.

## 2. What is HCFA's current process for recouping Federal share of State "third-party liability" collections?

On the quarterly HCFA-64 form that States provide to HCFA to seek Federal matching payments, there is a separate line for "third-party liability" collections. HCFA is then allowed to recoup its share of this amount based on the individual state's FMAP rate. In the past, HCFA has neither scrutinized or challenged this information submitted on "third-party liability" line of the HCFA-64 form.

HCFA has successfully recouped the Federal share of the three Liggett state tobacco settlements. Kathy King advised that the four states that have settlements with the other tobacco manufacturers (Mississippi, Texas, Minnesota, Florida) have not reported these third-party liability collections on the HCFA-64 form because the President sent a letter to the NGA last Fall saying the Administration hopes to resolve the recoupment issue in Federal legislation. [On the basis of this POTUS letter, one of the Liggett states actually wrote HCFA to ask for their money back. HCFA did not agree to this request.]

## 3. Can States Seek the State-Share Only of Third-Party Liability Payments?

DOJ staff were emphatic that the States have an obligation under the Medicaid statute to seek out third-party liability payments for both the Federal and State share of the Medicaid program. Some of the State AGs are apparently arguing that their current lawsuits against the industry are for the state-portion only or not Medicaid at all.

## 4. How should HCFA/HHS prepare to recoup Federal share of State settlement dollars?

Gene Thiorlf (DOJ) stressed the importance of HCFA developing a model for determining state-by-state Medicaid expenditures on tobacco-related illnesses. On the basis of this model, HCFA could then estimate the amount of money is owed to the Federal government as part of these individual cases. Both Gary Claxton and Chris Jennings were skeptical that this was possible.

I noted that researchers at the University of California had recently published a study in an HHS publication, titled "State Estimates of Medicaid Expenditures Attributable to Cigarette Smoking," that estimated tobacco-related Medicaid expenditures on a state-by-state basis. I also noted that the State AG Allocation Subcommittee used this study to develop a document with recommendations to Congress on how the State funds of the 6/20/97 settlement should be allocated by formula. The presence of such a AG document could help undermine possible State efforts to settle with the tobacco industry for non-Medicaid tobacco-related costs.

Per their request, I shared these two documents with DOJ, HHS and DPC

staff. I have also made copies of these two documents for everyone on this e-mail distribution list.

5. What Can HCFA do if the States do not report these third-party liability payments or report an unrealistically low amount available for Federal recoupment?

DOJ, Kathy King and Gary Claxton outlined 2 general options that HHS could pursue under such scenarios: (1) Disallowances and (2) "Non-Compliance" violation procedures.

(I) Disallowances: In this process, HCFA would send a letter to the State advising them that the agency intends to reduce the Federal matching payment to the State by a set amount to reflect the fact that the State did not accurately report third-party liability payments available for Federal recoupment. The State would then have an opportunity to correct this information and repay the Federal government. If the State chose not to do this, HCFA would not notify the State of its intent to disallow or "holdback" a set amount of money in its next reporting period.

If the State disagreed with the HCFA's disallowance decision, they could then appeal it to the HHS Departmental Appeals Board (DAB) within a 30 period. If the State did not agree with the DAB decision, it could seek judicial review in the District Court. The State has the option to maintain control of these funds until the issue has been resolved. In other words, HCFA would have to pay the state the funds in question of disallowance until the issue is resolved.

(II) Non-Compliance Violation Procedures: If HCFA finds that the States is not complying with certain requirements of the Medicaid statute, it may withhold all or a part of its Federal Financial Participation in the Medicaid state plan. In other words, the agency could choose not to provide Federal matching payments for some or all State plan activities. The State would have all of the same appeals procedures noted above, except that it could seek judicial review in the Federal Court of Appeals after the DAB administrative law decision. Everyone agreed that this was not a viable option.

6. If the State settles with the tobacco industry and collects damages for the following: (1) Federal Medicaid costs; (2) State Medicaid Costs; and (3) State employee health costs, which party is given priority in collecting damages? In other words, who is given priority in collecting damages if the settlement does not provide adequate funds to reimburse all parties (e.g. Federal and State governments) involved?

Gene Thirolf (DOJ) felt that the Federal government would be given the top priority in collecting damages. All other parties would likely have to split the funds proportionately. He cited a multi-party medical malpractice case argued in the 9th Circuit Court whereby a physician was sued for the following damages: Medical expenses (Medicare), attorneys fees and pain & suffering. In this case, HCFA/DOJ argued (and the court agreed) that the Federal government should receive its share of the funds first, with other parties splitting the residual accordingly.

If there was a scenario described in question #6 above, the Administration could argue that since the Federal government is the major payor in the Medicaid program (on average 57%), it should also be given top priority in collecting the funds. On the basis of the model described in #4, the Federal government should seek whatever amount of money it believes it is entitled.

7. Could the Federal Government and an individual State reach an out-of-court settlement on how States could spend the Federal share of the settlements?

In other words, under the scenario where a HCFA "disallowance" case was brought to court, could the Feds and the State come to an agreement on how the State would spend the Federal share (e.g. Child Care, Class Size, Health Care)?

DOJ staff said they wanted to look into this question more fully, but generally thought there were two obstacles: (1) Qui Tam law suits and (2) "Anti-Augmentation" laws. In the first obstacle, an individual could file suit against the Federal government for not collecting the money it is owed under the law. Under the second obstacle, DOJ staff said that there are certain laws which prevent the Executive branch from circumventing the Congressional appropriations process. This could be argued as such a situation.

Message Copied

To: \_\_\_\_\_

- Mark E. Miller/OMB/EOP@EOP
- Barry T. Clendenin/OMB/EOP@EOP
- Gina C. Mooers/OMB/EOP@EOP
- Victoria A. Wachino/OMB/EOP@EOP
- Anne E. Tumlinson/OMB/EOP@EOP
- Cynthia M. Smith/OMB/EOP@EOP
- Richard J. Turman/OMB/EOP@EOP

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:Janet S. Piller ( PILLER\_J ) (OMB)

CREATION DATE/TIME: 1-NOV-1995 11:41:06.56

SUBJECT:Callahan amendment

TO:Philip A. DuSault ( DUSAULT\_P ) (OMB)

READ: 1-NOV-1995 12:54:49.35

TEXT:

A copy is in your FYI box. As you can see, the Mexico city and lobbying restrictions are limited to foreign NGOs, but the same conditions do not apply to foreign governments (hence the Kassebaum amendment which will say you can't hold foreign NGOs to a stricter standard than for govts.)

The other item of interest is that the Callahan amdmt. terminates UNFPA funding on March 1, 1996, rather than immediately. Elena Kagan (WHCG) is working on the constitutionality issue and Meg Donovan is working on Kassebaum language for us.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:22-APR-1998 12:25:40.00

SUBJECT:: Readout on Tobacco Antismuggling/Licensing Mtg.

TO:Robert J. Pellicci ( CN=Robert J. Pellicci/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:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Barry T. Clendenin/OMB/EOP on 04/22/98  
12:26PM -----

Richard J. Turman  
04/22/98 12:21:17 PM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Readout on Tobacco Antismuggling/Licensing Mtg.

----- Forwarded by Richard J. Turman/OMB/EOP on 04/22/98  
12:20PM -----

Michael F. Crowley  
04/22/98 12:19:00 PM  
Record Type: Record

To: Michael Deich/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Readout on Tobacco Antismuggling/Licensing Mtg.

I sat in on a meeting with Bruce Reed, Josh Gotbaum, Elena Kagan (DPC), Neil Wolin (Treas. Dep. Genl. Counsel), John Gruber (Treas. DAS for Econ. Policy Analysis), Jim O'Hara (HHS), Patty Kaeding (HHS), and others to discuss tobacco licensing and other antismuggling changes needed in the McCain bill.

Licensing

Treasury is dropping its proposal to register retailers. While Treasury wants a solid licensing scheme put in place for retailers, Treasury does not feel that it needs to be the one to do it. However, Treasury wants improvements in the McCain bill to make explicit that exporters will be licensed. McCain already proposes federal licensing for the rest of the tobacco distribution chain.

McCain allows states to license retailers and gives FDA authority to fill in behind if states do not choose to license tobacco retailers. Currently 34 states license retailers (and 16 states do not, including some prominent southern states such as VA and WV).

Considerable discussion ensued concerning how to get the rest of the states to set up licensing programs for tobacco retailers. Current McCain language says that FDA "may" be the retail licensor of last resort. Treasury would prefer to change this to "shall." HHS, on the other hand, wants to avoid having FDA administer licensing -- even on a last resort basis -- and prefers to beef up incentives to states to implement their own licensing regimes. The Conrad bill has an interesting incentive -- making retail sales difficult in states that do not have licensing programs. The Frist amendment to McCain establishes a compliance bonus fund for rewarding states that do a good job in policing access. Treasury suggested conditioning state bonus awards on access outcomes as well as licensing.

#### Other Antismuggling Provisions

Treasury is seeking a number of other modifications to the antismuggling provisions in the McCain bill to improve antismuggling and diversion enforcement:

Provisions are needed to make explicit that transfer of tobacco product to a non-licensee is unlawful;

Provisions are needed to ensure appropriate recordkeeping along the distribution chain (to indicate who sells what and how much to whom);

Better penalty provisions are needed, including allowing the government to offer compromises and to impose criminal penalties (McCain penalties are currently civil and monetary);

Licensing needs to be conditioned on compliance with a host of tobacco-related statutes and regulations;

A catch-all provision to allow the Treasury Secretary to promulgate regulations is needed;

Treasury is concerned about McCain's reliance on appropriations rather than user fees for financing.

Treasury prefers that its enforcement efforts be fee-funded to ensure a reliable funding mechanism for its efforts. There was some discussion as to whether fee-funding was, in essence, a form of double-dipping -- since the tobacco industry already faces considerable cost for the tobacco settlement. Treasury pointed out that tobacco manufacturer user fees would be almost inconsequential, as the bulk of the fee revenue would be generated from wholesalers, importers, and exporters.

Other Treasury "nice to have" modifications would be to tone down McCain provisions on export marking and bond requirements (Treasury prefers that the whole bond section gets dropped), and to drop prohibitions on tobacco sales to foreign trade zones and duty free shops (Treasury says these are not necessary, but assumes McCain will get enough heat from his home state that these provisions will be dropped).

#### Next Steps

Elena Kagan wants more work done on the incentive issue for states. (Treasury is trying to schedule a meeting for tomorrow to discuss modifications to the Frist amendment.)

Bruce Reed wants to see McCain's staff soon and indicated that they are still busily writing the final bill. The Administration may try to sell McCain on incorporating some changes into a manager's amendment.

Leahy is having an antismuggling hearing next week and Bruce Reed asked Treasury to see if Ray Kelly would testify. There is some sensitivity about how the Administration portrays the Treasury portion of the tobacco proposal since CBS ran a story last Saturday night raising the spectre of ATF "jack-booted thugs" storming 7-11's to ensure against diversion of tobacco products.

#### Message Copied

To: \_\_\_\_\_  
Richard J. Turman/OMB/EOP@EOP  
Joshua Gotbaum/OMB/EOP@EOP  
Patrick G. Locke/OMB/EOP@EOP  
Jim R. Esquea/OMB/EOP@EOP  
Patricia E. Romani/OMB/EOP  
Theodore Wartell/OMB/EOP@EOP  
Alan B. Rhinesmith/OMB/EOP@EOP  
Kimberly A. Maluski/OMB/EOP  
Kathleen M. Turco/OMB/EOP

#### Message Sent

To: \_\_\_\_\_  
Melany Nakagiri/OMB/EOP@EOP  
Wm G. White/OMB/EOP@EOP  
Marc Garufi/OMB/EOP@EOP  
Jim R. Esquea/OMB/EOP@EOP  
Barry T. Clendenin/OMB/EOP@EOP  
Frank J. Seidl III/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Edward H. Chase ( CN=Edward H. Chase/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:28-OCT-1997 13:38:47.00

SUBJECT:: Increased resources for hate crimes

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

READ:UNKNOWN

TEXT:

----- Forwarded by Edward H. Chase/OMB/EOP on 10/28/97  
01:38PM -----

Edward H. Chase  
10/28/97 01:35:41 PM

Record Type: Record

To: Michael Deich/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Increased resources for hate crimes

There has been a general notice to alert the second floor whenever commitments for 1999 resources are being made outside the budget process. Here's one for your consideration.

I met with this morning with DOJ (David Ogden) and DPC (Elena Kagan) to talk about initiatives to be announced at the hate crimes conference on November 10. The AG is recommending, and DPC has agreed, that the protected classes under the hate crimes statute should be expanded, eg, to include sexual preference and gender. This would expand the workload of the FBI. They are estimating a cost of \$38 million per year. The meeting attendees believe this is high, and the costs can be controlled through limitations in the legislation and guidance identifying when cases would require federal involvement. Besides budget considerations, they believe the need not to appear to be federalizing all of these crimes will be a downward pressure. I agree, but based on past experience believe there will also be pressures in the other direction that could make the costs go up.

DOJ staff plans to meet with Senator Kennedy's staff later this week to discuss the proposed legislation. DOJ and DPC want to know if OMB has any problems with the budget implications of the proposal.

There is a major civil rights enhancement in the FBI's 1999 budget request. This includes:

130 field positions (65 agents) and \$13M to investigate hate crimes, and to conduct town hall meetings, regional workshops, and training for state

and local officials and civic and religious leaders; and  
6 positions for a civil rights analytical center to analyze trends in hate  
crimes.

I have a couple of concerns about this request. First, it represents a  
45% increase in resources (not including the legislative proposal  
above). I do not see a current workload problem that would justify such  
an increase. (Note, however, that a major element of the proposal is to  
improve reporting of hate crimes, which may increase workload.)  
Secondly, I am not convinced that the FBI is the right place for  
training, education, and trend analysis.

I am not supporting any of these increases as part of my recommended level  
for the FBI, but have included approximately half of the request in my  
alternative level. (This is my proposal; Ken and David have not  
signed-off, and may have a much different view.)

Again, DPC and DOJ want to know if they can announce these resources as  
part of the November conference.

There is a followup meeting tomorrow at 5:30. What should I tell them?

Message Copied

To: \_\_\_\_\_

Kenneth L. Schwartz/OMB/EOP@EOP

David J. Haun/OMB/EOP@EOP

John E. Thompson/OMB/EOP@EOP

Theodore Wartell/OMB/EOP@EOP

Patricia E. Romani/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jacob J. Lew ( CN=Jacob J. Lew/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:25-SEP-1997 18:27:11.00

SUBJECT:: Meeting on Adoption Bill

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

READ:UNKNOWN

TEXT:

I was surprised to learn from this e-mail about a meeting with the First Lady. Did you know about it? I think this may have been a case of bad communication in the absence of a PAD. I assume that either you or I would have attended.

----- Forwarded by Jacob J. Lew/OMB/EOP on 09/25/97 01:34 PM -----

Keith J. Fontenot  
09/25/97 01:29:07 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: Meeting on Adoption Bill

I sat in for OMB yesterday in a meeting with Mrs. Clinton, Bruce Reed, Secretary Shalala, Gene Sperling Elena Kagan, OFL and HHS staff on the \$2.5 billion (five years) adoption bill proposed by Senators Chaffee and Rockefeller. (The bill was introduced late last week, and we will have summary materials around shortly.)

In sum, there is broad recognition that the most costly component of the bill -- \$2.4 billion over five years -- is a cost shift from States to the Federal government and does nothing to increase the number of adoptions. However, the bill includes many of the President's zero cost proposals, and there is a strong desire in DPC/OFL to get an adoption bill this year. Not all participants fully shared our concerns on the cost shifting since some see the "cost allocation" offset in the bill as covering it. I raised the point that OMB has been working to preserve cost allocation as a potential source of financing for the Administration's initiatives in the President's budget. Secretary Shalala said that at this stage it too early to get "on board" this bill.

HHS is to try to get other members of the Finance Committee to express concerns on the cost shifting provisions in hopes of convincing Senator Chaffee to make modifications. The sense was that this strategy has a slim likelihood of success. HHS argued that a strategy of passing the

bill as is (including the cost shifting and cost allocation as an offset) with the hope of changes in conference might be "the only way" to get a bill this session. There was no discussion of official communication of an Administration position on the bill. HHS also noted that the Committee will hold hearings on October 6th or 8th on the bill. HHS has not yet been invited.

If you decide you want to have an official communication to the hill on the adoption legislation, it should also address the potential of the bill, if passed before the end of this legislative session, to trigger a sequester. (A separate email from Jeff Farkas describes our analysis of the scoring implications of the cost allocation offset). In the meantime, should we share our thinking on the scoring of the offset with DPC/OFL and HHS for consideration in their discussions with the hill?

Message Sent

To: \_\_\_\_\_  
Jacob J. Lew/OMB/EOP@EOP  
Joshua Gotbaum/OMB/EOP@EOP  
Barry White/OMB/EOP@EOP  
Kenneth S. Apfel/OMB/EOP@EOP  
Joseph M. Wire/OMB/EOP@EOP  
Jill M. Pizzuto/OMB/EOP@EOP

Message Copied

To: \_\_\_\_\_  
Janet Himler/OMB/EOP@EOP  
Jill M. Blickstein/OMB/EOP@EOP  
Matthew McKearn/OMB/EOP@EOP  
Jack A. Smalligan/OMB/EOP@EOP  
Edwin Lau/OMB/EOP@EOP  
Jeffrey A. Farkas/OMB/EOP@EOP  
Barry T. Clendenin/OMB/EOP@EOP  
Mark A. Weatherly/OMB/EOP@EOP  
Jennifer Friedman/OMB/EOP@EOP  
Barry B. Anderson/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Keith J. Fontenot ( CN=Keith J. Fontenot/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:21-OCT-1997 18:39:35.00

SUBJECT:: HUD and welfare reform

TO:Matthew McKearn ( CN=Matthew McKearn/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Jennifer Friedman ( CN=Jennifer Friedman/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Jeffrey A. Farkas ( CN=Jeffrey A. Farkas/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Anil Kakani ( CN=Anil Kakani/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

I am?

Anil/Jeff -- can you all enlighten me as to what I'm doing?

----- Forwarded by Keith J. Fontenot/OMB/EOP on 10/21/97

06:39PM -----

Barry White

10/21/97 06:21:37 PM

Record Type: Record

To: Michael Deich/OMB/EOP

cc: Keith J. Fontenot/OMB/EOP, Larry R. Matlack/OMB/EOP

Subject: HUD and welfare reform

As I recalled, the players from HUD during the development of the Welfare to Work program were Stegman and Paul Leonard.

Leonard still represents HUD on the Labor-chaired WTW Policy Committee, currently making decisions on the regs. I sit on this group as well (with DPC and NEC), and bring along my Labor branch chief, other staff, and the OIRA person. Transportation has been represented by Janno Leiber and staff.

There is still a weekly Welfare Reform Policy Group meeting chaired by DPC. This group talks through issues like Hill efforts on worker protections, as well as reactions by governors and mayors to WTW guidance and decisions, and TANF reg issues. Cynthia Rice generally runs it, with Elena Kagan in the chair for heavy things and Bruce Reed sometimes on

specific issues. OMB (my staff), NEC, HHS and Labor are regulars; WH/intergovernmental and others attend when interested in the agenda. Other agencies used to be there, and we've asked Cynthia about their attendance from time to time, but DPC seems more comfortable dealing with the "core" guys. I'm sure that if HUD really wanted to be in continuous contact with the discussions, they could call DPC (Reed, Kagan, or Rice) and readily be put on the routine list. It would at least help them understand the kind of issues that come up and give them the opportunity to intercede where they want.

There hasn't yet been an interagency meeting on the WTW evaluation, for which HUD is a statutory player, but there will be soon. My Income Maintenance branch (Fontenot) is getting it set up. It will include HUD.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:30-JAN-1998 09:05:26.00

SUBJECT:: race and health

TO:Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TO:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Barry T. Clendenin/OMB/EOP on 01/30/98  
09:06 AM -----

Wm G. White

01/30/98 08:59:25 AM

Record Type: Record

To: Richard J. Turman/OMB/EOP@EOP, Barry T. Clendenin/OMB/EOP@EOP, Barbara  
A. Menard/OMB/EOP@EOP, Gordon P. Agress/OMB/EOP@EOP

cc:

Subject: race and health

----- Forwarded by Wm G. White/OMB/EOP on 01/30/98 08:57  
AM -----

Sarah A. Bianchi

01/29/98 08:49:42 PM

Record Type: Record

To: Wm G. White/OMB/EOP@EOP

cc:

Subject: race and health

Elena Kagan spoke to Sylvia M. today about a race and health event. She was interested in having the President announce it. She said she has Feb 17 or 19 in mind and asked if we could come up with some possible proposals for events.

This Intercultural Cancer Council, I told you Chris ran into this morning are going to come by to meet with us tomorrow at 11am if you can come. They apparently have some proposals for an event. They are only in town for the morning, but if you can't make it, I can fill you in. We certainly

don't plan to make any promises tomorrow.

I think that means we should downplay it when the budget comes out.

sb

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Paul\_Riddle@ed.gov@INET@LNGTWY ( Paul\_Riddle@ed.gov@INET@LNGTWY [ UNKNOWN ] )

CREATION DATE/TIME: 8-MAY-1997 13:08:03.00

SUBJECT:: Re[2]: IDEA Statement

TO:Constance J. Bowers@EOP ( Constance J. Bowers@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Thanks for the info.

\_\_\_\_\_ Reply Separator

Subject: Re: IDEA Statement

Author: Constance\_J.\_Bowers@oa.eop.gov at Internet

Date: 5/8/97 12:35 PM

Message Creation Date was at 8-MAY-1997 12:35:00

----- Forwarded by Constance J. Bowers/OMB/EOP on

05/08/97

12:40PM -----

William R. Kincaid

05/08/97 12:34:23 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: Constance J. Bowers/OMB/EOP, Lisa B. Fairhall/OMB/EOP, William H. White

Jr./WHO/EOP, Lucia A. Wyman/WHO/EOP

bcc:

Subject: Re: IDEA Statement

The statement did not go out last night, but Elena thinks that we should be

prepared to issue it after the House vote next week.

Diana Fortuna

05/08/97 11:40:01 AM

Record Type: Record

To: Constance J. Bowers/OMB/EOP  
cc: William R. Kincaid/OPD/EOP, Lisa B. Fairhall/OMB/EOP  
Subject: IDEA Statement

The draft sap looks fine to me, although I would prefer it if there were a way to work in that this "reaffirms our commitment to a high quality education for children with disabilities" -- this is code language that the right to education in the law is not weakened, which a lot of parent groups have been worried about. We've been getting a lot of letters.

Attached fyi is a statement we sent to the press office on this last night (although I'm not sure if it got issued -- do you know, Bill?).

----- Forwarded by Diana Fortuna/OPD/EOP on 05/08/97  
11:41 AM  
-----

William R. Kincaid  
05/07/97 05:16:50 PM  
Record Type: Record

To: Barry J. Toiv/WHO/EOP  
cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP  
Subject: IDEA Statement

Attached is a draft statement on IDEA. Elena Kagan has approved this, but it has not been reviewed by the Chief of Staff's office. We would like for this to go out tonight. Thanks.

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

TEXT:  
The following attachments were included with this message:

---

TYPE : FILE  
NAME : IDEA3.PR

---

=====  
===== END ATTACHMENT 1 =====

=====  
===== ATTACHMENT 2 =====

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

TEXT:

Subject: IDEA3

MIME-version: 1.0

Content-type: Application/wordperfect5.1

Content-transfer-encoding: BASE64

A1-type: DOCUMENT

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

=====  
===== ATTACHMENT 3 =====

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

TEXT:

RFC-822-headers:

Received: from conversion.pmdf.eop.gov by PMDF.EOP.GOV (PMDF V5.0-4 #6879)

id <01IIMMAI93E8001JDA@PMDF.EOP.GOV> for "Constance J. Bowers"@oa.eop.gov;

Thu, 08 May 1997 13:07:02 -0500 (EST)

Received: from gatekeeper.eop.gov by PMDF.EOP.GOV (PMDF V5.0-4 #6879)

id <01IIMMAH9Q8W001R5F@PMDF.EOP.GOV> for Constance\_J.\_Bowers@oa.eop.gov; Thu,

08 May 1997 13:07:01 -0500 (EST)

Received: from r2d2.ed.gov by gatekeeper.eop.gov;

(5.65v3.2/1.1.8.2/17Oct95-0424PM) id AA09595; Thu, 08 May 1997 13:06:57 -0400

Received: from smtpgw1.ed.gov (smtpgw1.ed.gov [165.224.217.37])

by r2d2.ed.gov (8.8.5/8.8.4) with SMTP id NAA29897 for

<Constance\_J.\_Bowers@oa.eop.gov>; Thu, 08 May 1997 13:06:47 -0400 (EDT)

Received: from ccMail by smtpgw1.ed.gov (IMA Internet Exchange 1.04b)

id 37207a90; Thu, 08 May 1997 13:04:41 -0400

=====  
===== END ATTACHMENT 3 =====

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Laura Oliven Silberfarb ( CN=Laura Oliven Silberfarb/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:21-AUG-1997 15:09:48.00

SUBJECT:: Child Care Working Group

TO:Wendy A. Taylor ( CN=Wendy A. Taylor/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Maya A. Bernstein ( CN=Maya A. Bernstein/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Catherine Moore ( CN=Catherine Moore/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

FYI. Maya - please note the discussion on the background checks and possible registry in the Quality meeting description. We need to head this off before it gains momentum. Thanks.

----- Forwarded by Laura Oliven Silberfarb/OMB/EOP on  
08/21/9703:07 PM -----

Jennifer Friedman

08/21/97 03:00:39 PM

Record Type: Record

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

cc:

Subject: Child Care Working Group

The child care working groups on school-age, tax/subsidy, and quality issues all met this week. This memo summarizes all three of these meetings, which were led by Jennifer Klein and Elena Kagan. I will distribute hand-out materials to those of you that were not at the meetings.

At this point, it appears that the DPC wants to develop a child care package that includes up to \$2.5 billion in DCTC reforms, and between \$300 million and \$500 million for school-age care programs. They also plan to include quality incentives and they may include other subsidies; however, we do not know the funding levels they have in mind for the quality and subsidy components of their child care initiative.

School-Age Issues

Attendees at the meeting included HHS, Dept of Ed., and OMB (Leslie

Mustain, Mary Cassell, Laura Oliven, and myself)

The meeting began with a cursory overview of need for school-age care. When discussing need, Ed Dept. reps cite 1991 Census data indicating that 24 million children in grades K through 8 required child care, and that 1.7 million of these children were enrolled in formal before- and after-school programs (both school-based and non-school-based.) I asked a Dept. of Ed. official whether some of these 24 million children who need care could possibly be in informal care not tracked by the Census. She was reluctant to acknowledge that possibility, and stated that they had no information on that.

The Dept of Ed also reported that about 5 million school-age children spend time without adult supervision during a typical week. I questioned whether we know how many of these children are in unsafe settings. The response from the Dept. of Ed was that they can not break the data out that way. As the Dept. of Ed and the DPC develop their after-school care proposal, we will continue to question their assumptions about the universe of need.

After discussing need, the meeting focused on the barriers to school-based programs, the components of a good program, and the costs. Barriers to implementation include: (1) lack of resources; (2) unwillingness of the school district to open buildings; (3) unwillingness of teachers to have their classrooms used for after-school activities; (4) negotiations with custodial unions that stipulate building fees (only an issue in NY State and New York City); and (5) parents' inability to pay tuition and fees.

The components of successful extended learning after-school programs include: (1) coordination with the regular school day learning program; (2) true linkages between after-school and regular school day personnel; (3) hiring of qualified staff; and (4) low student-staff ratio.

The Dept. of Ed provided low and high cost scenarios that include all associated costs, except for transportation. The lower cost estimate assumes that staff are supplemented by volunteers and that enrichment activities do not require new materials. The higher cost estimate assumes that the staff will include certified teaching personnel, a full-time program director, and possibly significant materials expenditures. The Dept. of Ed. estimates that the costs (an average of the high and low cost scenarios) of after-school programs are as follows:

Estimated hourly cost per student: \$2 to \$2.50

Estimated yearly cost per student: \$1,050 to \$1,575

Estimated yearly program cost per school \$157,000 to \$500,000

Transportation (Estimated cost per student per trip) \$1.00

Elena Kagan and Mike Cohen of the DPC expressed their preference for a lower cost proposal that would serve more children. Mike Cohen also addressed our concern when he stated that there needs to be an understanding of the various categories of need.

Cynthia Rice stated that any new proposal has to distinguish itself from

existing programs such as the 21st Century Community Learning Centers (the House Approps committee bill provided the requested \$50 million and the Senate Approps committee bill provided \$1 million) and the Community Schools program (zeroed out by the House and Senate Appropriations committees).

The meeting ended with the Dept. of Ed. being assigned the task of developing a policy proposal in the realm of \$300 million to \$500 million. Mary Cassell pointed out that low-cost options can also be worthwhile. Jen Klein listed several variables for the Ed. Dept to consider, as follows:

- 1) whether to create a new program or build off of an existing one;
- 2) how to distribute money;
- 3) school-based v. non-school based;
- 4) purely federal program or combination fed/state program;
- 5) flexibility of the money;
- 6) ages served;
- 7) payment scale for parents.

The Dept. of Ed. was also asked to identify goals that can be sold politically and to look into scholarship programs and provider training initiatives.

## Quality Issues

Representatives from DPC, HHS, GSA, DOD, and OMB (L. Oliven, J. Farkas, K. Kirchgraber, and myself) attended the quality issues meeting.

We spent most of the meeting reviewing a list of policy options for health and safety standards developed by the Maternal and Child Health Bureau of HHS. For each option, a tension remains as to whether to apply any new requirements to just child care centers, or to family providers as well (i.e., licensed v. unlicensed providers). Policy options for health and safety standards included:

- (1) Create standards through federal regulation;
- (2) Require training for child care providers (it was unclear whether this would be done through legislation or regulation);
- (3) Expand the health and safety requirements of the Child Care and Development Block grant through regulation;
- (4) Require all child care programs in federally operated facilities (such as those run by GSA) to adhere to MCH's Stepping Stones guidelines document and challenge the states to match the federal efforts;
- (5) Promote States' adoption of Stepping Stones through incentives; and
- (6) Create a national support network for child care providers.

As in the last meeting, we again discussed HHS' lack of authority to regulate in this area. Elena asked the Child Care Bureau to check with their lawyers about how far they can push the envelope on regulation without new regulatory authority.

With regard to training requirements, MCH proposed two options: (1) require all child care providers to demonstrate competency in First Aid and CPR, Nutrition, Environmental Health and Safety, and managing the

developmental and emotional needs of at-risk children; or (2) require all child care providers to have a Child Development Associate Credential. We questioned the comprehensiveness of the CDA credential. MCH explained that the CDA credential is required of Head Start providers and is a course of competency training, but it is not equivalent to an Associate Degree. MCH believes that requiring the CDA credential would be one way to meet child development quality goals. One suggestion mentioned was to pull the Head Start CDA requirement into the Child Care program, similar to how Medicaid's EPSDT program may be used as a basis for the children's health initiative.

The DPC enthusiastically embraced the proposal that the President lead by example and require federal facilities to meet Stepping Stones guidelines through an Executive Order. This is one policy that they may unveil at the Child Care conference on October 23.

OIRA presented the option of combining incentives with standards by allowing higher reimbursement for higher quality. This was done in a previous interim child care regulation but was never finalized due to the child care legislation in welfare reform. Such a step would require new regulatory authority.

After a lengthy discussion of policy options for health and safety standards, we discussed the use of child care provider background checks for child abuse and criminal records. The Child Care Bureau provided a state-by-state summary of background check requirements. There are five states that do not require either criminal background checks or child abuse checks for child care center and family child care providers (AL, DC, NJ, TN, WY). However, there are many states that require one type of check and not the other, or require checks for child care center providers and not family child care providers.

Elena viewed this as an excellent issue to include in the Administration's anti-crime agenda, and asked the Child Care Bureau to develop another working group with DOJ in order to prepare a policy proposal and look into the possibility of developing a national registry. We do not know the extent of any problem in this area, so it is hard to say whether such a program would be a valuable use of resources. At the state level, background checks cost \$100 per provider (a national registry would reduce that cost). Therefore, funding in the realm of \$10 to \$25 million would allow for background checks of at least 100,000 to 250,000 providers.

The next meeting will cover child development quality issues, including options for a "quality incentive fund", family child care networks, and provider scholarships.

#### Tax/Subsidy Issues

Attendees at the meeting included representatives from Treasury, HHS, CEA, and OMB (J. Farkas and myself). We spent a large portion of the meeting discussing DCTC options, as presented by Carl Scholtz and Janet Holtzblatt of Treasury.

During this discussion, Treasury did not have specific information on the distributive impact of each proposed DCTC reform. They will provide this

information at the next meeting so that we can better assess the income levels of families benefitting from reform. The five options presented were as follows:

1) In order to claim the DCTC, current law requires that taxpayers provide over half of the support for the household. Option one would eliminate this requirement and replace it with a residency test, mandating that taxpayers live with the child for over half of the year. The largest group benefitting from this change would be taxpayers living with their parents. Estimated cost: \$300 million.

2) Under current law, taxpayers with adjusted gross incomes of \$10,000 or less are allowed a credit equal to 30 percent of child care expenses. Because the DCTC has not been adjusted for inflation since 1982, this option would index the income level for inflation. Under option two, the 30 percent credit would go to taxpayers with adjusted gross incomes of \$17,000 or less. The credit would be phased down to 20 percent for taxpayers with adjusted gross incomes between \$17,000 and \$44,000, and remain at 20 percent for taxpayers with incomes over \$44,000. (Under current law, the 20 percent credit applies to taxpayers earning \$28,000 or more).

Under this option, the amount of qualifying expenses would also be increased from \$2,400 to \$2,500 for one child, and from \$4,800 to \$5,000 for two or more children.

Treasury will do tax threshold tables to illustrate the distributional effects of this change. Under the existing credit, families making \$10,000 have little or no tax liability and do not receive any credit. Increasing the beginning of the phase-down to \$17,000 and the end of the phase-down to \$44,000 will allow more families to receive a higher credit, but it is unclear how the credit will compare to the tax liabilities of families in this income range. Estimated cost: \$2.5 billion.

3) Option two, with the modification that taxpayers could claim up to \$4,000 of child care expenses for children under six years of age (up to \$8,000 for two or more children under six). The maximum amount for qualifying child care expenses for preschool children would be indexed in subsequent years. Estimated cost: \$4 billion.

4) Make the DCTC a refundable tax credit. Estimated cost: \$4.5 billion.

5) Increase the credit rate to 30 percent for all taxpayers and increase qualifying child care expenditures to \$2,500 for one child and \$5,000 for two or more children. This proposal would disproportionately benefit higher income taxpayers. Estimated cost: \$6 billion.

At this point, it appeared that the group had accepted DCTC reform as a foregone conclusion, despite Treasury's argument at the previous meeting that subsidies can more effectively target recipients. Therefore, we asked whether the group was going to consider changes to subsidies instead of DCTC reform. The Treasury reps then repeated their view that low-income families can be better reached through subsidies; however, no real subsidy options were discussed. The group appeared to dismiss the

option of adding more funds to the Child Care and Development Block Grant. Elena then asked what the appropriate ratio of subsidies to tax credits was, i.e., for every \$X million spent on subsidies, how much should be spent on tax incentives? However, the answer depends on whether the goal is to redistribute money, reduce marginal tax rates, etc.

In the little time left, we discussed the possibility of using the DCTC to improve quality by providing a higher credit for accredited care. Treasury stated that such a policy would be very cumbersome administratively.

Although the group dismissed the option of employer credits for building facilities and providing on-site child care, Elena asked Treasury to think about options that would promote on-site child care. Treasury pointed out that any supply side incentive would reward companies that are already inclined to provide child care, and would be disproportionately benefit high-wage firms.

The meeting ended with Treasury receiving several assignments, as follows:

1. Review current bills and develop a list of subsidy options. Cynthia Rice specifically asked if there was any way to develop incentives for higher quality care and after-hours care.
2. Provide information on the distributional effects of each proposal.
3. Present options on policies that cost in the realm of \$300 million to \$2.5 billion. Specifically, the DPC requested different variations along the lines of option two.

#### Next Meeting

The three subgroups will not meet again until the week of September 2. The new subgroup on child care provider background checks will meet the week of August 25.

#### Message Sent

To: \_\_\_\_\_

Kenneth S. Apfel/OMB/EOP  
Barry White/OMB/EOP  
Keith J. Fontenot/OMB/EOP  
Jeffrey A. Farkas/OMB/EOP  
Matthew McKearn/OMB/EOP  
Anil Kakani/OMB/EOP  
Edwin Lau/OMB/EOP  
Corey G. Lee/OMB/EOP  
Laura Oliven Silberfarb/OMB/EOP  
Leslie S. Mustain/OMB/EOP  
Mary I. Cassell/OMB/EOP  
Katherine Kirchgraber/OMB/EOP  
Kathryn B. Stack/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Frank J. Seidl III ( CN=Frank J. Seidl III/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:29-JAN-1999 15:15:04.00

SUBJECT:: DPC Edits to Tobacco Q&As and Policy Summary

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

READ:UNKNOWN

TEXT:

Patrick, Richard meant to include you on the attached.

----- Forwarded by Frank J. Seidl III/OMB/EOP on 01/29/99

03:14 PM -----

Richard J. Turman

01/29/99 02:48:45 PM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP, Daniel N. Mendelson/OMB/EOP@EOP

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

Subject: DPC Edits to Tobacco Q&As and Policy Summary

Elena Kagan had substantial edits to the q's and a's, and some edits to the summary -- and created some new q's and a's as well. Please review the package and see if you concur with the edits.

Cynthia indicated that once she gets your sign-off, she figured that that would forward the q's and a's to HHS and Treasury for the Secretaries to use when asked questions on these topics. I'm not clear about the summary.

Process-wise within OMB, the tobacco summary and q's and a's were turned in several days ago, and are either on the way to Jack/Sylvia or already with them. If you concur with the edits, we will try to see about getting the revised material into their books.

Thanks.

----- Forwarded by Richard J. Turman/OMB/EOP on 01/29/99

02:42 PM -----

Cynthia A. Rice

01/29/99 02:31:18 PM

Record Type: Record

To: Richard J. Turman/OMB/EOP

cc:

Subject: Tobacco Q&As and Policy Summary

Q&A -- entire package (to substitute for Treasury's and your former packet). Includes a few new ones we added. DO NOT SPELL CHECK THIS DOCUMENT (it will crash)

The tobacco policy summary -- note Elena's removal of the illustrative tables

Message Copied

To: \_\_\_\_\_

Barry T. Clendenin/OMB/EOP@EOP

victoria wachino

Gina C. Mooers/OMB/EOP@EOP

Frank J. Seidl III

Jennifer M. Forshey/OMB/EOP@EOP

Melany Nakagiri/OMB/EOP@EOP

Wm G. White/OMB/EOP

Mark E. Miller/OMB/EOP@EOP

thomas reilly

Michael F. Crowley/OMB/EOP@EOP

Daniel D. Heath/OMB/EOP@EOP

Jennifer Friedman/OMB/EOP@EOP

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

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

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D86]MAIL49313023U.036 to ASCII,

The following is a HEX DUMP:

=====  
END ATTACHMENT 1  
=====

=====  
ATTACHMENT 2  
=====

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

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D86]MAIL44413023V.036 to ASCII,

The following is a HEX DUMP:

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

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:21-JUL-1997 13:38:15.00

SUBJECT:: Report on 7/18 Tobacco Legal Committee Meetings on 1st Amendment and Licensing Issues

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

READ:UNKNOWN

TEXT:

Please place in my Tobacco binder. Thanks.

----- Forwarded by Richard J. Turman/OMB/EOP on 07/21/97

01:36PM -----

Wm G. White

07/21/97 01:35:07 PM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP

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

Subject: Report on 7/18 Tobacco Legal Committee Meetings on 1st Amendment and Licensing Issues

I attended 2 meetings Friday afternoon sponsored by the Tobacco Legal Committee regarding First Amendment and Licensing issues related to the Tobacco Settlement. Elena Kagan chaired both meetings. Lawyers from DOJ, Treasury, FDA and other EXOP staff were in attendance for both sessions.

First Amendment Meeting

Two DOJ lawyers from the Office of Legal Counsel made presentations regarding the possible First Amendment challenges to the tobacco advertising restrictions in the agreement. They advised that DOJ is already defending the FDA in a First Amendment suit brought against the agency's tobacco regulation issued last year. They hinted that at some least some of the regulation's provisions restricting certain forms of tobacco advertising (e.g. the ban on billboards within 1,000 feet of schools) could possibly be overturned based on 1st Amendment concerns.

They noted that the Tobacco agreement includes many of these same advertising restrictions that are in the FDA rule as well as others that go beyond the rule. They advised that the Administration -- in order to minimize future constitutional challenges -- would need to be very careful in crafting the legislation and the related consent decrees between the tobacco manufacturers, the States and the Federal Government that would implement the agreement.

Elena Kagan speculated that the following 2-step process could be the best

way to avoid future constitutional challenges:

(1) The Administration would craft legislation that would specifically state the process (i.e. how the consent decrees would be crafted) by which tobacco manufacturers, States and the Federal government would reach agreement on Tobacco Advertising restrictions;

(2) Once this legislation were enacted, the tobacco manufacturers, States and the Federal government would then enter into a consent decree as dictated in the legislation.

She and some of the other lawyers in the room felt that the courts would be unlikely to overturn the advertising restrictions in such agreements on First Amendment grounds so long as all parties involved agreed to them. However, some of the DOJ lawyers speculated that there could still be constitutional difficulties.

Elana Kagan ended the meeting by asking DOJ to work with FDA lawyers to craft recommendations on how the Administration should craft the legislation implementing the agreement in order to best avoid future Constitutional challenges. They plan to meet again later in the week.

#### Licensing Meeting

Two lawyers from the Department of Treasury made a presentation summarizing the current licensing scheme at the Department's Alcohol, Tobacco and Firearms agency and the possible licensing schemes for tobacco products. They also discussed the pros and cons of licensing schemes in general. Their presentation is summarized in a 4-page handout that I will fax you this afternoon.

The FDA lawyers at the meeting stated that the resource implications of a national tobacco licensing program are very "scary" and would generally prefer not to get into this business. They would prefer to have the States take the lead in this area, although the FDA would still like the ability to revoke the State licenses of retailers who violate the agreement. (The inconsistency of this position was noted gently by some in the room.) FDA lawyers noted that they did not want to become a "licensing" agency because of the administrative burdens and the fact that it would change the organizational culture of the agency. Elana Kagan asked whether the ATF would be a better agency to implement the tobacco licensing provisions called for in the agreement -- an issue that the group is likely to consider further.

#### Message Copied

To: \_\_\_\_\_  
Barry T. Clendenin/OMB/EOP  
Richard J. Turman/OMB/EOP  
Jim R. Esquea/OMB/EOP  
Victoria A. Wachino/OMB/EOP  
Molly Finch/OMB/EOP  
Anne E. Tumlinson/OMB/EOP

Mark E. Miller/OMB/EOP  
Lois E. Altoft/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME: 4-MAR-1999 15:23:04.00

SUBJECT:: Report from 3/3 OMB/DPC meeting on Tobacco

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

READ:UNKNOWN

TO:Frank J. Seidl III ( CN=Frank J. Seidl III/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TO:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Wm G. White ( CN=Wm G. White/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Before DPC came in, there was a 5 minute pre-meeting with Josh, Dan, Jack, Greg, Ingrid, and myself.

Dan and Josh walked Jack through a memo they'd sent to Jack the night before. They mentioned that Claxton wanted the safety net/public health initiative taken off the menu, and Jack said no.

Josh mentioned that Shalala and Reed were meeting with Conrad and other Senators re: tobacco at 4:00 on Wednesday, and that he was planning to attend, given that Jack and Sylvia were unavailable.

Bruce Reed, Elena Kagan, Cynthia Rice, Chris Jennings, Sylvia Mathews and Rob Nabors then joined the discussion.

Bruce opened by noting that Daschle wanted to try to stop the rush to support Hutchison, and had pulled several Senators together to meet with he and Shalala that afternoon. It was not clear who would support an Administration bill at this time -- there were apparently some conflicts for Conrad, Harkin and Chafee were going to do something, but it would take a good while, Kennedy might if no one else would, etc.

Elena noted that even though the point was that some of the state tobacco money should end up being spent on tobacco, and many states are using the tobacco settlement money for things like we would be putting on the menu, many were not (e.g., Pataki is spending 3/4 on capital projects).

Jack said that at NGA, the rhetoric level was pretty high among the governors that they were going to spend some on tobacco, and that we ought to be able to come up with a menu with them.

Talk moved to the menu. Jack said he was comfortable talking about public health, child care, mental health, and that it was easy to make the argument that we have substantial initiatives in the Budget, and we want to use the tobacco settlement to spend money on some of the things that we want that the states want.

Elena said that a question he'll face is whether he's using the tobacco settlement money to buy out the base. Jack said he'd say it is a combination of funding the base and many increases, that he's focused on a total program level concept, and that if we can get the states to fund some of the things that we all want, so we don't have to, that's fine, since it helps advance the overall agenda.

Elena asked about the public health initiative, and HHS' concerns about taking it off the list. Jack said that there was no question -- it had to stay on the list. He observed that child care was on the list, and we couldn't say that the PHI was too important to be on the list, by comparison -- especially when we know what child care is and we're not sure exactly what the PHI is! Chris said the idea with the PHI was to have Federal accountability instead of state non-accountability. Jack said that Obey rain this last time because he wanted states to increase their health insurance coverage (?), and that Shalala won't won a fight that she knows better than states do. Jack then asked Dan if HHS' design for the PHI had matured substantially. Dan said that progress had been very slow. Dan said he would call Callahan and say that PHI was staying on the list, and Chris bet him that Jack would then get a call from Donna to appeal.

Jack said that if asked in the hearing, he won't name programs, which the Senators will try to get him to do. He'll say it will depend on negotiations and we have to see what states are doing with the tobacco money on 5-6 areas, including child care, public health, etc.,

Kagan said that Hutchison may put her bill on the Supp today.

Chris asked how Jack would answer why we're taking 57%, when last year we negotiated 50%. Jack said that last year the idea was to recapture cash from the companies, and spend it through the Federal government. This year the situation was entirely different, and our approach is appropriate. This time states receive the money from the companies, and get to keep it, and get to choose between various items that they would spend a portion of it on -- which is differnt than having the \$ be a federal appropriation, as it was last year.

He then said that there are substantial Federal/state priorities in child care and public health, and to the degree these priorities can be accomplished at the state level, then that is fine -- if the goal is to help kids, it doesnt matter whether the assistance comes from the Feds or the states.

Regarding budget cuts, Jack said that we didn't budget anything for this in 2000, because we'll need time to negotiate, and that we'll factor whatever we come up with on the menu into 2001 when the time comes.

Bruce reminded Jack that 2/3 of the Senate last year said that child care should be on the menu.

Jack also said we would not concede on the claim -- that we have a legitimate claim, and we're being less prescriptive than when we were at 50%.

Chris said this was all fine, as long as the menu didn't differ from what we cared about, to which Jack agreed.

Elena said that once Jack's testimony is done, we could get the menu items out on the table.

Josh asked Jack how he'd answer on farmers -- Jack said that it would depend on how states spend the money they get.

Bruce added that it depended on three things:

- a) how the \$5B gets split up that the companies and farmers have agreed to;
- b) how much states planned to use of the \$ they were getting from the tobacco settlement; and
- c) if the Fed Medicare lawsuit was successful, they could get some of that, too.

Bruce said that another question would be why we're asking for such a high proportion of Medicaid \$. Cynthia said some answers included:

- 1) the states have the obligation to collect for us;
- 2) it was in some of their suits;
- 3) states have given up their Medicaid claims in the settlement -- and OURS, since they sue on behalf of the Feds and we are barred from doing so;
- 4) there are lots of estimates, but the \$13B FY93 figure indicates the tobacco costs to medicaid, and if the states settled for \$8, Medicaid is to be paid first, so we actually have a claim to all 8.

Jack asked if she could get this all down on a sheet of paper -- that it would really help.

Jack indicated that the CBO testimony on how they scored the Budget, re: recoupment, was garbled, and that people will try to use it against us.

Bruce asked how he would answer the question about our baseline being zero. Jack said that in the history of recoupment, there has not been something like this -- a national settlement. Usually, we have to go from one state to another to deal with the separate documentation in each, the pleadings, the files, the settlements, etc., and that it is time-consuming and nuanced. Here, it is all on one place and crystal clear. And as the President said to the governors, states are legally obligated to pay. Further, the baseline reflects the past, but things have changed, and we're

looking at the future, not how we've not had big national settlements in the past. Greg noted that it is also a conservative technical estimate -- that states have said they won't pay, and the baseline reflects that. Jack said that that technical argument would also be helpful to have written down. Jack also said he would answer that we don't do the baseline -- it is done at HCFA.

Chris noted that they could then ask, if baselines are based on the past, , and the Administration has not enforced the recoupment of state provider taxes, why do we believe that this settlement money would have been collected. Jack said that each state had its own story on provider taxes, on what happened, how their particular laws and regulations and payments had been structured, etc., and that this was different. This was a judgement that was already created, and it would be irresponsible to ignore it. This is apples and oranges -- why more for tobacco recoupment? Because we expect more. Also, it is a national settlement, vs. multitudes of local issues.

Chris asked how he would respond to a question about vetoing Hutchison. Jack said the President and governors agreed to work this out, and he doesn't expect it will come to that. The President feels strongly that the tobacco settlement should accommodate these concerns about children and public health.

Elena asked what if states wanted to use the \$ for state programs in the specified areas, instead of Federal programs. Jack: we never said it has to be Federal programs, we wouldn't rule it out, as long as it is consistent with the criteria of what we care about.

Bruce said one question could be "name one state that would give you cause to do this menu," and that DPC would find out what the state was and give it to him, if he wanted to use it. Discussions ensued that they might not want to name a state at all, if it was represented on Finance.

That's the best I could do, given how fast the conversations went. Hope it's helpful -- GW -- does that sound right?

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Mark J. Schwartz ( CN=Mark J. Schwartz/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 8-MAY-1997 10:54:27.00

SUBJECT:: Amtrak Board of Directors

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:David E. Tornquist ( CN=David E. Tornquist/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

After languishing for months we are now in a big hurry to move the Amtrak reauthorization bill to the Hill by the beginning/middle of next week if we can. The sole remaining issue that needs to be ironed prior to transmittal is OLC's concerns about the constitutionality of the appointment of Board members.

Our concern is that the meeting not simply be a re-airing of everyone's views on the subject, but rather a meeting where we can decide how to proceed on the bill. That is, we hope that those who attend the meeting will understand that we are aiming to decide the issue. Our direction from Michael at this morning's meeting is to do what is necessary to move OLC off its views or have them overruled by White House counsel if necessary.

To have this happen we would need to be sure that someone from Justice who is capable of deciding the question (put more politely, someone capable of "acquiescing") is present. I have left a message with Neil Kincoff, at OLC. But perhaps Adrian Silas will know who is a better person to have attend.

I have invited Bill Marshall of White House counsel's office, but I think it would make sense to try and get Elena Kagan to weigh in on this issue since she is most familiar with the subject matter. I will drop her a note about the meeting but suggest she be invited by you guys.

Any thoughts on this?

Thanks.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Keith J. Fontenot ( CN=Keith J. Fontenot/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:31-OCT-1997 16:20:54.00

SUBJECT:: Cost allocation

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Barry B. Anderson ( CN=Barry B. Anderson/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Matthew McKearn ( CN=Matthew McKearn/OU=OMB/O=EOP@EOPAlison C. Perkins/OMB/EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Lisa M. Kountoupes ( CN=Lisa M. Kountoupes/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Susanne D. Lind ( CN=Susanne D. Lind/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Joshua Gotbaum ( CN=Joshua Gotbaum/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

As you requested, we spoke with DPC (both Cynthia Rice and Elena Kagan) concerning cost allocation. They agree that it would be good to have the cost allocation offset to finance Administration priorities in the budget. They don't have strong views on the cost allocation issue itself, nor did they express views on how to handle the ultimate issues of potential sequesters and how the Administration might respond to such legislation. They raised only one concern. In the context of discussions with the Finance Committee on the adoptions bill, the DPC or HHS apparently told the Committee that the Administration would not "openly" criticize the committee on its adoption bill. (This was

probably part of the HHS strategy to get a bill through the Senate so that issues might be resolved in conference.) They would be sensitive about doing something that was critical of the adoption bill. I explained that (1) from all reports we had heard the adoption bill is no longer likely to move this session because of concerns by Senator Roth on the delinking provisions, and (2) that if concern or opposition were to be expressed about the Senate Ag bill, it would be on the basis of the impact of the proposal on Food Stamps and/or the possibility of triggering a sequester. We'll weave something into the memo we're drafting for you for Frank to send to the COS. We have something you can talk to Frank about for Monday. On the status front, it sounds like the bill is still scheduled to move to the floor for Tuesday, with conference beginning immediately thereafter.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Keith J. Fontenot ( CN=Keith J. Fontenot/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 3-NOV-1997 13:36:40.00

SUBJECT:: Cost allocation

TO:Matthew McKearn ( CN=Matthew McKearn/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Keith J. Fontenot/OMB/EOP on 11/03/97  
01:36PM -----

Keith J. Fontenot  
10/31/97 04:19:12 PM

Record Type: Record

To: Jacob J. Lew/OMB/EOP@EOP, Barry White/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Cost allocation

As you requested, we spoke with DPC (both Cynthia Rice and Elena Kagan) concerning cost allocation. They agree that it would be good to have the cost allocation offset to finance Administration priorities in the budget. They don't have strong views on the cost allocation issue itself, nor did they express views on how to handle the ultimate issues of potential sequesters and how the Administration might respond to such legislation. They raised only one concern. In the context of discussions with the Finance Committee on the adoptions bill, the DPC or HHS apparently told the Committee that the Administration would not "openly" criticize the committee on its adoption bill. (This was probably part of the HHS strategy to get a bill through the Senate so that issues might be resolved in conference.) They would be sensitive about doing something that was critical of the adoption bill. I explained that (1)from all reports we had heard the adoption bill is no longer likely to move this session because of concerns by Senator Roth on the delinking provisions, and (2) that if concern or opposition were to be expressed about the Senate Ag bill, it would be on the basis of the impact of the proposal on Food Stamps and/or the possibility of triggering a sequester. We'll weave something into the memo we're drafting for you for Frank to send to the COS. We have something you can talk to Frank about for Monday. On the status front, it sounds like the bill is still scheduled to move to the floor for Tuesday, with conference beginning immediately thereafter.

Message Copied

To: \_\_\_\_\_  
Joshua Gotbaum/OMB/EOP@EOP  
Lisa M. Kountoupes/OMB/EOP@EOP  
Mark A. Weatherly/OMB/EOP@EOP  
Barry T. Clendenin/OMB/EOP@EOP  
Jeffrey A. Farkas/OMB/EOP@EOP  
Matthew McKearn/OMB/EOP@EOPAlison C. Perkins/OMB/EOP@EOP  
Robert G. Damus/OMB/EOP@EOP  
Barry B. Anderson/OMB/EOP@EOP  
Susanne D. Lind/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Maureen H. Walsh ( CN=Maureen H. Walsh/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:29-MAR-1999 10:52:20.00

SUBJECT:: Re: White House Immigration Group Meeting

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

READ:UNKNOWN

CC:larry r. matlack ( CN=larry r. matlack/OU=omb/O=eop@eop [ OMB ] )

READ:UNKNOWN

TEXT:

Barbara's/Deich's call, I think.

Debra J. Bond

03/29/99 10:48:14 AM

Record Type: Record

To: Larry R. Matlack/OMB/EOP@EOP

cc: Maureen H. Walsh/OMB/EOP@EOP

Subject: Re: White House Immigration Group Meeting

See below. Do you think that we should try to get the ALC fee in this bill?

----- Forwarded by Debra J. Bond/OMB/EOP on 03/29/99  
10:46 AM -----

Debra J. Bond

03/29/99 10:28:59 AM

Record Type: Record

To: Steven M. Mertens/OMB/EOP@EOP

cc:

bcc: Debra J. Bond/OMB/EOP

Subject: Re: White House Immigration Group Meeting

What is this immigration legislation package? Is it a free standing bill? Would this be a viable vehicle for the DOL immigration fee?

----- Forwarded by Debra J. Bond/OMB/EOP on 03/29/99  
10:46 AM -----

Steven M. Mertens

03/29/99 10:45:01 AM

Record Type: Record

To: Debra J. Bond/OMB/EOP@EOP

cc:

Subject: Re: White House Immigration Group Meeting

Its going to be a catch-all bill (at least that's what's being said now) that addresses a series of immigration related issues rather than get legislative fixes separately. I don't see why a DOL immigration fee could not be included (can we get a cut) -- but of course that is above my pay grade. You may want Barbara to raise that possibility with Elena Kagan in DPC. Elena will be running the show while Irene is on vacation.

Steven M. Mertens

03/26/99 03:14:51 PM

Record Type: Record

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

cc: Theodore Wartell/OMB/EOP@EOP, Sherron Duncan/OMB/EOP@EOP

Subject: White House Immigration Group Meeting

The thrust of yesterday's Immigration Group Meeting quickly became White House frustration with the pace of INS and Justice efforts to complete promised deliverables. In every agenda topic, where a reg was to be cleared, letter sent or guidance issued, little progress was reported from previous meetings. Highlights include:

Central America: No change in status. Decision memo on an acceptable "rebuttable presumption" is still at INS. Once received by DOJ it will be staffed and sent to the AG. Maria was very concerned about this slow pace -- and even more so when she found out the memo only addressed a part of the proposed reg and would not result in a final reg being cleared until possibly summer. INS had promised, and the WH had committed to immigration groups and on the Central American trip, that a reg would be ready this spring.

DPC will convene a meeting on a possible Central America legislation (expansion of NACARA provisions) for inclusion in a possible immigration package on Monday. Irene Bueno has the lead.

Mandatory Detention: I reported that OMB cleared the reprogramming for \$31 million to support INS detention needs last Friday with DOJ prepared to send it to the Hill after Congressional action on the Central America supplemental is concluded. The DAG continues to chair meetings to work on

a comprehensive INS detention strategy that addresses administrative and legislative fixes. Maria wants the mandatory detention proposal in the legislative package. DOJ reported that they have settled on a legislative fix but management and administrative improvements in INS' detention program are taking more time. Maria asked about OMB's role. I said we are awaiting INS' detention strategy (legislative and management fixes + additional funding for FY 2000 -- with offsets) and have seen nothing to date.

DPC will convene a meeting on mandatory detention and other immigration issues for possible inclusion in an immigration legislative package on Tuesday. Irene Bueno has the need.

Late Amnesty: INS was expected to respond in a letter from immigration groups informing them that only a legislative fix could address their concerns about extending amnesty. INS has yet to complete and send this letter.

Haitian Regulations: INS is still drafting these regulations. Maria questioned why it was taking so long since they should be identical to those issued last year for NACARA. INS will look into why it is taking so long and will provide a completion timetable.

Public Charge: Again, no progress. The decision memo, proposed regulation and guidance are still at INS and will need to go through the DOJ clearance process before decisions are made. We offered to speed OMB clearance if INS shares drafts of these proposed rules with us once they have been completed.

Naturalization: DOJ reported they developed a corrective action plan which would be shared with INS next week in hopes of getting backlog reduction efforts back on track.

Legislation: Maria asked DPC to take the lead in developing an immigration legislative package over the next few weeks. The WH would like to resolve most internal policy issues over the congressional recess so the Administration has a position and legislative fixes ready in April. The legislation will likely include: Central American relief (NACARA-lite provisions for other Central Americans as promised by the President on his trip); fix to the mandatory detention requirement; a possible extension to the 245(i) provision (this will raise big detention bucks if it is extended with the \$1000 penalty attached); change in the immigration registry, etc.

The Justice and INS representatives were asked to remain after the meeting and talk with Maria on deliverables.

Any questions on the above, please let me know. Thanks.

Message Sent

To: \_\_\_\_\_

Michael Deich/OMB/EOP@EOP  
Joshua Gotbaum/OMB/EOP@EOP  
Myrta Sale/OMB/EOP@EOP  
Kenneth L. Schwartz/OMB/EOP@EOP  
David J. Haun/OMB/EOP@EOP  
Ingrid M. Schroeder/OMB/EOP@EOP  
Debra J. Bond/OMB/EOP@EOP  
Daniel J. Chenok/OMB/EOP@EOP  
Stuart Shapiro/OMB/EOP@EOP  
Carol R. Dennis/OMB/EOP@EOP  
Dawn V. Woollen/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:17-JUL-1997 21:24:44.00

SUBJECT:: Tobacco Update

TO:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Barry T. Clendenin/OMB/EOP on 07/17/97  
09:25 PM -----

Richard J. Turman  
07/17/97 08:18:36 PM  
Record Type: Record

To: Joshua Gotbaum/OMB/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Tobacco Update

Several items:

1) Jeanne Lambrew is trying to re-schedule the meeting with HHS to talk about spending options for tomorrow afternoon. She is trying to get HHS to send paper over beforehand. We'll let you know when and where the meeting is, once we hear.

2) Elizabeth Drye reported this evening that:

a) none of the 4 working groups have completed their work, much less their reports. Bruce Reed is starting to do some thinking about how to put all the information that has been produced by the groups into something that can go to the President, and she expects that a meeting will happen early next week to get decide how to structure the decision process. She thinks that a principals meeting may happen late next week, but until the decision process is clear, that won't be scheduled.

b) the next meeting of the Industry Performance/Revenues/etc. group, convened by Bruce Reed, is scheduled for 11 on Friday. She said that you should have been invited, but were not sure that you had been. She said she would follow-up and make sure that you were, tomorrow morning. She said it would be important for someone from OMB to attend, since the purpose is to have Treasury get back to Bruce on some of the tasks they were assigned at last Friday's meeting.

c) the next meeting of the Legal Issues group, convened by Elena Kagan, is tomorrow at 3. They'll be looking at Constitutional issues at 3 and Licensing issues at 4:15. We plan to continue to try to monitor this group's meetings; the room is 211, if you're interested.

d) there were no public events today, but tomorrow there will be a meeting with several tobacco industry whistleblowers, including Jeffrey Wigand. The VP plans to attend.

e) an Executive Order on smoking in Federal Buildings will be issued on Tuesday by the President. She said that drafts are with Mac Reed in the GC's office and with OIRA staff; we'll follow up with them. Apparently the EO would ban smoking in Federal office buildings (with some requirement for separate venting in areas where it is allowed, for whatever reason).

f) the Reg. Issues subgroup has not produced much paper (and does not plan to), but pretty well completed its examination of the issues, including environmental tobacco smoke and the FDA regulatory issues.

g) no one has done much work, to her knowledge, on the issues of how the revenues identified by the Industry Performance group connect with the spending that the Chris Jennings group wants to do, nor how to think about whether the spending should be mandatory, discretionary, trust or other funds, etc.

3) In the absence of receiving HHS' proposals on how they think the tobacco settlement funding could be spent (we made sure that ASMB has the format this morning, by the way), we have started thinking about how to connect the revenue streams calculated by Treasury with the spending categories created by the State A.G's.

The idea is to first identify some plausible spending categories (e.g., enforcement, research, etc.), based on the State A.G. proposals, and determine how much could plausibly be state vs. Federal vs. non-governmental, and state our assumptions as to why. Then we would adjust the amounts available for the spending categories downward by whatever it takes to meet the Treasury revenue streams, and see what the resulting distributions looked like. We thought that creating a 'straw-man' structure like this might help define the terms of how much spending can take place within the terms of the Settlement, and show where varying assumptions could lead to more/less spending by various categories. We would also hope to show what could happen if you assumed that the goal was for the package to be budget neutral, vs. not having that constraint.

Does this approach sound like it would be helpful to you, as we all try to muddle through this rather confused DPC/HHS process?

Message Copied

To: \_\_\_\_\_

Barry T. Clendenin/OMB/EOP

Mark E. Miller/OMB/EOP

Anne E. Tumlinson/OMB/EOP

Jim R. Esquea/OMB/EOP

Wm G. White/OMB/EOP

Victoria A. Wachino/OMB/EOP

Molly Finch/OMB/EOP

Lois E. Altoft/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:18-MAY-1998 20:03:26.00

SUBJECT:: Process - Read to end and do not forward

TO:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

fyi

----- Forwarded by Richard J. Turman/OMB/EOP on 05/18/98  
08:03 PM -----

Barbara\_Menard@lieberman.senate.gov (Barbara Menard)

05/18/98 07:33:31 PM

Record Type: Record

To: Marc Garufi/OMB/EOP, Richard J. Turman/OMB/EOP, Wm G. White/OMB/EOP

cc:

Subject: Process - Read to end and do not forward

Just came from an LD's meeting with Elena Kagan and Larry Stein.  
The sense is that the manager's amendment will not be voted on,  
that is it will be the starting point for amendment.

First two amendments will be:

Faircloth on Attorney's fees (debate may begin tonight).  
Leadership will seek agreements on no second degrees). Vote on  
Faircloth amendment expected tomorrow morning.

2nd amendment will be \$1.50 per pack price increase. Not sure yet  
who will bring it. Again, agreement will be sought on no second  
degrees. Vote on \$1.50 expected tomorrow afternoon.

BTW - this was the second meeting today that I attended that Josh  
was supposed to be at but was not. What are you people doing to  
him? This morning he blew off Bruce Reed and this afternoon he  
blew off Elena and Larry. Hmmmmm. Elena said at one point that  
she was "going to yell at Josh" if we had questions that he could  
not answer. [DO NOT FORWARD THIS].

After the first two amendments, it is anyone's guess.....

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-JUL-1997 07:15:10.00

SUBJECT:: Status of letters on affirmative action bill (HR 1909)

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Per Alice, Jill Blickstein will ask the Director to raise the issue of the appropriate level of veto threat at the 7:45 a.m. White House senior staff meeting.

Alice plans to close directly with Elena Kagan and Vicki Radd of WH/COS office -- most likely in the morning.

Jim -- You should have received a Labor letter (also with a veto threat) that came in late this afternoon.

Ingrid -- I faxed the Labor edits to Adrien.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Michael Deich ( CN=Michael Deich/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 1-JUL-1997 09:39:45.00

SUBJECT:: good new/bad news re: DC

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

fyi.

----- Forwarded by Michael Deich/OMB/EOP on 07/01/97  
09:38 AM -----

Michael Deich  
07/01/97 09:36:30 AM  
Record Type: Record

To: Sylvia M. Mathews/WHO/EOP  
cc:  
Subject: good new/bad news re: DC

On criminal justice:

Good news -- At a meeting with Chuck Ruff, Elena Kagan and me last Friday, the AG made clear her belief that a compromise could be found that would satisfy both Norton and DOJ (she and CR had an earlier private conversation that apparently broke the deadlock). After the AG left, we sat down with Eric Holder et al and worked out what I believe is a fabulous proposal. The compromise would impose determinate sentencing (and thus would be consistent w/the President's general sentencing philosophy) but would leave the length of the sentence entirely in the hands of the District (thus respecting Home Rule) and also would allow a judge to impose, at the time of sentencing, a period of supervised release (thus meeting Norton's desire to give offenders strong incentives to reform -- a judge could sentence offenders to a short prison term (or no prison at all) followed by an extensive period of supervised release, during which the offender could remain out of prison only by behaving in a certain fashion). For the first time I am convinced that DOJ has outlined a position that meets the core objectives of both Norton and the Administration.

Bad news -- Classic Norton Negotiating Tactic -- Norton now claims that we have nothing to discuss, for the Administration has already agreed to her position on sentencing issues. We haven't, of course. Since

Norton will not meet with them, however, Chuck and Eric will meet today with Norton's staff to explain the Administration's position. In my judgment, the most difficult part of C&E's task will be getting Norton, through her staff, simply to listen; if she does, I believe she'll recognize that DOJ's proposal addresses her fundamental concerns. Until then things will be a little stormy.

On the legislation generally:

Good news -- Gingrich appears willing to put a DC bill in reconciliation, but only if the Senate agrees beforehand. Bad news -- Davis and FDR had a not very productive meeting on Friday with Brownback (DC authorizer). Unfortunately, Brownback seeks only two things: vouchers and other education changes that the Administration has already announced it would veto, and tax relief. With the tax changes already in the reconciliation bill, Brownback has little incentive to help the Administration. We will meet w/him again this a.m., but I expect little progress. If the larger DC bill is to get into reconciliation, I suspect that Lott will have to tell Brownback to let it go, and to pass his educational changes in a separate bill (a course that Davis also will urge on Brownback).

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:30-JAN-1998 18:47:34.00

SUBJECT:: Today's Tobacco meeting

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

READ:UNKNOWN

TO:Marc Garufi ( CN=Marc Garufi/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO:Chin-Chin Ip ( CN=Chin-Chin Ip/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TO:Melany Nakagiri ( CN=Melany Nakagiri/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO:Barbara A. Menard ( CN=Barbara A. Menard/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

CC:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Richard J. Turman/OMB/EOP on 01/30/98

06:47 PM -----

Mark A. Weatherly

01/30/98 06:45:31 PM

Record Type: Record

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

cc:

Subject: Today's Tobacco meeting

This morning's meeting discussed assistance to tobacco farmers, and seemed to be the opening session of Administration action to flesh out the President's commitment to protect these farmers and their communities in any tobacco settlement. In attendance were Bruce Reed, Elena Kagan, Josh, Barbara Woolley, Jerry Mande, and Tom Freedman from White House offices, as well as John Kitchen from Treasury, and Charlie Rawls, Dallas Smith, and Dave Carlin from USDA. (I may have missed a couple I didn't recognize, such as Jim O'Hara from HHS.)

The current bills in Congress dealing with farmer/quota holder-compensation were briefly discussed, such as the Lugar bill (\$15 b.), and Robb bill (\$18-20 b.) that would buy out tobacco production quotas, and the Ford bill (\$20 b.) that would compensate farmers/quota holders for any reduced value of their quotas. USDA noted there is disagreement among the farm community on how compensation should be structured and how much it should cost - the leadership of farm interest groups is concerned that the commodity 'coalition' hold together and that other commodity groups could get resentful of any massive payments to the tobacco interests. (For example, USDA pointed out that Senators Conrad, Daschle and Dorgan would not likely sign-on to billion-dollar payments to tobacco farmers while their wheat farmers struggle to get by.)

Josh did an exemplary job of pointing out how current quota buyout figures being bandied about, such as \$8 per lb., appeared far in excess of their economic value, given that the quota rent value is about \$500 m. per year - \$8 per lb. appears at least twice too rich, and USDA agreed.

He also pointed out that it looks like tobacco farmers (those actually growing the stuff) come out ahead if quotas are bought out, since most would no longer have to pay to rent a quota. USDA said this was true for flue-cured tobacco farmers, but maybe not for burley growers (mostly located in KY and TN).

The issue was also raised as to whether the Tarrif-rate Quota (TRQ) could remain in place to shield U.S. farmers from tobacco imports, if domestic production quotas were eliminated. USDA suggested there may be a challenge filed with the WTO (although Stuart points out that the TRQ level does not effectively limit imports currently).

Josh then raised the question as to whether we need to eliminate quotas as a means of providing compensation, and floated the idea of instead guaranteeing a minimum revenue for quota holders (and perhaps tobacco farmers). This sounds very like a form of revenue insurance, which USDA's Crop Insurance program started crafting for other commodities in the last couple years. Alternatively, he suggested a form of 'pension' could be offered to quota holders for as long as they live, to provide a guaranteed income stream at around the current level. These options appear to cost much less, and spread the costs over more years, than the outright quota buyouts being discussed.

The meeting concluded with Bruce and Elena asking USDA to flesh out a few options by next friday, providing financial and political analysis of options including quota buyouts, revenue insurance, and keeping a TRQ or not.

Charlie Rawls suggested the group may want to meet with Sen. Robb's lead staffer on this issue next week, and Elena will let us know if such a meeting is set up.

Message Sent

To:

---

Joshua Gotbaum/OMB/EOP@EOP

T J. Glauthier/OMB/EOP@EOP

Joseph J. Minarik/OMB/EOP@EOP

Ronald M. Cogswell/OMB/EOP@EOP

Barry T. Clendenin/OMB/EOP@EOP

Stuart R. Kasdin/OMB/EOP@EOP

Daniel D. Heath/OMB/EOP@EOP

Richard J. Turman/OMB/EOP@EOP

Jim R. Esquea/OMB/EOP@EOP

Wm G. White/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Stacy L. Dean ( CN=Stacy L. Dean/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:31-JAN-1997 13:07:18.00

SUBJECT:: Welfare Reform Conference Call

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

READ:UNKNOWN

CC:Robert M. Shireman ( CN=Robert M. Shireman/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Keith J. Fontenot ( CN=Keith J. Fontenot/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Cynthia M. Smith ( CN=Cynthia M. Smith/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

I listened in on the conference call, but did not participate. The following is a summary of the discussion:

Participants were:

Elena Kagan, Lyn Hogan, Emily Bromberg, Diana Fortuna  
John Monahan, Rich Tarplin, Melissa Skofield

NGA Welfare Resolution

There was some up front conversation about a rollout and I couldn't tell if they were talking about welfare or health. Later discussion seemed to imply health.

The Republican Gov's had put pressure on Ridge to soften the resolution with regards to immigrants. Chiles and Carper pushed back and John thinks that the resolution will go forward as is, but Ridge is going to have to sell it a bit first.

Diana raised the INS reg which would ease up naturalization requirements for the disabled. She thought that it might make sense to wait until after the budget's release to publish the rule. Melissa and Elena agreed that the Adminsitration's leg and admin strategy should come out together. DPC is to handle with the INS.

There was quite a bit of press strategy discussion on trying to get the press to stay away from Medicaid per capita cap stories and the NGA. HHS gave the NYTimes information on the MOE in the hopes of keeping them off the cap. As it turns out the NYTimes didn't run the story and now other papers are after the MOE. The bottom line was that MS was hopeful that

they wouldn't write so much about the cap, but not completely confident.

When the President speaks with the NGA on Monday, they are hoping to keep the discussion focused on Education and Welfare. According to Elena, he will say that he wants to visit all the States to urge education reform. HHS urged the DPC not to have him say that he would visit on welfare. The DPC shared the sentiment. He will however, make some Presidential statements about welfare and urge States to move forward with this great challenge.

The NGA is expected to come out with some type of welfare to work proposal where they link Governors with private business in order to create more jobs.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Melany Nakagiri ( CN=Melany Nakagiri/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 6-JAN-1999 15:13:46.00

SUBJECT:: CDC Initiative Funding

TO:Richard P. Emery Jr. ( CN=Richard P. Emery Jr./OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Jennifer M. Forshey ( CN=Jennifer M. Forshey/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

At your meeting with the DAD's last Wednesday (12/30), you said that Elena Kagan wanted further clarification about the CDC Tobacco Funding (\$27 million) and the general CDC Initiative funding (\$60 million). The following text (which has been cleared by Dan) provides additional information on these two items, which you can forward to Jack and Elena.

Please note two things:

The current amount carried on the 12/30/98 Initiatives table for CDC is less than the incremental increase for CDC in FY 2000. Since we do not have a specific program initiative that aligns exactly with the \$60 million shown, we have listed all of the major increases for CDC that people might want to highlight as initiatives;

The 12/30/98 BRD Initiatives table still includes a \$15 million stub line for tobacco education; we understood that this line was supposed to disappear and the funding included in the CDC line. We'll continue to work with BRD to see that this happens.

CDC Tobacco: \$27 million

The increased funding for FY 2000 is \$27 million (36%) over FY 1999 enacted to support CDC's efforts to stop the increase in youth smoking. The majority of this funding increase will be directed towards expanding CDC state tobacco control grants (e.g., ASSIST). Additional funds will also support surveillance, research and policy coordination activities.

CDC Funding: \$60 million

This dollar amount represents a portion of CDC's increased funding of \$173 million (on a comparable basis) over FY 1999 enacted. Funding increases, other than for tobacco, race and health, which are captured elsewhere on the "Initiatives" table, include:

- + \$65 million (47%) for a Public Health Surveillance Initiative to help improve state and local health departments' ability to rapidly detect an infectious disease or foodborne disease outbreak, or bioterrorist incident, and provide a communication bridge between state/local health departments and the local medical community. The \$25 million increment for the emerging infectious disease initiative is within this increase;
- + \$77 million (17%) for Childhood Immunizations to finish global polio eradication efforts (+\$17 million), continue measles eradication efforts (+\$8 million), and to provide some of the newly recommended routine immunizations such as rotavirus;
- + \$12 million (6%) for the National Institute for Occupational Safety and Health research;
- + \$11 million (17%) for Violence Against Women research and prevention efforts;
- + \$10 million (1.5%) for HIV Prevention activities

Please contact us if you have any further questions.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Lori Schack ( CN=Lori Schack/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:26-SEP-1997 11:38:00.00

SUBJECT:: FYI DOD and EO

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

READ:UNKNOWN

TEXT:

One fire out.

They must be swimming in \$. Can you imagine DOL voluntarily paying for anyone else?!

----- Forwarded by Lori Schack/OMB/EOP on 09/26/97 11:36 AM -----

Jeffrey D. Goldstein  
09/26/97 11:32:58 AM  
Record Type: Record

To: Lori Schack/OMB/EOP  
cc:  
bcc:  
Subject: Re: Employment of People with Disabilities EO

I don't know enough about the program to know whether it's any good, but apparently Sec. Cohen and Tony Coehlo were there and both loved it and Cohen signed up to doing it. I think the deletion of that language solves my problems with it. The DoD program manager I spoke with seemed very content to have DoD pay - in fact, I think that's what she wants.

Lori Schack  
09/26/97 11:24:29 AM  
Record Type: Record

To: Jeffrey D. Goldstein/OMB/EOP  
cc:  
Subject: Re: Employment of People with Disabilities EO

I've received Diana Fortuna's (DPC) latest draft of the EO. She's looking for OMB comments by Monday. Elena Kagan (DPC) wants this put into OMB clearance by the end of next week,

Diana's redraft of the DOD section reads:

(c) The Department of Defense ,s Computer/Electronics Accommodations Program shall be expanded to serve all government agencies. [, and funds shall be appropriated within the Department of Defense ,s budget to adequately fund and operate the program.]

What do you think? I think it gets of the biggest problem, by deleting the last phrase. But it may create new ones since it is so vague, I don't know if it's acceptable for EO language. Though that's something I'll let Mac worry about.

DOD will have a second shot at this during inter-agency clearance. Let me know if you want me to make any changes to Diana's language by Monday.

thanks.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Randolph M. Lyon ( CN=Randolph M. Lyon/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:29-AUG-1997 15:26:49.00

SUBJECT:: Mande's request from yesterday

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

READ:UNKNOWN

TEXT:

Sue Lind's reply and related earlier e-mails to follow.

----- Forwarded by Randolph M. Lyon/OMB/EOP on 08/29/97

02:26PM -----

Patrick G. Locke

08/28/97 05:59:36 PM

Record Type: Record

To: Barry B. Anderson/OMB/EOP

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

Subject: Re: White House Request for Tobacco Scenarios

According to Jerry Mande, Elena Kagan strongly wants to have the tobacco scenarios that Jerry requested when Bruce Reed gets back on Tuesday morning. I said that I would convey this to you; she may be calling you directly.

Even if I did nothing on the MSR tomorrow I am unsure whether it is feasible to finish on the scenarios that Jerry asked for. And I am assuming there will be at least some residual work on the MSR, which still comes first.. Is this something that is important enough to call for work over the holiday weekend? I will be around but not particularly happy to work, as we have people visiting from out of town.

Message Copied

To: \_\_\_\_\_

Susanne D. Lind/OMB/EOP

Hugh T. Connelly/OMB/EOP

Randolph M. Lyon/OMB/EOP

Joseph J. Minarik/OMB/EOP

jminarik2 @ aol.com

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barbara E. Washington ( CN=Barbara E. Washington/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 2-OCT-1997 10:42:00.00

SUBJECT:: Chris Jennings work on Health Disparities

TO:Jonathan Blum ( CN=Jonathan Blum/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Yvette Shenouda ( CN=Yvette Shenouda/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Katherine Kirchgraber ( CN=Katherine Kirchgraber/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Robert Donnelly ( CN=Robert Donnelly/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Margaret A. Murray ( CN=Margaret A. Murray/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Farooq Khan ( CN=Farooq Khan/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Nicolette Highsmith ( CN=Nicolette Highsmith/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

----- Forwarded by Barbara E. Washington/OMB/EOP on  
10/02/97 11:13 AM -----

Barry T. Clendenin  
10/01/97 07:53:47 PM  
Record Type: Record

To: Thomas Reilly/OMB/EOP, Barbara E. Washington/OMB/EOP  
cc:  
Subject: Chris Jennings's work on Health Disparities

Please note --  
----- Forwarded by Barry T. Clendenin/OMB/EOP on 10/01/97  
07:54PM -----

Melany Nakagiri 10/01/97 06:48:17 PM

Record Type: Record

To: Richard J. Turman/OMB/EOP@EOP, Barry T. Clendenin/OMB/EOP@EOP  
cc: Susan M. Carr/OMB/EOP@EOP  
Subject: Chris Jennings's work on Health Disparities

Susan Carr (in Housing/Treasury/Finance, who's coordinating the Civil Rights Cross-Cut) was discussing the cross-cut with Elena Kagan, who asked about Chris Jennings' work on health disparities among the different races. Susan called us to ask what we knew about this. I spoke to Sarah Bianchi this morning to find out more information. Essentially, Chris' office is taking a very preliminary look at HHS' efforts to address health disparities among the different minority groups with HHS' existing resources and how they could do better in these areas. Chris' office wants to know whether HHS' current activities and budgetary resources are sufficient to address this problem. HHS has identified six initial areas where the health disparities are quite large and to which HHS is very committed, including AIDS, cardiovascular diseases, breast/cervical cancer, infant mortality, diabetes, and immunizations (particularly for adults).

According to Sarah, the President may indicate an interest in this area at some point and it could possibly be an area of discussion for Director's Review although Chris' efforts are very preliminary at this point. Sarah said that Josh was aware of Chris' work in this area and that she would keep us posted on further developments.

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:11-MAR-1999 12:32:00.00

SUBJECT:: Genetic Info: Mtg Cancelled/UPDATE

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

READ:UNKNOWN

TEXT:

FYI

----- Forwarded by Debra J. Bond/OMB/EOP on 03/11/99  
12:32 PM -----

Maya A. Bernstein  
03/11/99 12:26:18 PM  
Record Type: Non-Record

To: Debra J. Bond/OMB/EOP@EOP  
cc:  
Subject: Genetic Info: Mtg Cancelled/UPDATE

Some progress!  
----- Forwarded by Maya A. Bernstein/OMB/EOP on 03/11/99  
12:28 PM -----

MayaBe@aol.com  
03/11/99 12:32:58 AM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: Genetic Info: Mtg Cancelled/UPDATE

Note: Some recipients have been dropped due to syntax errors.  
Please refer to the "\$AdditionalHeaders" item for the complete headers.

Daniel, Michael, et al --  
I'm sending you this update from home after I've returned from class so  
you'll  
have it first thing in the morning.

Short version:

- The meeting originally scheduled for tomorrow morning at 10am is CANCELLED.
- The VP event rescheduled to Tuesday, March 16th, will likely be postponed again.
- Chris Jennings is preparing a decision memo to the President seeking guidance on the direction of the Executive Order, including whether to scrap the idea altogether.
- If we proceed, the Director will be asked to read the EO and sign off when he gets it.
- Please let the staff know if there is anything else we can do for you.

Longer version:

There was a policy level meeting earlier this evening which broke up at about 7:45pm.

Mac Reed left me a message at about 5:45 to tell me the meeting was already in progress, and I managed to get there by 6:10. I attempted to find most of you, but I was unsuccessful.

The meeting was attended by Chris Jennings, Sarah Bianchi, Elena Kagan, Lisa Brown, Gary Claxton (HHS), Nancy Siegel and another woman from EEOC, plus others from DOJ/OLC, CIA, Labor, and others I didn't recognize (Mac has the list).

A new draft of the EO was circulated, and most of the meeting was spent discussing an exemption requested by the CIA. CIA wants to be able to collect and use family medical histories of their employees as a component of their decisions on job assignments overseas. The group did not come to consensus.

By the end, some were concerned that if the exemption would have to be drafted very broadly to satisfy CIA's concerns, the Administration might be better off scrapping the idea altogether.

The meeting resulted in agreement that a memo to the President would be required to make a decision about the content of the EO. I got the impression Jennings and Kagan would be drafting it. CIA is drafting exemption language. The choices presented to the President will include: Adopting the EO without an exemption, Adopting the EO with CIA's exemption, or no Executive Order.

Mac is going to poll the agencies to find out which way they would come down given those choices, and, in particular, if the choices are either an EO

with  
a potentially broad exemption, or no EO, which way they would like to go.

It was not clear to me that Mac would be presenting that question to the Director.

Once we get a decision from the President, if the EO is to go forward, it would take at least a day or two to obtain the proper clearances, and get it signed. Therefore, the event is going to be postponed. However, Jennings and Kagan agreed to call Jack and Sylvia (and everyone else necessary to grease the skids) to request that they read and sign off as soon as they receive it.

Please let me know if there is any action left for the staff to follow up on or if there is any further information or assistance the staff can provide.

--- Maya

#### Message Sent

To: \_\_\_\_\_  
daniel.mendelson@omb.gop.gov  
Michael Deich/OMB/EOP  
Alan B. Rhinesmith/OMB/EOP  
Bruce D. Long/OMB/EOP  
Lisa B. Fairhall/OMB/EOP  
Susan M. Carr/OMB/EOP  
Daniel LaPlaca/OMB/EOP  
Katherine Kirchgraber/OMB/EOP

#### Message Copied

To: \_\_\_\_\_  
Joshua Gotbaum/OMB/EOP  
Donald R. Arbuckle/OMB/EOP  
Jasmeet K. Sehra/OMB/EOP  
Dawn V. Woollen/OMB/EOP  
Ingrid M. Schroeder/OMB/EOP  
wartel@lgate2.eop.gov  
Maya A. Bernstein/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:22-SEP-1997 18:51:55.00

SUBJECT:: Meeting with DPC/NEC on Civil Rights in the FY 1999 Budget

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

READ:UNKNOWN

TEXT:

----- Forwarded by Mark E. Miller/OMB/EOP on 09/22/97  
07:37 PM -----

Barry T. Clendenin  
09/22/97 06:43:18 PM  
Record Type: Record

To: Thomas Reilly/OMB/EOP, Richard J. Turman/OMB/EOP, Mark E. Miller/OMB/EOP  
cc: Barbara E. Washington/OMB/EOP, Melany Nakagiri/OMB/EOP  
Subject: Meeting with DPC/NEC on Civil Rights in the FY 1999 Budget

RT/MM --

fyi and please followup as needed. Do we know what work Chris Jennings has under way on health disparities among races? I recall seeing something on that earlier but cannot remember the specifics --  
----- Forwarded by Barry T. Clendenin/OMB/EOP on 09/22/97  
06:41 PM -----

Susan M. Carr

09/22/97 05:31:37 PM  
Record Type: Record

To: Michael Deich/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Meeting with DPC/NEC on Civil Rights in the FY 1999 Budget

Alan Rhinesmith and I met today with Elena Kagan, Jose Cerda, Tom Freedman, and Emil Parker to discuss our civil rights crosscut for the FY 1999 Budget. They were supportive of our desire for a broad crosscut of enforcement and non-enforcement programs and were interested in including other initiatives as well, such as urban education (including an education opportunity zones proposal and possibly the Daschle-Gephardt school construction proposal), housing mobility counseling, work being done by

Chris Jennings on health disparities among races, etc. Following up on the August meeting, Elena will be scheduling a meeting for Friday with the civil rights agencies to discuss their ideas for initiatives in FY 1999 and we plan to attend.

Message Copied

To: \_\_\_\_\_

Theodore Wartell/OMB/EOP@EOP

Patricia E. Romani/OMB/EOP@EOP

Barry White/OMB/EOP@EOP

Barry T. Clendenin/OMB/EOP@EOP

Francis S. Redburn/OMB/EOP@EOP

Kenneth L. Schwartz/OMB/EOP@EOP

Alan B. Rhinesmith/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Sarah L. Abernathy ( CN=Sarah L. Abernathy/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:12-AUG-1997 17:40:53.00

SUBJECT:: Re: Memo on Executive Order on Employment of People with Disabilities

TO:Lori Schack ( CN=Lori Schack/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Marca Bristo, Chair, National Council on Disability

Howard Moses, Deputy Assistant Secretary, Office of Special Education and Rehabilitative Services

NCD is a federally funded small entity (like PCEPD). The Disability Task Force was the organization led by Rasco and Rivlin that Lisa mentioned. I don't really think this group thinks it is a follow-up on the fizzled group of the past couple of years, so I'd take that out of your memo.

They wanted Treasury on the task force, too.

Larry agreed to assign funds from different departments (I think this will be hard to do until we see what they want). Should you mention that in the memo?

My notes quote John saying that 8+ million adults got SSDI or SSI at a cost of \$72 billion excluding health benefits. Are the numbers in your memo more accurate?

- Sarah

Lori Schack

08/12/97 05:22:34 PM

Record Type: Record

To: Rosalyn J. Rettman/OMB/EOP, Sarah L. Abernathy/OMB/EOP

cc:

Subject: Memo on Executive Order on Employment of People with Disabilities

Attached is a draft memo on yesterday's meeting. Is there anything you want to add? Please get me comments tomorrow morning.

Do either of you know where Marca Bristo is from?

Sarah, what was the name of the guy from ED? Also, is the phrase in paragraph one about this resulting from NCD accurate?

Thanks.

----- Forwarded by Lori Schack/OMB/EOP on 08/12/97 05:18 PM -----

Lori Schack  
08/11/97 05:42:45 PM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: Executive Order on Employment of People with Disabilities

Monday I attended a DPC (Elena Kagan) meeting on a proposed Executive Order aimed at improving the employment of people with disabilities. Attending were Kitty Higgins, Deputy Secretary of Labor, John Lancaster of the President's Committee on the Employment of People with Disabilities (PCEPD), Paul Miller of the EEOC, Susan Daniels of SSA, and Howard Moses of Education, representatives of OMB (Larry Matlack, Roz Rettman, and Sarah Abernathy), DPC (Diana Fortuna), and NEC (Anne Lewis). The meeting was a follow-up to a meeting several months ago between Erskine Bowles and a group of administration appointees with disabilities, led by Tony Coelho of PCEPD, Marca Bristo of National Council on Disability and Judy Heumann of ED.

The Executive Order proposed by the appointees has yet to be circulated among the departments. The EO would establish an interagency task force to develop and implement a "national agenda" with the goal of "moving toward an employment rate for all adult individuals with disabilities as close as possible to the employment rate of the general adult population". The task force would identify changes to policies and agency programs to increase employment among the disabled. The activities specified in the EO include:

- Working with SSA and Treasury to create incentives for employers to hire people with disabilities and for individuals to leave income maintenance programs;
- Working with DOJ and HHS to ensure that welfare reform is carried out in accordance with the ADA and Rehabilitation Act of 1973.
- Working with OPM to make the federal government a model employer;
- Directing BLS and Census to produce a monthly unemployment rate of people with disabilities within a year;
- Expanding the Defense Department's Computer/Electronics Accommodations Program government-wide at a cost of \$2-6 million.

The appointee group wants to see the Administration address the high unemployment rate among people with disabilities. According to the Census Bureau, 52% of the 30 million working age people with a disability are employed. Of the 14.2 million working age people with severe disabilities, only one quarter are employed. The appointees believe the high unemployment rates result from employers

not knowing that they can often accommodate disabled employees for little cost, and disabled individuals facing economic disincentives to work because they lose their benefits.

There is significant cost to federal and state governments of unemployment among the disabled. According to the appointees, SSA pays over \$60B a year in SSI and SSDI payments to 9.5M disabled people; when Medicare and Medicaid costs are included the cost to the federal government and the states nearly doubles. The appointees believe 50-60% of the people on the SSA rolls can work.

OMB staff had been concerned about giving a task force implementation powers, particularly for government-wide issues. We also have been concerned that as the draft EO is written, the task force could be taking on entitlement review, and could change federal responsibility for the employment of people with disabilities. We have questioned the need for creating a new entity when several existing agencies address disability issues, and are concerned about providing resources to support a task force. Additionally, obtaining accurate monthly employment data for the disabled probably is not feasible (BLS and Census are looking at this issue).

There was agreement among EXOP staff at the meeting that entitlement review is too big an issue for this task force. Elana Kagan tasked the appointees to do the following:

Work with the DPC to come up with a list of items the task force could do (omitting "entitlement review" issues);

Develop a list of items which could be accomplished soon without the creation of a task force. EXOP will review the lists; and

Draft an Executive Order or Executive Memorandum creating a task force limited to the key agencies of DOL, ED, HHS, SSA, and Treasury, that would produce within one year a set of recommendations on further actions that may be necessary. The EO or Memorandum would be issued in late September or early October.

Message Sent

To: \_\_\_\_\_

Jacob J. Lew/OMB/EOP  
Joshua Gotbaum/OMB/EOP  
Kenneth S. Apfel/OMB/EOP  
Barry T. Clendenin/OMB/EOP  
Barry White/OMB/EOP

Message Copied

To: \_\_\_\_\_

Larry R. Matlack/OMB/EOP  
Kathryn B. Stack/OMB/EOP  
Keith J. Fontenot/OMB/EOP  
Rosalyn J. Rettman/OMB/EOP  
Sarah L. Abernathy/OMB/EOP  
Lisa B. Fairhall/OMB/EOP



RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Robert B. Rideout ( CN=Robert B. Rideout/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:28-MAR-1997 08:38:17.00

SUBJECT:: Federal Benefits for Domestic Partners

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Debra L. Williams ( CN=Debra L. Williams/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Raymond P. Kogut ( CN=Raymond P. Kogut/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Karen S. Dooley ( CN=Karen S. Dooley/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Douglas D. McCormick ( CN=Douglas D. McCormick/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Elena Kagan from DPC called this morning to see who the right person from OMB would be to invite to a WH policy-level meeting about Barney Frank's draft bill to provide federal employee benefits to domestic partners.

She asked if Nancy-Ann Min was the right person. I told her yes, and indicated Nancy-Ann would be back in the office for part of the day April 2, but that April 3 and after were probably the most realistic.

Barry/Mark - Just FYI. She did say federal employee benefits, so I expect you may not be caught up in this one. But, hey, better to know about it than not.

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:10-JUL-1997 01:25:32.00

SUBJECT:: Tobacco Regulatory Issues Meeting

TO:Jaha F. Norman ( CN=Jaha F. Norman/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Tobacco binder -- thx.

----- Forwarded by Richard J. Turman/OMB/EOP on 07/10/97  
01:25 AM -----

Jim R. Esquea

07/01/97 06:35:42 PM

Record Type: Record

To: Nancy A. Min/OMB/EOP, Barry T. Clendenin/OMB/EOP, Richard J. Turman/OMB/EOP, Mark E. Miller/OMB/EOP

cc: Wm G. White/OMB/EOP, Wendy A. Taylor/OMB/EOP

Subject: Tobacco Regulatory Issues Meeting

Yesterday afternoon I attended two working meetings of the Regulatory Issues/Tobacco Settlement Review Group. The meetings were chaired by Elena Kagan with Elizabeth Drye. Mitch Zeller and Bill Schultz from FDA/HHS; Jerry Mande from OSTP; Don Arbuckle and Mike Fitzpatrick from OIRA; Neal Wolin from Treasury; and representatives from Department of Justice, Labor, and the Vice President's Office were all in attendance for the majority of both meetings.

The first meeting dealt with the settlement provisions pertaining to Advertising/Access/Enforcement. The meeting ran about one hour with a majority of the time spent listening to Bill Schultz walk through the relevant sections of the settlement and how these sections are consistent with or different from the FDA regulations on tobacco.

Schultz raised the concern that it is not clear how much residual authority FDA has under the settlement. For example, under the federal Court decision in North Carolina, it is clear that FDA has full authority to regulate nicotine and cigarettes and the flexibility to make future adjustments to their tobacco regulations if the FDA was convinced it was necessary to do so - - like being able to raise the minimum age required to purchase cigarettes from 18 to 19 or 20 years of age. However, it is not clear whether FDA has the residual authority to make such adjustments under the settlement.

Another issue that was raised was the advertising provisions. The

settlement gives FDA the authority to regulate tobacco manufacturer advertising - - something the North Carolina Court said FDA did not have the authority to do. If the tobacco manufacturers did agree to a side agreement allowing FDA to regulate tobacco advertising, how would this effect convenience store owners and retailers. Zeller and Schultz argued that retailers and convenience store owners could engage in tobacco advertising themselves, since they were not a part of the settlement. No one had any answers on how to best deal with this.

The settlement also creates a licensing program, which FDA will have a major role in implementing/policing. Essentially, any entity that sells retail tobacco products directly to consumers would require a license. The Bureau of Alcohol, Tobacco, and Firearms has a similar licensing program and they advised that it was a nightmare to run. The tobacco settlement recommends a licensing program on a greater scale for tobacco then even the ATF has any experiencing handling.

Though the settlement recommends that FDA receive \$300 million annually from industry to regulate tobacco, Treasury/ATF reps that given the scope of the proposed licensing program, \$300 million might actually not be enough. Bottom line - - FDA is very hesitant about signing on to a licensing program.

The second meeting dealt with the settlement provisions pertaining to the regulation of product content, labeling, and safety. [I missed the majority of this meeting. I was busy trying to get clearance for some talking points OIRA drafted for the VP about FDA reform.] The major issue that FDA raised was about the settlement's provision regarding "Reduced Risk Products." I missed a lot of this discussion, but FDA seems to be concerned about the settlement's assumption that there is such a thing as a "less hazardous tobacco product" and that manufacturers can market these products with health claims, as long as manufacturers can prove that these products are less harmful than regular tobacco products. it was not clear where FDA wanted to go with this.

Elena advised that the working groups would be meeting again this Thursday to discuss the preemption provisions in the settlement as well as the issue of tobacco retail licensing.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 5-FEB-1998 10:22:02.00

SUBJECT:: Update: Cloning Legislation

TO:Corey G. Lee ( CN=Corey G. Lee/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TO:David Rowe ( CN=David Rowe/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TO:William L. Dorotinsky ( CN=William L. Dorotinsky/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Thomas Reilly/OMB/EOP on 02/05/98  
10:21 AM -----

Barry T. Clendenin  
02/04/98 06:47:19 PM  
Record Type: Record

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

cc:

Subject: Update: Cloning Legislation

fyi --  
----- Forwarded by Barry T. Clendenin/OMB/EOP on 02/04/98  
06:48 PM -----

Marc Garufi  
02/04/98 06:10:56 PM  
Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP  
cc: Barry T. Clendenin/OMB/EOP@EOP, Richard J. Turman/OMB/EOP@EOP  
Subject: Update: Cloning Legislation

The following is a report on today's DPC/OSTP meeting on legislative strategy, attended by Elena Kagan, Jerold Mande, Lucia Wyman, Rachel Levinson, Bill Raab (science advisor to Sec. Shalala), Jane Horvath (for Rich Tarplin), and NIH and FDA staff.

Bottom-line: In the next 2 days, HHS staff will try to solicit assistance from Sens. Daschle, Kennedy, and others to delay a vote in the Senate on

the Frist/Bond bill while WH Leg. Affairs staff try to gauge Sen. Frist's willingness to negotiate further on the bill.

The consensus at the meeting was though the Frist/Bond bill was considerably better than what is likely to emerge from the House, it still presents some problems with research prohibitions allowed. Therefore, the first step would be for WH Leg. Affairs to contact Frist's staff to see if the Senator could be moved toward the Administration's position. This "moving" could include a "doctor to doctor" call from Varmus. If Frist cannot come any further, then the next tact would be to delay a final vote in the Senate, which could be as early as tomorrow, until the Administration would make a final decision on how to respond to the Frist bill.

Elena made the point that if the Frist/Bond bill is the best we can hope to get out of the Senate, we will have to consider backing it over a more restrictive House bill. Therefore, any SAP that is sent would outline the Administration's preferences without threatening veto, but rather with constructive "we look forward to working with you on the details of the bill" language. LRD has been assigned the task of re-drafting the SAP and HHS will write a letter to Sen. Feinstein explaining the science of why her bill is better than Frist/Bond.

Further developments will occur tomorrow once WHLA takes Frist's temperature and as HHS is (or not) successful in enlisting support to block a floor vote on Frist/Bond. In addition, Jerry Mande will be developing an "amendments" strategy.

We'll keep you posted...

Message Sent

To:

---

Thomas Reilly/OMB/EOP@EOP

Ann Kendrall/OMB/EOP@EOP

Mark E. Miller/OMB/EOP@EOP

Robert J. Pellicci/OMB/EOP@EOP

Janet R. Forsgren/OMB/EOP@EOP

James C. Murr/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Richard H. Kodl ( CN=Richard H. Kodl/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:14-AUG-1997 14:32:26.00

SUBJECT:: DOI/DOJ Law Enforcement Initiative

TO:Gary C. Reisner ( CN=Gary C. Reisner/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Jim Boden/TCJS says that the memo from the Pres. has not yet been signed.

M. Deich got DOJ to agree to stick to the 10/31 date for the commission to make recommendations to DOI and DOJ. As a new twist, by 12/12 Babbitt and the AG are to then present these recommendation to the Pres., consistent with their budget submissions.

The approp's cmte recently approved a DOJ reprogramming request for \$500K to fund the commission, its travel, and other "fact finding" costs. The reprog. request letter stated that the Pres. would soon issue the memo. Elena Kagan says it should be revised, signed, and issued soon.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Anil Kakani ( CN=Anil Kakani/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:29-OCT-1997 19:48:33.00

SUBJECT:: summary from conference call today on Murray Amendment

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Sally Katzen ( CN=Sally Katzen/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Jill M. Blickstein ( CN=Jill M. Blickstein/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Keith J. Fontenot ( CN=Keith J. Fontenot/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Laura Oliven Silberfarb ( CN=Laura Oliven Silberfarb/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Janet Himler ( CN=Janet Himler/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Pursuant to a telephone conversation Bruce Reed had yesterday with Sen. Murray, DPC, OMB and HHS participated in a conference call today with staff from Sen. Murray's and Sen. Wellstone's offices. The purpose of the call was to explain how, substantively and procedurally, the Administration would like to address Sen. Murray's concerns. The conversation was rather contentious, with the key issues remaining unresolved. Elena Kagan, the primary speaker on the call for the Administration, basically made the following points:

HHS will allow states to exclude from work participation rate and time limit calculations individuals who have been granted domestic violence waivers

States will not be able to exclude these individuals automatically from the calculations, but rather will be permitted to do so by HHS if they demonstrate that waivers are being granted based on an individualized assessment, for limited duration, and accompanied by an appropriate

services plan designed to provide safety and lead to work.

We prefer these changes/clarifications be made through regulations, rather than through legislation.

Murray's and Wellstone's staffs generally responded as follows:

States should be able to automatically exclude domestic violence waiver recipients from calculations, without HHS approval.

States are concerned that they will be penalized for exempting victims of domestic violence from work and time limit requirements, and therefore are unlikely to grant waivers.

The Administration's concern that states might try to avoid penalties by granting domestic violence waivers represents a very cynical view of states.

Kagan clarified that the concern was not solely that states would game the requirements by liberally granting domestic violence waivers, but rather that they might grant waivers without providing the services necessary for victims to leave assistance and get jobs. She also stressed that the regulations will lay out what exactly a State must do to avoid a penalty for failing to meet certain requirements due to the number of domestic violence waivers granted.

Finally, earlier this evening we received revised statutory language that Sen. Murray might be offering in the Labor-HHS conference tonight. While the proposal still excludes individuals with waivers from the work participation and time limit calculations, and still does not require that states provide services to waiver recipients, it does try to move closer to our position by providing the following:

if a state would have failed the participation rate or time limit but for having granted domestic violence waivers, upon reviewing waivers granted by the state the Secretary "may revoke any waivers that [she] finds were not granted in good faith."

It is unclear what authority HHS has to revoke waivers granted to individuals or whether these individuals will be put back into the work rate or time limit calculations. Bruce Reed has already commented that the revised language is "unacceptable."

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Michael Deich ( CN=Michael Deich/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:30-JUL-1998 08:15:50.00

SUBJECT:: this should help -- jose' on 'Firearms Follies'

TO:Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Michael Deich/OMB/EOP on 07/30/98  
08:15 AM -----

Jose Cerda III  
07/27/98 07:11:20 PM  
Record Type: Record

To: Michael Deich/OMB/EOP, Peter G. Jacoby/WHO/EOP  
cc: David J. Haun/OMB/EOP, Leanne A. Shimabukuro/OPD/EOP  
Subject: Firearms Follies

fyi...jc3  
----- Forwarded by Jose Cerda III/OPD/EOP on 07/27/98  
07:15 PM -----

Jose Cerda III  
07/27/98 03:39:21 PM  
Record Type: Record

To: Sylvia M. Mathews/OMB/EOP  
cc:  
Subject: Firearms Follies

Sylvia:

Bruce asked me to follow-up with you on the proposed timing of the Brady rule. While your folks are right in saying that the proposed rule will annoy the appropriators, I think there is a growing consensus that we should take this fight on and soon. Last week, Peter Jacoby and myself touched based w/Treasury (Bob Bean), DOJ (Kent Markus), OMB (Michael Deich) on this issue -- and we all agreed that the WH/Administration had to become more vocal in fighting the surprise Brady amendment to the CJS bill (see attached e-mail).

Seperately, I understand that -- in response to the President's request -- we have tentatively scheduled an August 4th event to call for an extension

of the 5-day waiting period. Rahm, Bruce, Elena and I all thought we should link the CJS amendment and the Brady rule to this event ("Instead of undermining Brady, Congress should be strengthening it...helping law enforcement keep guns out of the hands of criminals and the mentally unstable..."). While I'm not sure if the 4th will hold, my understanding is that the plan is definitely to do a Brady event before the President leaves for vacation. Can we time publication of the Brady reg with this proposed event?

Jose'

----- Forwarded by Jose Cerda III/OPD/EOP on 07/27/98  
03:24PM -----

Jose Cerda III  
07/23/98 02:32:50 PM  
Record Type: Record

To: Michelle Crisci/WHO/EOP, Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Leanne A. Shimabukuro/OPD/EOP  
Subject: Firearms Follies

Rahm/Bruce/Elena:

The Child Safety Lock amendment to the Senate CJS approps bill, which failed Monday night, triggered a bit of an uproar that continued until late last night. In brief, 3 important amendments came up:

- (1) Smith (of New Hampshire) offered an amendment complicating implementation of the Brady Insta-Check system. It passed by a vote of 69-31 and is discussed below.
- (2) Sessions raised the juvie bill, but it was ultimately deferred. Both D's and R's agreed to try and negotiate a time agreement for sometime in September.
- (3) Durbin and Chafee offered their CAP bill, but it was tabled on 69-31 vote. The CAP amendment did not include Treasury and DOJ's changes, and was amended to include NRA-supported language linking increased gun tracing with the increased prosecution of federal gun cases.

The Brady amendment is of particular interest, especially if we're thinking of doing an in August to announce our support for extending the 5-day waiting period. Generally, the amendment would:

- (1) prohibit the FBI from retaining any records from background checks (the FBI currently plans to keep records of its checks for up to 18 months for audit purposes);
- (2) prohibit the FBI from charging a fee for each check (the FBI currently plans to charge gun dealers about \$15 per check to cover the operating costs of Insta-Check); and

(3) create a federal cause of action for anyone aggrieved by a violation of this provision, as well as allow successful plaintiffs to be awarded damages and attorney's fees.

This provision undermines Brady in several ways. Most importantly, though, it will put us in the position of either underfunding the Insta-Check system (estimated at \$80 million per year) or robbing from other FBI crime accounts (i.e., terrorism) to fund Insta-Check. An even more likely result, however, is that the FBI will procure a separate appropriation for Insta-Check that will effectively cut other, less popular priorities were fighting for in the overall CJS bill (i.e., Legal Services). Additionally, a similar, and perhaps worse, version of this amendment may come up on the House CJS bill today or tomorrow.

To date, Democratic appropriators have not wanted to fight on this issue. The NRA has characterized the Brady user fee as a "gun tax" and the FBI's record-keeping requirement as "federal gun registration." Moreover, the Administration is a bit split on how to approach this issue. OMB feels strongly that we don't have the money to cut a deal and ask for a separate FBI appropriation. Justice prefers being able to charge a fee, but will settle for a separate appropriation that comes out of somebody else's funds. The FBI will do whatever it takes to protect its budget, no matter what we decide. And Treasury is concerned that, in trying to cut a deal, we will look to save money and exempt pawnbrokers from Brady Checks (estimated to save \$30 million and strongly supported by many pro-gunners).

My recommendation, though it pains me to say this, is that we link our support for extending the 5-day waiting period to a CJS/Brady-based veto threat. We could accuse the R's of undermining Brady and of currying favor with the NRA; threaten to veto the CJS bill over this; and challenge Congress to strengthen -- not weaken -- Brady by extending the 5-day waiting period. As it stand, we are already likely to veto the CJS bill over Legal Services and census sampling -- and Brady is a much more popular issue. We could do this in early August just after Congress leaves, and also use it as an opportunity to criticize Congress' lack of progress on the overall budget.

In the meantime, I would also recommend that we get w/OMB, Leg. Affairs, DOJ and Treasury -- and discuss what a possible compromise might look like. Do we really need to charge \$15 per check? Does the FBI really need to hold on to all records for a year and a half? Etc...

Let me know your thoughts. Forgive the long e-mail,

Jose'



RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME: 7-MAY-1997 16:08:02.00

SUBJECT:: Possible Presid. IDEA statement today

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

READ:UNKNOWN

TO:BOWERS\_C ( BOWERS\_C @ A1 @ CD @ LNGTWY [ UNKNOWN ] ) (OMB)

READ:UNKNOWN

TEXT:

This is the first I've heard of this. I would object to the suggested deletion, -- it weakens the connection between special education and the presidential education reform initiatives. If you have no objection, I will make that point to Diana.

----- Forwarded by Lisa B. Fairhall/OMB/EOP on 05/07/97

04:07 PM -----

Diana Fortuna

05/07/97 03:57:35 PM

Record Type: Record

To: William R. Kincaid/OPD/EOP

cc: Michael Cohen/OPD/EOP, William H. White Jr./WHO/EOP, Lisa B. Fairhall/OMB/EOP

bcc:

Subject: Possible Presid. IDEA statement today

You need another sentence that's a bit more tailored to the disability community. Something like:

"I am especially pleased that all of the parties, including representatives of the education and disability communities, have been working together toward the goal of maintaining and strengthening our commitment to children with disabilities and their parents -- a commitment that has made it possible for so many young people to reach their full potential since IDEA was first enacted 20 years ago."

I would put it after your 3rd sentence, and drop the end of your 3rd sentence about helping young people reach their full potential.

Bill or Lisa, any comments?

William R. Kincaid  
05/07/97 03:28:03 PM  
Record Type: Record

To: Diana Fortuna/OPD/EOP  
cc: Michael Cohen/OPD/EOP  
Subject: IDEA

Suggestions for fine-tuning?

STATEMENT ON HOUSE AND SENATE COMMITTEE PASSAGE OF INDIVIDUALS WITH  
DISABILITIES EDUCATION ACT (IDEA) REAUTHORIZATION LEGISLATION -- DRAFT

I am pleased that today the House and Senate education committees have taken a major step towards ensuring high quality educational opportunities for all students. Today ,s votes come after much hard work by congressional Democrats and Republicans alike, along with tireless efforts by Secretary Riley and the Department of Education. This legislation is critical to helping parents and local schools work together in order to improve teaching and learning for students with disabilities, and to help all our young people reach their full potential. I hope we can continue in this bipartisan spirit to pass IDEA and move forward on the rest of our agenda to improve education and prepare America for the 21st Century.

----- Forwarded by William R. Kincaid/OPD/EOP on 05/07/97  
03:27 PM -----

Elena Kagan  
05/07/97 02:58:25 PM  
Record Type: Record

To: Michael Cohen/OPD/EOP  
cc: William R. Kincaid/OPD/EOP  
Subject: IDEA

could you guys work up a presidential statement for tomorrow? thanks.  
----- Forwarded by Elena Kagan/OPD/EOP on 05/07/97 03:02  
PM -----

William R. Kincaid  
05/07/97 02:43:49 PM  
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Michael Cohen/OPD/EOP  
Subject: IDEA

----- Forwarded by William R. Kincaid/OPD/EOP on 05/07/97  
02:47 PM -----

Diana Fortuna  
05/07/97 02:34:42 PM  
Record Type: Record

To: William R. Kincaid/OPD/EOP  
cc:  
Subject: Re: Sec. Riley's Statement on IDEA

----- Forwarded by Diana Fortuna/OPD/EOP on 05/07/97  
02:39 PM -----

Lucia A. Wyman  
05/07/97 11:50:55 AM  
Record Type: Record

To: Diana Fortuna/OPD/EOP  
cc:  
Subject: Re: Sec. Riley's Statement on IDEA

A few minor and not so minor problems w/IDEA this morning but all worked out and passed out of both the House and Senate Committees. Should go to floor next week. Press Conference at 3pm. Lott goes first/then Sec Rilely, then members. Would you let folks know. I've got another bill on floor today. Thanks.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Leslie S. Mustain ( CN=Leslie S. Mustain/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:22-AUG-1997 09:35:51.00

SUBJECT:: Child Care Working Group

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

READ:UNKNOWN

TEXT:

----- Forwarded by Leslie S. Mustain/OMB/EOP on 08/22/97  
09:27 AM -----

Jennifer Friedman

08/21/97 03:00:39 PM

Record Type: Record

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

cc:

Subject: Child Care Working Group

The child care working groups on school-age, tax/subsidy, and quality issues all met this week. This memo summarizes all three of these meetings, which were led by Jennifer Klein and Elena Kagan. I will distribute hand-out materials to those of you that were not at the meetings.

At this point, it appears that the DPC wants to develop a child care package that includes up to \$2.5 billion in DCTC reforms, and between \$300 million and \$500 million for school-age care programs. They also plan to include quality incentives and they may include other subsidies; however, we do not know the funding levels they have in mind for the quality and subsidy components of their child care initiative.

School-Age Issues

Attendees at the meeting included HHS, Dept of Ed., and OMB (Leslie Mustain, Mary Cassell, Laura Oliven, and myself)

The meeting began with a cursory overview of need for school-age care. When discussing need, Ed Dept. reps cite 1991 Census data indicating that 24 million children in grades K through 8 required child care, and that 1.7 million of these children were enrolled in formal before- and after-school programs (both school-based and non-school-based.) I asked a Dept. of Ed. official whether some of these 24 million children who need care could possibly be in informal care not tracked by the Census. She was reluctant to acknowledge that possibility, and stated that they had no information on that.

The Dept of Ed also reported that about 5 million school-age children spend time without adult supervision during a typical week. I questioned whether we know how many of these children are in unsafe settings. The response from the Dept. of Ed was that they can not break the data out that way. As the Dept. of Ed and the DPC develop their after-school care proposal, we will continue to question their assumptions about the universe of need.

After discussing need, the meeting focused on the barriers to school-based programs, the components of a good program, and the costs. Barriers to implementation include: (1) lack of resources; (2) unwillingness of the school district to open buildings; (3) unwillingness of teachers to have their classrooms used for after-school activities; (4) negotiations with custodial unions that stipulate building fees (only an issue in NY State and New York City); and (5) parents' inability to pay tuition and fees.

The components of successful extended learning after-school programs include: (1) coordination with the regular school day learning program; (2) true linkages between after-school and regular school day personnel; (3) hiring of qualified staff; and (4) low student-staff ratio.

The Dept. of Ed provided low and high cost scenarios that include all associated costs, except for transportation. The lower cost estimate assumes that staff are supplemented by volunteers and that enrichment activities do not require new materials. The higher cost estimate assumes that the staff will include certified teaching personnel, a full-time program director, and possibly significant materials expenditures. The Dept. of Ed. estimates that the costs (an average of the high and low cost scenarios) of after-school programs are as follows:

Estimated hourly cost per student: \$2 to \$2.50

Estimated yearly cost per student: \$1,050 to \$1,575

Estimated yearly program cost per school \$157,000 to \$500,000

Transportation (Estimated cost per student per trip) \$1.00

Elena Kagan and Mike Cohen of the DPC expressed their preference for a lower cost proposal that would serve more children. Mike Cohen also addressed our concern when he stated that there needs to be an understanding of the various categories of need.

Cynthia Rice stated that any new proposal has to distinguish itself from existing programs such as the 21st Century Community Learning Centers (the House Approps committee bill provided the requested \$50 million and the Senate Approps committee bill provided \$1 million) and the Community Schools program (zeroed out by the House and Senate Appropriations committees).

The meeting ended with the Dept. of Ed. being assigned the task of developing a policy proposal in the realm of \$300 million to \$500 million. Mary Cassell pointed out that low-cost options can also be worthwhile. Jen Klein listed several variables for the Ed. Dept to consider, as follows:

- 1) whether to create a new program or build off of an existing one;

- 2) how to distribute money;
- 3) school-based v. non-school based;
- 4) purely federal program or combination fed/state program;
- 5) flexibility of the money;
- 6) ages served;
- 7) payment scale for parents.

The Dept. of Ed. was also asked to identify goals that can be sold politically and to look into scholarship programs and provider training initiatives.

## Quality Issues

Representatives from DPC, HHS, GSA, DOD, and OMB (L. Oliven, J. Farkas, K. Kirchgraber, and myself) attended the quality issues meeting.

We spent most of the meeting reviewing a list of policy options for health and safety standards developed by the Maternal and Child Health Bureau of HHS. For each option, a tension remains as to whether to apply any new requirements to just child care centers, or to family providers as well (i.e., licensed v. unlicensed providers). Policy options for health and safety standards included:

- (1) Create standards through federal regulation;
- (2) Require training for child care providers (it was unclear whether this would be done through legislation or regulation);
- (3) Expand the health and safety requirements of the Child Care and Development Block grant through regulation;
- (4) Require all child care programs in federally operated facilities (such as those run by GSA) to adhere to MCH's Stepping Stones guidelines document and challenge the states to match the federal efforts;
- (5) Promote States' adoption of Stepping Stones through incentives; and
- (6) Create a national support network for child care providers.

As in the last meeting, we again discussed HHS' lack of authority to regulate in this area. Elena asked the Child Care Bureau to check with their lawyers about how far they can push the envelope on regulation without new regulatory authority.

With regard to training requirements, MCH proposed two options: (1) require all child care providers to demonstrate competency in First Aid and CPR, Nutrition, Environmental Health and Safety, and managing the developmental and emotional needs of at-risk children; or (2) require all child care providers to have a Child Development Associate Credential. We questioned the comprehensiveness of the CDA credential. MCH explained that the CDA credential is required of Head Start providers and is a course of competency training, but it is not equivalent to an Associate Degree. MCH believes that requiring the CDA credential would be one way to meet child development quality goals. One suggestion mentioned was to pull the Head Start CDA requirement into the Child Care program, similar to how Medicaid's EPSDT program may be used as a basis for the children's health initiative.

The DPC enthusiastically embraced the proposal that the President lead by

example and require federal facilities to meet Stepping Stones guidelines through an Executive Order. This is one policy that they may unveil at the Child Care conference on October 23.

OIRA presented the option of combining incentives with standards by allowing higher reimbursement for higher quality. This was done in a previous interim child care regulation but was never finalized due to the child care legislation in welfare reform. Such a step would require new regulatory authority.

After a lengthy discussion of policy options for health and safety standards, we discussed the use of child care provider background checks for child abuse and criminal records. The Child Care Bureau provided a state-by-state summary of background check requirements. There are five states that do not require either criminal background checks or child abuse checks for child care center and family child care providers (AL, DC, NJ, TN, WY). However, there are many states that require one type of check and not the other, or require checks for child care center providers and not family child care providers.

Elena viewed this as an excellent issue to include in the Administration's anti-crime agenda, and asked the Child Care Bureau to develop another working group with DOJ in order to prepare a policy proposal and look into the possibility of developing a national registry. We do not know the extent of any problem in this area, so it is hard to say whether such a program would be a valuable use of resources. At the state level, background checks cost \$100 per provider (a national registry would reduce that cost). Therefore, funding in the realm of \$10 to \$25 million would allow for background checks of at least 100,000 to 250,000 providers.

The next meeting will cover child development quality issues, including options for a "quality incentive fund", family child care networks, and provider scholarships.

#### Tax/Subsidy Issues

Attendees at the meeting included representatives from Treasury, HHS, CEA, and OMB (J. Farkas and myself). We spent a large portion of the meeting discussing DCTC options, as presented by Carl Scholtz and Janet Holtzblatt of Treasury.

During this discussion, Treasury did not have specific information on the distributive impact of each proposed DCTC reform. They will provide this information at the next meeting so that we can better assess the income levels of families benefitting from reform. The five options presented were as follows:

- 1) In order to claim the DCTC, current law requires that taxpayers provide over half of the support for the household. Option one would eliminate this requirement and replace it with a residency test, mandating that taxpayers live with the child for over half of the year. The largest group benefitting from this change would be taxpayers living with their parents. Estimated cost: \$300 million.
- 2) Under current law, taxpayers with adjusted gross incomes of \$10,000 or

less are allowed a credit equal to 30 percent of child care expenses. Because the DCTC has not been adjusted for inflation since 1982, this option would index the income level for inflation. Under option two, the 30 percent credit would go to taxpayers with adjusted gross incomes of \$17,000 or less. The credit would be phased down to 20 percent for taxpayers with adjusted gross incomes between \$17,000 and \$44,000, and remain at 20 percent for taxpayers with incomes over \$44,000. (Under current law, the 20 percent credit applies to taxpayers earning \$28,000 or more).

Under this option, the amount of qualifying expenses would also be increased from \$2,400 to \$2,500 for one child, and from \$4,800 to \$5,000 for two or more children.

Treasury will do tax threshold tables to illustrate the distributional effects of this change. Under the existing credit, families making \$10,000 have little or no tax liability and do not receive any credit. Increasing the beginning of the phase-down to \$17,000 and the end of the phase-down to \$44,000 will allow more families to receive a higher credit, but it is unclear how the credit will compare to the tax liabilities of families in this income range. Estimated cost: \$2.5 billion.

3) Option two, with the modification that taxpayers could claim up to \$4,000 of child care expenses for children under six years of age (up to \$8,000 for two or more children under six). The maximum amount for qualifying child care expenses for preschool children would be indexed in subsequent years. Estimated cost: \$4 billion.

4) Make the DCTC a refundable tax credit. Estimated cost: \$4.5 billion.

5) Increase the credit rate to 30 percent for all taxpayers and increase qualifying child care expenditures to \$2,500 for one child and \$5,000 for two or more children. This proposal would disproportionately benefit higher income taxpayers. Estimated cost: \$6 billion.

At this point, it appeared that the group had accepted DCTC reform as a foregone conclusion, despite Treasury's argument at the previous meeting that subsidies can more effectively target recipients. Therefore, we asked whether the group was going to consider changes to subsidies instead of DCTC reform. The Treasury reps then repeated their view that low-income families can be better reached through subsidies; however, no real subsidy options were discussed. The group appeared to dismiss the option of adding more funds to the Child Care and Development Block Grant. Elena then asked what the appropriate ratio of subsidies to tax credits was, i.e., for every \$X million spent on subsidies, how much should be spent on tax incentives? However, the answer depends on whether the goal is to redistribute money, reduce marginal tax rates, etc.

In the little time left, we discussed the possibility of using the DCTC to improve quality by providing a higher credit for accredited care. Treasury stated that such a policy would be very cumbersome administratively.

Although the group dismissed the option of employer credits for building

facilities and providing on-site child care, Elena asked Treasury to think about options that would promote on-site child care. Treasury pointed out that any supply side incentive would reward companies that are already inclined to provide child care, and would be disproportionately benefit high-wage firms.

The meeting ended with Treasury receiving several assignments, as follows:

1. Review current bills and develop a list of subsidy options. Cynthia Rice specifically asked if there was any way to develop incentives for higher quality care and after-hours care.
2. Provide information on the distributional effects of each proposal.
3. Present options on policies that cost in the realm of \$300 million to \$2.5 billion. Specifically, the DPC requested different variations along the lines of option two.

#### Next Meeting

The three subgroups will not meet again until the week of September 2. The new subgroup on child care provider background checks will meet the week of August 25.

#### Message Sent

To: \_\_\_\_\_

Kenneth S. Apfel/OMB/EOP  
Barry White/OMB/EOP  
Keith J. Fontenot/OMB/EOP  
Jeffrey A. Farkas/OMB/EOP  
Matthew McKearn/OMB/EOP  
Anil Kakani/OMB/EOP  
Edwin Lau/OMB/EOP  
Corey G. Lee/OMB/EOP  
Laura Oliven Silberfarb/OMB/EOP  
Leslie S. Mustain/OMB/EOP  
Mary I. Cassell/OMB/EOP  
Katherine Kirchgraber/OMB/EOP  
Kathryn B. Stack/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:24-OCT-1997 10:16:18.00

SUBJECT:: Central Americans - 10/23 DPC Meeting Follow-up

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Forwarding this to you since it concerns a matter on the DC appropriations bill. Gotbaum is among those working this issue. (Separate note from Gotbaum to follow.)

----- Forwarded by James J. Jukes/OMB/EOP on 10/24/97  
10:15 AM -----

Ingrid M. Schroeder  
10/24/97 09:29:37 AM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP

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

Subject: Central Americans - 10/23 DPC Meeting Follow-up

Elena Kagan (DPC) convened a meeting with WHLA , Public Liaison, DPC, WHC, NSC, Justice, INS, State, and OMB to discuss the Administration's position and strategy on legislation to provide relief from deportation/removal to certain Central Americans. The group sees the D.C. appropriations bill as the only legislative vehicle for the Central Americans provision. Below is summary of the current status and the next steps planned to address this issue.

Current Status

The House has not completed the final language of their proposal which

would: (1) permit Nicaraguans who entered the United States before December 1, 1995, to automatically qualify for permanent resident status; (2) permit Salvadorans and Guatemalans who entered before January 1, 1990, to apply for relief from deportation under the pre-1996 standards; (3) eliminate an unskilled worker visa category under which about 10,000 visas are issued each year; and (4) codify the "stop-time" rule (which requires aliens who are applying for relief from deportation to have resided in the United States for seven years prior to the commencement of deportation proceedings) to all cases pending (but not decided) before April 1, 1997 (date of enactment of the 1996 immigration bill). There continue to be discussions (Rep. Meek and the Congressional Black Caucus) regarding providing relief to certain Haitians.

In the Senate, Mack, Graham, and Kennedy are currently considering two different rewrites of their pending amendment to the D.C. appropriations bill. The first would be to take the House proposal, but make the following changes: (1) remain silent on the "stop-time" rule (the AG could take administrative action to exempt cases pending before April 1, 1997, from this requirement); and (2) exempt cases pending before April 1, 1997, from the yearly cap of 4,000 grants of suspension of deportation. The second option would be to take the Administration's bill and make it effective for only 18 months.

Although the Administration does not have a position on the elimination of the unskilled worker visa category (DPC indicated that the President would be willing to accept a reduction in this visa category) or on the potential inclusion of Haitians, WHLA believes that Senate options are more favorable than the House proposal.

#### Next Steps

WHLA and INS will work with the House to provide technical assistance in drafting their proposal and will meet with the Senate to continue substantive discussions regarding the pending amendment to the D.C. appropriations bill.

The group will meet again next week to discuss/determine the Administration's position on:

(1) elimination of the unskilled workers visa category; and (2) providing relief to Haitians.

If you need additional information, please contact Steve Mertens (54935) or me (53883).

Message Copied

To: \_\_\_\_\_  
Charles Konigsberg/OMB/EOP@EOP  
Charles E. Kieffer/OMB/EOP@EOP  
Michael Deich/OMB/EOP@EOP  
Gordon Adams/OMB/EOP@EOP  
Kenneth L. Schwartz/OMB/EOP@EOP  
David J. Haun/OMB/EOP@EOP  
Steven M. Mertens/OMB/EOP@EOP

Joseph G. Pipan/OMB/EOP@EOP  
Evan T. Farley/OMB/EOP@EOP  
Bruce K. Sasser/OMB/EOP@EOP  
Philip A. DuSault/OMB/EOP@EOP  
Alice E. Shuffield/OMB/EOP@EOP  
Lisa M. Kountoupes/OMB/EOP@EOP  
Theodore Wartell/OMB/EOP@EOP  
Robert G. Damus/OMB/EOP@EOP  
Jacqueline Boykin/OMB/EOP@EOP  
Robert E. Barker/OMB/EOP@EOP  
James J. Jukes/OMB/EOP@EOP  
James C. Murr/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Kathryn B. Stack ( CN=Kathryn B. Stack/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:22-AUG-1997 10:28:38.00

SUBJECT:: Bob's Fattah alternative

TO:Sarah L. Abernathy ( CN=Sarah L. Abernathy/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TO:Timothy A. Rosado ( CN=Timothy A. Rosado/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TO:Mary I. Cassell ( CN=Mary I. Cassell/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Patricia A. Smith ( CN=Patricia A. Smith/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Below is Bob's latest thinking, slightly modified by the meeting we had yesterday with Elena Kagan and Maureen M on DPC's interest in a minority enrollment initiative (DPC and NEC seem to be vying for the lead on an initiative along these lines). Notice the reference at the end to financing it from Perkins revolving funds. ( I mentioned to Bob and Maureen that since ED is going to propose termination of Perkins loans, we should consider other options for disposition of the revolving funds, other than simply giving them to the schools which ED is suggesting.)

Please look this over and give Tim any comments on Bob's proposal by early afternoon. Bob is looking for suggestions for improvement, but his bottom line is that the proposal must bear some similarity to what he's laid out below , which Sperling has discussed with Fattah and gotten general support for. Bob is putting together an options memo for Sperling (who returns next Tuesday), with the assumption that a memo to the President will follow.

Yesterday, DPC responded favorably to Bob's idea, but is also open to other models (they seem less concerned with the need to satisfy Fattah). If we can come up with a better model for improving minority enrollment in postsecondary ed (to be part of HEA reauthorization), we can put it into the mix early next week. If there's time today or Monday and several of you are interested in meeting to talk/brainstorm, we can try to fit that in. Barry may have an interest in this as well.

----- Forwarded by Kathryn B. Stack/OMB/EOP on 08/22/97  
09:54 AM -----

Robert M. Shireman  
08/21/97 11:06:43 PM  
Record Type: Record

To: Kathryn B. Stack/OMB/EOP, Maureen\_McLaughlin @ ed.gov @ inet, Timothy A. Rosado/OMB/EOP  
cc: Michael Cohen/OPD/EOP  
Subject: I'm going home

and will finish a Chaka draft for comment tomorrow, but would appreciate any comment or direction you might have now on this part of it, which relates to the meeting earlier today:

### C. School-College Partnerships

This option adopts the view that what low-income students most need in order to attend and succeed in college is a strong in-school academic program supplemented by early, intensive mentoring, tutoring and other support services. Under this approach, the Federal government would encourage and partially fund partnerships between colleges and high-poverty schools or school districts. These would consist of:

Partners: Each partnership would at least include a high-poverty school (or school district) and a degree-granting institution of higher education. Most would also include businesses and/or a community groups which may provide supplemental funds and/or may be a source of mentors and other assistance for the children.

[HOW SHOULD WE IDENTIFY HIGH-POVERTY SCHOOLS/DISTRICTS? SHOULD IT BE FLEXIBLE, PURSUANT TO REGS?]

An Academic Plan: The school would agree to offer a curriculum that prepares students for college.

Support Services: The college would agree to provide structured, long-term supplemental academic enrichment, mentoring, tutoring, and other assistance to all students starting not later than the eighth grade.

Financial Aid information and bonus: The partnership would provide

financial aid counseling, and could provide financial incentives for students to stick with the program, take the right classes and/or to get good grades. (In some existing programs, colleges guarantee admittance and aid if students reach certain goals in high school).

Why should colleges be involved? They have the tools, the expertise, and the stability to commit to a long-term mentoring project, and to provide the monitoring needed to ensure its success. They know what academic preparation they need from schools, so are in a good position to work with high-poverty schools to improve and supplement their curriculum, to prepare students for success in college. While in some cases mentoring might be provided by undergraduate students, universities also can tap alumni, businesses, and other community resources to get serious commitments of time for the effort. Finally, it is critical that there always be a full-time, serious and energetic coordinator running the mentoring and tutoring efforts.

Stronger school-college partnerships would not only serve to promote college-going, they would help to bring higher standards to impoverished schools. This is also a perfect complement to America Reads: while the reading tutoring effort starts with parents of young children and works through the early elementary years to lift up student achievement in reading, this partnership would reach down from the university level, and help to pull those same children along into high hopes and high achievement in all subject areas

Cost. The cost of early intervention programs vary widely. At the low end, the I Have a Dream Foundation reports that \$150,000 spread over five years covers the cost of an organizer who helps to maintain the contact between mentors and a single cohort of students from seventh grade through to high school graduation. For a cohort of 60 children, that is only \$500 each student per year. IHAD generally does not provide intensive academic assistance to students, however. A program that has more in common with the approach taken here is Upward Bound -- Federal grants that fund programs that provide academic enrichment and promote college attendance for promising, low-income, disabled, and first-generation college students. Those programs cost more than \$4,000 per participant. If we assume that (1) colleges and other partners could contribute some, at least in-kind, to the cost of a program, and (2) covering an entire school or cohort of students would not be as expensive on a per-student basis as the more selective Upward Bound program, then it may be reasonable to assume a Federal cost of \$1,000 to \$1,500 per participant.

[If there are 3.6 million students in 9th grade, and roughly 20,000 secondary schools, then an 8th grade cohort would have an average size of 180 per school. The program would therefore cost \$180,000 to \$270,000 per school/cohort/year. Starting with 6th, 7th, or 8th graders who are feeding into 1000 of the highest-poverty high schools would cost \$180 to \$270 million. Assuming some reduction in participation over the ensuing years in a program, the cost of 5 cohorts simultaneously (grades 8-12 for example) might be reduced by about a third by the fifth year. If so, the total cohort would cost \$750,000 to \$1, 125,000.]

[Can be funded from two sources:

Perkins revolving fund

Appropriation: for areas not well-covered by Perkins]

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Deb Smith ( CN=Deb Smith/O=OVP [ UNKNOWN ] )

CREATION DATE/TIME:18-MAR-1997 13:56:07.00

SUBJECT:: Re: Regulatory meeting with Sally Katzen must be moved. . .

TO:Phyllis Kaiser-Dark ( CN=Phyllis Kaiser-Dark/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

EK can't -- she's free after 4 tomorrow

Phyllis Kaiser-Dark @ EOP

03/18/97 01:52 PM

To: Phyllis Kaiser-Dark/OMB/EOP @ EOP

cc: Shelley N. Fidler/CEQ/EOP @ EOP, Elena Kagan/OPD/EOP @ EOP, Kathleen M. Wallman/WHO/EOP @ EOP, elaine c. kamarck/ovp, deb smith/ovp

Subject: Re: Regulatory meeting with Sally Katzen must be moved. . .

This meeting is conflicted yet again. Now, I'm looking at tomorrow, Wednesday, 12:30, RM. 350. Please, please, try to make this.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Harry G. Meyers ( CN=Harry G. Meyers/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:10-MAR-1998 15:14:57.00

SUBJECT:: FYI -- Items from Chiefs of Staff Breakfast

TO:Catherine A. Poynton ( CN=Catherine A. Poynton/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO:Kimberly A. Maluski ( CN=Kimberly A. Maluski/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Michael F. Crowley ( CN=Michael F. Crowley/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Harry G. Meyers/OMB/EOP on 03/10/98

03:14 PM -----

Alan B. Rhinesmith

03/10/98 03:08:20 PM

Record Type: Record

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

cc:

Subject: Items from Chiefs of Staff Breakfast

FYI

----- Forwarded by Alan B. Rhinesmith/OMB/EOP on 03/10/98

03:08 PM -----

William A. Halter

03/10/98 02:36:57 PM

Record Type: Record

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

cc:

Subject: Items from Chiefs of Staff Breakfast

Several items from this morning ,s Cabinet Affairs meeting of agency

chiefs of staff may be of interest to folks. Fun item first:

White House Easter Egg Roll will be held on Monday, April 13 with reading events from 9-10 a.m. and the outside activities held from 10-12 a.m. on the South Lawn.

#### Tobacco

Elena Kagan of the DPC reviewed the status of the Tobacco agreement and indicated that this was "the Administration ,s highest legislative priority for the balance of this Congressional session." She noted the most recent Presidential radio address, the President ,s speech to the AMA, and the upcoming speech to the state Attorneys General. Finally, she asked for Cabinet participation in early April on Kick Butts Day -- Cabinet Secretaries will be asked to focus on specific media markets.

#### President ,s Initiative on Race

Judy Winston, Executive Director of the President ,s Initiative on Race, reviewed progress to date on the initiative and asked Cabinet Secretaries to participate in a week of dialogue on race on college campuses across the country. Secretary Riley has sent letters to 3500 college and university presidents asking them to hold events to promote dialogue on campuses in the week of April 6-10.

#### Year 2000 Computer Problem

John Koskinen, Chair of the President ,s Council on Year 2000 Conversion, indicated that he would soon seek meetings at each major federal department and agency to discuss efforts to address the Y2K problem. He will seek to meet with each Cabinet Secretary, Deputy Secretary, Chief Information Officer, and the individual with direct responsibility for the agency ,s Year 2000 efforts. He will also ask agencies to pay particular attention to the interfaces of their departments with individuals and organizations outside the federal government.

#### Leadership Conference for Presidential Appointees

Cabinet Affairs and the Council on Excellence in Government will coordinate a conference for new Administration political appointees on Saturday, April 25. This conference will be very similar in format to a conference held last year.

#### President ,s Schedule

Wednesday, March 11 -- Meeting with Russian Prime Minister Chernomyrdin

Thursday, March 12 -- Speech to the National Association of Attorneys General

Friday, March 13 -- Working visit with the Prime Minister of Thailand

Tuesday, March 17 -- Meeting with the Irish Prime Minister; St. Patrick ,s Day lunch on Capitol Hill

Wednesday, March 18 -- Speech to AFL-CIO convention in Las Vegas

Thursday, March 19 -- Meeting with King Hussein of Jordan

Sunday, March 22 -- Depart for Africa trip

Message Sent

To: \_\_\_\_\_

Barry B. Anderson/OMB/EOP@EOP  
Donald R. Arbuckle/OMB/EOP@EOP  
Jill M. Blickstein/OMB/EOP@EOP  
Allan E. Brown/OMB/EOP@EOP  
Clarence C. Crawford/OMB/EOP@EOP  
Robert G. Damus/OMB/EOP@EOP  
Michael Deich/OMB/EOP@EOP  
G. E. DeSeve/OMB/EOP@EOP  
T J. Glauthier/OMB/EOP@EOP  
Joshua Gotbaum/OMB/EOP@EOP  
William A. Halter/OMB/EOP@EOP  
Charles E. Kieffer/OMB/EOP@EOP  
Charles Konigsberg/OMB/EOP@EOP  
Lisa M. Kountoupes/OMB/EOP@EOP  
Jacob J. Lew/OMB/EOP@EOP  
Joseph J. Minarik/OMB/EOP@EOP  
Franklin D. Raines/OMB/EOP@EOP  
Donald R. Arbuckle/OMB/EOP@EOP  
Barry T. Clendenin/OMB/EOP@EOP  
Ronald M. Cogswell/OMB/EOP@EOP  
Philip R. Dame/OMB/EOP@EOP  
Philip A. DuSault/OMB/EOP@EOP  
Richard P. Emery Jr./OMB/EOP@EOP  
Norwood J. Jackson Jr/OMB/EOP@EOP  
Bruce D. Long/OMB/EOP@EOP  
David H. Morrison/OMB/EOP@EOP  
Kathleen Peroff/OMB/EOP@EOP  
Alan B. Rhinesmith/OMB/EOP@EOP  
Justine F. Rodriguez/OMB/EOP@EOP  
Kenneth L. Schwartz/OMB/EOP@EOP  
Barry White/OMB/EOP@EOP

Message Sent

To: \_\_\_\_\_  
Edward A. Brigham/OMB/EOP@EOP  
Susan M. Carr/OMB/EOP  
Elizabeth M. DiGennaro/OMB/EOP  
Harry G. Meyers/OMB/EOP@EOP  
Francis S. Redburn/OMB/EOP@EOP  
Thomas P. Stack/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 4-MAR-1999 20:52:11.00

SUBJECT:: Report from 3/3 OMB/DPC meeting on Tobacco

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

READ:UNKNOWN

TEXT:

How does he have time to write all this?

----- Forwarded by Mark E. Miller/OMB/EOP on 03/04/99

07:31 PM -----

Richard J. Turman

03/04/99 03:23:18 PM

Record Type: Record

To: Barry T. Clendenin/OMB/EOP@EOP, Frank J. Seidl III/OMB/EOP@EOP,

Jennifer M. Forshey/OMB/EOP@EOP, Mark E. Miller/OMB/EOP@EOP

cc: Wm G. White/OMB/EOP@EOP

Subject: Report from 3/3 OMB/DPC meeting on Tobacco

Before DPC came in, there was a 5 minute pre-meeting with Josh, Dan, Jack, Greg, Ingrid, and myself.

Dan and Josh walked Jack through a memo they'd sent to Jack the night before. They mentioned that Claxton wanted the safety net/public health initiative taken off the menu, and Jack said no.

Josh mentioned that Shalala and Reed were meeting with Conrad and other Senators re: tobacco at 4:00 on Wednesday, and that he was planning to attend, given that Jack and Sylvia were unavailable.

Bruce Reed, Elena Kagan, Cynthia Rice, Chris Jennings, Sylvia Mathews and Rob Nabors then joined the discussion.

Bruce opened by noting that Daschle wanted to try to stop the rush to support Hutchison, and had pulled several Senators together to meet with he and Shalala that afternoon. It was not clear who would support an Administration bill at this time -- there were apparently some conflicts for Conrad, Harkin and Chafee were going to do something, but it would take a good while, Kennedy might if no one else would, etc.

Elena noted that even though the point was that some of the state tobacco money should end up being spent on tobacco, and many states are using the tobacco settlement money for things like we would be putting on the menu, many were not (e.g., Pataki is spending 3/4 on capital projects).

Jack said that at NGA, the rhetoric level was pretty high among the governors that they were going to spend some on tobacco, and that we ought to be able to come up with a menu with them.

Talk moved to the menu. Jack said he was comfortable talking about public health, child care, mental health, and that it was easy to make the argument that we have substantial initiatives in the Budget, and we want to use the tobacco settlement to spend money on some of the things that we want that the states want.

Elena said that a question he'll face is whether he's using the tobacco settlement money to buy out the base. Jack said he'd say it is a combination of funding the base and many increases, that he's focused on a total program level concept, and that if we can get the states to fund some of the things that we all want, so we don't have to, that's fine, since it helps advance the overall agenda.

Elena asked about the public health initiative, and HHS' concerns about taking it off the list. Jack said that there was no question -- it had to stay on the list. He observed that child care was on the list, and we couldn't say that the PHI was too important to be on the list, by comparison -- especially when we know what child care is and we're not sure exactly what the PHI is! Chris said the idea with the PHI was to have Federal accountability instead of state non-accountability. Jack said that Obey rain this last time because he wanted states to increase their health insurance coverage (?), and that Shalala won't won a fight that she knows better than states do. Jack then asked Dan if HHS' design for the PHI had matured substantially. Dan said that progress had been very slow. Dan said he would call Callahan and say that PHI was staying on the list, and Chris bet him that Jack would then get a call from Donna to appeal.

Jack said that if asked in the hearing, he won't name programs, which the Senators will try to get him to do. He'll say it will depend on negotiations and we have to see what states are doing with the tobacco money on 5-6 areas, including child care, public health, etc.,

Kagan said that Hutchison may put her bill on the Supp today.

Chris asked how Jack would answer why we're taking 57%, when last year we negotiated 50%. Jack said that last year the idea was to recapture cash from the companies, and spend it through the Federal government. This year the situation was entirely different, and our approach is appropriate. This time states receive the money from the companies, and get to keep it, and get to choose between various items that they would spend a portion of it on -- which is differnt than having the \$ be a federal appropriation, as it was last year.

He then said that there are substantial Federal/state priorities in child care and public health, and to the degree these priorities can be accomplished at the state level, then that is fine -- if the goal is to help kids, it doesnt matter whether the assistance comes from the Feds or the states.

Regarding budget cuts, Jack said that we didn't budget anything for this in 2000, because we'll need time to negotiate, and that we'll factor whatever we come up with on the menu into 2001 when the time comes.

Bruce reminded Jack that 2/3 of the Senate last year said that child care should be on the menu.

Jack also said we would not concede on the claim -- that we have a legitimate claim, and we're being less prescriptive than when we were at 50%.

Chris said this was all fine, as long as the menu didn't differ from what we cared about, to which Jack agreed.

Elena said that once Jack's testimony is done, we could get the menu items out on the table.

Josh asked Jack how he'd answer on farmers -- Jack said that it would depend on how states spend the money they get.

Bruce added that it depended on three things:

- a) how the \$5B gets split up that the companies and farmers have agreed to;
- b) how much states planned to use of the \$ they were getting from the tobacco settlement; and
- c) if the Fed Medicare lawsuit was successful, they could get some of that, too.

Bruce said that another question would be why we're asking for such a high proportion of Medicaid \$. Cynthia said some answers included:

- 1) the states have the obligation to collect for us;
- 2) it was in some of their suits;
- 3) states have given up their Medicaid claims in the settlement -- and OURS, since they sue on behalf of the Feds and we are barred from doing so;
- 4) there are lots of estimates, but the \$13B FY93 figure indicates the tobacco costs to medicaid, and if the states settled for \$8, Medicaid is to be paid first, so we actually have a claim to all 8.

Jack asked if she could get this all down on a sheet of paper -- that it would really help.

Jack indicated that the CBO testimony on how they scored the Budget, re: recoupment, was garbled, and that people will try to use it against us.

Bruce asked how he would answer the question about our baseline being zero. Jack said that in the history of recoupment, there has not been something like this -- a national settlement. Usually, we have to go from one state to another to deal with the separate documentation in each, the

pleadings, the files, the settlements, etc., and that it is time-consuming and nuanced. Here, it is all on one place and crystal clear. And as the President said to the governors, states are legally obligated to pay. Further, the baseline reflects the past, but things have changed, and we're looking at the future, not how we've not had big national settlements in the past. Greg noted that it is also a conservative technical estimate -- that states have said they won't pay, and the baseline reflects that. Jack said that that technical argument would also be helpful to have written down. Jack also said he would answer that we don't do the baseline -- it is done at HCFA.

Chris noted that they could then ask, if baselines are based on the past, , and the Administration has not enforced the recoupment of state provider taxes, why do we believe that this settlement money would have been collected. Jack said that each state had its own story on provider taxes, on what happened, how their particular laws and regulations and payments had been structured, etc., and that this was different. This was a judgement that was already created, and it would be irresponsible to ignore it. This is apples and oranges -- why more for tobacco recoupment? Because we expect more. Also, it is a national settlement, vs. multitudes of local issues.

Chris asked how he would respond to a question about vetoing Hutchison. Jack said the President and governors agreed to work this out, and he doesn't expect it will come to that. The President feels strongly that the tobacco settlement should accommodate these concerns about children and public health.

Elena asked what if states wanted to use the \$ for state programs in the specified areas, instead of Federal programs. Jack: we never said it has to be Federal programs, we wouldn't rule it out, as long as it is consistent with the criteria of what we care about.

Bruce said one question could be "name one state that would give you cause to do this menu," and that DPC would find out what the state was and give it to him, if he wanted to use it. Discussions ensued that they might not want to name a state at all, if it was represented on Finance.

That's the best I could do, given how fast the conversations went. Hope it's helpful -- GW -- does that sound right?

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jill M. Blickstein ( CN=Jill M. Blickstein/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 8-JAN-1998 13:10:33.00

SUBJECT:: Follow-Up to Small Farmers Meeting

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

----- Forwarded by Jill M. Blickstein/OMB/EOP on 01/08/98

01:10PM -----

Alecia Ward

01/08/98 12:20:11 PM

Record Type: Record

To: Jill M. Blickstein/OMB/EOP@EOP, Janet Himler/OMB/EOP@EOP

cc: Mark A. Weatherly/OMB/EOP@EOP, Ronald M. Cogswell/OMB/EOP@EOP

Subject: Follow-Up to Small Farmers Meeting

The attached e-mail may clarify exactly what Lucia is calling about. TJ, Mark, and Lucia need to have a little sit down and decide exactly should be responsible for drafting possible legislative language.

Al

----- Forwarded by Alecia Ward/OMB/EOP on 01/08/98 12:19

PM -----

Alecia Ward

01/08/98 10:40:51 AM

Record Type: Record

To: Mark A. Weatherly/OMB/EOP

cc:

Subject: Follow-Up to Small Farmers Meeting

Did you get this?

----- Forwarded by Alecia Ward/OMB/EOP on 01/08/98 10:41

AM -----

T J. Glauthier

01/04/98 03:11:19 PM  
Record Type: Record

To: Alecia Ward/OMB/EOP  
cc:  
Subject: Follow-Up to Small Farmers Meeting

please print .....  
----- Forwarded by T J. Glauthier/OMB/EOP on 01/04/98  
03:06PM -----

Andrew J. Mayock  
01/02/98 01:28:24 PM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Minyon Moore/WHO/EOP@EOP, Sylvia M. Mathews/WHO/EOP@EOP  
Subject: Follow-Up to Small Farmers Meeting

This e-mail tracks the outstanding issues from the President's meeting with small farmers. On Friday, January 9, 1997, a memo will be sent to the President that updates him on these issues. Our goal is to bring resolution to as many of these issues as possible by next Friday (e.g., responses in the mail to all letters and documents that we received). I will follow up early next week for a progress report. In the mean time, please let me know if you have any questions. Thanks.

#### Follow up Items for White House Staff

DPC staff contact to work on farm policy here at the WH. Sylvia Mathews will follow up with Bruce Reed and Elena Kagan.

Litigation and settlement process. Chuck Ruff and Dawn Chirwa will follow up on this item. In particular, they will address the issue of the Ross disbursement.

Legislative Affairs and Appropriations Issues. Lucia Wyman and Janet Murguia will address legislative issues. She is working with T.J. Glauthier and has reached out to Rep. Clayton and Senator Robb and members on the House Agriculture Committee.

Antitrust Issues. There were also a number of farming antitrust issues that the farmers raised which will be covered by Chuck Ruff and Dawn Chirwa in conjunction with DOJ. Dawn has asked DoJ to put together materials on what they have done in this area to date to get us started. Apparently, Antitrust has already been looking at these issues/concerns.

Hmong Farmers. USDA is hiring a temporary county office employee fluent in Hmong in Fresno, Ca to help USDA ,s Farm Services Agency communicate with Hmong farmers in the region [Ask USDA if this is the district of the Asian-American that was at POTUS meeting.]

Senator Robb ,s Tobacco Proposal. In conjunction with Legislative

Affairs, Elena Kagan and Bruce Reed are drafting response to Senator Robb ,s proposal regarding tobacco.

Letter from Representative McKinney. In conjunction with Legislative Affairs, Chuck Ruff and Dawn Chirwa are drafting a response to the letter the President received from Representative McKinney on December 18, 1997.

Documents sent to President Clinton by Small Farmers. Barbara Woolley will follow up on the documents that were submitted to the President by the farmers. She will ensure that they receive appropriate action. The following paragraphs describe each item and recommended follow up. All of these items will be copied and sent to Eric Galston in Secretary Glickman ,s office for appropriate follow-up by USDA.

Submit a draft executive summary of the report by the National Commission on Small Farms & A Time to Act 8 - Harold Volkmer. Sent to correspondence for thank you note. Woolley will work with Kyle Baker.

Request for President to attend opening ceremonies for community-wide race dialogue sponsored by 1898 Centennial Foundation in Wilmington, North Carolina on January 17, 1998 - Bolton Anthony, Bertha Todd. Sent to scheduling and the President ,s Initiative on Race for the appropriate action. We recommend PIR consider surrogate (possibly John Hope Franklin as this is a North Carolina event).

Request for a meeting on tobacco deal with the President and Federation of Southern Cooperatives/Land Assistance Fund (FSC/LAF) - Ralph Paige. Recommend Bruce Reed hold meeting with FSC/LAF. Woolley will follow up with Reed and then handle appropriate correspondence.

Request for a meeting on tobacco deal with the President by Commodity Growers Cooperative Association - Karen Armstrong-Cummings and Rod Kuegel. Recommend Bruce Reed hold meeting with FSC/LAF. Woolley will follow up with Reed and then handle appropriate correspondence.

Submission of: 1) Business Plan for the First Americans National Bank (proposal for a bank owned by Native Americans); 2) Indian Issues for the Commission on Small Farms; 3) Credit Committee Report - Bob Miller. Recommend thank you note from President and follow up on business plan and reports by USDA. Woolley to handle.

Proposal for additional funding for welfare to work project by Hmong American Community - Toulou Thao. Recommend forward proposal to Cynthia Rice for appropriate follow up. Woolley will track and monitor.

Personal letter from Gary Cornelious. Woolley forwarded to correspondence for a response. She will work with Kyle Baker.

Submission of notebook on personal dairy operation - Gary Henderson. Recommend thank you letter. Woolley will work with Kyle Baker.

Message Sent

To: \_\_\_\_\_  
Barbara D. Woolley/WHO/EOP@EOP  
T J. Glauthier/OMB/EOP@EOP  
Robert B. Johnson/WHO/EOP@EOP  
Lucia A. Wyman/WHO/EOP@EOP  
Janet Murguia/WHO/EOP@EOP  
Kyle M. Baker/WHO/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:GLAUTHIER\_T@A1@CD@LNGTWY ( GLAUTHIER\_T@A1@CD@LNGTWY [ EOP ] ) (OMB)

CREATION DATE/TIME:15-SEP-1996 09:56:35.00

SUBJECT:: Radiation legislation...my response

TO:Alecia Ward@eop ( Alecia Ward@eop [ OMB ] )

READ:UNKNOWN

TO:Gary L. Bennethum@EOP ( Gary L. Bennethum@EOP [ OMB ] )

READ:UNKNOWN

TO:HERNANDEZ\_N@A1@CD@LNGTWY ( HERNANDEZ\_N@A1@CD@LNGTWY [ UNKNOWN ] ) (OMB)

READ:UNKNOWN

TO:Eric L. Macris@eop ( Eric L. Macris@eop [ OMB ] )

READ:UNKNOWN

TO:Kathleen Peroff@EOP ( Kathleen Peroff@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

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

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

TEXT:

From: GLAUTHIER\_T@A1@CD@LNGTWY

\*To: REGAS\_D@A1@CD@LNGTWY

\*cc: KATZEN\_S@A1@CD@LNGTWY

\*cc: DRYE\_E@A1@CD@LNGTWY

\*cc: PETERSON\_RK@A1@CD@LNGTWY

Date: 9/15/96 9:32am

Subject: RE: Human Radiation Experiments

Diane, we need to discuss this quickly. I understand that a very "draft" and incomplete legislative package was sent over here Thurs or Fri by DOJ and that it is far from ready for prime time. In particular, I have been told that it was not even run thru DOJ's legislative review process, that it is not all in final legislative language, and that the agencies and perhaps we in the WH offices are going to raise serious questions about whether we should send it up at this time.

I will check further with my staff, but I need more background on just what process this has gone through so far, what the agencies' involvement has been, etc.

I have not seen the package yet, but from my staff's comments and all of our history on this topic, I expect that it will seem a lot more conservative and less "victim friendly" than we may want to spring out publicly right now.

I certainly support our demonstrating follow through on the Advisory Committee's report and recommendations, but am not clear enough on the overall strategy.

I would like to have this kind of discussion early this week, before you schedule an interagency meeting. Maybe a couple of us could sit down with you for 20 to 30 minutes on Monday or Tuesday. Have Phil Caplan, Kris Balderston, and Elena Kagan been involved already? They've been involved a lot in the past.

===== END ATTACHMENT 1 =====

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Randolph M. Lyon ( CN=Randolph M. Lyon/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:25-AUG-1997 16:26:58.00

SUBJECT:: Tobacco penalty scenarios

TO:jminarik2 ( jminarik2 @ aol.com @ inet [ UNKNOWN ] )

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Fyi. Jerry Mande called you with this request. I suggested that he e-mail it to Hugh and Patrick. I hope it's OK that he contact them directly.

----- Forwarded by Randolph M. Lyon/OMB/EOP on 08/25/97

04:25 PM -----

Jerold R. Mande

08/25/97 04:13:16 PM

Record Type: Record

To: Patrick G. Locke/OMB/EOP, Hugh T. Connelly/OMB/EOP

cc: Joseph J. Minarik/OMB/EOP, Randolph M. Lyon/OMB/EOP, Charles F. Stone/CEA/EOP, Elena Kagan/OPD/EOP

Subject: Tobacco penalty scenarios

Patrick and Hugh --

I am working with Bruce Reed and Elena Kagan on the proposed tobacco settlement. Could you please run the following penalty scenarios to see how much they cost? We need 10 and 25-year numbers, as well as year-by-year totals. We also need both pre- and post-tax cost (i.e., how much the industry must earn in order to pay the penalty). I don't know what tax rate to assume; the companies say 42%. Can you do these runs with a range of scenarios about how much youth smoking goes down -- i.e., missing by 10 pts, by 15 pts, by 20 pts, by 25 pts, by 30 pts. Thank you.

1. Two-tier penalty structure, as follows:

\* If industry misses target by less than 10%, each point costs \$80 million, and is tax-deductible.

\* If industry misses target by more than 10%, each point (above the first 10) costs \$160 million, and is not tax-deductible.

\* Eliminate the cap.

- \* Keep the double counting provision as written.

2. One-tier penalty, but not tax-deductible:

- \* Each point costs \$80 million
- \* No cap.
- \* Keep double counting provision.
- \* Find out the pretax cost to the company

3. Higher one-tier penalty, but tax-deductible:

- \* \$160 million a point
- \* No cap.
- \* Keep double counting provision.

4. Excise tax trigger:

- \* \$80 million a point, tax-deductible.
- \* Keep \$2 billion cap.
- \* Keep double counting.
- \* If industry misses target in year 5, it triggers 10 cent a pack tax. If target missed in year 7, that tax rises to 20 cents a pack. If target missed in year 10, rises to 30 cents a pack.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 1-JUL-1997 19:04:19.00

SUBJECT:: Tobacco Regulatory Issues Meeting

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

READ:UNKNOWN

TEXT:

fyi --

----- Forwarded by Barry T. Clendenin/OMB/EOP on 07/01/97  
07:04PM -----

Jim R. Esquea

07/01/97 06:35:42 PM

Record Type: Record

To: Nancy A. Min/OMB/EOP, Barry T. Clendenin/OMB/EOP, Richard J. Turman/OMB/EOP, Mark E. Miller/OMB/EOP

cc: Wm G. White/OMB/EOP, Wendy A. Taylor/OMB/EOP

Subject: Tobacco Regulatory Issues Meeting

Yesterday afternoon I attended two working meetings of the Regulatory Issues/Tobacco Settlement Review Group. The meetings were chaired by Elena Kagan with Elizabeth Drye. Mitch Zeller and Bill Schultz from FDA/HHS; Jerry Mande from OSTP; Don Arbuckle and Mike Fitzpatrick from OIRA; Neal Wolin from Treasury; and representatives from Department of Justice, Labor, and the Vice President's Office were all in attendance for the majority of both meetings.

The first meeting dealt with the settlement provisions pertaining to Advertising/Access/Enforcement. The meeting ran about one hour with a majority of the time spent listening to Bill Schultz walk through the relevant sections of the settlement and how these sections are consistent with or different from the FDA regulations on tobacco.

Schultz raised the concern that it is not clear how much residual authority FDA has under the settlement. For example, under the federal Court decision in North Carolina, it is clear that FDA has full authority to regulate nicotine and cigarettes and the flexibility to make future adjustments to their tobacco regulations if the FDA was convinced it was necessary to do so - - like being able to raise the minimum age required to purchase cigarettes from 18 to 19 or 20 years of age. However, it is not clear whether FDA has the residual authority to make such adjustments under the settlement.

Another issue that was raised was the advertising provisions. The

settlement gives FDA the authority to regulate tobacco manufacturer advertising - - something the North Carolina Court said FDA did not have the authority to do. If the tobacco manufacturers did agree to a side agreement allowing FDA to regulate tobacco advertising, how would this effect convenience store owners and retailers. Zeller and Schultz argued that retailers and convenience store owners could engage in tobacco advertising themselves, since they were not a part of the settlement. No one had any answers on how to best deal with this.

The settlement also creates a licensing program, which FDA will have a major role in implementing/policing. Essentially, any entity that sells retail tobacco products directly to consumers would require a license. The Bureau of Alcohol, Tobacco, and Firearms has a similar licensing program and they advised that it was a nightmare to run. The tobacco settlement recommends a licensing program on a greater scale for tobacco then even the ATF has any experiencing handling.

Though the settlement recommends that FDA receive \$300 million annually from industry to regulate tobacco, Treasury/ATF reps that given the scope of the proposed licensing program, \$300 million might actually not be enough. Bottom line - - FDA is very hesitant about signing on to a licensing program.

The second meeting dealt with the settlement provisions pertaining to the regulation of product content, labeling, and safety. [I missed the majority of this meeting. I was busy trying to get clearance for some talking points OIRA drafted for the VP about FDA reform.] The major issue that FDA raised was about the settlement's provision regarding "Reduced Risk Products." I missed a lot of this discussion, but FDA seems to be concerned about the settlement's assumption that there is such a thing as a "less hazardous tobacco product" and that manufacturers can market these products with health claims, as long as manufacturers can prove that these products are less harmful than regular tobacco products. it was not clear where FDA wanted to go with this.

Elena advised that the working groups would be meeting again this Thursday to discuss the preemption provisions in the settlement as well as the issue of tobacco retail licensing.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jeffrey A. Farkas ( CN=Jeffrey A. Farkas/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 4-FEB-1999 12:38:40.00

SUBJECT:: Affidavit/Jeffords-Kennedy/Cost Allocation

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

READ:UNKNOWN

TEXT:

----- Forwarded by Jeffrey A. Farkas/OMB/EOP on 02/04/99  
12:28 PM -----

Jeffrey A. Farkas  
02/04/99 11:54:23 AM

Record Type: Record

To: Daniel N. Mendelson/OMB/EOP@EOP, Gina C. Mooers/OMB/EOP@EOP  
cc: Barry T. Clendenin/OMB/EOP@EOP, Mark E. Miller/OMB/EOP@EOP, Anne E. Tumlinson/OMB/EOP@EOP, Lillian S. Spuria/OMB/EOP@EOP  
Subject: Affidavit/Jeffords-Kennedy/Cost Allocation

This is to give you an update on the most recent developments in these three areas. Note especially our question on Jeffords-Kennedy and the cost allocation issue. Please let us know if you have any questions or want to discuss further. Thanks.

Affidavits of Support

DPC is in general agreement with exempting Medicaid from the affidavit repayment requirements. DPC and EIML are mulling approaches on SSI -- Barbara Chow is apparently concerned about overreaching on cash assistance (where potential sponsor liability is much lower than for medical assistance). One potential SSI option is to exempt sponsors who become destitute. The issue is still open. Cynthia Rice will be vetting both Medicaid and the SSI issues with Bruce Reed and Elena Kagan. I will keep you up to date on developments.

There will be a WH leg affairs-type meeting this Friday at 3 p.m. to discuss the Administration's proposed restorations. I will be attending, but you may want to as well.

Jeffords-Kennedy

A Senate hearing is being held today, but mark-up is not planned until the spring. The Administration therefore has some time to provide comments to the Hill on areas of concern in the bill. The biggest Administration issues appear to be the Title IV discretionary grants (i.e., getting DOL'S

BRIDGE-like formulation into the mix) and the sunset provisions on the SSA Ticket to Work provisions.

Surprisingly, Jeanne indicated a willingness to revisit concerns we raised about the disability demonstration last fall. (Independently we've learned of Hill concerns about crowd-out, which may have led to Jeanne's newfound openness to our issues.) Jeanne also expressed a willingness to revisit Bob Williams's desire to add "date certain"-like activities (i.e., moving people from nursing homes to community placements, etc.) to those currently allowed under the infrastructure grants in the bill. (The Hill also wants to provide more clarification to the grant allotments under the disability demo, and it is likely that they will also want to increase \$\$ -- but these are not issues we will raise.)

Given that the Administration has stated the Budget replicates the Jeffords-Kennedy health provisions, how much leeway do we have to reopen the health title and suggest changes to the Hill? You may want to talk to Chris Jennings about this. We can work with Jeanne on our and HHS's concerns, but would remain within the cost parameters assumed in the Budget.

#### Cost Allocation

Informally, we learned that CBO will price the Medicaid cost allocation provision without the TANF prohibition at about \$500 million over 5 years. This is lower than what they estimated last year for a Food Stamp provision without the TANF prohibition (\$700 million). The savings decrease because CBO's new TANF baseline is down and CBO assumes States will have more TANF funds available to spend on Medicaid costs reduced by the bill.

By comparison, the Budget assumes savings of \$1.2 billion. The major explanation for the difference in OMB and CBO scoring is different TANF baseline assumptions. (If the TANF prohibition is included, CBO would score savings of \$1.9 billion while we would come out at about \$2.0 billion.)

The major qualification to CBO's scoring is that they assume legislative language must include two conditions on the use of TANF funds for the backfill: (1) The amount of TANF funds used by a State on Medicaid costs cannot exceed the amount of the State's ag research determination for Medicaid (i.e., backfill cannot exceed cost-shift); and (2) States cannot use TANF State maintenance of effort (MOE) dollars on Medicaid administrative costs.

The first provision is not likely to raise concerns, but States are likely to object to the second condition. The ag research bill's TANF prohibition prevented States from using MOE dollars for Food Stamp admin costs, and States will want to reverse this provision in Medicaid along with the prohibition against the use of Federal TANF money. Without the second condition, however, CBO thinks the bill could be a coster instead of a saver (because States will increase TANF spending even more).

In order to assure CBO's scoring, our passback to HHS on the draft

legislative language will include the two provisions. (At IM's recommendation, we will also passback a provision subjecting any TANF funds used for Medicaid administrative costs to the 15% limit on admin in TANF.)

We need you to understand that States are still likely to have objections to the cost allocation proposal even though we have given them flexibility in the use of Federal TANF funds. If you would like to discuss strategy for submitting the legislation to the Hill, please let us know.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jim R. Esquea ( CN=Jim R. Esquea/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:16-JUL-1997 13:37:07.00

SUBJECT:: Re: URGENT: USDA draft letter supporting Tobacco crop insurance

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

DPC is aware of this. OMB AG branch has drafted a letter to be sent by Secretary Glickman complaining about the provision. I was advised by Mark Weatherly, AG branch chief, that the draft included edits from Elena Kagan and Elizabeth Drye, as well as sign off from White House Legislative Affairs.

Weatherly should be receiving shortly a copy of the signed letter from the AG Department.

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:Kathleen A. McGinty ( MCGINTY\_K ) (CEQ)

CREATION DATE/TIME:19-MAR-1996 20:36:28.80

SUBJECT:headwaters

TO:Elisabeth Blaug ( BLAUG\_E ) (CEQ)

READ:20-MAR-1996 08:23:01.13

TO:Shelley N. Fidler ( FIDLER\_S ) (CEQ)

READ:20-MAR-1996 12:15:53.01

TEXT:

i talked to garamendi this afternoon.

he's really a bit much. i told him that i was gravely concerned that he was running off out of sight and as a lone ranger. answer to that is that we are going to meet soon to catch up on all pieces that are moving.

he told me that he has sent to boggs a list of fdic properties.

to my screams on this point, he said that the list was cleared by fdic before it was sent. this also makes me very nervous.

to my scream that the tax meeting had already happened, he said he had no idea why we weren't alerted. he expressed great apologies.

but he did say that doi lawyer/s was/were present.

on his part he said that lois schiffer was calling him wanting to push herself into these negotiations. he didn't want that to happen and i don't think i do either. i will talke to lois and try to back her off.

elizabeth -- your main job on this right now is to get rob to set up the meeting with garamendi. but, i also need you to bring elena kagan up to speed and have her ready to participate in this meeting and help to give us guidance. that will involve finding out as best as you can who from interior has been involved in what parts of this and putting as much of this together for elena as possible. i would like to meet with elena after she is up to speed but before we bring garamendi in. i want this all to happen fast before he does something that causes us trouble.

as i shared with shelley, i am very torn about this whole thing. garamendi is impossible. in part i don't care about that becuase while there is an up side in our getting a deal done here, there is no major downside to this not working for us. UNLESS however, john creates for us some legal problem in monkeying with this that we don't currently have.

i'm getting resigned to our inability adequately to reign him in. what i essentially think i want to do is to let him give this a shot but cover our legal asses on it and ensure that there will be no legal trouble for us as a consequence.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Keith J. Fontenot ( CN=Keith J. Fontenot/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 3-MAR-1997 17:13:47.00

SUBJECT:: Welfare reg's

TO:Jeffrey A. Farkas ( CN=Jeffrey A. Farkas/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Cynthia M. Smith ( CN=Cynthia M. Smith/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

This will be your baby -- we'll pick and choose our battles. don't let me forget to follow up.

----- Forwarded by Keith J. Fontenot/OMB/EOP on 03/03/97  
05:21 PM -----

From: Kenneth S. Apfel on 03/03/97 10:24:04 AM

Record Type: Record

To: Keith J. Fontenot/OMB/EOP

cc:

Subject: Welfare reg's

I talked to sally and elena and they both thought this was a good idea. I suggested to sally that a staff group get together once before katzen/apfel/golden/kagan meet to start the discussion. Pls reach out to s/o in dpc and OIRA and HHS and get the ball rolling.

----- Forwarded by Kenneth S. Apfel/OMB/EOP on 03/03/97  
10:17 AM -----

From: Kenneth S. Apfel on 02/28/97 06:17:07 PM

Record Type: Record

To: Sally Katzen/OMB/EOP, Elena Kagan/OPD/EOP

cc: Keith J. Fontenot/OMB/EOP

Subject: Welfare reg's

Over the next half year or so, HHS is gonna put out a bucketful of regulations on TANF. I think we need to set up some kind of a pre-consultation process with hhs so we can handle problems early and expedite action. Does it make sense for us to get together - - possibly with HHS - - to talk through how best to handle?



RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:19-MAY-1998 09:34:37.00

SUBJECT:: More (informal!) Senate Dem Tobacco Update Info.

TO:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Barry T. Clendenin/OMB/EOP on 05/19/98  
09:35 AM -----

Richard J. Turman  
05/19/98 09:24:54 AM  
Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: More (informal!) Senate Dem Tobacco Update Info.

----- Forwarded by Richard J. Turman/OMB/EOP on 05/19/98  
09:22 AM -----

I attended the 6:00 PM LD's meeting on tobacco. The meeting was essentially a reporting of the major changes in the manager's amendment by Elena Kagan and Larry Stein. For the most part, the information that was presented was the same information that I got at the 3:00 Commerce Committee meeting. Ironically, in neither meeting was it reported that Lott was going to slip in the Lugar provision on tobacco farmers at the last minute. That was a total surprise, and it is the sense that it may cause Hollings and Ford to walk from the bill.

The handout from this meeting was a shorter summary of the major changes than the one that we received earlier today.

The only new information that we got in this meeting was process:

As you now know, the manager's amendment was going to be used as the starting point for amendment. (no vote on manager's amendment.)

The first two amendments that are expected are:

1) A Faircloth amendment on Attorney's fees. Daschle's staff feel that there is already an adequate structure in the bill (arbitration panel) for determining attorney's fees, and want this amendment to be voted down flat. Agreement will be sought to prevent second-degree amendments. Vote on this amendment expected Tuesday morning.

2) An amendment on a \$1.50 per pack price increase instead of \$1.10. Leadership is not sure yet who is going to introduce this amendment. Larry and Elena reported that the WH is ok with either a \$1.10 per pack increase or \$1.50 per pack increase. Again, an agreement will be sought to prevent second-degrees. Vote expected on this amendment Tuesday afternoon.

Other amendments will be offered, but no one is sure yet how many, what they will be, or what agreements will be worked out. The one thing that is certain is that Daschle wants to keep the Conrad-Gregg amendment for the very end.

Both WH staff and Daschle staff expressed strong desire to limit # of amendments in an attempt to get this done this week.

Finally, when discussing look-backs, Elena again stressed the need to call the look-back payments "surcharges" and not penalties. All members are urged to avoid the expression "penalties" in an attempt to preserve their long-term success in expected litigation. Also, Larry Stein expressed strong WH support for the \$8 billion liability cap, stating that the WH thinks the bill now represents stronger liability provisions than the Chafee-Graham-Harkin bill.

Let the wild rumpus begin...

Message Copied

To: \_\_\_\_\_

Melany Nakagiri/OMB/EOP@EOP  
Wm G. White/OMB/EOP@EOP  
Marc Garufi/OMB/EOP@EOP  
Jim R. Esquea/OMB/EOP@EOP  
Barry T. Clendenin/OMB/EOP@EOP  
Frank J. Seidl III/OMB/EOP@EOP  
Natasha M. Cavanaugh/OMB/EOP@EOP  
Daniel N. Mendelson/OMB/EOP@EOP  
Patrick G. Locke/OMB/EOP@EOP  
Charles E. Kieffer/OMB/EOP@EOP  
James J. Jukes/OMB/EOP@EOP  
Robert J. Pellicci/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Anil Kakani ( CN=Anil Kakani/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:29-OCT-1997 20:18:30.00

SUBJECT:: summary from conference call today on Murray Amendment

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

READ:UNKNOWN

TEXT:

----- Forwarded by Anil Kakani/OMB/EOP on 10/29/97 08:19 PM -----

Anil Kakani  
10/29/97 07:46:44 PM  
Record Type: Record

To: Franklin D. Raines/OMB/EOP, Jacob J. Lew/OMB/EOP  
cc: See the distribution list at the bottom of this message  
Subject: summary from conference call today on Murray Amendment

Pursuant to a telephone conversation Bruce Reed had yesterday with Sen. Murray, DPC, OMB and HHS participated in a conference call today with staff from Sen. Murray's and Sen. Wellstone's offices. The purpose of the call was to explain how, substantively and procedurally, the Administration would like to address Sen. Murray's concerns. The conversation was rather contentious, with the key issues remaining unresolved. Elena Kagan, the primary speaker on the call for the Administration, basically made the following points:

HHS will allow states to exclude from work participation rate and time limit calculations individuals who have been granted domestic violence waivers

States will not be able to exclude these individuals automatically from the calculations, but rather will be permitted to do so by HHS if they demonstrate that waivers are being granted based on an individualized assessment, for limited duration, and accompanied by an appropriate services plan designed to provide safety and lead to work.

We prefer these changes/clarifications be made through regulations, rather than through legislation.

Murray's and Wellstone's staffs generally responded as follows:

States should be able to automatically exclude domestic violence waiver recipients from calculations, without HHS approval.

States are concerned that they will be penalized for exempting victims of

domestic violence from work and time limit requirements, and therefore are unlikely to grant waivers.

The Administration's concern that states might try to avoid penalties by granting domestic violence waivers represents a very cynical view of states.

Kagan clarified that the concern was not solely that states would game the requirements by liberally granting domestic violence waivers, but rather that they might grant waivers without providing the services necessary for victims to leave assistance and get jobs. She also stressed that the regulations will lay out what exactly a State must do to avoid a penalty for failing to meet certain requirements due to the number of domestic violence waivers granted.

Finally, earlier this evening we received revised statutory language that Sen. Murray might be offering in the Labor-HHS conference tonight. While the proposal still excludes individuals with waivers from the work participation and time limit calculations, and still does not require that states provide services to waiver recipients, it does try to move closer to our position by providing the following:

if a state would have failed the participation rate or time limit but for having granted domestic violence waivers, upon reviewing waivers granted by the state the Secretary "may revoke any waivers that [she] finds were not granted in good faith."

It is unclear what authority HHS has to revoke waivers granted to individuals or whether these individuals will be put back into the work rate or time limit calculations. Bruce Reed has already commented that the revised language is "unacceptable."

Message Copied

To: \_\_\_\_\_  
Barry White/OMB/EOP  
Keith J. Fontenot/OMB/EOP  
Jeffrey A. Farkas/OMB/EOP  
Jill M. Blickstein/OMB/EOP  
Janet Himler/OMB/EOP  
Sally Katzen/OMB/EOP  
Laura Oliven Silberfarb/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barbara E. Washington ( CN=Barbara E. Washington/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:25-SEP-1997 14:25:53.00

SUBJECT:: Meeting on Adoption Bill

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

READ:UNKNOWN

TEXT:

----- Forwarded by Barbara E. Washington/OMB/EOP on  
09/25/97 02:58 PM -----

Barry T. Clendenin  
09/25/97 02:21:16 PM  
Record Type: Record

To: Barbara E. Washington/OMB/EOP  
cc: Richard J. Turman/OMB/EOP, Thomas Reilly/OMB/EOP  
Subject: Meeting on Adoption Bill

Please note --  
----- Forwarded by Barry T. Clendenin/OMB/EOP on 09/25/97  
02:21 PM -----

Keith J. Fontenot  
09/25/97 01:29:07 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: Meeting on Adoption Bill

I sat in for OMB yesterday in a meeting with Mrs. Clinton, Bruce Reed, Secretary Shalala, Gene Sperling Elena Kagan, OFL and HHS staff on the \$2.5 billion (five years) adoption bill proposed by Senators Chaffee and Rockefeller. (The bill was introduced late last week, and we will have summary materials around shortly.)

In sum, there is broad recognition that the most costly component of the bill -- \$2.4 billion over five years -- is a cost shift from States to the Federal government and does nothing to increase the number of adoptions. However, the bill includes many of the President's zero cost proposals, and there is a strong desire in DPC/OFL to get an adoption bill this

year. Not all participants fully shared our concerns on the cost shifting since some see the "cost allocation" offset in the bill as covering it. I raised the point that OMB has been working to preserve cost allocation as a potential source of financing for the Administration's initiatives in the President's budget. Secretary Shalala said that at this stage it too early to get "on board" this bill.

HHS is to try to get other members of the Finance Committee to express concerns on the cost shifting provisions in hopes of convincing Senator Chaffee to make modifications. The sense was that this strategy has a slim likelihood of success. HHS argued that a strategy of passing the bill as is (including the cost shifting and cost allocation as an offset) with the hope of changes in conference might be "the only way" to get a bill this session. There was no discussion of official communication of an Administration position on the bill. HHS also noted that the Committee will hold hearings on October 6th or 8th on the bill. HHS has not yet been invited.

If you decide you want to have an official communication to the hill on the adoption legislation, it should also address the potential of the bill, if passed before the end of this legislative session, to trigger a sequester. (A separate email from Jeff Farkas describes our analysis of the scoring implications of the cost allocation offset). In the meantime, should we share our thinking on the scoring of the offset with DPC/OFL and HHS for consideration in their discussions with the hill?

Message Sent

To: \_\_\_\_\_  
Jacob J. Lew/OMB/EOP@EOP  
Joshua Gotbaum/OMB/EOP@EOP  
Barry White/OMB/EOP@EOP  
Kenneth S. Apfel/OMB/EOP@EOP  
Joseph M. Wire/OMB/EOP@EOP  
Jill M. Pizzuto/OMB/EOP@EOP

Message Copied

To: \_\_\_\_\_  
Janet Himler/OMB/EOP@EOP  
Jill M. Blickstein/OMB/EOP@EOP  
Matthew McKearn/OMB/EOP@EOP  
Jack A. Smalligan/OMB/EOP@EOP  
Edwin Lau/OMB/EOP@EOP  
Jeffrey A. Farkas/OMB/EOP@EOP  
Barry T. Clendenin/OMB/EOP@EOP  
Mark A. Weatherly/OMB/EOP@EOP  
Jennifer Friedman/OMB/EOP@EOP  
Barry B. Anderson/OMB/EOP@EOP

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:Edith D. Hopkins ( HOPKINS\_E ) (OMB)

CREATION DATE/TIME:29-NOV-1995 13:47:20.76

SUBJECT:Elena Kagan 6-7594

TO:T J Glauthier ( GLAUTHIER\_T ) (OMB)

READ:29-NOV-1995 14:22:48.98

CC:Alice E. Shuffield ( SHUFFIELD\_A ) (OMB)

READ:29-NOV-1995 13:58:37.07

TEXT:

Would like to set up a meeting with Tom Jensen, Jennifer, herself and you for a half an hour between 2:00 - 2:45 or 4:00 - 5:30 p.m. today. She did not give me a subject, please give her a call.

Thanks,

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:23-MAR-1998 09:03:38.00

SUBJECT:: Summary: Thursday's (3/19) Legal Fees Meeting

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

READ:UNKNOWN

TEXT:

Please place in what will perhaps be a new tab in my tobacco topics binder: legal fees. Thanks!

----- Forwarded by Richard J. Turman/OMB/EOP on 03/23/98  
09:03 AM -----

Marc Garufi  
03/22/98 04:55:02 PM  
Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Summary: Thursday's (3/19) Legal Fees Meeting

Below is a summary of the March 19 Tobacco Legal Fees meeting, attended by Elena Kagan, Cythnia Rice, Cynthia Dailey, Gary Claxton, Christy Schmidt, Mitch Zeller (FDA), and DoJ (Neal Katyal, David Barron, Tom Perilli, Randy Moss, David Odgen). No major decisions were made; the only consensus was that everyone would prefer to avoid dealing with the legal fees issue. I will fax you a 3-page document developed by DoJ which served as the basis for the meeting's discussions.

DoJ ,s Draft Proposal

The key question posed by DoJ: Do we want a legal fee structure that is anti-windfall -- erring on the side of preventing the private attorneys from receiving a ton of money -- or anti-wipeout -- erring on the side of insuring the attorneys receive compensation?

DoJ staff indicated that their draft proposal tries to avoid the wipeout problem but recognized that not all attorneys may be covered by final Federal legislation. Some attorneys not covered could then be the benefit of a windfall, while other attorneys could be left out; both of these scenarios would undoubtedly lead to litigation in state courts.

DoJ's proposal is a hybrid of the hourly cap and arbitration models and based on three principles: (a) the private attorneys meaningfully contributed to development of the settlement and, as such, Congress should insure that they receive fair compensation; (b) the settlement also

resulted from the efforts of other individuals (in addition to the private attorneys); and, (c) attorney fees should come from tobacco manufacturers; the Federal government is not liable for these payments under any circumstances.

The proposal provides two alternatives for the attorney fee component of Federal tobacco legislation (please see the proposal): (1) an hourly cap "benchmark" of \$250/hour that could be adjusted up or down by an arbitration panel on a case-by-case basis; (2) "Loadstar" -- provide for, but do NOT specify, a "reasonable" rate of compensation (I was not exactly clear on the Loadstar reference). DoJ offered that (2) would be better politically because it would obscure the issue somewhat by not providing an exact compensation figure. From a policy and administrative standpoint, (1) may be better and the legislation could be written to guarantee that adjustments to the \$250/hour level -- either up or down -- would be few and far between.

In response to Elena's question on if a \$/hour figure would be better than a percentage, DoJ noted that with under a percentage structure there is likely to be a battle over the base, i.e., percentage of what? Furthermore, it may not be politically wise to set fees as a percentage of the large total amount (e.g., \$365 billion) of the Federal legislation.

There was no decision on the compensation structure but DoJ seemed to pushing gently toward the \$250/hour benchmark plus arbitration system.

### Constitutional Issues

There was a discussion on the issue of Federal "takings" of vested property rights of private attorneys [see criteria (6) on the last page of the proposal]. DoJ explained that some attorneys have contracts that provide a vested property right to a specified level of compensation. Examples of these cases would be where state settlements specified attorney compensation or where an attorney contract(s) provides a specified amount in the event that Federal legislation preempts the settlement. DoJ noted that in Texas and Florida, the legislature and/or state courts have reduced the attorney fees specified in the state settlements, calling them unconscionable. DoJ indicated it is difficult to estimate how many attorney contracts exist that provide a property right and therefore be judged potentially as outside the jurisdiction of Federal legislation.

The second constitutional issue related to private parties -- in this case tobacco manufacturers -- appointed representatives to an arbitration panel whose members held de facto regulatory positions in the executive branch. DoJ suggested that this may be judged as an inappropriate abdication of Executive power under the Constitution. In the draft DoJ proposal, the Federal Attorney General appoints the arbitration panel members; other proposals have provided the tobacco manufactures with appointment power of some minority portion of the panel. DoJ noted that they needed to explore this issue more and would get back to the group.

Bonus: Unrelated but Interesting FDA Question

At the end of the meeting, Elena asked the DoJ lawyers for an opinion of the following question: If the tobacco legislation provided for FDA authority to regulate tobacco products under a separate title of the Federal Food, Drug, and Cosmetic Act (FFDCA), could this have an adverse impact on the Administration's the pending circuit court case if the tobacco legislation was considered but not passed by Congress?

Background (from Elena): "We" want to keep FDA's authority to regulate tobacco in a current FFDCA title while other have pressed for a new, separate title.

Scenario: new Federal tobacco legislation, which provides a separate title for FDA regulatory authority over tobacco, is considered by not passed by Congress

Result (from the above scenario): The tobacco manufacturers argue in the North Carolina appeals case that FDA's authority to regulate tobacco can not currently exist since the Federal (unpassed) legislation provided for this authority under a new title.

Answer: most of the DoJ lawyers did not think this result was likely, arguing that the provision in the pending legislation has no impact on the court case. One lone voice (David Barron) from the back remained unconvinced and offered the following opinion: If the language in the Federal legislation was "clarifying" -- i.e., Congress used the legislation to clarify that the existing FFDCA title should apply to tobacco products -- then the legislation should have no impact on the court case. But, if the language provided a new title for FDA authority over tobacco, a case could be made by the tobacco manufacturers that the new title is necessary because Congress did not originally intend for FFDCA to apply to tobacco products.

An interesting if inconclusive discussion.

Please let me know if you have questions.

Message Copied

To: \_\_\_\_\_

Barry T. Clendenin/OMB/EOP@EOP

Richard J. Turman/OMB/EOP@EOP

Wm G. White/OMB/EOP@EOP

Jim R. Esquea/OMB/EOP@EOP

Melany Nakagiri/OMB/EOP@EOP

Jill M. Pizzuto/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Anne E. Tumlinson ( CN=Anne E. Tumlinson/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:12-AUG-1998 09:43:54.00

SUBJECT:: Report on the 8/11 Medicaid/Tobacco Legal Issues Meeting

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Cynthia M. Smith ( CN=Cynthia M. Smith/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Wm G. White ( CN=Wm G. White/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

I attended today's 2:30 pm Medicaid/Tobacco legal issues meeting. In attendance were Bruce Reed, Elena Kagan (who ran the meeting), Chris Jennings, Gene Thirolf (DOJ), Gary Claxton (HHS), Kathy King (HCFA), Cynthia Rice (DPC), and various other DOJ and HHS staff. Issues discussed at the meeting are as follows:

Main Question for 8/11 Discussion: Could the Federal Government and an individual State reach an out-of-court settlement on how States could spend the Federal share of the settlements? In other words, under the scenario where a HCFA "disallowance" case was brought to court, could the Federal government and the State come to an agreement on how the State would spend the Federal share (e.g., child care)?

Elena Kagan asked this question at the 7/31 meeting (see Greg White's e-mail). DOJ was asked to look into the issue for today's meeting. DOJ responded initially by saying that the Executive Branch does not have the authority without Congress' approval to decide to take less money in

exchange for State spending that it considers agreeable. DOJ said that, under such a scenario, the federal government would be paying the States money it did not owe them.

However, DOJ suggested that if DOJ thought a State could argue successfully to a court that it would pay less money but engage in some good works to reduce youth smoking, DOJ could entertain it in the context of a settlement between the federal government and a State. DOJ restated this as, "federal government can not pay States more than they are statutorily entitled to unless it is related to how a court might decide," (and/or if litigation risk is perceived to be high).

DOJ also suggested that if the settlement amount is so large that collecting it could destroy the Medicaid program, DOJ may have some leeway to settle for less in exchange for certain conditions the court might decide. Therefore DOJ made a distinction between trading money for Presidential priority programs and trading money for litigation risk or program survival.

Given this information, Elena Kagan developed five options:

1. Collect the entire amount. Write to States and ask for the entire amount owed to the federal government. Elena suggested that the practical effect of this option is to have States asking Congress to eliminate their tobacco obligation to the federal government.
2. Settle for about half of the entire amount. Assert that the litigation risks are such that going to court is not worth the entire amount owed to the federal government so we will settle for about 57 percent.
3. Settle for even smaller amount. Assert that the litigation risks are so large that federal government will settle for a very small percentage of the amount originally owed by States.
4. Settle for smaller amount plus some set of conditions. Assume that the courts might consider some conditions in exchange for money. Elena asked DOJ to think about what these conditions could possibly be.
5. Reach agreement with States on a smaller amount of money plus a set of conditions and go to Congress for approval.

Comments/Questions about options: Elena stated that the practical effect of options 1 or 2 would be that States would ask Congress for a fix and the President would not get anything --- money or his priorities.

Elena also asked a question about what would it take to reach an agreement with States and go to Congress. There was little consensus but everyone agreed that DOJ would need to negotiate the deal but would probably want to bless it. [We note, for your information, that CBO could score Medicaid costs to legislation forgiving a large amount of tobacco money owed to the federal government.]

Last Remarks and Assignment: Elena Kagan said that everyone should be careful about "pounding on the table" during the last month Congress is in

session or we could see a rider in the appropriations bill to "fix" this problem for States. Elena also asked HHS and Chris Jennings to work on developing a clearer picture of the amount of money they believe is involved. Kathy King asserted that this would be simply the settlement amount that States tell HCFA is related to Medicaid smoking costs. However, Cynthia Rice pointed out to Chris that OMB staff had given her a report from researchers on state-by-state Medicaid smoking-related costs.

DOJ is going to further consider the five options and report back.

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME: 3-SEP-1997 09:55:14.00

SUBJECT:: Child Care Working Group on background checks

TO:Melany Nakagiri ( CN=Melany Nakagiri/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Barbara A. Menard ( CN=Barbara A. Menard/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Marc Garufi ( CN=Marc Garufi/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Chin-Chin Ip ( CN=Chin-Chin Ip/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

----- Forwarded by Richard J. Turman/OMB/EOP on 09/03/97  
09:55 AM -----

Corey G. Lee            09/03/97 09:42:37 AM

Record Type: Record

To: Mark E. Miller/OMB/EOP, Katherine Kirchgraber/OMB/EOP, Richard J.  
Turman/OMB/EOP

cc: Thomas Reilly/OMB/EOP

Subject: Child Care Working Group on background checks

----- Forwarded by Corey G. Lee/OMB/EOP on 09/03/97 09:39  
AM -----

Jennifer Friedman

09/03/97 08:45:07 AM

Record Type: Record

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

cc:

Subject: Child Care Working Group on background checks

The child care working group on background checks for providers met last week. The meeting was led by Linda Smith from DOD, and attendees included Joan Lombardi, Faith Wall (NPR), and reps from DOD, DPC (Jose Certa) and OMB (Maya Bernstein and myself). Elena Kagan asked the group to meet in order to determine the feasibility and cost effectiveness of requiring background checks for child care providers. The discussion focused on (1) the differences between, and feasibility of, conducting criminal and non-criminal checks; (2) the effectiveness of background checks; and (3) the cost of background checks.

#### Different Standards Needed for Criminal and Non-Criminal Background Checks

In order to access FBI files to check a provider's criminal background, current law requires that states must: (1) have a state law requiring background checks; and (2) pay a fee to the FBI. Maya asked whether the National Child Protection Act of 1993 gave the FBI cleaner authority to respond to requests - it did not. Non-criminal background checks (checks for claims of abuse and neglect) require that states have open records. There are currently only five states with open records.

#### Information on Effectiveness of Background Checks is Limited

An American Bar Association survey of child care providers prepared for DOJ found that basic screening measures (interview, personal and employer reference checks, and confirmation of educational status) were almost equally as likely to identify unsuitable applicants as criminal background checks. DOD, which has the widest experience conducting background checks for child care providers, believes that many providers with criminal backgrounds were discovered when DOD first began doing fingerprint checks, but that the criminal background check is now more effective as a deterrent. I questioned whether there was any information on the scope of the problem. Joan Lombardi and Linda Smith admitted that they did not know of any direct evidence, but quickly stated that we should still pursue background checks as a deterrent.

#### More Detailed Information is Needed on the Cost of Background Checks

Maya and I also pushed the group to provide more detailed information at the next meeting on the cost of background checks. Costs cited ranged from \$3 (for a name check) to \$67 (for a National Agency Check) to \$100 (cited by Faith Wall) It was unclear what accounted for the variation in cost between the \$67 check and the \$100 check.

#### Issues for the Next Meeting

The next meeting will be held on September 9 at noon and will address privacy issues surrounding child care provider background checks.

Message Sent

To: \_\_\_\_\_

Kenneth S. Apfel/OMB/EOP

Barry White/OMB/EOP

Keith J. Fontenot/OMB/EOP

Jeffrey A. Farkas/OMB/EOP

Matthew McKearn/OMB/EOP

Anil Kakani/OMB/EOP

Edwin Lau/OMB/EOP

Corey G. Lee/OMB/EOP

Laura Oliven Silberfarb/OMB/EOP

Leslie S. Mustain/OMB/EOP

Mary I. Cassell/OMB/EOP

Katherine Kirchgraber/OMB/EOP

Kathryn B. Stack/OMB/EOP

Maya A. Bernstein/OMB/EOP

Edward H. Chase/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Ingrid M. Schroeder ( CN=Ingrid M. Schroeder/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:28-OCT-1997 13:12:09.00

SUBJECT:: Central Americans - Update

TO:Michael Deich ( CN=Michael Deich/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Joshua Gotbaum ( CN=Joshua Gotbaum/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Robert E. Barker ( CN=Robert E. Barker/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Lisa M. Kountoupes ( CN=Lisa M. Kountoupes/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Philip A. DuSault ( CN=Philip A. DuSault/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Evan T. Farley ( CN=Evan T. Farley/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Gordon Adams ( CN=Gordon Adams/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Andrew Abrams ( CN=Andrew Abrams/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Jacqueline Boykin ( CN=Jacqueline Boykin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Theodore Wartell ( CN=Theodore Wartell/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Alice E. Shuffield ( CN=Alice E. Shuffield/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Bruce K. Sasser ( CN=Bruce K. Sasser/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC:Joseph G. Pipan ( CN=Joseph G. Pipan/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

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

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

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

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

TEXT:

In response to you question regarding the status of the Central American amendment to the DC appropriations bill -

According to WHLA (Jacoby), INS is currently on the Hill reviewing House legislative language to address the Central American issue (see below for a description) and the Senate fixes to the House language (i.e., remain silent on the "stop time" rule and eliminate the 4,000 cap on suspension of deportation cases). At this point, WHLA and INS continue to prefer the House proposal with the Senate fixes.

In addition, WHLA is continuing discussions with the Hill regarding the appropriate vehicle for the Central American amendment. The Hill is considering either the CJS (in conference) or DC (Senate floor) appropriations bills as potential vehicles. WHLA would prefer to use the DC appropriations bill as the vehicle so that House Republicans will not try to trade the Central Americans amendment for deletion of the 245(i) penalty provision (which permits certain illegal aliens to pay a \$1,000 penalty in order to adjust their status in the United States verses having to travel back to their home country to adjust).

Will keep you posted on additional developments.

Ingrid M. Schroeder  
10/24/97 09:29:37 AM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Central Americans - 10/23 DPC Meeting Follow-up

Elena Kagan (DPC) convened a meeting with WHLA , Public Liaison, DPC, WHC, NSC, Justice, INS, State, and OMB to discuss the Administration's position and strategy on legislation to provide relief from deportation/removal to certain Central Americans. The group sees the D.C. appropriations bill as the only legislative vehicle for the Central Americans provision. Below is summary of the current status and the next steps planned to address this issue.

### Current Status

The House has not completed the final language of their proposal which would: (1) permit Nicaraguans who entered the United States before December 1, 1995, to automatically qualify for permanent resident status; (2) permit Salvadorans and Guatemalans who entered before January 1, 1990, to apply for relief from deportation under the pre-1996 standards; (3) eliminate an unskilled worker visa category under which about 10,000 visas are issued each year; and (4) codify the "stop-time" rule (which requires aliens who are applying for relief from deportation to have resided in the United States for seven years prior to the commencement of deportation proceedings) to all cases pending (but not decided) before April 1, 1997 (date of enactment of the 1996 immigration bill). There continue to be discussions (Rep. Meek and the Congressional Black Caucus) regarding providing relief to certain Haitians.

In the Senate, Mack, Graham, and Kennedy are currently considering two different rewrites of their pending amendment to the D.C. appropriations bill. The first would be to take the House proposal, but make the following changes: (1) remain silent on the "stop-time" rule (the AG could take administrative action to exempt cases pending before April 1, 1997, from this requirement); and (2) exempt cases pending before April 1, 1997, from the yearly cap of 4,000 grants of suspension of deportation. The second option would be to take the Administration's bill and make it effective for only 18 months.

Although the Administration does not have a position on the elimination of the unskilled worker visa category (DPC indicated that the President would be willing to accept a reduction in this visa category) or on the potential inclusion of Haitians, WHLA believes that Senate options are more favorable than the House proposal.

### Next Steps

WHLA and INS will work with the House to provide technical assistance in drafting their proposal and will meet with the Senate to continue substantive discussions regarding the pending amendment to the D.C. appropriations bill.

The group will meet again next week to discuss/determine the Administration's position on:

(1) elimination of the unskilled workers visa category; and (2) providing relief to Haitians.

If you need additional information, please contact Steve Mertens (54935)

or me (53883).

Message Copied

To:

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Charles Konigsberg/OMB/EOP@EOP  
Charles E. Kieffer/OMB/EOP@EOP  
Michael Deich/OMB/EOP@EOP  
Gordon Adams/OMB/EOP@EOP  
Kenneth L. Schwartz/OMB/EOP@EOP  
David J. Haun/OMB/EOP@EOP  
Steven M. Mertens/OMB/EOP@EOP  
Joseph G. Pipan/OMB/EOP@EOP  
Evan T. Farley/OMB/EOP@EOP  
Bruce K. Sasser/OMB/EOP@EOP  
Philip A. DuSault/OMB/EOP@EOP  
Alice E. Shuffield/OMB/EOP@EOP  
Lisa M. Kountoupes/OMB/EOP@EOP  
Theodore Wartell/OMB/EOP@EOP  
Robert G. Damus/OMB/EOP@EOP  
Jacqueline Boykin/OMB/EOP@EOP  
Robert E. Barker/OMB/EOP@EOP  
James J. Jukes/OMB/EOP@EOP  
James C. Murr/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-JUL-1997 22:13:38.00

SUBJECT:: FYI here are DPC comments on conferee letter; I gave these to Kountoupes/Haas

TO:Janet Himler ( CN=Janet Himler/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Maureen H. Walsh ( CN=Maureen H. Walsh/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Larry R. Matlack/OMB/EOP on 07/01/97  
10:13 PM -----

Diana Fortuna  
07/01/97 10:03:09 PM

Record Type: Record

To: Barry White/OMB/EOP, Keith J. Fontenot/OMB/EOP, Larry R.  
Matlack/OMB/EOP, Emil E. Parker/OPD/EOP

cc:  
Subject: FYI here are DPC comments on conferee letter; I gave these to  
Kountoupes/Haas

but thought you might be interested.

To: Larry Haas, Lisa Kountoupes

Fr: Diana Fortuna

cc: Cynthia Rice

Date: 7/1/97

Here are DPC comments on conferee letter. We have one major comment and  
four minor ones.

In &Minimum Wage and Workfare 8 section, DPC/Elena Kagan proposes to add  
the following as a 3rd paragraph. We understand the need for Hilley to  
concur.

"In addition, the Administration is seriously concerned that the House  
bill weakens the welfare law's strict emphasis on work by permitting some  
states to count additional time spent in activities such as job search  
toward the work requirements."

Below are minor issues:

In Welfare to work intro, page 12, paragraph beginning &We continue to be concerned 8: Shouldn ,t we drop sentence beginning &Some of these issues 8? This doesn ,t apply to anything at issue in the \$3 billion, and sounds like it was intended to be an intro to welfare section generally.

Welfare to Work section on &Targetting Welfare to Work Funding... 8: Strike first part of last sentence, i.e., &We believe the Education and Workforce and Finance Committee versions are inconsistent with the budget agreement 8. This statement goes too far. We should just include the balance of that sentence: &We urge the Conferees to adopt the Ways and Means proposal. 8

Non-Displacement: Draft is confusing. Would paragraph make sense if we added at the end &with changes noted above 8?

Voc Ed in TANF: To our knowledge, we have not said in earlier SAPs that &we strongly urge the conferees to drop these provisions. 8 We don ,t feel strongly about this point, but wondered why we were turning up the volume.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Robert M. Shireman ( CN=Robert M. Shireman/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 3-MAR-1997 10:06:14.00

SUBJECT:: Meeting on Children's Health Conference

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

READ:UNKNOWN

TO:Mary I. Cassell ( CN=Mary I. Cassell/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Timothy A. Rosado ( CN=Timothy A. Rosado/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Patricia A. Smith ( CN=Patricia A. Smith/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Robert M. Shireman/OMB/EOP on 03/03/97  
10:10 AM -----

Barry White

03/03/97 08:56:18 AM

Record Type: Record

To: Robert M. Shireman/OMB/EOP

cc:

Subject: Meeting on Children's Health Conference

----- Forwarded by Barry White/OMB/EOP on 03/03/97 08:58  
AM -----

Barry T. Clendenin  
02/28/97 03:37:47 PM  
Record Type: Record

To: Barry White/OMB/EOP, Keith J. Fontenot/OMB/EOP  
cc:  
Subject: Meeting on Children's Health Conference

----- Forwarded by Barry T. Clendenin/OMB/EOP on 02/28/97  
03:40PM -----

Victoria A. Wachino  
02/28/97 03:27:46 PM  
Record Type: Record

To: Nancy A. Min/OMB/EOP  
cc: Richard J. Turman/OMB/EOP, Barry T. Clendenin/OMB/EOP, Chin-Chin  
Ip/OMB/EOP, Barbara A. Menard/OMB/EOP  
Subject: Meeting on Children's Health Conference

I attended today's 12:30 meeting on the White House children's health conference, which is tentatively scheduled for April 17th. Elena Kagan chaired the meeting and said that the conference, which will last between one-half days and a full day, will be structured in two parts. The first part will feature high-profile scientists in areas such as neurology describing how young children develop, and how parents and others can apply this scientific knowledge. The second part will be devoted to how society can best help young children, and will feature business, community and religious leaders.

Kagan, Pauline Abernathy from DPC, and Nicole Rabner from the first lady's office asked representatives from various agencies attending the meeting for suggestions on initiatives that could be announced before, after, and during the conference. The message will be centered around child care, parenting, and child health.

HHS suggested that the conference would be a good way to convey its message about child health measures like immunizations and lying infants on their backs to sleep to prevent Sudden Infant Death Syndrome. They suggested distributing products from HHS, such as the Maternal and Child Health Bureau's parent information pieces. They also brought up standards that MCH is developing that states should have in place to evaluate child care. Other agencies noted that 70% of Federal employees' child care centers are accredited, which far exceeds a 5% national average, and suggested that the conference spotlight the Federal accreditation rate as a model.

DOE suggested highlighting some of their health research, and suggested that HHS examine NIH's research portfolio as well. ONDCP stated that either they or SAMHSA are planning to release parent training guidelines on substance abuse this spring.

There was some additional talk about how to get the message of the

conference out through satellite hookups, simulcasts with the governors, and distributing short videos after the conference. Kagan announced that Rob Reiner is planning to broadcast a TV show on April 28 that highlights children's health, and that the POTUS and FLOTUS are planning to appear on the show.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:24-FEB-1998 08:18:20.00

SUBJECT:: DPC Tobacco Licensing Meeting

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

READ:UNKNOWN

TO:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

----- Forwarded by Barry T. Clendenin/OMB/EOP on 02/24/98  
08:18 AM -----

Jim R. Esquea

02/23/98 10:35:53 PM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP, Barry T. Clendenin/OMB/EOP@EOP, Richard J. Turman/OMB/EOP@EOP

cc: Jill M. Pizzuto/OMB/EOP@EOP, Wm G. White/OMB/EOP@EOP, Marc Garufi/OMB/EOP@EOP

Subject: DPC Tobacco Licensing Meeting

Today I attended the tobacco licensing meeting chaired by Elena Kagan. In attendance were: Cynthia Rice (DPC), Tom Freedman (DPC), Jerry Mande (OSTP), Mitch Zeller (FDA), Neal Wolin (Treasury), Patty Kaeding (FDA), and some other folks from Treasury and Justice whose names I did not catch.

The meeting was quite short (under 40 minutes) and focused on the two approaches that HHS and Treasury developed separately to implement a Federal licensing program for tobacco.

The HHS Approach

Licensing of Retailers - - Federal Standards Administered by the States

HHS proposed a mandatory retail licensing program that would require that tobacco retailers have a Federal license issued by a State or

locality under the authority of the Federal government or the Federal program charged with overseeing this licensing program. The focus of this approach is on those facilities that sell tobacco products to the public in order to prevent sales to minors. A retailer's license to sell tobacco could be suspended and/or revoked for particular violations of Federal law.

Under this approach the Federal government through HHS/FDA or some other government agency would have the ability to set the standards for licensing programs, while Administrative responsibilities would rest with the States who choose to operate their own licensing programs through contract with the Federal government.

HHS proposes that an annual appropriation be available for the Federal agency (HHS/FDA or Treasury) to contract with States to develop and maintain a licensing scheme, with appropriations also available for the Federal agency to undertake these responsibilities in States that choose not to contract with the Federal agency to operate their own licensing program.

#### Treasury/ATF Approach

##### Regulating the Entire Distribution Network

The Treasury approach would involve Federal regulation of all levels of the "distribution chain" for tobacco products ranging from manufacturer to retail dealer. The Treasury approach consists of three main pieces:

All manufacturers, importers exporters, and wholesale distributors of tobacco would be required to obtain a permit.

All retail dealers in tobacco products would be required to register with the Federal agency designated to administer the program.

Manufacturers, importers, or wholesale dealers would only be allowed to deliver, sell, ship, or transfer tobacco products to permitted or registered entities.

Under this system the designated Federal agency would suspend or revoke any permit or registration, and/or levy fines if the entity holding the registration or permit violates any Federal law relating to the regulation or distribution of tobacco products. In addition, the Federal agency would be given the authority to impose civil monetary penalties for violation of the proposed system and be given the authority to seize and forfeit tobacco products, conveyances, and proceeds associated with and derived from any violation of the proposed system.

Treasury did state that the cost to run their proposed licensing program would be about \$88 million in each of the first three years of the program phase in. After program phase in, the cost would be \$38 million annually. Treasury also stated that an annual fee of \$75 for each permittee and retail registrant would cover the costs of running this program. [Though they did not mention whether the \$75 would cover the

cost of the \$88 million program or the after phase in \$38 million program.]

### Next Steps

Elena Kagan was quite happy with the discussion and asked that HHS and Treasury work together on a consensus licensing program by next week. HHS and treasury agreed that both of their proposals complemented each other and that they would try to mesh their proposals together.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:19-MAR-1999 11:04:34.00

SUBJECT:: Re: DOJ Crime Bill - nursing home provision

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

READ:UNKNOWN

TEXT:

Thanks --an excellent explanation and update.

BC

Gaylee L. Morgan 03/19/99 10:04:12 AM

Record Type: Record

To: Daniel N. Mendelson/OMB/EOP@EOP

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

Subject: DOJ Crime Bill - nursing home provision

MM and I attended a meeting Wednesday afternoon with DPC (Chris Jennings, Elena Kagan), HCFA (Mike Hash, et. al) and DOJ (John Bentivoglio) on the nursing home quality enforcement provision that is currently in DOJ's draft crime bill. The purpose of the meeting was to begin to come to a compromise on the bill.

We understand that there may be a POTUS signing event in two weeks for the Nursing Home Resident Protection Amendments of 1999 (prohibiting facilities that withdraw from the Medicaid program from transferring their Medicaid residents). DPC is trying to move DoJ and HCFA toward a compromise on the DOJ bill so that it can be announced as part of the signing event. We understand that there will be a meeting next Wednesday between Kevin Thurm, Nancy-Ann and Eric Holder to come to a final compromise on the bill. While it is very likely that the bill will change as a result of these negotiations, we have been asked to comment formally on the crime bill by Monday.

Background. The primary purpose of the bill is to fill a gap in nursing home quality enforcement by giving DOJ the authority to pursue nursing home chains that exhibit a pattern of quality problems. In effect, however, the proposed bill would give DOJ civil, criminal and injunctive authority to go after both individual nursing homes and nursing home chains, increasing the potential for conflict between HCFA and DOJ investigations.

HCFA and DOJ are generally in agreement that DOJ should have criminal

authority to go after nursing home chains and individual nursing homes. They are also in general agreement that DOJ should have civil authority to pursue chains, as HCFA currently does not have the ability or authority to enforce quality standards above the individual facility level. (Note: As an alternative, HCFA is interested in pursuing its own civil authority for nursing home chains, with referral of some cases to DOJ. Thus, DOJ would have all criminal authority and HCFA would have all primary civil authority.)

HCFA is concerned that, in general, the bill would create significant overlap between HCFA's and DOJ's enforcement actions, and that this overlap could -- both optically and in fact -- place DOJ's enforcement efforts ahead of HCFA's quality efforts. HCFA is also concerned with maintaining its authority to refer cases to DOJ or approve any cases that DOJ takes on.

Analysis. We have reviewed the bill and have one general concern:

As a matter of perception, we believe policy officials should consider the danger in housing a nursing home quality provision in the crime bill. Nursing home resident advocates have raised concerns that nursing home enforcement should, in general, be a quality issue, not a crime issue. We recommend pulling the nursing home provision out of the crime bill and sending it up as a stand-alone bill.

We also have several specific concerns with the bill:

The bill would give DOJ the authority to pursue nursing homes without referral from HCFA. HCFA believes this would create significant overlap between HCFA's and DOJ's enforcement actions and could impede HCFA's actions to improve quality. We are also concerned that, because DOJ would exercise its authority through its US Attorney's offices, there would not be a consistent application of quality standards. We recommend that DOJ have the authority to pursue nursing homes only upon referral from HCFA or with the explicit approval of HCFA. We understand that DOJ is willing to concede HCFA approval for injunctions but would only require "advance consultation with HCFA" for civil cases. DOJ would put these approval/consultation provisions in an MOU. We believe these provisions should be part of the actual bill.

The bill would give DOJ civil authority to pursue both nursing home chains and individual facilities. While we agree that DOJ should have civil authority to pursue chains, we believe that HCFA should have primary civil authority in cases involving individual facilities, and we recommend removing the legislative language that gives DOJ civil authority over individual facilities. DOJ would continue to have civil authority through the False Claims Act, upon referral from HCFA. DOJ's proposal would impede HCFA's ability to enforce quality through CMPs, including the use of HCFA's new CMP per-instance CMP authority.

The bill provides no assurance that HCFA will be allowed to continue quality enforcement actions even if DOJ is conducting its own investigation. We believe HCFA should be able to continue its enforcement actions even if DOJ is conducting its own investigation. We

recommend including language stating that "Nothing in this Act shall be construed as depriving the Secretary of Health and Human Services of any authority, including enforcement authorities, under the Social Security Act, related to nursing homes."

HCFA is also interested in seeking its own expanded administrative authorities to enforce quality in chains. We will work with HCFA to develop a legislative proposal, which would ideally be included as part of this bill.

These issues are complex and have a long history. Please let us know if you would like to discuss.

Message Copied

To: \_\_\_\_\_

Barry T. Clendenin/OMB/EOP@EOP

Mark E. Miller/OMB/EOP@EOP

Anne E. Tumlinson/OMB/EOP@EOP

Caroline B. Davis/OMB/EOP@EOP

Yvette Shenouda/OMB/EOP@EOP

Gina C. Mooers/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:31-MAR-1997 09:36:28.00

SUBJECT:: Welfare & labor

TO:Wendy A. Taylor ( CN=Wendy A. Taylor/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

----- Forwarded by Daniel J. Chenok/OMB/EOP on 03/31/97  
09:39 AM -----

No. 61 Monday March 31, 1997

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## REGULATION, ECONOMICS AND LAW

### Welfare

Clinton Backs Worker Protections During Meeting With Labor Leaders  
President Clinton, in a White House meeting with labor leaders March 28, said he believes welfare recipients who must participate in local work programs in order to receive benefits should have the same protections private-sector workers enjoy, such as the minimum wage, overtime pay, safe workplaces, and the right to organize, according to AFL-CIO President John Sweeney.

The question of whether local workfare programs are covered by the Fair Labor Standards Act and other worker protections has been under consideration by officials at the Labor Department, but a White House official familiar with Clinton's meeting said the Labor Department is expected to "come down in favor of it."

The welfare reform law signed by the president in 1996 requires states to operate work programs for welfare recipients who exhaust the two-year limit on cash benefits but have not found jobs. The law requires all states to have welfare reform programs in place by July 1.

"The president expressed his concern and his desire to make sure that these people are considered as workers under the Fair Labor Standards Act and entitled to all the protections of the law," Sweeney told reporters after the meeting.

He said he believed the administration was close to a decision that the

FLSA would apply, although it had not "crossed all the Ts and dotted all the Is. "It sounds positive," he said. "That was our Easter present." Sweeney said he does not believe covering workfare workers with federal labor protections will deter states from providing jobs to welfare recipients.

"I think where states are truly interested in providing jobs and providing gainful employment, that they will be interested in making sure that workers will be protected by the laws that are already there under the Fair Labor Standards Act," he said.

Others from the labor community who attended the meeting were Morton Bahr, president of the Communications Workers of America; Andrew Stern, president of the Service Employees International Union; and Gerald McEntee, president of the Association of Federal, State, County and Municipal Employees.

With the president from the White House were National Economic Council Chairman Gene Sperling; Domestic Policy Council Chairman Bruce Reed; Deputy Chief of Staff John Podesta; and Elena Kagan, deputy assistant to the president for domestic policy.

In March 17 remarks to the Association of Community Organizations for Reform Now, Sperling said the White House believed welfare recipients who participate in local workfare programs should have the same protections afforded to other workers, but that the administration still was sorting out the legal opinion.

-- By Alexis Simendinger

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RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:Alice E. Shuffield ( SHUFFIELD\_A ) (OMB)

CREATION DATE/TIME:27-JUL-1995 14:32:50.54

SUBJECT:Call from General Council on Mining

TO:Ron Cogswell ( COGSWELL\_R ) (OMB)

READ:27-JUL-1995 15:05:08.43

TO:Bruce D. Beard ( BEARD\_B ) (OMB)

READ:27-JUL-1995 14:47:11.07

TEXT:

Elena Kagan called from WH Council's office just a few minutes ago re: the moratorium on patenting mining claims. Evidently the President expressed an interest in the issue, and she is trying to gather information. Just a head's up -- T.J. hasn't yet seen the message.

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME: 3-DEC-1997 14:13:57.00

SUBJECT:: Summary of yesterday's Child Care Deputies Meeting

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

READ:UNKNOWN

TEXT:

----- Forwarded by Daniel J. Chenok/OMB/EOP on 12/03/97  
02:13 PM -----

Laura Oliven Silberfarb  
12/03/97 01:22:27 PM

Record Type: Record

To: Daniel J. Chenok/OMB/EOP

cc:

Subject: Summary of yesterday's Child Care Deputies Meeting

FYI.

----- Forwarded by Laura Oliven Silberfarb/OMB/EOP on  
12/03/97 01:22 PM -----

Jennifer Friedman  
12/03/97 12:57:57 PM  
Record Type: Record

To: Jacob J. Lew/OMB/EOP

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

Subject: Summary of yesterday's Child Care Deputies Meeting

Elena Kagan chaired the meeting. The purpose of the meeting was to review the most recent list of child care options and discuss how to revise the list and prepare principals for the child care meeting scheduled for Friday. Elena posed five questions:

1. Whether to require "benchmarks" for new block grant funds.
2. How to fund an early childhood quality fund.
3. Whether the school-age care option should be presented to principals as two programs (HHS and ED) or one combined program.
4. What options for stay-at-home parents to keep on the list.
5. How the various options should be prioritized.

## Benchmarks for New Block Grant Funds

First, it is important to note that the options paper states that a \$4 billion investment over five years would provide subsidies for approximately 280,000 children. This assumes a \$3 billion state match over 5 years. It also assumes an average cost per slot of \$5000 - this is much higher than the average cost of \$3,224 (from most recent data, FY 1995) or \$4000 (number HHS has been using recently).

The discussion centered on what goal we are trying to meet with new funds. HHS stated that the goal should be to help low-income, working families (i.e., non-TANF families above poverty). However, Jack Lew raised the question as to whether we should target these families when we are not yet meeting the need of those below poverty. HHS raised the concern that overly prescriptive targeting reduces state flexibility and will be ineffective since states can simply supplant their existing efforts. Elena asked everyone to think about how we could require targeting of the block grant, without being too prescriptive, so that it reaches up the income scale. Karl Scholz asked for information on the need for care broken down by age group. Kevin Thurm suggested that HHS take on the task of figuring out what we are already accomplishing and what type of state flexibility already exists.

## Quality and Early Learning

Elena drew a distinction between targeted quality activities, such as consumer education, and health and safety monitoring, and the more vague "Early Childhood Education Fund" proposed by HHS and NEC. Elena expressed the concern that the NEC/HHS idea would become a slush fund. Barbara Chow and Barry White tried several times to raise the question of whether a new early childhood education piece makes sense since we already have such a program (Head Start) and since we're not sure what this program would buy. Elena asked them to hold those questions until the discussion of priorities (which we never got to).

With regard to the quality fund, there was also a discussion about how this should be funded. Options include:

- (1) federal to "local collaboratives" through a competitive grant program;
- (2) federal through states to local "collaboratives"; or
- (3) a combination of federal to state and federal through states to "local collaboratives" (the HHS/NEC proposal).

Elena and Barry both expressed a preference for a federal to local competitive grant program.

Olivia Golden staked out the opposite position, arguing that federal to local is least desirable for three reasons:

1. Administering the program would be difficult and would fall to HHS.
2. States have the ability and expertise to run these programs.
3. Proposing a federal to local competitive grant program could raise problems during the Head Start reauthorization (Head Start is funded federal to local).

Despite her preference for combined local/state funding to "local collaboratives", Olivia was unable to define a "local collaborative".

At this point, Barry then made it clear that he does not think the Early

Childhood Education Fund is a good idea and that it would be better to do targeted licensing and enforcement activities. He also pointed out that (1) we should not move toward a massive developmental program for children; (2) we already reach close to half the nation's infants through WIC ; and (3) America Reads includes \$60 million for "parents as first teachers" type of activities.

The question of whether to fund targeted quality activities or a more general quality fund (in Elena's words, "a block grant for quality") will be raised at the principals meeting.

#### School-Age Care

Elena began by stating that it does not appear to make sense to propose two separate school-age programs, one in HHS and one in ED, and asked the agencies to tell her if she was wrong. She also asked why we couldn't design a program that builds off of ED's 21st Century Community Learning Centers, but includes some community aspect. Terry Peterson responded by describing the benefits of the ED proposal, namely that the facilities already exist. Both HHS and ED then repeated their position that they each have political constituencies to take care of i.e., HHS wants to provide care in non-school settings while ED wants to use the schools. Others at the table asked pointed questions in an attempt to move HHS and ED to a more collaborative approach. Barry asked ED to see how far they could move toward a role for community groups under 21st Century's existing authorization, so that we could avoid opening up another law.

Elena told HHS and ED that it was up to them to decide if the school-age option should be presented to the principals as two separate programs.

#### Working Parents Who Stay-At-Home Temporarily and Non-Working Stay-at-Home Parents

The list of options to present at the principals meeting was slimmed down. FMLA expansion options with nonbudgetary impacts can be pursued at a later date, and DCTC reform (to cover certain expenses for stay-at-home parents) was dropped, much to Treasury's relief. The two remaining options discussed were:

1. Providing paid parental leave coverage for a limited amount of time for working parents below a set income level, currently priced at \$1 billion per year. Anne Lewis expressed a preference for this policy since it could result in behavior changes. Barry also thought this policy was "not a bad idea" and pointed out that its cost can be scaled down by providing fewer weeks of benefits or lowering the income cut-off. Mary Bourdette stated that this policy does not deal with the political problem of non-working parents who stay at home.
2. Providing a larger child credit (around \$250) for families with young children. Anne Lewis pointed out that this is a symbolic gesture, and will not do anything to really help families since it is not enough to effect behavioral changes.

In addition to these options, Treasury was asked to think about doing a paid leave option through the tax code.

## Questions for Principals Meeting

The Principals meeting will cover the following questions:

1. What should the quality/early education piece look like?
  - a) a general quality fund; or
  - b) more focused initiatives; and
2. How should the various options be prioritized? What could be cut?

Elena expressed the hope that question of how to present the school-age option will be resolved prior to the principals meeting.

## Message Copied

To: \_\_\_\_\_

Barbara Chow/WHO/EOP

Barry White/OMB/EOP

Keith J. Fontenot/OMB/EOP

Janet Himler/OMB/EOP

Wayne Upshaw/OMB/EOP

Larry R. Matlack/OMB/EOP

Jeffrey A. Farkas/OMB/EOP

Laura Oliven Silberfarb/OMB/EOP

Leslie S. Mustain/OMB/EOP

Debra J. Bond/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Melany Nakagiri ( CN=Melany Nakagiri/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:20-OCT-1997 15:50:34.00

SUBJECT:: FYI - Summary of DPC meeting with Civil Rights Agencies, 10/17/97

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Elena Kagan of DPC convened a meeting last Friday (10/17) with the civil rights enforcement agencies in HHS, Labor, and Education, to discuss: 1) how to improve and enhance civil rights enforcement; 2) ideas agencies might have for possible initiatives for FY 1999; and 3) how the Administration can help these agencies with Congressional appropriators (a concern being that the Budget has requested more money than Congress has been appropriating for these offices in recent years). The DPC is searching for civil rights initiatives to include in the President ,s Initiative on Race and will probably ask for OMB ,s assistance in any initiatives they develop. Attendees included Dennis Hayashi from HHS, Norma Cantu from Ed, and Shirley Wilcher from Labor.

Overall, the agency representatives felt that the significant reduction in resources over the past couple of years has severely hampered civil rights agencies' ability to improve data collection activities and provide more technical assistance and outreach to states and entities who receive federal funding (e.g. hospitals, schools) to prevent discrimination from occurring in the first place. All of the agency representatives agreed that better data collection and the ability to provide more technical assistance were two critical areas that would help improve efficiency among civil rights agencies. The agency representatives also felt that coordination among the agencies could be improved if the Dept. of Justice played a more proactive coordinating role and helped them in areas such as developing litigation strategies and providing resources for non-English speaking populations. One agency even suggested having a White House civil rights contact who could touch base with these agencies every so often and provide help/advice for these agencies.

New Initiatives: Dennis Hayashi mentioned that HHS is working on a survey to determine where racial disparities exist; developing a test pilot with the Dept. of Justice to see if there is any discrimination on the basis of HIV status; and working on improving affirmative action in medical schools

since many of these doctors are likely to go back and serve their communities. Labor is working on expanding ADR (alternative dispute resolution) in Title VI cases and carrying out more technical assistance training. Education is reworking a survey for elementary and secondary education and trying to look at ways to fast-track affirmative action complaints.

In terms of what it would take to make the Congressional appropriators look upon civil rights agencies favorably, most of the agency representatives felt that it would be difficult to do anything given the current political climate, although one agency mentioned that Congress would like to see a reduced number of affirmative action complaints.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Marc Garufi ( CN=Marc Garufi/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 11-MAR-1999 10:00:39.00

SUBJECT:: Re: Genetic Info: Mtg Cancelled/UPDATE

TO: Katherine Kirchgraber ( CN=Katherine Kirchgraber/OU=OMB/O=EOP@EOP [ OMB ] )

READ: UNKNOWN

TEXT:

Woorrddddd!

Katherine Kirchgraber

03/11/99 09:30:16 AM

Record Type: Record

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

cc: Gina C. Mooers/OMB/EOP@EOP

Subject: Genetic Info: Mtg Cancelled/UPDATE

----- Forwarded by Katherine Kirchgraber/OMB/EOP on  
03/11/99 09:29 AM -----

MayaBe@aol.com

03/11/99 12:32:58 AM

Record Type: Record

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

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

Subject: Genetic Info: Mtg Cancelled/UPDATE

Note: Some recipients have been dropped due to syntax errors.  
Please refer to the "\$AdditionalHeaders" item for the complete headers.

Daniel, Michael, et al --

I'm sending you this update from home after I've returned from class so  
you'll

have it first thing in the morning.

Short version:

- The meeting originally scheduled for tomorrow morning at 10am is CANCELLED.
- The VP event rescheduled to Tuesday, March 16th, will likely be postponed again.
- Chris Jennings is preparing a decision memo to the President seeking guidance on the direction of the Executive Order, including whether to scrap the idea altogether.
- If we proceed, the Director will be asked to read the EO and sign off when he gets it.
- Please let the staff know if there is anything else we can do for you.

Longer version:

There was a policy level meeting earlier this evening which broke up at about 7:45pm.

Mac Reed left me a message at about 5:45 to tell me the meeting was already in progress, and I managed to get there by 6:10. I attempted to find most of you, but I was unsuccessful.

The meeting was attended by Chris Jennings, Sarah Bianchi, Elena Kagan, Lisa Brown, Gary Claxton (HHS), Nancy Siegel and another woman from EEOC, plus others from DOJ/OLC, CIA, Labor, and others I didn't recognize (Mac has the list).

A new draft of the EO was circulated, and most of the meeting was spent discussing an exemption requested by the CIA. CIA wants to be able to collect and use family medical histories of their employees as a component of their decisions on job assignments overseas. The group did not come to consensus.

By the end, some were concerned that if the exemption would have to be drafted very broadly to satisfy CIA's concerns, the Administration might be better off scrapping the idea altogether.

The meeting resulted in agreement that a memo to the President would be required to make a decision about the content of the EO. I got the impression Jennings and Kagan would be drafting it. CIA is drafting exemption language. The choices presented to the President will include: Adopting the EO without an exemption, Adopting the EO with CIA's exemption, or no Executive Order.

Mac is going to poll the agencies to find out which way they would come down

given those choices, and, in particular, if the choices are either an EO with a potentially broad exemption, or no EO, which way they would like to go.

It was not clear to me that Mac would be presenting that question to the Director.

Once we get a decision from the President, if the EO is to go forward, it would take at least a day or two to obtain the proper clearances, and get it signed. Therefore, the event is going to be postponed. However, Jennings and Kagan agreed to call Jack and Sylvia (and everyone else necessary to grease the skids) to request that they read and sign off as soon as they receive it.

Please let me know if there is any action left for the staff to follow up on or if there is any further information or assistance the staff can provide.

--- Maya

Message Sent

To: \_\_\_\_\_  
daniel.mendelson@omb.gov  
Michael Deich/OMB/EOP  
Alan B. Rhinesmith/OMB/EOP  
Bruce D. Long/OMB/EOP  
Lisa B. Fairhall/OMB/EOP  
Susan M. Carr/OMB/EOP  
Daniel LaPlaca/OMB/EOP  
Katherine Kirchgraber/OMB/EOP

Message Copied

To: \_\_\_\_\_  
Joshua Gotbaum/OMB/EOP  
Donald R. Arbuckle/OMB/EOP  
Jasmeet K. Sehra/OMB/EOP  
Dawn V. Woollen/OMB/EOP  
Ingrid M. Schroeder/OMB/EOP  
wartel@lmgate2.eop.gov  
Maya A. Bernstein/OMB/EOP

Message Sent

To: \_\_\_\_\_  
Daniel N. Mendelson/OMB/EOP@EOP  
Mark E. Miller/OMB/EOP@EOP  
Barry T. Clendenin/OMB/EOP@EOP  
Richard J. Turman/OMB/EOP@EOP  
Marc Garufi/OMB/EOP@EOP





RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Leslie S. Mustain ( CN=Leslie S. Mustain/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 6-JUN-1997 15:39:39.00

SUBJECT:: Title IX Meeting

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:E. Irene James ( CN=E. Irene James/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Kathryn B. Stack ( CN=Kathryn B. Stack/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Kathy and I attended yesterday's meeting on Title IX, convened by Jennifer Klein (OFL/DPC). Attending were: Mac Reed, Nicole Rabner (OFL/DPC), Bill Marshall (WH Counsel), Kris Balderston (WH Cabinet), Elena Kagan (WH DPC), Judith Winston (ED/OGC), George Lyon (HHS/OGC), Andy Hyman (HHS/OGC), Rosemary Hart (DOJ/OGC), and Lisa Bressman (DOJ/OLC) --- as you can see, lots of lawyers. (I was a little surprised there was no one there from ED OCR.)

There will be an event to celebrate the 25th anniversary of Title IX (which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance) on June 17, 11:00 am in the OEOB, with the POTUS. However, people are concerned that a "party" is not enough -- that something more concrete needs to come from this event, like a Directive or an EO. There were two proposed E.O. ideas:

1. Require agencies to enforce Title IX on Federally-assisted programs. Although this has actually been required for 25 years, no one does it. Only 4 other agencies have regs, so even if an agency wanted to do it, they couldn't.
2. Prohibit discrimination based on sex in Federally-conducted (as opposed to Federally assisted) Education programs (across all agencies). This would mean that DOD and BIA schools, for example, would have to enforce Title IX.

ED appears to think that option 1 is okay, as long as no one actually issues regs -- they can just be required to enforce through guidance or referral to ED. This got a little murky. ED hated option 2, if it required issuing an EO by June 17, since we don't have a clear

understanding of how it would affect other agencies, and whether it would require regs. The big problem is that ED and the constituent groups are afraid to open up Title IX regs, draw Congressional attention to Title IX, and then have the Hill start tinkering (destroying) the legislation. The equity in athletics part is NOT popular with a lot of Hill folks.

So basically, the dilemma is: Regs are dangerous and anything less, like guidance or a task force, may be perceived as just window dressing. Then there was a long discussion about whether Marcia (Kathy and I have no idea who this is) agreed there should be regs or not.

After much more discussion, it was agreed that

1. Someone would contact Marcia and ask her whether or not we should have regs.
2. As a variation of Option 2, we would draft a directive (Not an EO) that would require all agencies to apply Title IX to their Federally-conducted Education programs -- the presumption being that all these agencies will then adopt Title IX unless they come back in the time period stated in the Directive and show why it shouldn't be applicable.

It was then mentioned that sex discrimination alone didn't look quite right, so they added on racial discrimination into the proposed directive as well. (Unfortunately, when asked by a brave soul if there was actually a problem that had arisen in these areas in Federally-conducted Education programs, no one had an answer. So, there is no real problem description, just a proposed "solution.")

Judith Winston agreed to draft the proposed Directive and have it ready for Elena and Jennifer this afternoon. They plan to send an early draft to DOD and BIA, the two agencies they expect it will affect the most. (No one had any idea what impact this policy would have on administrative workload and FTE.) Then a small subgroup will work to perfect it.

It truly was an odd meeting -- let me know if you have questions and I will try (with the aid of my notes) to answer them ...

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Paul W. Baker ( CN=Paul W. Baker/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:23-JAN-1998 13:26:07.00

SUBJECT:: Partial-Birth Abortion Ban Act of 1997

TO:regsap ( regsap @ www0.whitehouse.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Paul W. Baker/OMB/EOP on 01/23/98

01:25 PM -----

Bill No: HR929 (Click for Introduced Bill) ==>

Title: Partial-Birth Abortion Ban Act of 1997

Date Sent: 03/19/97

To Whom: HOUSE

Type: Non-Appropriations SAP

+-----+

March  
19, 1997  
(House)

H.R. 929 - Partial-Birth Abortion Ban Act of 1997  
(Rep. Canady and 181 cosponsors)

H.R. 929 contains the same serious flaws as H.R. 1833, a virtually identical bill that was passed during the 104th Congress and vetoed by the President on April 10, 1996.

The President will veto H.R. 929 for the reasons he expressed in his veto message of April 10, 1996, which is attached.

\* \* \* \* \*

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Pellicci) in consultation with Associate Director Min.

OMB/LA Clearance: Nancy Ann (OMB), Elena Kagan (DPC), Peter Jacoby/John Hilley (WHLA), Sylvia Matthews (COS).

H.R. 929

As reported by the House Judiciary Committee on March 12th, H.R. 929 would ban under most circumstances a certain type of late-term abortion procedure, which the bill calls a "partial-birth abortion." H.R. 929 defines the term "partial-birth abortion" to mean any "abortion in which

the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

H.R. 929 would allow a "partial-birth abortion" in cases where it is needed to "save the life of a mother whose life is endangered by a physical disorder, illness, or injury . . . ." This exception, however, is permitted only when no other procedure would suffice. This bill does not include an exception for cases in which the woman's health is threatened.

H.R. 929 would subject doctors and others who perform the procedure to criminal fines and/or up to two years of imprisonment. The bill would exempt women who obtain such abortions from any criminal penalties.

Because of the criminal fines provisions, H.R. 929 is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimate of the criminal fine receipts under this bill is zero.

#### Congressional Action on H.R. 1833

Last year the House passed H.R. 1833 by a vote of 288-139 and the Senate passed the bill by a vote of 54-44. The House voted to override the President's veto by a vote of 285-137; the Senate failed to override the President's action by a vote of 57-41.

LEGISLATIVE REFERENCE DIVISION DRAFT

3/18/97 - 3:45 P.M.

\* \* \*

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:Shelley N. Fidler ( FIDLER\_S ) (CEQ)

CREATION DATE/TIME:19-MAR-1996 08:58:38.86

SUBJECT:RE: headwaters

TO:Kathleen A. McGinty ( MCGINTY\_K ) (CEQ)

READ:19-MAR-1996 10:04:22.57

TEXT:

I suggest a heart to heart with John on this. Frankly, he can't do it all because it needs other agencies and WH signoff therefore it would be better if he'd conduct himself from the start with others rather than as the lone ranger.

In addition, as we know, he's a risk taker of the first order and this issue contains risks. I suggest that he might not want Elisabeth because she's low level - but either you or I can debrief him on the California meetings parts of what he's doing and ask him to have meetings on this here.

Logistically, that makes it hard - and I'm not clear on the time frame here. Another brilliant idea I just had is to have Elena Kagan on this case with him. I like that one - what about you. Status and dependability.

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:11-MAR-1997 17:33:31.00

SUBJECT:: Cabinet Affairs Briefing and Action Items

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Melissa Y. Cook ( CN=Melissa Y. Cook/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Please do not forward or copy. Thanks.

----- Forwarded by Janet R. Forsgren/OMB/EOP on 03/11/97

05:33 PM -----

James C. Murr

03/11/97 04:48:19 PM

Record Type: Record

To: Janet R. Forsgren/OMB/EOP, James J. Jukes/OMB/EOP, E. Holly  
Fitter/OMB/EOP

cc:

Subject: Cabinet Affairs Briefing and Action Items

----- Forwarded by James C. Murr/OMB/EOP on 03/11/97

04:49 PM -----

From: Jill M. Blickstein on 03/11/97 04:29:10 PM

Record Type: Record

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

cc:

Subject: Cabinet Affairs Briefing and Action Items

Please note the GPRA and user fee items below.

----- Forwarded by Jill M. Blickstein/OMB/EOP on 03/11/97

04:30 PM -----

William A. Halter  
03/11/97 11:01:37 AM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Cabinet Affairs Briefing and Action Items

Information and action items from this morning ,s Cabinet Affairs  
breakfast:

Upcoming POTUS events:

today -- National Press Club remarks on campaign reform and free TV  
time for candidates; Announcement of the Economic Development Corporation  
for DC

Wednesday 3/12 -- ABC Radio Town Hall with children on drugs and  
announcement of date of early learning conference

Thursday 3/13 -- Speech to North Carolina State Legislature on teaching  
and education

Friday 3/14 -- School construction event in Florida

Saturday 3/15 -- Gridiron Dinner

Monday 3/17 -- Meeting with Irish Prime Minister Bruton and meeting with  
Russian Foreign Minister Primakov

Tuesday 3/18 -- Meeting with King Hussein and depart for Summit in  
Helsinki, Finland

Wednesday 3/19 and Thursday 3/20 -- Summit in Helsinki, Finland

OMB Spring Assessment and User Fees

John Koskinen briefed the agency chiefs of staff on OMB ,s plans for  
Spring Assessment and how it will try to encompass GPRA implementation,  
the initiatives of the NPR, and the initiatives that agencies have  
proposed in a recent memo to the Chief of Staff. John also reported on  
recent meetings with Congressional staff and with legislative affairs and  
other staff of the agencies that are implementing GPRA.

On user fees, John noted that OMB and the White House are strongly  
supporting the user fee proposals in the Administration ,s budget in  
interactions with the Hill. John noted that a united front on the user  
fee proposals was important because the loss of these proposals would  
leave only difficult options to meet the budgetary caps. VA ,s chief of  
staff noted that they were meeting stiff Hill resistance and that they  
would submit to OMB the names of Members to be contacted.

Welfare to Work

Elaine Kamarck reported on activities to increase federal agency hiring of  
welfare recipients. Elaine noted that agencies may need relief from FTE  
limits (and John Koskinen indicated that this would be forthcoming),  
suggested that agencies should use streamlined hiring practices to push  
this initiative forward, and asked that agencies submit the names of their  
primary contacts on this initiative to Cabinet Affairs. In response to a  
question from Energy, she indicated that contractors should also be encoura  
ged to hire welfare recipients and John Koskinen noted the significant

number of contractors providing services to the federal government.

#### D.C. Initiative

Carol Thompson-Cole summarized the recent Administration efforts to assist the District, reviewed the components of the Economic Development Corporation to be announced today, and encouraged agencies to follow up with events highlighting their own efforts to help the District.

#### Early Learning Conference

Elena Kagan of the DPC reviewed plans for the Early Learning Conference. The date for the conference (4/17) will be announced at an event tomorrow. Agencies have been asked to submit a list of their current programs and new initiatives that affect 0 to 3 year-old children and to name a person to participate in an interagency task force to prepare for the conference. (Ken Apfel and Nancy Ann Min ,s staff have been involved in this)

#### Gleaning

USDA ,s chief of staff reviewed an initiative to prevent the waste of food in federal facilities and their efforts to work with local non-profits like the DC Central Kitchen and the Capital Area Food Bank. Agencies were asked to provide a contact to USDA to help coordinate an effort across the federal government. (Ken Apfel has suggested an OMB staffer to be our contact).

#### Message Sent

To: \_\_\_\_\_

Gordon Adams/OMB/EOP  
Kenneth S. Apfel/OMB/EOP  
Barry B. Anderson/OMB/EOP  
Jill M. Blickstein/OMB/EOP  
Rebecca R. Culberson/OMB/EOP  
Robert G. Damus/OMB/EOP  
G. E. DeSeve/OMB/EOP  
T J. Glauthier/OMB/EOP  
Lawrence J. Haas/OMB/EOP  
William A. Halter/OMB/EOP  
Sally Katzen/OMB/EOP  
Steven J. Kelman/OMB/EOP  
Charles E. Kieffer/OMB/EOP  
Charles Konigsberg/OMB/EOP  
John A. Koskinen/OMB/EOP  
Lisa M. Kountoupes/OMB/EOP  
Jacob J. Lew/OMB/EOP  
Nancy A. Min/OMB/EOP  
Joseph J. Minarik/OMB/EOP  
Franklin D. Raines/OMB/EOP  
Stephen A. Weigler/OMB/EOP

Message Sent

To: \_\_\_\_\_

Barry T. Clendenin/OMB/EOP  
Ronald M. Cogswell/OMB/EOP  
Bruce D. Long/OMB/EOP  
Kathleen Peroff/OMB/EOP  
Alan B. Rhinesmith/OMB/EOP  
Kenneth L. Schwartz/OMB/EOP  
Barry White/OMB/EOP  
Phebe N. Vickers/OMB/EOP  
Philip A. DuSault/OMB/EOP  
James C. Murr/OMB/EOP  
Richard P. Emery Jr./OMB/EOP  
Philip R. Dame/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:22-SEP-1997 18:44:03.00

SUBJECT:: Meeting with DPC/NEC on Civil Rights in the FY 1999 Budget

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

READ:UNKNOWN

CC:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

fyi --

----- Forwarded by Barry T. Clendenin/OMB/EOP on 09/22/97

06:43 PM -----

Susan M. Carr

09/22/97 05:31:37 PM

Record Type: Record

To: Michael Deich/OMB/EOP@EOP

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

Subject: Meeting with DPC/NEC on Civil Rights in the FY 1999 Budget

Alan Rhinesmith and I met today with Elena Kagan, Jose Cerda, Tom Freedman, and Emil Parker to discuss our civil rights crosscut for the FY 1999 Budget. They were supportive of our desire for a broad crosscut of enforcement and non-enforcement programs and were interested in including other initiatives as well, such as urban education (including an education opportunity zones proposal and possibly the Daschle-Gephardt school construction proposal), housing mobility counseling, work being done by Chris Jennings on health disparities among races, etc. Following up on the August meeting, Elena will be scheduling a meeting for Friday with the civil rights agencies to discuss their ideas for initiatives in FY 1999 and we plan to attend.

Message Copied

To: \_\_\_\_\_

Theodore Wartell/OMB/EOP@EOP

Patricia E. Romani/OMB/EOP@EOP

Barry White/OMB/EOP@EOP  
Barry T. Clendenin/OMB/EOP@EOP  
Francis S. Redburn/OMB/EOP@EOP  
Kenneth L. Schwartz/OMB/EOP@EOP  
Alan B. Rhinesmith/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Susan M. Carr ( CN=Susan M. Carr/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 15-OCT-1997 16:17:56.00

SUBJECT:: 10/15/97 DPC Outreach Meeting With Civil Rights Groups

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

READ: UNKNOWN

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

READ: UNKNOWN

CC: Theodore Wartell ( CN=Theodore Wartell/OU=OMB/O=EOP@EOP [ OMB ] )

READ: UNKNOWN

CC: Patricia E. Romani ( CN=Patricia E. Romani/OU=OMB/O=EOP@EOP [ OMB ] )

READ: UNKNOWN

CC: Michael Deich ( CN=Michael Deich/OU=OMB/O=EOP@EOP [ OMB ] )

READ: UNKNOWN

BCC: Susan M. Carr ( CN=Susan M. Carr/OU=OMB/O=EOP@EOP [ OMB ] )

READ: UNKNOWN

TEXT:

Following are notes from the meeting.

Elena Kagan of the DPC convened a civil rights outreach meeting today. Attendees included: Wade Henderson, Leadership Conference on Civil Rights; Karen Naraski, Nat'l Assoc. Pacific Legal Consortium; Bill Taylor, Citizens Commission on Civil Rights; Verna Williams, National Women's Law Center; Georgina Verdugo, Mexican Am Legal Defense Fund; and Juan Figueroa, Puerto Rico Legal Defense Fund.

The participants made the following recommendations:

Coordinated approach to civil rights policies with a full-time senior person in the White House responsible for civil rights issues. This approach could build on the August, 1994, Executive Order which established a White House role for coordination of civil rights policies. They suggested that a coordinated approach could lead to:

-- Identifying civil rights priorities and focusing resources incrementally in key areas. This could aide the Assistant Secretaries in defending their budgets during the appropriations process;

-- Strategic planning for Presidential appointments, including serious attention to Chairman Casellas replacement and to other civil rights nominations;

-- Strategic attention to the timing of major initiatives, e.g.,

HUD ,s fair housing enforcement announcement could have been better timed to Eva Plaza ,s confirmation;

-- Administration support of civil rights agencies , work, e.g. Norma Cantu at Education ,s OCR needs the backing of the White House, DOJ ,s Civil Rights Division, etc.;

-- Administration support for agency civil rights offices to be at the table where funding and policy decisions are made, not several layers down in the bureaucracy;

-- Focusing the need for Cabinet Secretaries to play a more visible role in advancing the Administration ,s civil rights agenda;

-- Strategic attention to getting more Federal judges on the bench.

Key battles to focus on now include: the ISTEA reauthorization; the Houston initiative on the ballot November 4th; and OMB ,s resolution of the multi-racial category issue. On this latter point, the group is extremely concerned that OMB plans to announce today its findings on adding a multi-racial category and has not given proper attention to the research published on the potential impact on Federal civil rights programs of having a multi-racial category.

Address the problem of discrimination by and in Federal agencies. Praise for Glickman ,s (Ag) and Cisneros , (HUD) courageous visibility in fighting discrimination by the Federal agencies. Consider asking all Federal agencies to review their employment statistics and make the data public, as Commerce has done.

More Federal agency compliance reviews of Federal programs and overall better enforcement of Title VI, including greater consideration to the benefits of withholding Federal funds from grantees where discriminatory practices are identified.

Consider proposals for statutory changes to the makeup of the Civil Rights Commission, and strengthen its ability to do careful and credible research.

Address the need for better data on civil rights programs. OMB ,s civil rights role was mentioned as one previous source of Administration information on civil rights programs. [We could consider recommending to the Director resurrecting the civil rights analysis, formerly Special Analysis J, to include in the President's Budget for FY 1999. The last time this analysis was presented was FY 1989.]

Consideration should be given to furthering the impact of the President ,s Little Rock speech and what that means for Federal programs.

Increased enforcement of Title IX.

A more proactive role for DOJ ,s Civil Rights Division.

Elena ended the meeting by asking the groups to provide her with their

ideas for:

- What Federal Departments can do to better address discrimination by the Federal government
- Ideas for data collection, including concerns of and alternatives for the multi-racial category
- Initiatives for agencies to better respond to complaints
- Ideas for what the civil rights offices should be doing in addition to responding to complaints
- Ideas for stronger Title VI enforcement

Following the meeting, Michael asked me to tell Elena & Co. that I need initial proposals by November 4th (the date of the civil rights PAD review) if they are to be incorporated into the Director's crosscut, which I will do.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:24-SEP-1998 12:26:33.00

SUBJECT:: Re: Heads Up on Country of Origin Labeling

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

READ:UNKNOWN

TEXT:

Thanks for this update --

Jim R. Esquea

09/24/98 11:00:14 AM

Record Type: Record

To: Daniel N. Mendelson/OMB/EOP@EOP, Barry T. Clendenin/OMB/EOP@EOP

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

Subject: Heads Up on Country of Origin Labeling

See attached. Sen. Tim Johnson is floating compromise language to USDA on country of origin labeling. I spoke to DPC staffers and the compromise language involves the labeling of beef and lamb. Only cut meats would need the country of origin labeling - - not hamburger meat. USDA wants to say the compromise language is OK. DPC advised that the subtle nod of approval for this language would come from Elena Kagan.

No discussions thus far on a position on country of origin labels for imported fruits and vegetables. Ag conference will probably happen this Friday/Saturday.

----- Forwarded by Jim R. Esquea/OMB/EOP on 09/24/98  
10:38 AM -----

Wendy A. Taylor 09/24/98 10:20:00 AM

Record Type: Record

To: Jim R. Esquea/OMB/EOP@EOP, Dana L. Flower Lake/OMB/EOP@EOP, Margaret A. Malanoski/OMB/EOP@EOP

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

Subject: Heads Up on Country of Origin Labeling

I received a call from DPC this morning giving us a heads up that the Administration may be sending a subtle nod of approval today on the country of origin labeling provision. Glickman has been talking to Tim

Johnson about some compromise language which Glickman believes may be reasonable. The language has been run by USTR and they are comfortable with it. Glickman will likely say yes to Johnson this afternoon.

Message Copied

To: \_\_\_\_\_

Donald R. Arbuckle/OMB/EOP@EOP

Virginia A. Huth/OMB/EOP@EOP

Lisa M. Jones/OMB/EOP@EOP

Richard J. Turman/OMB/EOP@EOP

Mark A. Weatherly/OMB/EOP@EOP

Message Copied

To: \_\_\_\_\_

Richard J. Turman/OMB/EOP@EOP

Amandeep K. Matharu/OMB/EOP@EOP

Gina C. Mooers/OMB/EOP@EOP

Marc Garufi/OMB/EOP@EOP

Wendy A. Taylor/OMB/EOP@EOP

Margaret A. Malanoski/OMB/EOP@EOP

Dana L. Flower Lake/OMB/EOP@EOP

Ruth D. Saunders/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Lourdes M. Lamela ( CN=Lourdes M. Lamela/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:29-JUL-1998 17:47:07.00

SUBJECT:: Re: Medicaid Tobacco Legal Issues Meeting

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

READ:UNKNOWN

CC:Frank J. Seidl III ( CN=Frank J. Seidl III/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

In response to your question:

-Florida: specifies that the funds received from the tobacco companies constitute reimbursement for Medicaid expenses incurred by the state of Florida in addition to other uses

-Texas: Specifies that "all other payments" (after reimbursement for public health expenditures for the State of Texas and the State's Employees' Health Insurance Program and Charity Care programs) also constitutes reimbursement of Medicaid expenses

-Minnesota: Does not specify Medicaid, language is as follows:

"..including, without limitation, claims for equitable and injunctive relief, claims for health care expenditures and claims for punitive damages,...

-Mississippi: Memorandum of Understanding does not actually specify Medicaid, nor any other reimbursement issue. Language states:

"the Settlement Agreement will provide for the resolution of all past and future claims of the type described above against all defendants"

However, the "past and future claims" are not really described "above"

Richard J. Turman  
07/29/98 01:59:30 AM

Record Type: Record

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

cc:

Subject: Medicaid Tobacco Legal Issues Meeting

Check this out. LL/FS -- what do you know about item 2, especially, given you reading of the settlements -- did they specify one way or the other?

----- Forwarded by Richard J. Turman/OMB/EOP on 07/29/98

02:03 AM -----

Wm G. White

07/28/98 05:20:28 PM

Record Type: Record

To: Barry T. Clendenin/OMB/EOP@EOP, Mark E. Miller/OMB/EOP@EOP, Anne E. Tumlinson/OMB/EOP@EOP

cc: Cynthia M. Smith/OMB/EOP@EOP, Richard J. Turman/OMB/EOP@EOP

Subject: Medicaid Tobacco Legal Issues Meeting

I attended Monday's Medicaid tobacco legal issues meeting called by the DPC. In attendance were Bruce Reed, Bruce Lindsey, Elena Kagan, Cynthia Rice, Cynthia Daillard, Josh, Dan, David Beier (OVP), Kathy King (HCFA) and various other DOJ and HHS staff.

Bruce Reed began the meeting by saying that several state AGs have been meeting with the tobacco industry to discuss the possibility of a state-only national settlement. [Such a settlement would theoretically not require Federal legislation to gain approval.] Given this prospect and the defeat of Federal legislation, the Administration needed to consider options on whether and how to recoup the Federal share of such lawsuits.

In summary, Bruce Reed and Elena Kagan seemed unhappy with HCFA and DOJ preparation for the meeting. They asked several questions of HCFA/DOJ, most of which were not fully answered. Elena called for another meeting this Friday to discuss the unanswered questions. Provided below are a list of the issues that were discussed at this meeting and to be revisited more fully at the next meeting.

Question #1: Bruce Reed asked if the Administration would need legislation to recoup the Federal share of State settlement proceeds. Or would there need to be some sort of Federal-State partnership agreement?

This was one of the few questions that HCFA staff could answer with a high degree of certainty. Kathy King and others noted that the Medicaid statute authorizes HCFA to recoup the proceeds of individual state lawsuits/settlements. Therefore, legislation would not be necessary for the Federal government to recoup their share of the state proceeds.

Question #2: What happens if some or all of the States enter into an agreement with the tobacco industry whereby the terms of the settlement

state that the tobacco industry is reimbursing the states for STATE-ONLY (i.e. non-Medicaid) expenditures related to the health effects of tobacco."

In other words, the terms of the agreement would not mention Medicaid, but other State-only programs (e.g. State employee health costs or State-only health programs. Under this scenario, would HCFA have leverage under the statute to challenge or scrutinize such agreements and try to prove that all or a portion of these costs are really Medicaid-related? (Bruce and Elena thought that it was possible that the 10-or-so states that were not part of the 6/20/97 AG settlement could enter into such an agreement.)

HCFA was clearly caught off guard by this question. They said that they have never encountered such a situation of this likely magnitude and therefore needed to check with their lawyers.

Question #3: In the few cases where HCFA has actually recouped money from the states (e.g. with the Liggett tobacco settlement cases), how much scrutiny did HCFA give to the State's presentation of what was available for Federal recoupment?

Kathy thought that HCFA had previously not given much scrutiny. They usually just accept whatever information the States provide in standard reporting documents. She noted that in the scenario above (whereby great sums of money would be at stake), the agency would likely want to scrutinize the claims/settlements much more closely. Again, however, HCFA needed to consult more closely with their lawyers.

Question #4: What happens if some or all of the States enter into an agreement with the tobacco industry whereby the terms of the settlement state that the tobacco industry is reimbursing the states for the STATE-PORION ONLY of MEDICAID expenditures related to the health effects of tobacco." (Apparently Mike Moore the AG of Mississippi has been making this claim.)

The DOJ staff felt that these types of claims would not hold water in court. He felt that the Medicaid statute directs the States to seek both the Federal and State share of such lawsuits. Both HCFA/DOJ wanted to look into this issue more fully however.

Question #5: How vulnerable is the Federal government in this situation to "Qui Tamp" lawsuits whereby private citizens bring lawsuits in court on behalf of the Federal government to collect funds legally owed to the Federal government? In other words, what happens if the HCFA does not recoup the Federal share of the individual state settlements? Could private citizens bring these suits against the states to collect the money?

DOJ staff did not believe that this would be much of a threat. Evidently, private citizens can only usually bring about these type of suits if they are privileged to private papers which directly show Federal government neglect in not enforcing law or collecting funds. For example, the State would have to notify the Federal government in writing that a set percentage of the settlement funds were available for recoupment. If the Federal government then did not act to collect these

funds, and a private citizen were privy to such information, he/she could then introduce a "qui tam" suit. DOJ however, wanted to check this issue out more fully with their experts on this subject.

Question #6: Chris Jennings asked Bruce Reed and Elena whether the Administration should be elevating its rhetoric with regard to the four states (e.g. Texas, Florida, Miss, and Minnesota) that have agreed to settlements with the tobacco industry. In other words, should the Administration be making statements in the media that we intend to collect the Federal share of these state proceeds? If we don't, the Administration's possible eventual position of collecting all of these proceeds in the future could be undermined. (Chris and others noted however that the Administration could look inconsistent for making such rumblings given the NY provider-tax situation.)

Bruce/Elena seemed to shy away from such a suggestion. Bruce felt that the President's letter of last year to the Governors that said both (1) HCFA is authorized under the law to collect the Federal share of such law suits and (2) the Administration hopes to resolve this situation through national legislation, was sufficient for now.

Josh also asked the DOJ staff if "we have done our homework" on the underpinnings of the 4 state settlements. Are we certain that they are based on Medicaid expenditures, which would allow the Federal government to make such claims. DOJ staff said that they needed to look into this more fully.

NEXT STEPS: At the end meeting, Elena said that "we obviously have a lot of homework to do." She called for another meeting to discuss these issues more fully this Friday. Both DOJ and HCFA seemed concerned about answering all of these questions by Friday. Kathy King asked if they could have until next week given that most of the senior Medicaid people at HCFA were away on retreat and would not be back until Wednesday or Thursday of this week. Elena (who was not very happy) said "well that should give you two full days to do the assignment then." She said come back with whatever information you have on Friday.

Message Sent

To: \_\_\_\_\_  
Lourdes M. Lamela/OMB/EOP@EOP  
frank j. seidl III  
Jim R. Esquea/OMB/EOP@EOP  
Marc Garufi/OMB/EOP@EOP  
Patrick G. Locke/OMB/EOP@EOP  
Melany Nakagiri/OMB/EOP@EOP  
Barbara A. Menard/OMB/EOP@EOP



RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Wm G. White ( CN=Wm G. White/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:28-JUL-1998 17:21:32.00

SUBJECT:: Medicaid Tobacco Legal Issues Meeting

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Cynthia M. Smith ( CN=Cynthia M. Smith/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

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RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jim R. Esquea ( CN=Jim R. Esquea/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 1-JUL-1997 18:35:59.00

SUBJECT:: Tobacco Regulatory Issues Meeting

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

READ:UNKNOWN

TO:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

TO:Nancy A. Min ( CN=Nancy A. Min/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Wendy A. Taylor ( CN=Wendy A. Taylor/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC:Wm G. White ( CN=Wm G. White/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Yesterday afternoon I attended two working meetings of the Regulatory Issues/Tobacco Settlement Review Group. The meetings were chaired by Elena Kagan with Elizabeth Drye. Mitch Zeller and Bill Schultz from FDA/HHS; Jerry Mande from OSTP; Don Arbuckle and Mike Fitzpatrick from OIRA; Neal Wolin from Treasury; and representatives from Department of Justice, Labor, and the Vice President's Office were all in attendance for the majority of both meetings.

The first meeting dealt with the settlement provisions pertaining to Advertising/Access/Enforcement. The meeting ran about one hour with a majority of the time spent listening to Bill Schultz walk through the relevant sections of the settlement and how these sections are consistent with or different from the FDA regulations on tobacco.

Schultz raised the concern that it is not clear how much residual authority FDA has under the settlement. For example, under the federal Court decision in North Carolina, it is clear that FDA has full authority to regulate nicotine and cigarettes and the flexibility to make future adjustments to their tobacco regulations if the FDA was convinced it was necessary to do so - - like being able to raise the minimum age required to purchase cigarettes from 18 to 19 or 20 years of age. However, it is not clear whether FDA has the residual authority to make such adjustments under the settlement.

Another issue that was raised was the advertising provisions. The settlement gives FDA the authority to regulate tobacco manufacturer

advertising - - something the North Carolina Court said FDA did not have the authority to do. If the tobacco manufacturers did agree to a side agreement allowing FDA to regulate tobacco advertising, how would this effect convenience store owners and retailers. Zeller and Schultz argued that retailers and convenience store owners could engage in tobacco advertising themselves, since they were not a part of the settlement. No one had any answers on how to best deal with this.

The settlement also creates a licensing program, which FDA will have a major role in implementing/policing. Essentially, any entity that sells retail tobacco products directly to consumers would require a license. The Bureau of Alcohol, Tobacco, and Firearms has a similar licensing program and they advised that it was a nightmare to run. The tobacco settlement recommends a licensing program on a greater scale for tobacco then even the ATF has any experiencing handling.

Though the settlement recommends that FDA receive \$300 million annually from industry to regulate tobacco, Treasury/ATF reps that given the scope of the proposed licensing program, \$300 million might actually not be enough. Bottom line - - FDA is very hesitant about signing on to a licensing program.

The second meeting dealt with the settlement provisions pertaining to the regulation of product content, labeling, and safety. [I missed the majority of this meeting. I was busy trying to get clearance for some talking points OIRA drafted for the VP about FDA reform.] The major issue that FDA raised was about the settlement's provision regarding "Reduced Risk Products." I missed a lot of this discussion, but FDA seems to be concerned about the settlement's assumption that there is such a thing as a "less hazardous tobacco product" and that manufacturers can market these products with health claims, as long as manufacturers can prove that these products are less harmful than regular tobacco products. it was not clear where FDA wanted to go with this.

Elena advised that the working groups would be meeting again this Thursday to discuss the preemption provisions in the settlement as well as the issue of tobacco retail licensing.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:T J. Glauthier ( CN=T J. Glauthier/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:13-MAR-1997 14:05:23.00

SUBJECT:: kids eo meeting

TO:Alecia Ward ( CN=Alecia Ward/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

this is the answer to Carol Dennis' question....I sent a response, "ok"

----- Forwarded by T J. Glauthier/OMB/EOP on 03/13/97

02:06 PM -----

Elena Kagan

03/13/97 10:24:41 AM

Record Type: Record

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

cc:

Subject: kids eo meeting

Just a reminder that the kids eo meeting is set for 6:00 pm in 218. I'm inclined to say just us (no staff).

Message Sent

To: \_\_\_\_\_

Sally Katzen/OMB/EOP

Kathleen M. Wallman/WHO/EOP

Kathleen A. McGinty/CEQ/EOP

T J. Glauthier/OMB/EOP

MUNNELL\_A @ A1 @ CD @ LNGTWY

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Susan M. Carr ( CN=Susan M. Carr/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 11-MAR-1999 09:34:12.00

SUBJECT: Equal Pay Meeting

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

READ: UNKNOWN

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

READ: UNKNOWN

BCC: Susan M. Carr ( CN=Susan M. Carr/OU=OMB/O=EOP [ OMB ] )

READ: UNKNOWN

TEXT:

The meeting yesterday did not reach a consensus on an alternative data collection provision. Barbara Chow mentioned OMB had drafted an option to Daschle's EEOC language (the OFCCP proposal), but it wasn't discussed. The meeting was large - about 35 people - from the agencies and the White House. Ida Castro was confrontational and defensive about supporting Daschle's provision and the need for EEOC to collect wage data to better enforce equal pay laws, and the need for more resources to do so. Elena concluded the meeting by asking Tom Freedman to set up another one for Friday with a smaller group. Presumably OMB will be invited.

Background/context. Last year, Daschle asked the Administration for its endorsement of the Paycheck Fairness Act. The Administration endorsed the bill, after a controversial data collection provision was dropped. The data collection provision which we wanted deleted amended Title VII of the Civil Rights Act by adding the following subsection:

"The Commission shall, by regulation, require each employer who has 100 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year to maintain payroll records and to prepare and submit to the Commission reports containing information from the records. The reports shall contain pay information, analyzed by the race, sex, and national origin of the employees. The reports shall not disclose the pay information of an employee in a manner that permits the identification of the employee."

The womens groups were not pleased that this provision was dropped, and now Daschle wants to add it back. Elena Kagan said that if it is added back, we would almost certainly endorse the new Daschle bill. However, she is open to other data collection ideas, which she wants to discuss on Friday. OMB's OFCCP proposal will be on the table.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Keith J. Fontenot ( CN=Keith J. Fontenot/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 2-JUL-1997 13:21:49.00

SUBJECT:: FYI here are DPC comments on conferee letter; I gave these to Kountoupes/Haas

TO:Jeffrey A. Farkas ( CN=Jeffrey A. Farkas/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

let's call fortuna -- come on by

----- Forwarded by Keith J. Fontenot/OMB/EOP on 07/02/97

01:29PM -----

Diana Fortuna

07/01/97 10:03:09 PM

Record Type: Record

To: Barry White/OMB/EOP, Keith J. Fontenot/OMB/EOP, Larry R. Matlack/OMB/EOP, Emil E. Parker/OPD/EOP

cc:

Subject: FYI here are DPC comments on conferee letter; I gave these to Kountoupes/Haas

but thought you might be interested.

To: Larry Haas, Lisa Kountoupes

Fr: Diana Fortuna

cc: Cynthia Rice

Date: 7/1/97

Here are DPC comments on conferee letter. We have one major comment and four minor ones.

In &Minimum Wage and Workfare 8 section, DPC/Elena Kagan proposes to add the following as a 3rd paragraph. We understand the need for Hilley to concur.

"In addition, the Administration is seriously concerned that the House bill weakens the welfare law's strict emphasis on work by permitting some states to count additional time spent in activities such as job search toward the work requirements."

Below are minor issues:

In Welfare to work intro, page 12, paragraph beginning &We continue to be concerned 8: Shouldn ,t we drop sentence beginning &Some of these issues 8? This doesn ,t apply to anything at issue in the \$3 billion, and sounds like it was intended to be an intro to welfare section generally.

Welfare to Work section on &Targetting Welfare to Work Funding... 8: Strike first part of last sentence, i.e., &We believe the Education and Workforce and Finance Committee versions are inconsistent with the budget agreement 8. This statement goes too far. We should just include the balance of that sentence: &We urge the Conferees to adopt the Ways and Means proposal. 8

Non-Displacement: Draft is confusing. Would paragraph make sense if we added at the end &with changes noted above 8?

Voc Ed in TANF: To our knowledge, we have not said in earlier SAPs that &we strongly urge the conferees to drop these provisions. 8 We don ,t feel strongly about this point, but wondered why we were turning up the volume.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jill M. Pizzuto ( CN=Jill M. Pizzuto/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:19-MAY-1997 09:50:40.00

SUBJECT:: Mathews / Shriver meeting on May 29th

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

just a reminder -- that we have on the Calendar for May 29th @ 11:00am the meeting with Sylvia Mathews, Eunice Shriver & the Director -- in Sylvia's office. Also attending will be Elena Kagan from DPC (Bruce will be out next week).

I know that Ken will be preparing some background for the Director. Please let me know if there's anything else you'll need in the meantime.

If for any reason there is a change in the Director's calendar and he is not in town or something, please let me know ASAP. It's my understanding that this is THE ONLY day that Eunice Shriver is able to do this and Sylvia really needs the Director's attendance.

thanks.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Katherine Kirchgraber ( CN=Katherine Kirchgraber/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:11-MAR-1999 09:29:57.00

SUBJECT:: Genetic Info: Mtg Cancelled/UPDATE

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Marc Garufi ( CN=Marc Garufi/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

----- Forwarded by Katherine Kirchgraber/OMB/EOP on  
03/11/9909:29 AM -----

MayaBe@aol.com

03/11/99 12:32:58 AM

Record Type: Record

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

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

Subject: Genetic Info: Mtg Cancelled/UPDATE

Note: Some recipients have been dropped due to syntax errors.

Please refer to the "\$AdditionalHeaders" item for the complete headers.

Daniel, Michael, et al --

I'm sending you this update from home after I've returned from class so  
you'll

have it first thing in the morning.

Short version:

- The meeting originally scheduled for tomorrow morning at 10am is

CANCELLED.

- The VP event rescheduled to Tuesday, March 16th, will likely be postponed again.
- Chris Jennings is preparing a decision memo to the President seeking guidance on the direction of the Executive Order, including whether to scrap the idea altogether.
- If we proceed, the Director will be asked to read the EO and sign off when he gets it.
- Please let the staff know if there is anything else we can do for you.

Longer version:

There was a policy level meeting earlier this evening which broke up at about 7:45pm.

Mac Reed left me a message at about 5:45 to tell me the meeting was already in progress, and I managed to get there by 6:10. I attempted to find most of you, but I was unsuccessful.

The meeting was attended by Chris Jennings, Sarah Bianchi, Elena Kagan, Lisa Brown, Gary Claxton (HHS), Nancy Siegel and another woman from EEOC, plus others from DOJ/OLC, CIA, Labor, and others I didn't recognize (Mac has the list).

A new draft of the EO was circulated, and most of the meeting was spent discussing an exemption requested by the CIA. CIA wants to be able to collect and use family medical histories of their employees as a component of their decisions on job assignments overseas. The group did not come to consensus.

By the end, some were concerned that if the exemption would have to be drafted very broadly to satisfy CIA's concerns, the Administration might be better off scrapping the idea altogether.

The meeting resulted in agreement that a memo to the President would be required to make a decision about the content of the EO. I got the impression Jennings and Kagan would be drafting it. CIA is drafting exemption language. The choices presented to the President will include: Adopting the EO without an exemption, Adopting the EO with CIA's exemption, or no Executive Order.

Mac is going to poll the agencies to find out which way they would come down given those choices, and, in particular, if the choices are either an EO with

a potentially broad exemption, or no EO, which way they would like to go.

It was not clear to me that Mac would be presenting that question to the Director.

Once we get a decision from the President, if the EO is to go forward, it would take at least a day or two to obtain the proper clearances, and get it signed. Therefore, the event is going to be postponed. However, Jennings and Kagan agreed to call Jack and Sylvia (and everyone else necessary to grease the skids) to request that they read and sign off as soon as they receive it.

Please let me know if there is any action left for the staff to follow up on or if there is any further information or assistance the staff can provide.

--- Maya

Message Sent

To: \_\_\_\_\_  
daniel.mendelson@omb.gop.gov  
Michael Deich/OMB/EOP  
Alan B. Rhinesmith/OMB/EOP  
Bruce D. Long/OMB/EOP  
Lisa B. Fairhall/OMB/EOP  
Susan M. Carr/OMB/EOP  
Daniel LaPlaca/OMB/EOP  
Katherine Kirchgraber/OMB/EOP

Message Copied

To: \_\_\_\_\_  
Joshua Gotbaum/OMB/EOP  
Donald R. Arbuckle/OMB/EOP  
Jasmeet K. Seehra/OMB/EOP  
Dawn V. Woollen/OMB/EOP  
Ingrid M. Schroeder/OMB/EOP  
wartel@lmgate2.eop.gov  
Maya A. Bernstein/OMB/EOP

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:Janet W. Minkler ( MINKLER\_J ) (OMB)

CREATION DATE/TIME:27-JUL-1995 18:50:44.04

SUBJECT:Patent on Hardrock Mining Claims

TO:T J Glauthier ( GLAUTHIER\_T ) (OMB)

READ:28-JUL-1995 12:11:52.87

TO:Jacob J. Lew ( LEW\_J ) (OMB)

READ:28-JUL-1995 13:52:01.66

TO:Charles S. Konigsberg ( KONIGSBERG\_C ) (OMB)

READ:28-JUL-1995 16:33:14.08

TO:Charles E. Kieffer ( KIEFFER\_C ) (OMB)

READ:27-JUL-1995 20:08:18.65

CC:Ron Cogswell ( COGSWELL\_R ) (OMB)

READ:27-JUL-1995 18:53:59.21

CC:Bruce D. Beard ( BEARD\_B ) (OMB)

READ:27-JUL-1995 18:57:42.95

CC:Alice E. Shuffield ( SHUFFIELD\_A ) (OMB)

READ:28-JUL-1995 12:52:06.68

TEXT:

FYI --

Elena Kagan from the White House Council's office called regarding the moratorium on the patent of hardrock mining claims in relation to the Appropriations bill. Evidently, POTUS has expressed an interest in the issue having seen a recent newsclip.

She asked what the history of the moratorium was in relation to Appropriations and I told her the following: the House Interior Appropriations Subcommittee voted to lift the moratorium on new hardrock patent claims that was in the President's Budget (both FY 1995 and FY 1996). On the House Floor, the moratorium was reinstated. The Senate Interior Appropriations Subcommittee has once again lifted the moratorium.

Kagan then asked what we were doing to respond to the Senate action. I told her that we were working on a draft letter to send to the Chairman of the Senate Appropriations Committee (the markup is scheduled for 10:00 am tomorrow). She asked to see a copy of the draft letter, which I am faxing to her.

She also began asking who supported and opposed the moratorium in the Senate and who "could we call on the issue." At that point, I suggested she call Chuck Konigsberg or Jack Lew regarding the politics of the issue.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Harry G. Meyers ( CN=Harry G. Meyers/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:22-AUG-1997 17:47:35.00

SUBJECT:: While you are away -- HTF Div report for week ending Aug. 22

TO:Catherine A. Poynton ( CN=Catherine A. Poynton/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO:Kimberly A. Maluski ( CN=Kimberly A. Maluski/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO:Michael F. Crowley ( CN=Michael F. Crowley/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Harry G. Meyers/OMB/EOP on 08/22/97

05:45 PM -----

Alan B. Rhinesmith  
08/22/97 05:05:22 PM  
Record Type: Record

To: Michael Deich/OMB/EOP  
cc: See the distribution list at the bottom of this message  
Subject: While you are away -- HTF Div report for week ending Aug. 22

A blizzard of paper touched off by GPRA, plus several other significant issues:

Civil Rights Enforcement Initiatives - Elena Kagan chaired a meeting of agency representatives and DPC/NEC/OMB staff to discuss possible new policy initiatives in civil rights enforcement. There was talk about looking at communities as a whole (transportation, job creation, housing, schools, etc.) and linking programs and funding to address community problems. Elena tasked each agency with preparing a brief background paper (e.g. budget, FTE, relevant numbers like complaints) and writing a memo to her outlining where they think the Administration's civil rights agenda should be heading and how to get the ball rolling. For example, she said, if the President were to give a speech highlighting the Administration's civil rights achievements, he would also want to use the opportunity to discuss the challenges that remain and what his

Administration's next steps would be. Elena also emphasized the opportunity and need to incorporate these initiatives into the FY 1999 budget process.

HUD buyouts. Letters were sent to 960 people who applied for buyouts indicating tentative approval, subject to funds availability. The letters required immediate reaffirmation and, if the Dept. gave final approval, separation by Friday, August 22nd. As of COB 8/21, 410 had responded and been accepted, most from FHA. HUD has funding to cover this number.

Income verification. Steve delivered to HUD CFO and budget director a letter from us regarding likely loss of \$1.5 billion in outlay savings unless quick action is taken to implement, extend, and augment HUD's limited income-matching authority and to reinforce this authority with other administrative steps to strengthen income verification and rent collections.

Public housing extenders bill. HUD provided draft language for a dozen items in response to a letter from Chairman Lazio asking for technical drafting services in preparing a bill that would extend expiring authorities for six months of 1998. About half of the items on HUD's list would have provided new authorities, most of which we had previously cleared. Our guidance was that HUD could transmit the six-month extender items and let us know whether it wanted to put the others into our clearance process. There is a danger that going beyond technical drafting would insert HUD into the middle of a jurisdictional dispute between appropriators and authorizers just prior to the appropriations conference.

Section 108 Boston/Lawrence. Acting HUD CPD A/S Jacquie Lawing has apparently decided not to accept Treasury's (Mozelle Thompson's) proposal that included acceptance of HUD's contract language regarding subordination provided HUD would consult in advance on borderline or unique projects that might violate A-129. Instead, HUD staff report that Jacquie is preparing a memo to OMB suggesting that new regulations be developed.

SBA FY 1999 Budget Submission. SBA Administrator Alvarez has not yet sent a letter to the Director protesting the FY 1999 guidance level, a subject which you discussed with Paul Weech before you began your leave. Instead, the SBA CFO Larry Wilson sent a memorandum Aug. 20 on behalf of the Administrator to Ed Brigham outlining the agency's difficulties with the guidance level. (A copy will be in your reading when you return.) In summary, SBA's position is that the guidance level is so politically and programmatically unrealistic that it is a waste of time to prepare such a budget, since the President and Congress would never agree to it. SBA staff do not believe that the guidance level is serious and that it reflects political gamesmanship by OMB.

FIB staff (Brigham, Swain, and Wiggins) met with the SBA CFO office on Aug. 20 to discuss the FY 1999 budget process and to defend the guidance level. We described the derivation of the guidance levels and indicated that we believe the Director and the President do intend to consider significant reallocations of funding at the margin to provide room for new initiatives. We also said we would not be surprised if,

after indicating what the agency would have to do to stay within the guidance level, that SBA stated why it believes the guidance level is inadequate and what funding level is necessary. We acknowledged that there are significant issues raised by the guidance level, particularly funding for disaster loans, but stated our belief that any such difficulties would receive consideration for funding from the reserve.

Finally, the SBA CFO indicated that decision meetings with Administrator Alvarez were not scheduled to begin until Sep. 8. (The Administrator is on leave until Sep. 2.) If that date is not accelerated, it is not likely that the SBA FY 1999 submission will arrive until Oct. 1.

**SBA GPRA Strategic Plan** SBA called Aug. 18 to say that its GPRA strategic plan, which was due on Aug. 15, would not arrive until Aug. 29. Paul Weech did not finish his review and edits before he started leave. He is due back in the office on Aug. 25. This delay will make it very difficult to complete the formal interagency comment process and get SBA's final strategic plan to Congress by the statutory date of Sep. 30. (See the separate e-mail to Ed DeSeve about this.)

**FHFB GPRA Strategic Plan** The first draft of the strategic plan of the Federal Housing Finance Board which FIB has seen arrived on Aug. 21. It is grossly inadequate. It doesn't reflect even a basic understanding of the six statutory components, which are the minimum requirements for an acceptable plan. FIB staff (Enger, Brigham) have a meeting with FHFB staff on Mon. Aug. 25, to try to get them on track.

**FFB 1/8th Fee Discussion.** In a fairly acrimonious meeting, Treasury (Mozelle Thompson) complained about the process, and then spent some time on specifics. According to Mozelle, Treasury wants a complete repeal of the entire provision. If that cannot be done, OMB staff are preparing three proposals that address most of the programmatic concerns that FFB raised. There will be an e-mail for you and Barry on this next week, but basically we are proposing (1) that the interest FFB pays Treasury be governed by the underlying program structure so that it can continue to charge borrowers appropriate rates and not absorb programmatic or subsidy costs; (2) a liquidating appropriation to eliminate the FFB's deficit; and (3) a fix to an REA provision that limits earnings by the FFB on its holdings of REA certificates.

**Interagency Review of Treasury Strategic Plan.** In what is turning out to be an incredibly cumbersome review process, twenty-nine agencies have requested copies of the Treasury Strategic Plan. In addition, we've identified another 9 EXOP internal reviewers who should review it, including ONDCP, CEA, other OMB branches. While the Treasury-wide plan plus the component/bureau plans total about 500 pages, we are opting for a more targeted distribution, limited to just the 60 page Departmental plan plus:

- Justice (would also receive all law enforcement and IRS component plans)
- HUD (would also receive CDFI plan)
- DOD (would also receive the FMS plan -- since both make government payments)

--EXOP reviewers will receive component plans for those issues in which they have an interest

Clearance of Taggants Study on Hold. Jose Cerda (DPC) asked LRD not to clear the ATF Taggants Interim Report to Congress a couple of weeks ago because Rahm Emanuel felt that the report was too limited. At this week's Crime Meeting, Emanuel said the Taggant report was unacceptable, primarily because it does not include enough information showing why taggants are needed.

Meeting with Appropriations Surveys and Investigations Staff. We met with Surveys and Investigations staff for the second time on the IRS budget. They are reviewing IRS budget formulation practices for the Committee Chairman. We discussed Treasury and IRS efforts, through the IRS Management Board, to address planning and budget issues. The investigators questioned IRS' contingency planning should IRS not be funded at the FY98 President's request, the Service's labor cost model used for budget formulation, and the IRS' program cost accounting system (PCAS). We told them that we (1) supported IRS' contingency planning efforts, (2) had reviewed the labor cost model and found it useful and reliable, and (3) agreed with them that PCAS was a problem requiring senior management review (we have raised this with IRS a number of times). Afterwards, Kathleen asked IRS to work with Surveys and Investigations to clarify any misunderstandings regarding contingency planning and to provide additional background materials on the budget process, if necessary.

IRS EITC Initiative. Kathleen has been working closely with Treasury Tax Policy and IRS to develop a comprehensive EITC compliance initiative to implement the EITC enforcement legislation in the Taxpayer Relief Act of 1997. This will require a FY98 Budget amendment for up to \$138 million in funding. IRS proposed an unfocused laundry list of activities; Kathleen is working with them this week to develop a more comprehensive plan that will address customer service, pre-refund audit, enforcement actions, and systems modifications. We expect to have a budget amendment, and plan the week of September 2, 1997.

Loan Asset Sales A staff level work team has been established to develop a Financial Advisory Services requirements for a government-wide contract which would be managed by GSA. The team is being led by HUD and includes representative from Treasury (FMS and Domestic Finance), SBA, ED, and USDA. The scope of the contract will include financial advisory requirements for the sale of loan assets and loan servicing rights (outsourcing routine account maintenance).

EFT 99 Treasury regulation for implementation of the Debt Collection Improvement Act mandate that agencies pay electronically will be delayed until September. Treasury is working on concerns voiced by SSA and OMB regarding the broad individual self-certification waiver that Treasury initially proposed. Treasury has responded to many of the staff level concerns; however, there is a remaining issue on how low-cost banking services will be provided to the un-banked. Treasury continues to avoid specification. Consequently, coordination with the ongoing EBT program which will be implemented in most States within the next 12 months will be

difficult. The likely result in most States will be a two card system, i.e. one for Federal benefits and another for State benefits.

Prompt Pay -- Treasury has completed the drafting of the Prompt Pay Amendments. The bill transfers OMB prompt pay oversight authorities to Treasury and gives Treasury the authority to manage electronic payment policy and procedures. In addition, the bill would establish a fund of up to \$10 million at Treasury for financing financial management improvements. Our GC is reviewing the language before initiating A-19 clearance.

Message Copied

To: \_\_\_\_\_

Edward A. Brigham/OMB/EOP

Susan M. Carr/OMB/EOP

Elizabeth M. DiGennaro/OMB/EOP

Harry G. Meyers/OMB/EOP

Francis S. Redburn/OMB/EOP

Thomas P. Stack/OMB/EOP

Kenneth L. Schwartz/OMB/EOP

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR: Elisabeth Blaug (BLAUG\_E) (CEQ)

CREATION DATE/TIME: 19-MAR-1996 16:03:36.39

SUBJECT: headwaters team

TO: Kathleen A. McGinty (MCGINTY\_K) (CEQ)

READ: 20-MAR-1996 08:59:14.55

CC: Shelley N. Fidler (FIDLER\_S) (CEQ)

READ: 19-MAR-1996 16:21:40.31

TEXT:

Allen McReynolds and I have identified a core team, along with a few ad hoc members for involvement in specific actions throughout the process. We feel the core team comprises the people that know the most about the project, yet is small enough to ensure we get things done efficiently and discretely. The core team would include:

Department of Interior: Allen McReynolds and Bob Baum/Dave Watts (Solicitors Office)

CEQ: Elisabeth

FDIC: Jack Smith, Deputy General Counsel

Forest Service: Dave Sherman

NEC: David Lane\*

WH Counsel: Elena Kagan\*

\*Both have been briefed on this, and have expressed interest in being involved, however, their level of involvement will likely vary.

Ad Hoc Members:

DOD: Bob Bayer

OMB: Bruce Beard

DOJ: 2 lawyers with tax and takings expertise (Bob Baum and Dave Watts are working with them)

GSA: Gordon Creed

Any thoughts?

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Margaret A. Malanoski ( CN=Margaret A. Malanoski/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 5-AUG-1998 17:19:41.00

SUBJECT:: Meeting on Food Safety

TO:Dana L. Flower Lake ( CN=Dana L. Flower Lake/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Margaret A. Malanoski/OMB/EOP on  
08/05/98 05:11 PM -----

Summary of the 2:00 meeting sent to Don. I thought you might find it  
useful. As I'm sure your aware, Mark Weatherly was at the meeting. By  
the way , so too was Jim Esquea.

Margaret A. Malanoski  
08/05/98 05:11:04 PM  
Record Type: Record

To: Donald R. Arbuckle/OMB/EOP@EOP  
cc: Lisa M. Jones/OMB/EOP@EOP  
Subject: Meeting on Food Safety

The topic of the meeting was the administration strategy for the NAS  
report on the adequacy of the current system in protecting public health  
and the viability of a single food agency.

It was decided that sometime before or after the release of the report  
(Aug. 20), an announcement of some sort would be made. (How's that for  
informative?) .

There is general agreement that the President will sign an Executive Order  
establishing a Council on Food Safety (I left a copy with Lisa Jones).  
The council will consist of the Secretaries of Ag and HHS, the Asst. to  
the President for Domestic Policy, the Senior Policy Advisor for the V.P.,  
the Director for OSTP, and someone from OMB, EPA, and Commerce. (The last  
three were added at the meeting.) It will be chaired by Ag, HHS, and  
possibly a neutral third party (DPC or NPR.)

The primary purpose of the council will be to review the NAS report, but  
they will also be charged with developing a unified food safety budget and  
a unified plan for improving food safety from farm to table. In addition,  
they will oversee the Joint Institute for Food Safety Research.

There was a suggestion that the administration request a briefing from  
NAS, after which the President would announce the Executive Order (with  
NAS alongside). Elena Kagan is looking into whether this strategy will  
find a receptive audience in the West Wing.

## Unresolved Issues

- (1) The Preamble Language -- They don't have any. Agencies are sending in material.
- (2) Whether a third neutral chairperson should be added to the chairmanship of the council
- (3) The role of OSTP - There was discussion of beefing up the responsibilities of OSTP and/or making their role more obvious.

The timeline for this is: new draft asap. Agencies are sending material into Tom Freedman and he's redrafting. I am going to ask that he sends the drafts to both of us. I'll keep you updated.

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:James F. Fish ( FISH\_J ) (OMB)

CREATION DATE/TIME: 8-FEB-1996 10:10:39.20

SUBJECT:Revision to DoD abortion policy to reflect 96 Appro and Auth.

TO:Gordon Adams ( ADAMS\_G ) (OMB)

READ: 8-FEB-1996 14:54:27.46

CC:Phebe N. Vickers ( VICKERS\_P ) (OMB)

READ:NOT READ

CC:David Morrison ( MORRISON\_D ) (OMB)

READ: 8-FEB-1996 12:19:40.85

CC:Janet L. Graves ( GRAVES\_J ) (OMB)

READ: 8-FEB-1996 10:11:20.04

TEXT:

I faxed a copy of the proposed guidance to you last night. The guidance reflects changes suggested by the WH Counsel. Per LRD (Pellicci), the following have signed off on the document:

Silas for DOJ (NOB)

Sennas for NC (concur)

Nancy-Ann Min (NOB)

Stephanopoulos (NOB per Laura)

James Costello for WHC (NOB)

Jennifer Klein (NOB)(OPD)

Elena Kagan (WHC)

I recommend we clear the memorandum. OK with you?

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Mark A. Weatherly ( CN=Mark A. Weatherly/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 4-DEC-1997 16:32:08.00

SUBJECT:: CODE RED -- Consultations with Sally and Josh on EXOP support for single food safety agency

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

READ:UNKNOWN

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

READ:UNKNOWN

CC:Ronald M. Cogswell ( CN=Ronald M. Cogswell/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

You've probably already come upon this e-mail from Adrienne that addresses your question on who to talk to among other EXOP agencies. Her suggestions represent the inter-examiner wisdom on who they should be. It might be heresy, but I'd caution against calling Carl, because it's as good as calling USDA, and Elena Kagan has been working on this issue.

(FYI: last summer, the DPC's Elizabeth Drye was much in favor of the one-agency proposal, and of course the NPR recommended it in the first NPR report. So I'd hope these agencies still support the idea. But I think the current contacts are intended to prevent later complaints of 'lack of consultation'.) You might want to check with Josh and Sally to see who's calling whom, since I believe they all got the list of recommended EXOP contacts from their staff.

----- Forwarded by Mark A. Weatherly/OMB/EOP on 12/04/97  
04:23 PM -----

Adrienne C. Erbach

12/04/97 01:32:42 PM

Record Type: Record

To: T J. Glauthier/OMB/EOP@EOP, Alecia Ward/OMB/EOP@EOP, Ronald M. Cogswell/OMB/EOP@EOP

cc: Mark A. Weatherly/OMB/EOP@EOP

Subject: CODE RED -- Consultations with Sally and Josh on EXOP support for single food safety agency

The Director has asked about the views of other EXOP agencies on the idea of a single food safety agency (see Janet Graves e-mail below). OMB examiners have not discussed this with anyone outside the organization because we were awaiting guidance from the Director. We recommend that you, Sally and Josh discuss how and when you would like to raise this issue with the other agencies. We recommend that the following people be

contacted: DPC -- Elena Kagan and Chris Jennings; NEC -- Gene Sperling; NPR -- Bob Stone; and in addition, OVP -- Don Gibbs and OSTP -- Cliff Gabriel. Sally and Josh are getting similar e-mails from their staff on this issue, so you may receive a call soon about it.

Janet L. Graves  
12/04/97 12:32:34 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: Creation of a Single Food Safety Agency

In response to your decision memo on the Creation of a Single Food Safety Agency, the Director asked if "NPR, NEC & DPC support this?"

Please respond by e-mail to Jill Blickstein w/cc to me.

Thanks.

From: Jill M. Blickstein on 12/04/97 12:45:21 PM  
Record Type: Record

To: K. Lisa Grove/OMB/EOP@EOP  
cc: T J. Glauthier/OMB/EOP@EOP, Sally Katzen/OMB/EOP@EOP  
bcc:  
Subject: Re: Creation of a Single Food Safety Agency

Frank has already told most of the WH budget group that he will float this with them, so most of them know about it, at least in a vague sort of way. In lieu of a mtg, the appropriate PAD/DAD (or Sally?) should raise it with their DPC/NEC contacts to indicate that it is moving forward and now is the time to state their views. This could generate speed quickly, and we don't anyone to say we didn't consult or they were surprised.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Margaret A. Malanoski ( CN=Margaret A. Malanoski/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 5-AUG-1998 17:11:10.00

SUBJECT:: Meeting on Food Safety

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

The topic of the meeting was the administration strategy for the NAS report on the adequacy of the current system in protecting public health and the viability of a single food agency.

It was decided that sometime before or after the release of the report (Aug. 20), an announcement of some sort would be made. (How's that for informative?) .

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Unresolved Issues

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The timeline for this is: new draft asap. Agencies are sending material

into Tom Freedman and he's redrafting. I am going to ask that he sends the drafts to both of us. I'll keep you updated.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Carol R. Dennis ( CN=Carol R. Dennis/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:12-MAR-1997 09:18:39.00

SUBJECT:: Re: Children's EO- new language and approach

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Please help me interpret TJ's response. I interpret this to mean TJ would support deleting section 4 from the EO and rewriting section 5. Am I to pass this information to Mac Reed-the drafter? Elena Kagan/Diane Regas? or is TJ to carry the water if he really thinks this is a good idea?

Or did TJ's musings on data initiatives and databases(projects) mean he really doesn't think deleting section 4 is a good idea?

----- Forwarded by Carol R. Dennis/OMB/EOP on 03/12/97  
09:16AM -----

T J. Glauthier

03/12/97 08:50:38 AM

Record Type: Record

To: Carol R. Dennis/OMB/EOP

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

Subject: Re: Children's EO- new language and approach

I think both these changes would be positive. I am not sure that we should rely on the budget process though to substitute for the database. Wasn't the purpose of the database to avoid duplication of research projects, rather than "initiatives"? If so, someone needs to be sure that regular, day to day procedures and databases will do the job.

Message Copied

To: \_\_\_\_\_

Ronald M. Cogswell/OMB/EOP

Robert S. Fairweather/OMB/EOP

Donald R. Arbuckle/OMB/EOP

Alecia Ward/OMB/EOP

Carline M Jelsma/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:25-JUN-1997 20:05:23.00

SUBJECT:: Regulatory Issues Committee Meeting

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

READ:UNKNOWN

TEXT:

fyi -- Tobacco

----- Forwarded by Barry T. Clendenin/OMB/EOP on 06/25/97

08:06PM -----

Jim R. Esquea

06/25/97 07:42:21 PM

Record Type: Record

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

cc:

Subject: Regulatory Issues Committee Meeting

This morning I attended the first meeting of the Regulatory Issues committee - - one of the four committees that has been set up by the White House to examine the tobacco settlement. This group will be examining how the tobacco settlement effects current FDA tobacco regulations. The other three committees will focus on legal issues, programs and budget, and industry performance & accountability.

Elena Kagan of the Domestic Policy Council chaired the meeting with Elizabeth Drye. Mitch Zeller and Bill Schultz of FDA were in attendance along with representatives from Justice, Labor, OSTP, and HHS (I didn't catch everyone's name). Don Arbuckle and Wendy Taylor from OIRA were also in attendance. The meeting itself was fairly short and focused on organizational matters and work products.

Three Working Groups

This committee will be broken out into three working groups that will assess different aspects of the settlement and how it effects current regulations. There will be a group focusing on FDA regulation of tobacco itself; a group focusing on how the settlement effects advertisements & billboards; and a group focusing on environmental tobacco smoke impacts. In addition the Justice Department reps were asked to examine all of the preemption rules in the settlement as well as review the settlement for antitrust issues.

Work Products

Elena advised that the first priority of the working groups was to do a quick and dirty analysis of the settlement and how it compares to the FDA's current tobacco regulation - - essentially, a sort of side-by-side. Elena didn't make clear what the final work product of this committee would be or how it would fit in with the work of the other committees. She did make clear that the President has committed to completing the review of this settlement in thirty days. It was emphasized that the task of this committee was to critique the settlement and not necessarily to come up with an Administration alternative to the settlement.

#### Meetings Next Week

Elena didn't specify how many meetings the committee was likely to have. However, she did advise that she expects the three working groups of the committee to meet on Monday to begin work on the preliminary analysis of the regulatory pieces of the settlement. FDA was heading up the working group that was to examine the regulation of tobacco itself.

#### Message Sent

To:

---

Nancy A. Min/OMB/EOP  
Barry T. Clendenin/OMB/EOP  
Richard J. Turman/OMB/EOP  
Mark E. Miller/OMB/EOP  
Jennifer Ferguson/OMB/EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jennifer Friedman ( CN=Jennifer Friedman/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 3-DEC-1997 16:07:45.00

SUBJECT:: Summary of yesterday's Child Care Deputies Meeting

TO:Jack A. Smalligan ( CN=Jack A. Smalligan/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Jennifer Friedman/OMB/EOP on 12/03/97  
04:08 PM -----

Jennifer Friedman  
12/03/97 12:57:57 PM  
Record Type: Record

To: Jacob J. Lew/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Summary of yesterday's Child Care Deputies Meeting

Elena Kagan chaired the meeting. The purpose of the meeting was to review the most recent list of child care options and discuss how to revise the list and prepare principals for the child care meeting scheduled for Friday. Elena posed five questions:

1. Whether to require "benchmarks" for new block grant funds.
2. How to fund an early childhood quality fund.
3. Whether the school-age care option should be presented to principals as two programs (HHS and ED) or one combined program.
4. What options for stay-at-home parents to keep on the list.
5. How the various options should be prioritized.

#### Benchmarks for New Block Grant Funds

First, it is important to note that the options paper states that a \$4 billion investment over five years would provide subsidies for approximately 280,000 children. This assumes a \$3 billion state match over 5 years. It also assumes an average cost per slot of \$5000 - this is much higher than the average cost of \$3,224 (from most recent data, FY 1995) or \$4000 (number HHS has been using recently).

The discussion centered on what goal we are trying to meet with new funds. HHS stated that the goal should be to help low-income, working families (i.e., non-TANF families above poverty). However, Jack Lew raised the question as to whether we should target these families when we are not yet meeting the need of those below poverty. HHS raised the concern that overly prescriptive targeting reduces state flexibility and will be ineffective since states can simply supplant their existing

efforts. Elena asked everyone to think about how we could require targeting of the block grant, without being too prescriptive, so that it reaches up the income scale. Karl Scholz asked for information on the need for care broken down by age group. Kevin Thurm suggested that HHS take on the task of figuring out what we are already accomplishing and what type of state flexibility already exists.

### Quality and Early Learning

Elena drew a distinction between targeted quality activities, such as consumer education, and health and safety monitoring, and the more vague "Early Childhood Education Fund" proposed by HHS and NEC. Elena expressed the concern that the NEC/HHS idea would become a slush fund. Barbara Chow and Barry White tried several times to raise the question of whether a new early childhood education piece makes sense since we already have such a program (Head Start) and since we're not sure what this program would buy. Elena asked them to hold those questions until the discussion of priorities (which we never got to).

With regard to the quality fund, there was also a discussion about how this should be funded. Options include:

- (1) federal to "local collaboratives" through a competitive grant program;
- (2) federal through states to local "collaboratives"; or
- (3) a combination of federal to state and federal through states to "local collaboratives" (the HHS/NEC proposal).

Elena and Barry both expressed a preference for a federal to local competitive grant program.

Olivia Golden staked out the opposite position, arguing that federal to local is least desirable for three reasons:

1. Administering the program would be difficult and would fall to HHS.
2. States have the ability and expertise to run these programs.
3. Proposing a federal to local competitive grant program could raise problems during the Head Start reauthorization (Head Start is funded federal to local).

Despite her preference for combined local/state funding to "local collaboratives", Olivia was unable to define a "local collaborative".

At this point, Barry then made it clear that he does not think the Early Childhood Education Fund is a good idea and that it would be better to do targeted licensing and enforcement activities. He also pointed out that

- (1) we should not move toward a massive developmental program for children;
- (2) we already reach close to half the nation's infants through WIC ; and
- (3) America Reads includes \$60 million for "parents as first teachers" type of activities.

The question of whether to fund targeted quality activities or a more general quality fund (in Elena's words, "a block grant for quality") will be raised at the principals meeting.

### School-Age Care

Elena began by stating that it does not appear to make sense to propose two separate school-age programs, one in HHS and one in ED, and asked the agencies to tell her if she was wrong. She also asked why we couldn't

design a program that builds off of ED's 21st Century Community Learning Centers, but includes some community aspect. Terry Peterson responded by describing the benefits of the ED proposal, namely that the facilities already exist. Both HHS and ED then repeated their position that they each have political constituencies to take care of i.e., HHS wants to provide care in non-school settings while ED wants to use the schools. Others at the table asked pointed questions in an attempt to move HHS and ED to a more collaborative approach. Barry asked ED to see how far they could move toward a role for community groups under 21st Century's existing authorization, so that we could avoid opening up another law.

Elena told HHS and ED that it was up to them to decide if the school-age option should be presented to the principals as two separate programs.

#### Working Parents Who Stay-At-Home Temporarily and Non-Working Stay-at-Home Parents

The list of options to present at the principals meeting was slimmed down. FMLA expansion options with nonbudgetary impacts can be pursued at a later date, and DCTC reform (to cover certain expenses for stay-at-home parents) was dropped, much to Treasury's relief. The two remaining options discussed were:

1. Providing paid parental leave coverage for a limited amount of time for working parents below a set income level, currently priced at \$1 billion per year. Anne Lewis expressed a preference for this policy since it could result in behavior changes. Barry also thought this policy was "not a bad idea" and pointed out that its cost can be scaled down by providing fewer weeks of benefits or lowering the income cut-off. Mary Bourdette stated that this policy does not deal with the political problem of non-working parents who stay at home.
2. Providing a larger child credit (around \$250) for families with young children. Anne Lewis pointed out that this is a symbolic gesture, and will not do anything to really help families since it is not enough to effect behavioral changes.

In addition to these options, Treasury was asked to think about doing a paid leave option through the tax code.

#### Questions for Principals Meeting

The Principals meeting will cover the following questions:

1. What should the quality/early education piece look like?
  - a) a general quality fund; or
  - b) more focused initiatives; and
2. How should the various options be prioritized? What could be cut?

Elena expressed the hope that question of how to present the school-age option will be resolved prior to the principals meeting.

Message Copied

To: \_\_\_\_\_

Barbara Chow/WHO/EOP@EOP

Barry White/OMB/EOP@EOP

Keith J. Fontenot/OMB/EOP@EOP  
Janet Himler/OMB/EOP@EOP  
Wayne Upshaw/OMB/EOP@EOP  
Larry R. Matlack/OMB/EOP@EOP  
Jeffrey A. Farkas/OMB/EOP@EOP  
Laura Oliven Silberfarb/OMB/EOP@EOP  
Leslie S. Mustain/OMB/EOP@EOP  
Debra J. Bond/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Lisa B. Fairhall@EOP@LNGTWY@LNGTWY ( Lisa B. Fairhall@EOP@LNGTWY@LNGTWY [ OMB ] )

CREATION DATE/TIME: 7-MAY-1997 17:34:12.00

SUBJECT:: Latest version after Elena's editing; I think it's pretty good

TO:Constance J. Bowers@eop ( Constance J. Bowers@eop [ OMB ] )  
READ:UNKNOWN

TEXT:  
Message Creation Date was at 7-MAY-1997 17:12:00

Based on the attached, I assume that Diana has decided not to accept my comments.

I have not heard anything on this afternoon's press briefing.  
----- Forwarded by Lisa B. Fairhall/OMB/EOP on 05/07/97  
05:15  
PM -----

Diana Fortuna  
05/07/97 04:51:08 PM  
Record Type: Record

To: Lisa B. Fairhall/OMB/EOP, William H. White Jr./WHO/EOP  
cc: Lucia A. Wyman/WHO/EOP  
Subject: Latest version after Elena's editing; I think it's pretty good now

----- Forwarded by Diana Fortuna/OPD/EOP on 05/07/97  
04:55 PM  
-----

William R. Kincaid  
05/07/97 04:48:26 PM  
Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Diana Fortuna/OPD/EOP  
Subject: revised IDEA

How's this?

STATEMENT ON HOUSE AND SENATE COMMITTEE PASSAGE OF INDIVIDUALS WITH  
DISABILITIES EDUCATION ACT (IDEA) REAUTHORIZATION LEGISLATION -- DRAFT

I am pleased that the House and Senate education committees have today taken a major step towards ensuring high quality educational opportunities for all students by voting to send legislation reauthorizing the IDEA to the full House and Senate. This legislation is critical to strengthening our commitment to children with disabilities and their parents -- a commitment that has made it possible for so many young people to reach their full potential since IDEA was first enacted 20 years ago. This legislation is the result of a remarkable process involving hard work by congressional Democrats and Republicans, the Department of Education, and representatives of the education and disability communities. I hope we can continue in this bipartisan spirit to pass IDEA and move forward on the rest of our agenda to improve education and prepare America for the 21st Century.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:31-MAR-1999 11:54:41.00

SUBJECT:: Re: DPC Meeting with Tobacco Interest Groups -- 3/30/99

TO:Frank J. Seidl III ( CN=Frank J. Seidl III/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Thanks for the report -- very interesting --

Frank J. Seidl III

03/31/99 10:34:30 AM

Record Type: Record

To: Daniel N. Mendelson/OMB/EOP@EOP, Joshua Gotbaum/OMB/EOP@EOP

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

Subject: DPC Meeting with Tobacco Interest Groups -- 3/30/99

Principal attendees: Elena Kagan, Chris Jennings, Cynthia Rice, Devorah Adler, and Eric Gould (DPC); Cass Wheeler (American Heart Association), John Seffrin (American Cancer Society), Matt Myers (Campaign for Tobacco Free Kids) and Jordan Richland (American College of Preventative Medicine). Chris Jennings joined the meeting several minutes after it started, and stayed for only a few minutes.

Cass Wheeler began the discussion by saying that the Administration should threaten to veto the 1999 Supplemental bill, unless the conferees agree that 25% of the State Settlement funds are earmarked in the bill for tobacco control and public health. He urged that the Administration make calls to conferees, saying that this was an opportunity that should not be lost.

John Seffrin said that he was more concerned than ever that we're not doing very well in getting the message out, even though his organization is allocating more of its operating budget to tobacco issues. He said that a "strong call was needed from the Administration that was backed up by specifics". He reiterated the point made by Cass Wheeler that the Administration should say "no supplemental, unless there is a 25% earmark."

Matt Myers pointed out that while there may be optimism about tobacco control efforts in a few states such as Washington and New Jersey, that the momentum in many other states is slipping. Some examples cited:

RI -- moving toward using the tobacco settlement funds to reduce

the car tax.

Ohio -- would target to education

Michigan -- would spend more on scholarships

Montana -- conservative forces moving to use funds for tax cuts

New York -- zero commitment on tobacco control

Texas -- \$10 million for tobacco control; a drop in the bucket.

Nevada -- would use on scholarships

Alabama -- would set up a trust fund, but with minimal resources.

Utah -- no real spending on tobacco control

Myers said that there have been some victories, but that in order to get results in all states, there has to be a strong push at the Federal level.

Elena Kagan said that the Hutchison amendment was strongly opposed by the Administration, and that we would continue to be explicit about our problems with the amendment. Furthermore, she said that a Florida study will soon be completed, and the Administration will issue a statement about it. Elena said, however, that the group needed to understand the position that the Administration is in on this issue:

" The vote in the Senate was 71-29. This supplemental bill is the worst kind of bill for us. We care about it. They don't care if it languishes. What we really need to think about is how do we change the dynamic on these tobacco issues, so that we don't repeat another 71-29 vote."

Elena said that the supplemental bill may die. The issue is not whether there is a veto threat on Hutchison, but rather how we can change the dynamic. Right now, the Administration has no leverage. There is no way to get the conference to agree to the 25% earmark. If the Administration did threaten veto, we would likely see the Hutchison amendment added to another bill.

She said we may be in a position to start all over again if the bill dies. The delay in getting a bill may start to worry the state governors. If we can start to get the governors feel the heat, then that may be the point at which we can re-direct the dynamic.

Chris Jennings said one important way to change the dynamic is to explicitly illustrate to the governors and the public that the current direction of the states in using settlement funds is ignoring the original purpose of the states' lawsuits.

Seffrin suggested that it would be helpful if the Administration use some of its heavy-hitters to change the dynamic -- the surgeon general, Secretary Shalala, and others.

Myers agreed with Elena's argument that the best opportunity to change the dynamic would be when the governors begin to think they might not get their money i.e. "when they see it's not a slam dunk." Then, they may conclude it's time to cut a deal.

Kagan pointed out that if we made a veto threat, it might even make things worse. The House still may take out the Hutchison amendment in conference, but with a veto threat from the Administration may tighten

their resolve to keep it in.

Seffrin then asked Elena whether the best posture for them is to concentrate on getting the Hutchison amendment stripped from the bill? Elena said yes.

Kagan said that the Administration does have an umbrella veto threat out on the entire supplemental bill. No one thinks it's clear that we are going to sign this bill. There might be a time later when we might threaten veto over this issue. The fact is, however, that we have a D.C. Appropriations problem, where Hutchison is committee chairman and could add a similar amendment to her committee's bill.

Elena said the best political message coming out of this situation is to keep reminding the states that they brought all these lawsuits, and now they are not going to spend a dime on stopping youth smoking. She repeated Chris Jennings' idea that we should focus the debate on what is not happening in tobacco control. Further, she said that we should use every opportunity to publicize and capitalize on any independent reports that point out how recent state actions are ignoring or weakening tobacco control policies.

Message Copied

To: \_\_\_\_\_  
Barry T. Clendenin/OMB/EOP@EOP  
Richard J. Turman/OMB/EOP@EOP  
Mark E. Miller/OMB/EOP@EOP  
Wm G. White/OMB/EOP@EOP  
Jeffrey A. Farkas/OMB/EOP@EOP  
Jennifer M. Forshey/OMB/EOP@EOP  
Marc Garufi/OMB/EOP@EOP  
Ingrid M. Schroeder/OMB/EOP@EOP  
Gina C. Mooers/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Linda Ricci ( CN=Linda Ricci/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:24-JUN-1998 14:58:13.00

SUBJECT:: Needle exchange

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

READ:UNKNOWN

TEXT:

When I ran the doc by Jack, he asked me to check with Josh on this , and Josh sent me to Elena Kagan, who felt that it wasn't in our best interests to play up the needle exchange rider.

Sorry. (But we got some health stuff in there! Maybe next time!)

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Mark A. Weatherly ( CN=Mark A. Weatherly/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 8-JAN-1998 11:11:29.00

SUBJECT:: Follow-Up to Small Farmers Meeting

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

READ:UNKNOWN

TEXT:

FYI, I hadn't seen this, and suggested to Alecia that she forward it to Jill B. and Janet H. both of whom have now called me asking what this is all about. This could help explain where Lucia is coming from.

----- Forwarded by Mark A. Weatherly/OMB/EOP on 01/08/98

11:10AM -----

Alecia Ward

01/08/98 10:40:51 AM

Record Type: Record

To: Mark A. Weatherly/OMB/EOP@EOP

cc:

Subject: Follow-Up to Small Farmers Meeting

Did you get this?

----- Forwarded by Alecia Ward/OMB/EOP on 01/08/98 10:41

AM -----

T J. Glauthier

01/04/98 03:11:19 PM

Record Type: Record

To: Alecia Ward/OMB/EOP

cc:

Subject: Follow-Up to Small Farmers Meeting

please print .....

----- Forwarded by T J. Glauthier/OMB/EOP on 01/04/98

03:06PM -----

Andrew J. Mayock

01/02/98 01:28:24 PM

Record Type: Record

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

cc: Minyon Moore/WHO/EOP@EOP, Sylvia M. Mathews/WHO/EOP@EOP  
Subject: Follow-Up to Small Farmers Meeting

This e-mail tracks the outstanding issues from the President's meeting with small farmers. On Friday, January 9, 1997, a memo will be sent to the President that updates him on these issues. Our goal is to bring resolution to as many of these issues as possible by next Friday (e.g., responses in the mail to all letters and documents that we received). I will follow up early next week for a progress report. In the mean time, please let me know if you have any questions. Thanks.

#### Follow up Items for White House Staff

DPC staff contact to work on farm policy here at the WH. Sylvia Mathews will follow up with Bruce Reed and Elena Kagan.

Litigation and settlement process. Chuck Ruff and Dawn Chirwa will follow up on this item. In particular, they will address the issue of the Ross disbursement.

Legislative Affairs and Appropriations Issues. Lucia Wyman and Janet Murguia will address legislative issues. She is working with T.J. Glauthier and has reached out to Rep. Clayton and Senator Robb and members on the House Agriculture Committee.

Antitrust Issues. There were also a number of farming antitrust issues that the farmers raised which will be covered by Chuck Ruff and Dawn Chirwa in conjunction with DOJ. Dawn has asked DoJ to put together materials on what they have done in this area to date to get us started. Apparently, Antitrust has already been looking at these issues/concerns.

Hmong Farmers. USDA is hiring a temporary county office employee fluent in Hmong in Fresno, Ca to help USDA ,s Farm Services Agency communicate with Hmong farmers in the region [Ask USDA if this is the district of the Asian-American that was at POTUS meeting.]

Senator Robb ,s Tobacco Proposal. In conjunction with Legislative Affairs, Elena Kagan and Bruce Reed are drafting response to Senator Robb ,s proposal regarding tobacco.

Letter from Representative McKinney. In conjunction with Legislative Affairs, Chuck Ruff and Dawn Chirwa are drafting a response to the letter the President received from Representative McKinney on December 18, 1997.

Documents sent to President Clinton by Small Farmers. Barbara Woolley will follow up on the documents that were submitted to the President by the farmers. She will ensure that they receive appropriate action. The following paragraphs describe each item and recommended follow up. All of these items will be copied and sent to Eric Galston in Secretary Glickman ,s office for appropriate follow-up by USDA.

Submit a draft executive summary of the report by the National Commission on Small Farms & A Time to Act 8 - Harold Volkmer. Sent to correspondence for thank you note. Woolley will work with Kyle Baker.

Request for President to attend opening ceremonies for community-wide race dialogue sponsored by 1898 Centennial Foundation in Wilmington, North Carolina on January 17, 1998 - Bolton Anthony, Bertha Todd. Sent to scheduling and the President ,s Initiative on Race for the appropriate action. We recommend PIR consider surrogate (possibly John Hope Franklin as this is a North Carolina event).

Request for a meeting on tobacco deal with the President and Federation of Southern Cooperatives/Land Assistance Fund (FSC/LAF) - Ralph Paige. Recommend Bruce Reed hold meeting with FSC/LAF. Woolley will follow up with Reed and then handle appropriate correspondence.

Request for a meeting on tobacco deal with the President by Commodity Growers Cooperative Association - Karen Armstrong-Cummings and Rod Kuegel. Recommend Bruce Reed hold meeting with FSC/LAF. Woolley will follow up with Reed and then handle appropriate correspondence.

Submission of: 1) Business Plan for the First Americans National Bank (proposal for a bank owned by Native Americans); 2) Indian Issues for the Commission on Small Farms; 3) Credit Committee Report - Bob Miller. Recommend thank you note from President and follow up on business plan and reports by USDA. Woolley to handle.

Proposal for additional funding for welfare to work project by Hmong American Community - Toulou Thao. Recommend forward proposal to Cynthia Rice for appropriate follow up. Woolley will track and monitor.

Personal letter from Gary Cornelious. Woolley forwarded to correspondence for a response. She will work with Kyle Baker.

Submission of notebook on personal dairy operation - Gary Henderson. Recommend thank you letter. Woolley will work with Kyle Baker.

#### Message Sent

To: \_\_\_\_\_

Barbara D. Woolley/WHO/EOP@EOP

T J. Glauthier/OMB/EOP@EOP

Robert B. Johnson/WHO/EOP@EOP

Lucia A. Wyman/WHO/EOP@EOP

Janet Murguia/WHO/EOP@EOP

Kyle M. Baker/WHO/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:25-MAR-1999 18:18:02.00

SUBJECT:: Re: sorry i keep missing you

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

READ:UNKNOWN

TEXT:

The process on this one is strange. Here's a re-cap, as I know it:

DPC (Elena Kagan and Chris Jennings) met with HHS Dep. Sec. Thurm and Peggy Hamburg and HHS GC Harried Rabb with DOJ and Lisa Gordon-Haggerty on Monday evening to discuss HHS' concerns with the crime bill, of which this was one of 6 items.

DPC told HHS that this provision would stay in, but that the references to HHS would be deleted. HHS objected, and went back to try to draft something that would be acceptable. We understand that HHS has been discussing the 6 items with DOJ on the phone this week, and that progress has been made on some issues, but not necessarily this one. As of yesterday, Lisa GH understood that a meeting would be necessary to bring this one to closure, and I understood from Dan M that EXOP wasn't very sympathetic to HHS' concerns, since DOJ had tried to work this through with HHS for the last 9 months, and HHS hadn't done anything.

On Monday, OSTP sided with HHS, and produced a compromise proposal that we think makes a lot of sense.

Then this morning I found out that OVP is inclined to side with HHS, which may change the read that Dan gave me about how EXOP is going to side on this -- though the agencies don't know OVP's views yet.

There are many, many players swirling on this, including health folks in DPC, crime folks in DPC, DOJ, NSC, OSTP, OMB, and the various players in HHS. DPC seems to be driving the process, as best I can tell, and trying to get DOJ and HHS to work out their various issues, including this one. The only thing that force resolution is the calendar, at this point.

I keep advising folks that if there is a meeting, I'd like to go, but that hasn't worked so far, and may not work again. We'll see what more I can glean as the process moves along.....

I'll be out tomorrow (California) but back all next week.

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1998 08:57:42.00

SUBJECT:: HHS Items at Crime Meeting: 8/12/98

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

READ:UNKNOWN

TEXT:

FYI --

----- Forwarded by Janet R. Forsgren/OMB/EOP on 08/24/98  
08:57 AM -----

Ronald E. Jones

08/17/98 11:28:50 AM

Record Type: Record

To: Janet R. Forsgren/OMB/EOP, Melinda D. Haskins/OMB/EOP

cc:

Subject: HHS Items at Crime Meeting: 8/12/98

----- Forwarded by Ronald E. Jones/OMB/EOP on 08/17/98  
11:28 AM -----

John E. Thompson

08/12/98 07:53:56 PM

Record Type: Record

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

cc:

Subject: Crime Meeting: 8/12/98

Jose Cerda chaired. The meeting focused on upcoming events, announcement, and reports.

The President's Weekly Radio Address on Saturday will address crime issues.

The Early Warning Radio Guide will be ready on August 22. It will be placed on the internet and sent to law enforcement entities, schools, etc. There will be no special roll-out.

There is a meeting tomorrow to discuss a conference on school safety.

GTO. We can do a GTO event this fall, but not next week. Elena Kagan

wants a separate meeting on this.

Household Survey on drug use/Drug-free Community Grants. We want to announce the grants to counteract the expected negative results of the Household Survey. The annual survey results are usually announced in August, but we may want to wait until the grants are ready to be announced. HHS and OJP are working on the grants, but August is too early.

Elder abuse and fraud. We want to do an event in September. The agencies are working on the elements (e.g. HHS is working on an Elder Abuse Center proposal, DOJ on telemarketing fraud). This is an opportunity to call for a reauthorization of the Older Americans Act.

Other grants. There are 3 other grant announcement possibilities from the COPS office:

COPS school-based partnership grants will be ready the first week of September. These grants are to hire more cops in schools.

Police Corps Grants are ready to announce now. These provide money for people to attend college, after which they work as cops. Lott and Kennedy like it, but Rep. Rogers does not. Police also do not like it.

Domestic violence grants will probably be ready in mid-September.

(Also, most of the \$500 million in Local Law Enforcement Block Grants will be announced in the fall).

The Brady regulation establishing a fee for handgun checks is now ready.

The target date for the Gun Tracing Report is October 15.

A report on Probation will issued on Sunday.

Message Sent

To:

---

James Boden/OMB/EOP@EOP  
michael deich/omb/eop@eop  
kenneth l. schwartz/omb/eop@eop  
theodore wartell/omb/eop@eop  
patricia e. romani/omb/eop@eop  
steven m. mertens/omb/eop@eop  
edward h. chase/omb/eop@eop  
david j. haun/omb/eop@eop  
michael f. crowley/omb/eop@eop  
ronald e. jones/omb/eop@eop  
james j. jukes/omb/eop@eop  
kevin p. cichetti/omb/eop@eop  
victoria wassmer/omb/eop@eop

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:30-JAN-1998 10:03:52.00

SUBJECT:: DPC Meeting on Race and Health

TO:Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TO:Thomas Reilly ( CN=Thomas Reilly/OU=OMB/O=EOP [ OMB ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Barry T. Clendenin/OMB/EOP on 01/30/98  
10:05 AM -----

Wm G. White

01/30/98 09:58:31 AM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP, Jill M. Pizzuto/OMB/EOP@EOP

cc: Barry T. Clendenin/OMB/EOP@EOP, Richard J. Turman/OMB/EOP@EOP, Barbara  
A. Menard/OMB/EOP@EOP, Gordon P. Agress/OMB/EOP@EOP

Subject: DPC Meeting on Race and Health

Sarah B. sent this to me last night about a meeting today at 11:00 am.  
We plan to go, unless you think we should not. Would you like to attend  
as well? (I will try to find out what is the room number for the meeting  
and then let Jill know.)

Also note Sarah's last sentence about Budget rollout for Race and  
Health.

----- Forwarded by Wm G. White/OMB/EOP on 01/30/98 09:53  
AM -----

Sarah A. Bianchi

01/29/98 08:49:42 PM

Record Type: Record

To: Wm G. White/OMB/EOP@EOP

cc:

Subject: race and health

Elena Kagan spoke to Sylvia M. today about a race and health event. She  
was was interested in having the President announce it. She said she has  
Feb 17 or 19 in mind and asked if we could come up with some possible

proposals for events.

This Intercultural Cancer Council, I told you Chris ran into this morning are going to come by to meet with us tomorrow at 11am if you can come. They apparently have some proposals for an event. They are only in town for the morning, but if you can't make it, I can fill you in. We certainly don't plan to make any promises tomorrow.

I think that means we should downplay it when the budget comes out.

sb

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR:Thomas C. Jensen ( JENSEN\_T ) (CEQ)

CREATION DATE/TIME:15-NOV-1995 08:38:07.31

SUBJECT:Timber folks

TO:T J Glauthier ( GLAUTHIER\_T ) (OMB)

READ:15-NOV-1995 22:43:27.98

CC:Kathleen A. McGinty ( MCGINTY\_K ) (CEQ)

READ:15-NOV-1995 13:49:56.17

CC:Dinah Bear ( BEAR\_D ) (CEQ)

READ:15-NOV-1995 08:57:34.06

TEXT:

TJ,  
I think we missed one important person on the timber working group, namely Elena Kagan. She's been a real help, particularly on the judicial/legislative end of things. Any ideas?  
Tom

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Edward H. Chase ( CN=Edward H. Chase/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:28-OCT-1997 13:37:32.00

SUBJECT:: Increased resources for hate crimes

TO:Michael Deich ( CN=Michael Deich/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC:Theodore Wartell ( CN=Theodore Wartell/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Patricia E. Romani ( CN=Patricia E. Romani/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

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

READ:UNKNOWN

CC:Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

There has been a general notice to alert the second floor whenever commitments for 1999 resources are being made outside the budget process. Here's one for your consideration.

I met with this morning with DOJ (David Ogden) and DPC (Elena Kagan) to talk about initiatives to be announced at the hate crimes conference on November 10. The AG is recommending, and DPC has agreed, that the protected classes under the hate crimes statute should be expanded, eg, to include sexual preference and gender. This would expand the workload of the FBI. They are estimating a cost of \$38 million per year. The meeting attendees believe this is high, and the costs can be controlled through limitations in the legislation and guidance identifying when cases would require federal involvement. Besides budget considerations, they believe the need not to appear to be federalizing all of these crimes will be a downward pressure. I agree, but based on past experience believe there will also be pressures in the other direction that could make the costs go up.

DOJ staff plans to meet with Senator Kennedy's staff later this week to discuss the proposed legislation. DOJ and DPC want to know if OMB has any problems with the budget implications of the proposal.

There is a major civil rights enhancement in the FBI's 1999 budget request. This includes:

130 field positions (65 agents) and \$13M to investigate hate crimes, and

to conduct town hall meetings, regional workshops, and training for state and local officials and civic and religious leaders; and  
6 positions for a civil rights analytical center to analyze trends in hate crimes.

I have a couple of concerns about this request. First, it represents a 45% increase in resources (not including the legislative proposal above). I do not see a current workload problem that would justify such an increase. (Note, however, that a major element of the proposal is to improve reporting of hate crimes, which may increase workload.) Secondly, I am not convinced that the FBI is the right place for training, education, and trend analysis.

I am not supporting any of these increases as part of my recommended level for the FBI, but have included approximately half of the request in my alternative level. (This is my proposal; Ken and David have not signed-off, and may have a much different view.)

Again, DPC and DOJ want to know if they can announce these resources as part of the November conference.

There is a followup meeting tomorrow at 5:30. What should I tell them?

RECORD TYPE: FEDERAL (NOTES MAIL)

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

CREATION DATE/TIME: 3-NOV-1997 16:54:24.00

SUBJECT:: Civil Rights Crosscut

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

READ:UNKNOWN

TEXT:

----- Forwarded by Debra J. Bond/OMB/EOP on 11/03/97  
04:53 PM -----

Susan M. Carr

11/03/97 04:48:43 PM

Record Type: Record

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

cc: Alan B. Rhinesmith/OMB/EOP@EOP, Francis S. Redburn/OMB/EOP@EOP,  
Theodore Wartell/OMB/EOP@EOP, Patricia E. Romani/OMB/EOP@EOP

Subject: Civil Rights Crosscut

This afternoon, I am forwarding a draft copy of the civil rights crosscut to Michael Deich. We in HTF are meeting with Michael tomorrow to review the overall approach and content now that there is some "meat on the bones". Following this meeting and after making any formatting/editing changes that Michael suggests, I will circulate a draft copy for your final review and input.

In addition, at Michael Deich's request, I am forwarding a draft copy of the civil rights crosscut to Elena Kagan at the Domestic Policy Council. I learned today that the DPC is still strongly considering a "major" Presidential civil rights initiative for enforcement agencies that they may want addressed in the crosscut. The DPC has asked agencies (based on what we heard at earlier meetings) to send them plans for better enforcement, how mediation could be used in better ways, what compliance initiatives would they undertake with additional funding, etc. However, the DPC has not received material from the agencies yet, and I reiterated OMB's timeframe for Director's Review material (tonite a draft to the PAD, final OMB changes this week, Director's Book circulated Monday). At this time, it is unclear what form this initiative might take, but I will keep you posted.

Message Sent

To:

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John E. Thompson/OMB/EOP@EOP

Debra J. Bond/OMB/EOP@EOP

Leslie S. Mustain/OMB/EOP@EOP

Lori Schack/OMB/EOP@EOP

Jonathan C. Ball/OMB/EOP@EOP

Robert L. Nabors/OMB/EOP@EOP

Stephen M. Frerichs/OMB/EOP@EOP

Stuart R. Kasdin/OMB/EOP@EOP

Melany Nakagiri/OMB/EOP@EOP

William F. Wiggins/OMB/EOP@EOP

Edward H. Chase/OMB/EOP@EOP

Zach Church/OMB/EOP@EOP

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Wm G. White ( CN=Wm G. White/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:20-OCT-1997 10:18:56.00

SUBJECT:: WAR ITEM

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

READ:UNKNOWN

CC:Margaret A. Murray ( CN=Margaret A. Murray/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TEXT:

Presidential Initiative on Racial Disparities in Health -- HD staff attended a meeting on 10/17 with Chris Jennings and Elena Kagan of DPC and Bill Corr, John Callahan and other HHS policy officials regarding potential Presidential initiatives on reducing racial disparities in health status. Per the guidance of DPC, HHS has prepared draft FY 1998 and FY 1999 funding initiatives to address six health areas where there are notable racial disparities: infant mortality, breast and cervical cancer, heart disease and stroke, diabetes, AIDS and childhood immunizations. HHS advised that the FY 1999 initiative, which would provide grants to 30 communities to address one of the six health areas, would cost \$360 million over 5 years. HHS would not specify how much of this total would be for FY 1999. This proposal was not included in HHS' FY 1999 submission to OMB in September.

DPC and HHS discussed the possibility of having the President announce these FY 1998 and FY 1999 funding initiatives on November 11th, 1997 at a meeting of the American Public Health Association (APHA). HHS was uncertain they could prepare all of the press materials for an announcement on this date, but was going to get back with DPC during the week of 10/20 to let them know when they could be ready. It was noted that any Presidential funding commitments for FY 1999 would have to be cleared through OMB. DPC staff also noted that the President and Chief of Staff Bowles have a strong interest in this potential initiative.

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Janet E. Irwin ( CN=Janet E. Irwin/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 6-MAY-1997 16:27:26.00

SUBJECT:: Meeting Invitation

TO:mlawler ( mlawler @ ios.doi.gov [ UNKNOWN ] )

READ:UNKNOWN

TEXT:

Mary Ann -- do you know anything about this? Its embarassing to be blindsided like this...

----- Forwarded by Janet E. Irwin/OMB/EOP on 05/06/97  
04:28 PM -----

Alecia Ward

05/06/97 04:09:48 PM

Record Type: Record

To: Ronald M. Cogswell/OMB/EOP, Janet E. Irwin/OMB/EOP, Richard H. Kodl/OMB/EOP, E. Irene James/OMB/EOP

cc:

Subject: Meeting Invitation

Does TJ need to attend this meeting or can you handle it?

----- Forwarded by Alecia Ward/OMB/EOP on 05/06/97 04:13  
PM -----

Patricia E. Romani

05/06/97 04:07:43 PM

Record Type: Record

To: Alecia Ward/OMB/EOP

cc: T J. Glauthier/OMB/EOP

Subject: Meeting Invitation

Alecia, this is e-mail Michael wished forwarded to you and TJ.

Hope TJ is feeling better!

Pat

----- Forwarded by Patricia E. Romani/OMB/EOP on 05/06/97  
04:25 PM -----

Cathy R. Mays 05/06/97 03:12:27 PM

Record Type: Record

To: Michael Deich/OMB/EOP, Lynn G. Cutler/WHO/EOP, Maria Echaveste/WHO/EOP  
cc: Marjorie Tarmey/WHO/EOP, Patricia E. Romani/OMB/EOP  
Subject: Meeting Invitation

You are invited to a meeting on Thursday, May 8, at 2:00 p.m. in Bruce Reed's office. The subject of the meeting is the Interior/Justice proposal to move Interior's law enforcement authority to the Justice Department and create a new Indian Country Investigative Service.

Other participants will include: Elena Kagan, Jose Cerda, and Leanne Shimabukuro of our staff; Seth Waxman and David Ogden from Justice; and Ann Shields and one other person from Interior.

Please let me know your availability for this meeting. Thanks.