

NLWJC – Kagan

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DRAFT -- FEBRUARY 7, 1996

MEMORANDUM FOR:NATALIE WILLIAMS

FROM:JOHN M. QUINN  
COUNSEL TO THE PRESIDENT

JANE C. SHERBURNE  
SPECIAL COUNSEL TO THE PRESIDENT

SUBJECT:Additional Records Subpoenaed by the House Government Reform & Oversight Committee

As explained in our February 1, 1996 memorandum to all staff of the Executive Office of the President, the House Committee on Government Reform and Oversight has subpoenaed certain White House records in connection with its Travel Office investigation. In addition to the records identified in our February 1 memorandum, the Government Reform Committee also seeks certain other records from your files. Please review your White House "records,"<sup>11</sup>For purposes of responding to the subpoena, please refer to the definition of "White House Travel Office matter" found in the attached "Definitions and Instructions" of the Committee subpoena (see Attachment 1). and retrieve the following records:

All calendars and phone records, message slips or phone logs . . . made to or from any of the following individuals, from May 1, 1995 through November 30, 1995 regarding the White House Travel Office matter<sup>22</sup>For purposes of responding to the subpoena requests, please use the definition of the term "White House Travel Office matter" appearing in the attached "Definitions and Instructions" of the Committee subpoena (see Attachment 1). or the case of U.S. v. Billy Ray Dale:" Jane Sherburne, Jon Yarowsky, Miriam Nemetz, Abner Mikva, Margaret Williams, Capricia Marshall, Patsy Thomasson, John Podesta, Catherine Cornelius, Mark Gearan, Bruce Lindsey, David Watkins, Janet Greene, Betsey Wright, Webb Hubbell, Bill Kennedy, Jeff Eller, Neil Eggleston, Cliff Sloan, Mike Berman, Harry Thomason, Darnell Martens, Beth Nolan, James Hamilton, Susan Thomases, James Lyons, Roy Neel, John Gaughan, any employee of the Military Office,<sup>33</sup>See attachment 2 for a list of all employees of the Military Office from January 20, 1993 through the present. Larry Herman, John Shutkin, any employee of KPMG Peat Marwick,<sup>44</sup>We are aware that at least he following KPMG Peat Marwick employees were involved in some aspect of the White House Travel Office matter: Larry Herman, Dan Russell, Leslie Casson, Carolyn Rawdon, Nicholas DiCarla, Charles Siu and John Shutkin. Billy Ray Dale, Barney Brasseaux, John Dreylinger, Ralph Maughan, John McSweeney, Robert Van Eimeren, Gary Wright, David Bowie, Pam Bombardi, Tom Carl, Stuart Goldberg, Lee Radek, Jamie Gorelick, Adam Rossman and David Sanford.

It is extremely important that staff members conduct a thorough search for responsive documents. Each Assistant to the President or Department head should ensure that his or her staff members conduct such a search. Please provide any responsive materials to Associate Counsel Elena Kagan in Room 125 OEOB no later than February 7, 1996.

MEMORANDUM TO ELENA KAGAN AND SALLY KATZEN

FROM:Julie Fernandes and Cecilia Rouse

DATE:April 8, 1998

RE:Background on H-1B Visa Reform

Though the Administration has endorsed a set of principles that should guide any legislation that proposes to increase the cap on the number of H-1B visas, we need to evaluate key components of possible legislative proposals and decide our priorities. This memo outlines aspects of the existing legislative proposals on which we need to focus.

#### Background

The H-1B visa program was designed to allow for the temporary admission of foreign "specialty workers" for employment in the United States. In its current form, it allows the admission of up to 65,000 non-immigrant workers each year. Each visa lasts for three years, and is renewable for another three. The program was designed to meet the short-term employment needs of employers seeking highly-skilled workers. Currently, H-1B visas are issued on a first come, first served basis.

Under current law, before obtaining a temporary foreign worker under the H-1B program, employers must attest that: (1) they will pay the prevailing wage; (2) notification has been provided to their employees and the representing union; (3) there is no strike or lock-out; and (4) the employment of H-1B non-immigrants will not adversely affect the working conditions of workers similarly employed. The Labor Department only has the authority to review these attestations for completeness and obvious inaccuracies.

Since 1993, the Administration has sought reforms to the H-1B visa program, including requiring employers to attest that they have and are taking timely and significant steps to recruit and retain U.S. workers in the jobs in which they seek to employ H-1B non-immigrants; prohibiting employers from laying-off a U.S. worker to replace them with a temporary foreign worker; and reducing the authorized length of stay from six to three years to better reflect the temporary nature of the presumed employment need. INS and Labor agree that these reforms would target H-1B usage to employers experiencing genuine skill shortages, thus relieving the pressure on the cap.

Industry is strongly opposed to these reforms. In general, they assert (1) that DOLs occupational classifications do not reflect the breadth of occupations within the industry, thus causing a recruitment or no lay-off provision to be unworkable; (2) that they do not want the government to second-guess their hiring and firing decisions; and (3) that these reforms would be equivalent to the labor certification requirement that exists in the permanent visa program, and thus would be slow and ineffective. Organized labor, however, supports these reforms, arguing they are needed to protect U.S. workers.

#### Issues to Consider

1.What does "recruit and retain" mean?

According to the Department of Labor, the Administration has never defined what precisely

would satisfy the "recruit and retain" requirement. Industry opposes this provision, in part, because it is not clear exactly what would be required.

The Kennedy-Feinstein legislation includes a provision that would require employers to attest to having taken timely, significant, and effective steps to recruit and retain U.S. workers prior to obtaining an H-1B foreign worker, with compliance measured by comparison to "industry-wide standards." However, it is unclear how this would work. For example, how would these "industry-wide standards" for recruitment and retention be identified? Also, should we endorse a process that simply identifies standards that reflect what industry is currently doing (therefore codifying the status quo) or should we ask industry to do more to recruit U.S. workers before being able to hire a temporary foreign worker? If we want them to do more, how do we define what we want them to do?

The "recruit and retain" provision of the now-defunct foreign nurses program (H-1A) set out several steps that an employer could take to recruit and retain U.S. workers, and then defined satisfaction of the statutory requirement as compliance with some subset of those. This method, though effective in the context of a single industry (where it is easier to define the universe of possibly acceptable recruitment methods), could prove unworkable for the H-1B program, given the diversity of industries that use it.

## 2. Occupational classification

Industry objects to a proposal that would permit the Department of Labor to use "recruit and retain" or "no lay-off" provisions to limit industry's employment choices based on occupational classifications established by the DOL. At the same time, industry has argued for broader occupational categories for the prevailing wage calculation since more general categories usually result in lower wage estimates.

Labor has agreed that it would not make sense to require employers to use existing occupational classifications to establish compliance with a "recruit and retain" or "no lay-off" provision. An alternative is to consider defining who needs to be recruited or who cannot be laid-off based on skill-level (e.g., the ability to program in java) or on the amount of additional training an incumbent or other U.S. worker would need to perform the job (e.g., someone who could program in java with six weeks training), rather than on occupational classification (e.g., computer programmer).

## 3. Practicability of a no lay-off provision

Industry also argues that a no lay-off provision would be difficult to administer, given the decentralized nature of employment decisions in large companies. They ask, for example, whether a firm that lays-off a worker in Chicago, but wants to hire one in Houston, would be considered to have "laid-off" the Chicago worker, and thus unable to hire an H-1B worker in Houston.

The Abraham bill includes a no lay-off provision that would not achieve our goals. His proposal would prohibit an employer from employing a temporary foreign worker "at the specific place of employment and in the specific employment opportunity from which a U.S. worker with substantially equivalent qualifications and experience in the specific employment opportunity has been laid-off." This language makes every employee unique, and thus is likely unenforceable.

## 4. The role of job contractors

In 1995, the Administration endorsed a proposal that job contractors seeking to use the H-1B program would be precluded from placing H-1B workers at sites of customers that had not also attested to complying with the H-1B criteria. Given that the top ten users of the H-1B program are job contractors, we may want to consider this as part of our overall reform package.

#### 5.Reduced maximum stay from six to three years

Under current law, the H-1B visa lasts for six years (it is a three year visa that is almost always renewed for an additional three years). The proposed reform would eliminate the possibility of renewal, thus creating a maximum stay of three years. In both 1993 and 1995, the Administration strongly supported this limitation as better comporting with the "temporary" nature of the presumed employment need.

However, the Administration proposed this reform in the context of not increasing the cap on the annual number of H-1B visas. It would be somewhat incongruous to both increase the annual cap and effectively limit by half the number of H-1B visa holders in the country at any one time. Thus, if we were to endorse raising the annual cap (even temporarily), this increase should not be coupled with a proposed reform to limit the annual number of visas.

#### 6.Enhanced enforcement

In addition to the above reforms to the H-1B program, the Labor Department has proposed that they be given greater authority and resources to ensure that employers comply with the standards for hiring temporary foreign workers under the H-1B program (either current or proposed).

Under current law, it is not clear that the Department of Labor has independent authority (i.e., where there has been no complaint) to initiate an investigation of an employer suspected of not substantively complying with the labor market attestations. The Kennedy-Feinstein proposal would give the Secretary independent authority to investigate (upon a finding of probable cause), subpoena authority, an ability to conduct random audits, and would increase the penalties for employers found in violation (from \$5,000 to \$10,000). These changes seem appropriate to ensure compliance with the objectives of the H-1B program. However, though each element of this enhanced enforcement is important, the subpoena authority and the ability to investigate without a complaint are the most critical.

The Abraham bill increases the penalty for willful violations of the H-1B program, but eliminates penalties for less than willful violations. In addition, the bill allows DOL to conduct random inspections of willful violators (for 5 years), but does not authorize additional money to do so. Also, under Abrahams bill, an employer could only be investigated for having violated the "no lay-off" provision if the employer were already being investigated for another violation. These reforms would weaken, rather than strengthen, the Secretarys enforcement authority.

#### 7.Prevaling wage

Under current law, an employer must pay each H-1B non-immigrant the "higher of prevailing or actual wage paid to similarly-employed U.S. workers." The Kennedy-Feinstein bill would modify this requirement to include benefits and all other compensation when calculating the wage standard. However, according to the Department of Labor, they would not be able to

calculate a reliable prevailing wage that includes non-wage compensation.

While the Abraham bill uses the current definition of wages, it would allow employers to use any published survey "which shall be considered correct and valid if the survey was conducted in accordance with generally accepted industry standards and the employer has maintained a copy of the survey information" to determine the prevailing wage. The requirement would permit the use of outdated wage data and would give DOL little control over the quality of the surveys used to determine the prevailing wage.

In the past, DOL has advocated for a prevailing wage calculation based on the applicable prevailing wage plus the same benefits and additional compensation provided to similarly employed workers of the employer.

#### 8. An application fee

Currently, employers only pay a small processing fee when filing for an H-1B visa. The Kennedy-Feinstein bill proposes a fee of \$250 per H-1B visa application. An application fee is a straightforward way to require employers who use the H-1B program to directly contribute to more training for U.S. workers and to generate additional funds for enforcement. However, an application fee will likely be perceived as a tax, and thus could be unpopular.

If we decide to push for the establishment of an application fee, we may want to increase it to \$500. First, the higher fee will generate more money for training. Second, as a tactical matter, if we begin negotiations at \$500 we may end up at \$250 (rather than beginning at \$250 and ending up at \$0). We should be careful, however, not to endorse a fee that would create such a disincentive to participation that it would effectively prevent the United States from meeting its treaty obligations (under the GATS) to permit 65,000 persons to enter annually under the H-1B program.

#### 9. Training

In order to meet the short-term and long-term needs of industry, training should be geared towards incumbent workers as well as those who have yet to enter the workforce. In addition, there is widespread support among the agencies for programs that encourage employers to work together with educators or training providers.

The Kennedy-Feinstein bill contains a proposal for the creation of "Regional Skills Alliances." Money generated through application fees would be used to set up these Alliances that would bring together employers, organized labor, U.S. workers and educational institutions to focus on building the skills of U.S. workers. Another proposal is to allocate additional funds to the National Science Foundations (NSF) Advanced Technological Education (ATE) program. ATE is an educational institution-based program that is designed to foster partnerships between two- and four-year colleges, secondary schools, government, and industry to improve educational programs through curriculum and teacher/faculty development. These programs, in combination, could address the training of both new and incumbent workers.

There remains the question of whether the Administration should push for a provision that provides training money directly to individuals either through scholarships or loans. The Kennedy-Feinstein bill includes the creation of a new short-term student loan program. The Abraham bill adds funds to an existing scholarship program. According to OMB, the

Department of Education, and others, there currently exists a variety of both loan and grant programs that are available to most workers. In addition, the Lifelong Learning Tax Credit is available to enable incumbent workers to obtain additional training. Thus, it may not make sense to spend any money generated by an H-1B application fee to augment an already adequate pool of money for loans or scholarships.

#### 10. Academic community concerns

Some members of the academic community have expressed concern that a "recruit and retain" or "no lay-off" provision would unfairly limit their ability to hire H-1B non-immigrants as part of (temporary) research grant programs.

MEMORANDUM FOR ELENA KAGAN AND SALLY KATZEN

FROM: JULIE FERNANDES AND CECILIA ROUSE

SUBJECT: POTENTIAL OPTIONS FOR THE H-2A PROGRAM

DATE: September 12, 1998

#### Background

In order to better understand the agencies positions, it is useful to understand the underlying policy tensions. Growers see themselves as having a choice between three categories of workers: legal U.S. workers, illegal workers, and H-2A workers. Which category they draw from is almost exclusively determined by total cost. For example, if the total cost of hiring a U.S. worker (including wages, taxes, housing, etc.) is higher than the total cost of hiring an H-2A worker, the grower will hire the H-2A worker. Because the H-2A program requires that growers pay the guestworkers a minimum wage (and the farmers have little incentive to pay more than this minimum wage because it is generally more than these workers would earn in their home countries), and provide housing and (generally) transportation, the total compensation offered by the H-2A program is the effective total compensation ceiling for U.S. workers.<sup>11</sup> In a normal labor market, in response to a labor shortage wages would increase which would induce more U.S. workers to work in agriculture. However, with the option of hiring H-2A workers, if no U.S. workers are willing to work for the wage the grower is offering, the grower can claim that he or she is unable to hire U.S. workers and therefore apply for H-2A workers to whom he or she must pay at least the wage set by the H-2A program. Although it may seem that the minimum wage in the program should also increase if there is a shortage of U.S. agricultural workers, in fact because the growers can apply for H-2A workers, the average wage paid to U.S. workers need never exceed the minimum wage in the H-2A program.

In addition, the presence of large numbers of illegal farmworkers distorts the labor market such that the growers response to an inability to find sufficient legal U.S. workers is to hire illegal workers, rather than increase wages or improve working conditions. Thus, though we may want to require fair wages and working conditions in the H-2A program, if the cost of using the program is too high, the growers will hire undocumented workers.

USDAs goal is to provide a steady, reliable source of farmworkers for U.S. growers. USDA believes that the domestic labor force can never completely satisfy the labor needs of agriculture, particularly during peak times, and therefore there will always be a need for temporary foreign agricultural workers. In a world in which the INS is increasingly cracking down on the employment of undocumented workers, the USDA (and the growers) would prefer that the foreign workers that they employ be authorized to work. Their goal is thus to set a wage (or total compensation) floor that is low enough that growers will readily use the H-2A program (rather than hire undocumented workers), but that is high enough to continue to attract U.S. farmworkers. However, they believe that an H-2A program that would set the wage (or total compensation) floor high enough to attract many more U.S. workers would drive growers into the illegal labor market.

DOL is concerned that a low wage (or total compensation) floor becomes a low ceiling for U.S. workers and therefore hurts these already impoverished workers. They are not as

convinced that the domestic labor force could never satisfy growers needs at a reasonable wage; rather, they argue that agricultural wages have been kept artificially low because of the large presence of undocumented workers. Labor believes that if agricultural wages were allowed to rise, additional U.S. workers would be willing to work in agriculture. They also assert that we can do a better job of facilitating matches between workers and employers that would give domestic farm workers more stable employment and growers access to a steady supply of workers.

The four major areas in which decisions must be made include: wages and other costs, recruitment of U.S. workers, enforcement, and immigration management. The most controversial components involve costs (e.g., wages, housing, transportation) where the issue is whether the proposal increases the total cost to the employer or shifts those costs to the government or the farmworker. USDA generally opposes reforms that would increase grower costs. The Labor Department generally opposes reforms that transfer costs to the government or the farmworker, and favors reforms that aim at improving labor conditions or wages for U.S. and foreign farmworkers. Because the focus is on total costs (with wages and housing being the most significant areas of concern) we cannot decide on individual reform components in isolation.

The rest of this memo discusses the issues for the major areas for discussion and describes the positions of the growers and workers.

## Issues and Options

### Wages and Costs

#### The 3/4 Guarantee

#### The issue

Under current law, workers hired under the H-2A program must be paid at least 75% of the work contract period for which they were recruited (unless there is an act of God that results in the termination of crop activity).

Growers believe that this requirement is overly costly and inflexible and would like it eliminated or modified. Workers, however, believe that elimination or weakening of this requirement would encourage growers to lure workers from far away with the promise of potentially high earnings without any obligation to fulfill at least a substantial part of that promise.

Under the MSPA, migrant farmworkers are guaranteed 100% of the work contract period for which they were recruited.

#### Options:

1. Eliminate this requirement (the current proposal in the Wyden/Graham bill).
2. Modify the requirement to allow H-2A growers to limit the contract period to the duration of crop activity and terminate the contract period offered due to changes in market conditions (the proposal of the Georgia growers).
3. Lower the required percentage of contract time covered from 75% to, say, 70%.

Pros of Options 1 and 2

Would help to lower the cost to growers of participating in the H-2A program.

Increases flexibility for growers

Cons of Options 1 and 2

Shifts the risk of changes in market conditions from the growers to the workers.

May encourage growers to recruit more workers than they actually need to hedge against uncertainties.

Because the MSPA requires growers to pay U.S. workers 100% of the work contract period for which they were recruited, these options would discourage the hiring of U.S. workers. (Because of the asymmetry in requirements.)

Pros of Option 3

Acknowledges the fact that this requirement potentially imposes a significant cost on growers.

Does not significantly weaken the guarantee for workers.

Cons of Option 3

Farm workers will be strongly opposed.

Recommendation: Option 3.

**Requirements (and Definitions) under the Current H-2A Program**

\*Recruitment: The agricultural employer must engage in independent positive (i.e., active) recruitment of U.S. workers, including newspaper and radio advertising in areas of expected labor supply. Such recruitment must be at least equivalent to that conducted by non-H-2A agricultural employers to secure U.S. workers.

\*Wages: Employers must pay H-2A workers the adverse effect wage rate (AEWR), the applicable prevailing wage rate, or the statutory minimum wage rate, whichever is higher. The AEWRs are the minimum wage rates which the DOL has determined must be offered and paid to U.S. and H-2A workers, and they are established for each state. The region- or state-wide AEWR for all agricultural employment for which H-2A certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the USDA.<sup>22</sup> Some 1998 AEWRs: California, \$6.87; Florida, \$6.77; Georgia, \$6.30; Hawaii, \$8.83; Kentucky, \$5.92; and Ohio, \$7.18. The AEWRs are designed to prevent the employment of these nonimmigrant alien workers from adversely affecting the wages of similarly employed U.S. agricultural workers.

\*Housing: The employer must provide free and approved housing to all workers, both foreign and domestic, who are not able to return to their residences the same day.

\*Meals: The employer must provide either three meals a day to each worker or furnish free and convenient cooking/kitchen facilities. If meals are provided, then the employer may charge each worker a certain amount per day for these meals.

\*Transportation: The employer is responsible for the following types of transportation for workers: 1) After a worker has completed fifty percent of the work contract period, the employer must reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work; 2) The employer must provide free transportation between any required housing site and the work site for any worker who is eligible for such housing; 3) Upon completion of the work contract, the employer must pay return transportation to the workers prior residence or transportation to the next job.

\*Workers Compensation Insurance: The employer must provide Workers Compensation or equivalent insurance for all workers, both foreign and domestic.

\*Three-fourths Guarantee: The employer must guarantee to offer each worker employment for at least three-fourths of the workdays in the work contract and any extensions. In applying this guarantee and determining any additional wages due, the following facts must be established: 1) The beginning and ending dates of employment; 2) The number of workdays between the established beginning and ending dates of the guarantee period; and 3) The hours of worktime for the guarantee. The guarantee is then established by computing seventy-five percent of the established total hours of work time in the contract period. Note that the employer may not count any hours offered on such days in which the worker refused or failed to work.

\*Fifty Percent Rule: The employer must employ any qualified U.S. worker who applies for an available job until fifty percent of the contract period has elapsed.

\*Tools and Supplies: The employer must furnish at no cost to the worker all necessary tools and supplies, unless it is common practice for the worker to provide certain items.

\*Labor Dispute: The employer must ensure that the available job for which the employer is requesting H-2A certification is not vacant due to a strike or lockout.

\*Certification Fee: A fee will be charged to an employer granted temporary alien agricultural labor certification. The fee is \$100, plus \$10 for each available job certified, up to a maximum fee of \$1,000 for each certification granted.

\*Farm Labor Contractors (Crewleaders): A farm labor contractor is an organization or entity that either supervises, recruits, transports, houses, or solicits farm labor other than the owner of the work site. Bona fide registered farm labor contractors may be eligible to apply for and receive H-2A certification, although they generally deal with domestic laborers. Farm labor contractors would be required, as employers, to provide all the minimum benefits specified by the H-2A regulations, including the three-fourths guarantee and the fifty percent rule.

☐☐

Reform Proposal

WH

USDA

DOL

Worker Recruitment

Require positive recruitment of U.S. farmworkers by growers only in areas where DOL finds that there are a significant number of qualified workers willing to make themselves available for employment at the time and place needed.

Y

okay

DOL implemented this administrative change.

Count as available for employment only those U.S. workers who are identified by name, address, and SSN

Y

okay

DOL implemented this administrative change.

Post employers H-2A job orders on Americas job bank

Y

USDA would not oppose.

DOL proposal; requires job order simplification.

Strengthen the MSPA program of registering farm labor contractors to require bonding; allow H-2A employers to require bonding as a condition of employing a farm labor contractor.

Y

DOL and USDA agree to support this.

Allow H-2A growers to include a bonding requirement for FLCs they employ.

Y

DOL and USDA agree to support this (essentially the same as the previous proposal).

Eliminate the requirement that farm labor contractors must be used by H-2A growers if the use is the prevailing practice in the area.

N

USDA generally wants more flexibility for growers, however they are unlikely to strongly oppose DOLs opposition.

DOL strongly opposes because the goal is for the H-2A program to track prevailing practices in areas of labor protection.

Provide an exception from current program requirement to use FLCs for any FLC who has a demonstrated history of employing illegal workers or other serious labor abuses.

Y

USDA agrees.

DOL regulatory initiative.

Require use of FLCs as recruitment mechanism whenever use is common or normal (not prevailing) in an area.

N

USDA will likely oppose because grower regulations should involve the highest standard.

DOL generally supports prevailing practice. This is not likely an issue about which DOL will take a strong position.

Require payment of competitive rates for FLC services.

Employment Eligibility Verification

DOL work with Congress and other affected agencies to develop a reliable means of verifying individuals authorization to work as they are hired.

Y

USDA would likely agree because of their goal to decrease growers dependence on undocumented workers as long as growers had increased access to H-2A workers.

DOL agrees.

Create a national employment eligibility verification system so that employers can check on the legal status of domestic workers who are hired during the H-2A process.

Y

INS currently has a pilot program to do just that which we support and has encouraged growers to participate in the pilot.

Require growers using the H-2A program to use INS pilot employment eligibility verification system.

Y

USDA would likely agree as part of an overall package.

DOL would likely agree.

Growers only responsible for recruiting and hiring farm workers in the U.S. through the DOL-administered Registries (and contacting former employees); Registries are

responsible -- and have only 14 days -- to locate, contact, verify employment eligibility, and refer U.S. workers to growers seeking foreign farm workers; failure to refer timely or to refer sufficient workers allows direct application for workers to Secy of State.

N

USDA likely supports this provision because it reduces the burden on employers.

DOL hates this provision because it leaves the burden of recruitment entirely to the Federal government.

Secy of State authorizes additional H-2A workers if Registry-referred workers fail to report; are not ready, willing, able, or qualified to do the work; or, abandon or are terminated from employment.

N

USDA likely supports this provision because it provides growers with quick access to H-2A workers if they have cannot recruit U.S. workers through the registry.

DOL would likely hate this provision because, again, it centralizes all recruitment through the Registry and absolves growers of any additional recruitment before applying for H-2A workers.

Pilot test new Registry of available U.S. farm workers; growers share responsibility for positive recruitment of U.S. farm workers.

Y

USDA would likely support a pilot of a mechanism to facilitate the hiring of U.S. workers for growers.

DOL supports a pilot of such a registry (as long as growers continue to share part of the responsibility for recruitment).

Require employers positive recruitment to include: providing an 800 contact telephone number and accepting collect calls from worker job applicants; contacting other potential employers to link a series of job opportunities; and developing a long-term recruitment plan to reduce dependence on foreign guestworkers.

N

USDA would likely oppose such positive recruitment measures because it increases the costs to employers.

DOL would likely support these measures, but are unlikely to require that they be part of a final package.

H-2A workers covered by the MSPA, but disclosure only required at time of visa issuance.

N

USDA likely supports this measure.

DOL supports having H-2A workers covered by MSPA but likely believes that the workers should be informed of their rights when recruited rather than at the time of visa issuance (which could be after the worker has incurred significant costs).

DOL rulemaking regarding possible consolidation of agricultural job orders in the Interstate Clearance System.

Y

USDA agrees.

DOL agrees

#### Productivity Standards

H-2A employers allowed to set minimum production standards after a 3-day break-in period.

?

Employer-established productivity standards and quality requirements should be permitted only if they are the prevailing practice among non-H-2A employers, are bona fide, objective, justifiable, fully disclosed and implemented on a fair and equitable basis.

USDA generally opposes any additional regulations or restrictions on growers and would therefore likely oppose this idea.

DOL would likely support this idea as it is aimed at protecting U.S. workers.

#### Experience (and related) Requirements

H-2A employers should be allowed to specify agricultural experience as a condition for hiring U.S. farm workers.

USDA would likely support because it ultimately gives the growers more flexibility in who they hire.

DOL would likely oppose arguing that it gives growers too much discretion for jobs that generally do not require substantial experience.

Disallow job qualifications, experience and reference requirements unless they are the prevailing practice among non-H-2A employers and are otherwise job-related and bona fide.

USDA would likely oppose for the same reasons that they would support specifying agricultural experience.

DOL would likely support for the same reasons they would oppose specifying agricultural experience.

Allow H-2A workers to move from one certified H-2A employer to another, with the final employer responsible for return transportation costs.

Y

According to DOL, this is current law.

Prohibit H-2A job orders that consolidate seasons and different crops.

USDA would likely oppose because consolidation would potentially decrease costs to growers by allowing them to group together and reduce the number of individual applications.

DOL would likely support because it protects U.S. farm workers by requiring growers to submit individual applications.

Prohibit use of the H-2A program in designated labor surplus areas.

N

USDA may not disagree in theory but would likely be concerned that the designation of a labor surplus areas would not necessarily reflect the short-term labor needs of particular growers with particular crops.

DOL would support this in theory, however it would likely have concerns about how areas are designated.

Wages and Costs

Revise H-2A regulations regarding the 3/4 guarantee to remove incentives to growers to overestimate the contract period.

Y

Agrees.

Agrees.

Consider applying the 3/4 guarantee incrementally during the contract period.

N

Oppose.

Opposes.

Eliminate the 3/4 guarantee

N

Doesnt like the 3/4 guarantee b/c wants growers not to have to pay workers if their crop is disappointing (less work in fact than they anticipated). However, they understand that this is a more generous rule than under the MSPA (the statute that governs non-H2A farmworkers) and thus agrees that this reform is no good.

Opposes the elimination of the 3/4 guarantee (b/c protects farmworkers by ensuring that the work that they are promised in the contract is provided, thus allowing them to make fairer judgments when choosing between jobs). However, not sure that 3/4 is a magic number.

Modify the 3/4 guarantee to allow H-2A growers to limit the contract period to duration of crop activity and terminate the contract period offered due to changes in market conditions.

N

Agree that effectively eliminates the 3/4 guarantee.

Agree that effectively eliminates the 3/4 guarantee.

Eliminate AEWR and instead require payment of 105% of prevailing wage for crop in the area.

Yes. They are in favor of eliminating the AEWR b/c it provides a wage higher than the prevailing wage for some H2A workers. USDA does not agree that the prevailing wage is depressed by the presence of illegals in the workforce, but does not object to a small sweetener to the prevailing wage to replace the AEWR (like the 105% proposed by Wyden)

No. The AEWR is calculated to compensate for the presence of illegals that depress the

prevailing wage rate. It calculates the required wage as the state-wide average of all non-managerial farmworkers, thus dispersing the impact of illegals. If the wage is calculated based on 105% of prevailing, it will still be a depressed wage in those industries or areas where the presence of illegals is large. However, DOL agrees that the AEWR is a bit of an odd way to calculate, and that there is no magic to it.

They want some way to calculate the wage that compensates both for the presence of illegals (wage depression) and for the fact that growers do not pay H2A workers FICA/FUDA (approx. 8%). AEWR may not be magic, but 105% of prevailing does not even get the wage = to that of non-H2A workers.

Eliminate AEWR and require payment of the prevailing wage for the crop in the area.

USDA likes this option. They want the H2A wages to be the same as the prevailing wage in the crop and area. They dispute that wages are depressed b/c of the presence of illegals. In addition, they maintain that if the program requires a higher wage than what is being paid locally, the growers will not use the H2A program and will access the undocumented workforce.

Labor hates this idea, for the reasons above. The wage paid to H2A workers should be a fair wage -- defined as one that compensates for the wage depression caused by the presence of illegals. Labor believes that growers should have to go to the U.S. market first, offer a fair wage and good conditions, and if not successful, access an H2A market that compels them to pay a fair wage under good conditions.

Only require payment of federal minimum wage (not AEWR) as a training wage for inexperienced workers during a training period (in the K).

Another way to undercut the AEWR that USDA likes.

Another way to undercut the AEWR that Labor hates.

Require increases in piece rates to reflect increases in the AEWR.

Y

USDA would likely not like. This would raise the total wage cost.

Labor would like. Most farmworkers are paid by the piece, so a conversion of the piece rate to the AEWR is consistent with their desire to keep or strengthen the AEWR.

Prohibit H-2A employers from increasing productivity requirements to offset increases in the AEWR

Y

USDA would likely not like b/c this would raise the total wage cost and require farmers to set productivity levels early in the season and not allow conditions to change expectations.

Labor would like this. It discourages the farmers from changing productivity levels in ways designed to keep the wage low.

Change AEWR methodology to set at 90th percentile of local market wage or 80th percentile of regional market wage.

They are generally opposed to any change that would increase the overall wage cost. However, they may be open to setting the wage at some modest percentage higher than the local prevailing wage. Thus, though these numbers are high, there may be room to work here.

Labor is generally in favor of calculations that result in a higher wage, though they see no magic in the AEWR. The conflict with USDA would be over how high to set the percentile.

Apply AEWR to sheepherders.

?

Opposed. Sheepherders are different.

They want more for the sheepherders.

Disallow any wage deductions by H-2A employers that reduce earnings below the highest required wage.

USDA would favor changes along these lines. They want to consider total cost of employing an H2A worker and compare that to total cost of hiring a non-H2A worker (legal or illegal).

Oppose. Though Labor is open to discussions that take into account total cost to growers to use the program, they do not want the farmworker wages to be too low.

Prohibit H-2A employers from fixing uniform wage rates across large areas -- states or regions.

?

Reforms to the 50% rule as recommended by OIG.

Y

USDA agrees.

Labor agrees.

Modify existing 50% rule to only require hiring of local workers (that reside within commuting distance) but extend this obligation to the entire period of the contract.

N

Oppose. Blocks out of state U.S. crews from work.

Oppose. same reason.

Eliminate 50% rule except for workers referred through the registries unless there are other substantially similar job opportunities in the area.

Y

Would agree to apply the 50% rule only where equivalent jobs are not available in the area. This is currently the rule where the association in the employer. Also agrees that the 50% rule is good for U.S. workers.

Agrees.

H-2A workers should be covered under the State Unemployment Insurance System

Y

This could increase grower cost, but unlikely that they would oppose this.

Likely favor, though there is a question of whether this would only apply where U.S. farmworkers are covered under state law.

H-2A employers expressly authorized to pay hourly wage, piece rate, task rate, or other incentive payment method, including a group rate, irrespective of the prevailing payment method.

N

USDA might like this b/c it gives flexibility to growers.

Labor will hate this, b/c they have asserted that the task rate is too variable to be

susceptible to a prevailing wage determination. There are also likely problems with the group rate.

H-2A employers are in compliance with the wage requirements if the average of the hourly earnings of the workers, taken as a group, equals the required hourly wage.

N

USDA may like this, but fairness concerns weigh against it.

Labor will not like this b/c it allow the growers to pay some workers less than the required hourly wage.

Prohibit payment by task rate or other variable rate method of payment.

Y

May not like b/c like grower choice.

Would likely favor. Have spoken out against the task rate.

Protect earnings level when employers convert from a piece rate to an hourly rate.

Y

USDA likely would not oppose, b/c it only holds the rate the same.

Protecting wage rates would seem a good thing to Labor.

For employers converting from hourly rate to piece rate, set piece rate to assure earnings at least 30% above AEWR.

This is another way to sweeten the wage that USDA will likely oppose.

This is another way to sweeten the wage that DOL will like, but it is -- in a way -- difficult to defend (unless you assume that growers are setting piece rates at levels well below the AEWR conversion).

H-2A workers apply for transportation reimbursement to the government (rather than the employer).

This is a shift of cost from the grower to the government. USDA will like this.

Labor does not like, for the same reason. However, as long as the cost to the grower remains the same for a U.S. worker (working under fair wages and good conditions) and an H2A worker, DOL will not fight if some overall costs are picked up by the government (as long as the cost is not coming out of their budget!).

H-2A workers may apply to the employer for transportation reimbursement, but employer not obligated to provide such reimbursement.

N

USDA may like this, b/c lowers cost for the grower. However, growers are used to paying transportation costs in this program. This cost is just part of the overall cost, and thus would go into the overall cost calculation (which, according to USDA, determines whether a grower will participate or hire illegals).

DOL will oppose. They want H2A workers to have transportation paid for. However, as noted, they may be amenable to a system that has the government assume some of this cost.

H-2A workers not eligible for transportation reimbursement if distance traveled is less than 100 miles.

?

This is part of the cost calculation. USDA may think that this is a small step in the right direction.

Labor would likely oppose as eroding the transportation guarantee. Not likely a big issue for either side.

Pilot program for transportation advances for U.S. farmworkers.

Y

USDA would likely be open to this.

DOL would also likely be open to this (a small pilot).

Require H-2A employers to provide travel advances to U.S. farmworkers.

Charge fee = FICA/FUDA taxes to finance certain program activities (housing; admin. costs; transportation)

Y

USDA is in favor. The question is how high is the fee.

Labor is not opposed to a fee that would fund certain activities. The question is how high is the fee (more than FICA/FUDA?)

Impose user fees that reflect the cost of the H-2A program.

First, we are not sure how to calculate this cost (particularly, the cost of housing). Even if we could, USDA would be concerned that it would be too high (and thus cost prohibitive for growers to use). They are open, though, to a modest user fee.

As noted, Labor is also open to a user fee. However, it is not clear that they would want to push for a fee that was a total reimbursement (making it cost neutral for the government). That would surely make it too expensive for growers to use.

Allow H-2A workers to opt out of the employer-provided meal plans.

Unclear how they would react to this.

Labor would likely think this is o.k., b/c under the current system the cost of meals is deducted from the farmworker wages. However, there is some concern about making sure that workers dont opt out and then not have adequate food for the harvest.

Require first time H-2A employers to maintain wages and working conditions previously offered.

USDA would oppose this as restricting grower flexibility.

Labor would likely favor, but it could be hard to administer.

Housing

Apply local or state (rather than federal) housing standards to housing provided by H-2A growers.

USDA would likely favor (local laws could give more flexibility) , but it is just a race to the bottom. They could be convinced that federal standards should apply in a federal program.

Labor would likely oppose. Would want federal standards to apply in this federal program. Also, would assume that federal standards are stricter.

H-2A employers permitted to charge workers up to fair market value for the cost of maintenance and utilities provided.

USDA likes as a way to reduce cost.

Labor hates as a way to erode wages.

H-2A employers can charge workers reasonable amounts (up to \$25 per week) for the cost of maintenance, utilities, repair and clean-up of housing provided.

Same

Same

H-2A employers can charge a security deposit (up to \$50) to protect against gross negligence or willful destruction of property.

USDA likes as a way to share some costs with farmworkers and make them responsible for taking care of grower-provided housing.

Labor in general would not like, but likely some compromise could be struck on this one.

H-2A employers may require reimbursement (wage deduction) from responsible worker of reasonable cost of repairing damage to housing provided that is not the result of normal wear and tear.

Y

According to DOL and USDA, this is current law.

Reduced user fee to H-2A growers providing housing.

This is just another way to think about total cost to growers. If we have a user fee, we have to think about what we want it to pay for.

H-2A employers may provide a minimum housing allowance in lieu of housing, unless (no earlier than 8 years after enactment) a state Governor certifies that there is not adequate farm worker housing available.

USDA would like as a cheaper way to meet the housing requirement.

Labor hates this. First, there is a shortage of affordable housing generally (which is particularly acute in rural areas). Second, it is unreasonable to expect a migrant worker from another country to be able to rent any housing on his own with a federal voucher.

H-2A employers may provide a minimum housing allowance in lieu of housing, but must also arrange for decent housing at the allowance level.

USDA would like this as affording choice to the grower on how to comply with the housing requirement.

This is better than above, but does not address the fact of great shortages of decent, affordable housing in rural areas. Under this system, what happens if housing is not available?

Require growers to provide free housing to all U.S. farm workers (including local workers).

USDA would not like this additional cost burden on the growers.

Labor would like as an ideal, but unrealistic to add this additional burden on growers (unless heavily subsidized by the federal government).

Require H-2A growers to make their housing available for U.S. workers who arrive early.

Cant see the objection to this one.

Labor likely is in favor.

Enforcement

Extend to Wage & Hour the authority to debar violating employers who commit serious labor standards or H-2A program violations.

Y

USDA and DOL agreed to this during our earlier process. Will be part of upcoming rulemaking.

Issue final H-2A regulations.

Y

DOL has agreed to this.

Narrow DOL enforcement to only allow investigations only pursuant to a complaint.

N

USDA may like this, but not sure. It would be difficult for them to argue in favor of less enforcement, when there is so little already.

DOL would hate this. They need more not less enforcement money and tools.

Institute a 12-mo. statute of limitations on complaints

USDA likely would favor.

DOL may think this is o.k.

Provide a reasonable cause threshold for investigations.

USDA would likely favor.

DOL may want to reserve the right to do random inspections.

Limit penalties to certain types of violations.

Unclear what this recommendation means.

Institute a three-year and permanent debarment period for repeat violations.

USDA would likely favor.

DOL would likely favor, unless this is substantially less than current law.

Require hiring of former H-2A workers (where allowed) to offset disincentives to complain about labor violations.

USDA would oppose. This too greatly limits grower flexibility in hiring.

Not sure if DOL would see this as an effective tool to offset disincentives to complain about labor violations.

Require disclosure of terms and conditions of employment to be given to workers in their native language in plain language.

Cant imagine opposition, unless it costs a lot.

Labor would likely favor.

More timely initiation and completion of DOL enforcement actions.

We are all in favor of timeliness.

Immigration Management

H2A worker ineligible for continued participation in the program if, during the prior 5 years, the worker violates the terms of admission to the U.S.

USDA would not likely have an opposition to this in theory.

DOL would not likely have an opposition to this in theory.

H2A workers admitted to the U.S. have 14 days after termination of employment contract to search for other legal work in the U.S.

Y

USDA would not likely have an objection.

DOL would not likely have an objection.

H2A workers admitted must be issued fraud-resistant identification/work authorization documents.

Y

USDA would not likely have an objection.

DOL would not likely have an objection.

An employer may file for extension of stay to employ an H2A worker already in the country and may legally employ such a worker from the date application is made.

USDA would likely support this idea because it provides growers with easy and quick access to H-2A workers.

DOL would likely oppose this idea because it would allow growers to get around the recruitment requirement.

AG study whether H2A workers timely depart the U.S. after period of authorized employment.

Y

Legalization for H2A workers who complete at least 6 months employment in the U.S. under the H2A program for 4 consecutive years in compliance with program requirements.

N

USDA would not likely oppose this idea. However, it does not advance their goals because they believe that growers need a ready supply of foreign workers to meet short-term labor needs. Once legalized these foreign farmer workers would likely move into other sectors of the labor market.

DOL is opposed because it a) it gives the employers additional leverage over the workers by empowering them to hold the promise of a green card out to the foreign worker and b) it undercuts our immigration policy.

Require withholding of percentage of H2A workers wages, deposited in accounts reclaimable within limited time period in home country, as incentive to repatriate.

N

USDA supports incentives to repatriate and if they believed that if this would work they would support it.

DOL would likely oppose this because 1) there is no guarantee that the workers would actually receive these wages and 2) there is no evidence that this amount of money would be an incentive to repatriate.

User fee offsetting FICA/FUDA advantage used as repatriation incentive

N

Same position as above.

Same position as above.

Require entry-exit control system for all H2A workers.

Y

If this were possible, USDA and DOL would support it. However, at this time INS is unable to operate an effective exit and entry control system on the land borders.

Other issues

Expand scope of the H2A program to include agricultural -- meat/poultry -- processing employment.

Secretary authorized to establish cap on number of H2A visas issued pursuant to application from independent contractors, agricultural associations and such similar entities.

Y

USDA would likely support this as long as it was a high cap.

DOL supports this provision since 80% of all H-2A applications are from independent contractors or agricultural associations.

Comprehensive report by AG and Secretaries of Labor and Agriculture.

Y

All H2A employers non-wage practices and benefits should be subject to prevailing practice standards.

USDA will want more flexibility for growers.

DOL would likely favor tying all practices and benefits to prevailing practice standards.

Assure that U.S. and H2A workers are truly allowed to choose their employer

Cap the number of visas available under the H2A program.

See above.

See above.

Administrative Processes

Consolidate DOL certification and INS petition approval into one process administered by DOL

Y

Consolidate responsibility within DOL in Wage & Hour for post-application examination and enforcement of employer compliance with H2A program requirements.

Y

Government -- not employer -- responsible for reimbursing transportation costs of eligible workers.

Y

Require employers H2A labor certification applications to be submitted 45 (rather than 60) days before the employer date of need.

Y

Reduce lead time for employer applications to 30 (rather than 60) days before date of need.

Y

Consistently meet 7 day deadline -- after initial receipt of employers labor certification application -- to give written notification to the employer of deficiencies precluding adjudication of the application.

Y

Consistently meet existing 20 day deadline -- prior to employers date of need -- to issue approved certifications

Y

After consolidation of certification and petition adjudication process in DOL, change the law to set deadline for DOL approval of employers application to 7 days before date of need.

Y

Reduce the deadline for employer-provided housing to be available for inspection to 15 (rather than 30) days before the date of need.

Y

Change the current labor certification to one based on employers attestations to comply with program requirements.

?

Unsure how this changes employer obligations.

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines

FROM: Sally Katzen

SUBJECT: Heads-up on Proposed USDA Organic Rule

We are about to conclude review of a proposed USDA rule that would set national standards for products labeled with the term "organic." The rule, which implements part of the 1990 "Farm Bill," would establish a Federal accreditation program for States or private entities to certify that a farmer or handlers product can be labeled as organic; require farmers and handlers to prepare and follow "organic plans" that describe their farming and handling practices as a condition for certification; and identify substances approved for use (and, by implication, those that cannot be used) in organic farming.

We expect the rule to be somewhat controversial. Organized organic industry groups will be supportive of USDAs approach. However, many of the conditions in the rule will likely produce an unintended but unavoidable reaction. For example, the organic industry prefers natural manure as a fertilizer and the proposal includes "proper manuring" practices, whereas some of the consumer groups are concerned that manure may harbor pathogens that have been linked to recent food safety scares. In addition, the standards in the rule presume that organic farming is more environmentally friendly than conventional farming; this may offend some conventional farmers and implies that EPA and FDAs regulatory programs do not adequately ensure that pesticide approvals meet high environmental and human health standards.

USDA expects to publish this proposal in the Federal Register in two weeks. We are encouraging sooner rather than later so as not to spoil the holiday cheer. Please let me know if you have any questions.

cc: Maria Echaveste  
Rahm Emanuel  
Ron Klain  
Thurgood Marshall, Jr.  
John Hilley  
Ann Lewis  
Sylvia Mathews  
Bruce Reed  
Gene Sperling  
Chris Jennings  
Elena Kagan  
Victoria Radd  
Barry Toiv

Michael Waldman  
T.J. Glauthier  
Josh Gotbaum  
Larry Haas

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines

FROM: Sally Katzen

SUBJECT: Heads-up on Proposed HHS Hospital Conditions of Participation Rule

We are about to conclude review of a proposed HHS rule revising the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The rule would shift HCFAs regulatory focus towards patient care and outcomes and away from unnecessary and burdensome procedural requirements. This rule is an important component of the Vice Presidents Reinventing Government initiative. Last winter, the Department published a proposed rule covering home health agencies. This rule is the next in a series of rules that will also cover end-stage renal disease facilities, ambulatory surgical centers, and hospices.

In particular, the rule requires hospitals to develop their own tailored quality assessment and performance improvement program and delineates the minimum items that must be included in the hospitals program, e.g. access to care, patient satisfaction, complaints and grievances, etc. To balance these new requirements, the rule would eliminate unnecessary paperwork, personnel, and administrative requirements.

This proposed rule is also an important component in the Departments organ donation initiative in that it would mandate that hospitals report all potential organ donors to Organ Procurement Organizations. Currently, such reporting is voluntary, based upon hospital-specific policies. Hospitals may react adversely to these new organ procurement reporting requirements, but the American Hospital Association has been consulted and has agreed to work constructively with the Department.

The hospital industry has been expecting this rule for some time and generally will be supportive of its increased flexibility and focus on patient care and outcomes. Health care professionals such as physicians, dieticians, etc. may oppose flexible staffing requirements, while other personnel such as certified registered nurse anesthetists will appreciate the streamlined oversight and management.

Please let me know if you have any questions.

cc: Maria Echaveste  
Rahm Emanuel  
Ron Klain  
Thurgood Marshall, Jr.  
John Hilley  
Ann Lewis

Sylvia Mathews  
Bruce Reed  
Gene Sperling  
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Elena Kagan  
Victoria Radd  
Barry Toiv  
Michael Waldman  
Josh Gotbaum  
Larry Haas

FEBRUARY 1, 1996

MEMORANDUM FOR:OFFICE OF RECORDS MANAGEMENT

FROM:JOHN M. QUINN  
COUNSEL TO THE PRESIDENT

JANE C. SHERBURNE  
SPECIAL COUNSEL TO THE PRESIDENT

SUBJECT:Subpoena from the House Government Reform & Oversight Committee

The House Committee on Government Reform and Oversight has subpoenaed certain White House records in connection with its investigation into the "White House Travel Office matter."<sup>11</sup>For purposes of responding to the subpoena requests, please use the definition of the term "White House Travel Office matter" appearing in the attached "Definitions and Instructions" of the Committee subpoena (see Attachment 1). Please review your "records,"<sup>22</sup>For purposes of responding to the subpoena requests, please use the definition of "records" appearing in the attached "Definitions and Instructions" of the Committee subpoena (see Attachment 1). and retrieve the following White House records created on or before January 11, 1996:

1."Any records related to the White House Travel Office matter or the White House Project"<sup>33</sup>For purposes of responding to these requests, the term "White House Project" refers to an endeavor which "involved both improving the 'staging' of Presidential events as well as finding a way to utilize excess Presidential Inaugural Commission funds for outsourcing White House assistance or providing assistance to the White House." from the following individuals and/or offices: The White House Counsel's Office,<sup>44</sup>For a list of the employees who have served in the White House Counsel's Office from January 20, 1993 to the present, see Attachment 2. Maggie Williams, Capricia Marshall, Lisa Caputo, Neel Lattimore, Isabelle Tapia, Mary Beck, Vince Foster, Deborah Gorham, Linda Tripp, Bill Kennedy, David Watkins, Catherine Cornelius, Clarissa Cerda, Jeff Eller, Patsy Thomasson, Ricki Seidman, Mark Gearan, Dwight Holton, Andre Oliver, Todd Stern, Jean Charleton, Brian Foucart, Janet Greene, Beth Nolan, Clifford Sloan, Mack McLarty, Bill Burton, David Dreyer, Anne Edwards, Rahm Emmanuel, David Leavey, Bruce Lindsey, Darnell Martens, Matt Moore, Dee Dee Myers, Lloyd Cutler, Jane Sherburne, Abner Mikva, Mark Fabiani, Tom Hufford, Roy Neel, John Podesta, Rita Lewis, David Gergen, Craig Livingstone, Marjorie Tarmey, Ira Magaziner, Bernard Nussbaum, Jennifer O'Connor, Penny Sample, George Stephanopoulos, Frank Stidman, Harry Thomason, Lorraine Voles, Jeremy Gaines, Dale Helms, David Gergen, Joel Klein, Neil Eggleston, Steve Neuwirth, Cheryl Mills, Jurg Hochuli, Andris Kalnins and Bruce Overton.

2.All calendars, "phone records (including message slips, phone logs, pages or any White House record of phone calls)" of the following individuals for the period May 1, 1993 through July 31, 1993: Bill Kennedy, Vince Foster, Mack McLarty, Ricki Seidman, John Podesta, Todd Stern, Dwight Holton, Andre Oliver, Brian Foucart, Bruce Lindsey, Jack Kelly, Matt Moore, Beth Nolan, Cliff Sloan, Bernard Nussbaum, David Watkins, Catherine Cornelius,

Jennifer O'Connor, George Stepha-nopoulos, Dee Dee Myers, Clarissa Cerda, Jeff Eller, Patsy Thomasson, Mark Gearan, Leon Panetta, Harry Thomason and Maggie Williams.

3. All "calendars, phone records, message slips or phone logs" of the following individuals for the period May 1, 1995 through November 30, 1995: Jane Sherburne, Jon Yarowsky, Natalie Williams, Miriam Nemetz, Abner Mikva, Maggie Williams, Capricia Marshall, Patsy Thomasson, John Podesta, Catherine Cornelius, Mark Gearan, Bruce Lindsey, David Watkins, Janet Greene, Betsey Wright, Webb Hubbell, Bill Kennedy, Jeff Eller, Neil Eggleston, Cliff Sloan, Mike Berman, Harry Thomason, Darnell Martens, Beth Nolan, James Hamilton, Susan Thomases, James Lyons, Roy Neel, John Gaughan, any employee of the Military Office,<sup>55</sup> For a list of the employees who have served in the Military Office from January 20, 1993 to the present, see Attachment 3. Larry Herman, John Shutkin, any employee of KPMG Peat Marwick,<sup>66</sup> We are aware that at least the following KPMG Peat Marwick employees were involved in some aspect of the White House Travel Office matter: Larry Herman, Leslie Casson, Carolyn Rawdon, Dan Russell, Nicholas Di Carla, Charles Siu and John Shutkin. Billy Ray Dale, Barney Brasseaux, John Dreylinger, Ralph Maughan, John McSweeney, Robert Van Eimeren, Gary Wright, David Bowie, Pam Bombardi, Tom Carl, Stuart Goldberg, Lee Radek, Jamie Gorelick, Adam Rossman, David Sanford.

4. "All records related to the General Accounting Office review of the White House Travel Office."

5. "All records related to the Justice Department's Office of Professional Responsibility review of the White House Travel Office."

6. "Any records related to American Express obtaining the White House Travel Office business including all records related to any contact with GSA or American Express."

7. "All records related to the Peat Marwick review of the White House Travel Office and any subsequent reviews such as that performed by Tichenor and Associates and any records reflecting any contacts, communications or meetings with any Peat Marwick attorneys or officials."<sup>77</sup> See footnote 6.

8. "Any records of any contacts or communications related to any IRS matter regarding UltrAir and/or any IRS matter regarding any other White House charter company, any IRS matter related to any of the fired seven travel office employees, or any other IRS matter related to the White House Travel Office and any records of contact or communications with IRS Commissioner Peggy Richardson by Mack McLarty, Webb Hubbell, Bruce Lindsey, Vince Foster, Bill Kennedy, or any other member of the White House Counsel's office<sup>88</sup> See footnote 4. from May 1, 1993 to" January 11, 1996.

9. "All records related to the Treasury Inspector General's investigation of the IRS audit of UltrAir. (The investigation requested by Rep. Frank Wolf in May 1993)."

10. "Any records relating to any proposal to use independent financing or unused Presidential Inaugural Committee funds to assist anyone on the White House staff, outsource White House duties or tasks, or otherwise assist White House operations. This would include records regarding any efforts, both inside and outside the White House to explore, evaluate or implement such proposal. It would also include records of any subsequent analysis of such efforts."

11. "Any records relating to or mentioning the finding of the note in Mr. Foster's briefcase

or any other location following his death, any Travel Office records of Mr. Foster's and any records relating to the finding or existence of or explanations of any files of Mr. Foster's relating to the White House Travel Office matter, Special Government Employees, issues of nepotism, the use of volunteers or any efforts to obtain Office of Legal Counsel opinions on any of these matters and any records of any contacts with Mr. James Hamilton, Lisa Foster, Harry Thomason, Susan Thomases, James Lyons about Vincent Foster records."

12."Any records relating to Mr. Thomason, Mr. Martens, Ms. Penny Sample, Ms. Betta Carney and Mr. Steve Davison and any other World Wide Travel employees including, but not limited to, all records indicating what these individuals did while at the White House, any documents relating to issues arising out of any actions they took while at the White House, any personnel records, requests for passes or pass forms, requests for office space and any forms related to office space, phone or other equipment, and any records relating to any actions taken by these individuals regarding the White House Travel Office. (For Ms. Sample, this request would also include all trip files for trips she had any involvement with while at the White House.)"

13."All records about problems or allegations or wrongdoing in the Travel Office from January 20, 1993 to" January 11, 1996.

14."All tapes or videotapes produced by Mr. Thomason or any associates of his for the White House, the Bill Clinton for President Committee or the Clinton/Gore '92 Committee and all billings and financial statements relating to such work."

15."All records relating to Travel Office funds and/or documents being placed in the White House military office and all records of any inquiries about related events."

16."All records of any contacts with David Watkins or Bill Kennedy from the time they ended their employment at the White House to" January 11, 1996.99Bill Kennedy's effective date of resignation was 11/21/94. David Watkins' effective date of resignation was 6/17/94.

17."All Executive Order documents located in Mr. Foster's Travel Office files and/or his briefcases."

18."All records related to Harry Thomason and/or Darnell Martens discussing pursuing contracts with GSA, all records related to ICAP (Interagency Committee on Aviation Policy), and any records of the White House Counsel's office analyzing the issues raised by Mr. Thomason and Mr. Martens actions at the White House."

19."All records related to any sexual harassment complaints about Mr. David Watkins during the Clinton/Gore 1992 campaign or during his tenure at the White House and any records of meetings, actions, or communications regarding such complaints and all records related to the \$3000 per month retainer provided to Mr. Watkins by the Clinton for President campaign."

20."All records of any contacts, communications or meetings regarding the 'Watkins memo' produced to the Committee on January 3, 1996 and the chain of custody of this memo."

21."All indices or catalogues of Vincent Foster's office, tapes, computer and documents and who received each document from his office."

22."All records relating to the actions of Mr. Watkins at the White House regarding the use of White House helicopters, the names of all individuals in the two helicopters used in May

1994 for Mr. Watkins golf outing and all records relating to his departure from the White House."

23. "All records relating to the matter of United States of America v. Billy Ray Dale, any investigation by the Justice Department into the White House Travel Office matter (as defined in the accompanying "Definitions and Instructions"), and all records relating to Billy Ray Dale as well as any records of talking points prepared about Mr. Dale."

24. "All records related to the gathering of documents for any review or investigation related to the White House Travel Office matter (as defined in the accompanying "Definitions and Instructions"). This includes, but should not be limited to, the White House Management Review, the IRS internal review, the GAO Travel Office review, the OPR (Office of Professional Responsibility) investigation, the Public Integrity investigation, the Treasury IG investigation, the FBI internal review, Independent Counsel Robert Fiske, and Independent Counsel Kenneth Starr."

We recognize that, in many respects, the House subpoena is identical to the December 19, 1995 document request previously sent to you by the Counsel's Office. You do not need to provide any documents which have already been produced to the Counsel's Office in response to the December 19, 1995 request. But for all other responsive records that fall within the above categories, please provide such materials to Associate Counsel Elena Kagan in Room 125 OEOB no later than February 7, 1996.

If you have any questions regarding the House subpoena request, please call Jane Sherburne (6-5116) or Associate Counsel Natalie Williams (6-5079).

Thank you for your cooperation. **PP**

ATTACHMENT 3

Military Office Employees

John Gaughan  
Alphonso Maldon  
Alan Sullivan  
Captain Jay Yakeley, USN  
Captain Mark Rogers, USN  
Colonel James Hawkins, USAF  
Bobby Chunn  
Joni Stevens  
Commander Howard "Buzz" Couch, USN  
Lieutenant Colonel Larry O. Spencer, USAF  
Major Russell Cancilla, USA  
Lieutenant Colonel John F. Schorsch, USA  
Major Michael G. Mudd, USA  
Commander Joseph Walsh, USN  
Commander Richard Fitzpatrick, USN  
Major John Wissler, USMC  
Major Leo Mercado, USMC  
Major Charles Raderstorf, USMC  
Major Michelle Johnson, USAF  
Major Darren McDew, USAF  
Lieutenant Commander Wayne Justice, USCG

Lieutenant Commander Robert Walters, USCG  
Lieutenant Commander June Ryan, USCG  
YN1 Carol Schrader, USN  
YN1 (AW) Ronald Wright, USN  
Technical Sergeant Jon Sams, USAF  
Staff Sergeant Keith Williams, USAF  
Staff Sergeant John Otto, USAF  
Technical Sergeant Jerome McNair, USAF  
Sergeant First Class Edmund Carazo, USA  
Sergeant Darryl Turner, USA

March 23, 1998

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines

FROM: Don Arbuckle  
Acting Administrator

SUBJECT: Heads-up on Final HHS Organ Procurement and Transplantation Rule

In the next few days, we will complete review of a Department of Housing and Human Services (HHS) final rule that enhances the implementation of the National Organ Transplant Act of 1984. This regulation is another important step in the Administrations efforts to increase patient access to transplantation and to improve patient health outcomes. The Administration began these efforts last December with the announcement of the new National Organ and Tissue Donation Initiative. HHS submitted the rule formally to OMB on Friday and they plan to "roll-out" the rule on Thursday, March 26th.

This final rule establishes performance standards for the Organ Procurement and Transplant Networks (OPTN) development of organ allocation policies. Historically, patients who are most ill have been treated differently based upon their geographic location. The performance standards are intended to ensure that patients with the same medical need will be treated more equitably, regardless of where they live. HHS believes that these performance standards will ensure that available transplantation technology is maximized in saving patients lives. The OPTN must develop these new policies within a year of the effective date of the final regulation. However, for liver transplant policies, the OPTN must develop new final allocation policies within 60 days of the rules effective date.

This rule will be opposed by certain local transplantation center interests that fear that broader sharing of organs will threaten local organ supplies and their programs viability. The OPTN and certain Organ Procurement Organizations (Federal contractors and agents) may be concerned that the rules lead to too much Federal oversight of medical decision making. On the other hand, patients desiring more market choice will applaud the rule. Transplant centers that embrace competition also will support the rule. We believe that HHS has done its best to develop a rule that will make organ allocation both more equitable and efficient nationwide, and will enhance patient choice and participation in the health care system.

**cc:** Maria Echaveste  
Rahm Emanuel  
Larry Stein  
Ron Klain  
Thurgood Marshall, Jr.  
Ann Lewis  
Sally Katzen

Sylvia Mathews  
John Podesta  
Bruce Reed  
Gene Sperling  
Elena Kagan  
Barry Toiv  
Michael Waldman  
Josh Gotbaum  
Linda Ricci

Figure 11

MEMORANDUM FOR ERSKINE BOWLES

THROUGH:Franklin D. Raines

FROM:Sally Katzen

SUBJECT:Heads-up on EPA Proposed Rule on Ozone Transport

We are about to conclude review on an EPA proposed rule that is directly related to the implementation of the new ozone ambient air quality standards. In setting the new standards, we emphasized that there was a process -- the Ozone Transport Assessment Group (OTAG) -- through which the 37 easternmost States agreed to take measures to tackle the problem of ozone transport across State lines. EPA stated that if the States complied with the requirements coming out of that process, there would be few areas out of attainment with the new ozone air standards.

The proposed rule we are clearing sets the OTAG requirements. Rather than imposing requirements on all 37 OTAG States, EPA's proposal would set statewide ozone emissions "budgets" for 22 of the States; while there are no new requirements on the remaining 15 States (generally on the periphery of the OTAG region), they can take action that will enable them to get "credit" toward the new standards.

The cost of the new requirements is \$2 billion per year. As expected, the bulk (75 percent) of the cost will fall on electric utilities (and their customers). The reaction will be predictable -- we anticipate some opposition from the electric utility industry and support from the environmental groups. Please call me if you have any questions.

cc: Maria Echaveste  
Rahm Emanuel  
John Hilley  
Ann Lewis  
Thurgood Marshall, Jr.  
Sylvia Mathews  
Katie McGinty  
Bruce Reed  
Gene Sperling  
Don Gips  
Elena Kagan  
Victoria Radd  
Barry Toiv  
T.J. Glauthier  
Larry Haas

February 28, 1997

MEMORANDUM FOR THE PRESIDENT

FROM BRUCE REED  
ELENA KAGAN

Subject: Welfare to Work Outreach Strategy

This memo is a response to a Feb. 25 meeting between the Chief of Staffs Office, DPC, White House Counsel, Public Liaison, Intergovernmental Affairs, and HHS at which welfare to work outreach strategies were discussed. Following are decisions made about additional outreach steps, a summary of ongoing outreach efforts, and a suggested structure to create a more comprehensive and coordinated outreach and communications effort.

Outreach Decisions

The following decisions were made at the 2/25 meeting. Outreach and external coordination will be focused on four key groups: state governments and their social service offices; the business community; the nonprofit sector; and the faith communities. Outreach efforts will include but will not be limited to recruiting nonprofits, businesses, and religious organizations to the effort, building comprehensive lists of those committed, creating a referral network for individuals and organizations to relevant programs, assisting businesses and other entities with welfare to work programs, and preparing written material to educate states, nonprofits, business, and faith organizations about best practices on welfare to work.

A main vehicle for outreach will be to establish four private spokes people -- one for each of the outreach areas -- who will carry the Administration's welfare to work message to state governments, and the business, nonprofit and religious communities.

However, counsel has written that it will be legally difficult to recruit individuals to volunteer as spokes people for the welfare to work effort. Counsel says that there is no problem discussing issues with private individuals and indicating that we would like them to work on particular matters. However, we cannot direct a private person's activity and we must be careful not to give that person the impression that she holds an official position or that her activities are government sanctioned, or that she is acting on behalf of the White House.

Outreach Efforts To Date

Several outreach activities have been ongoing since the passage of the welfare law. Following is a summary of those ongoing activities.

\*You are traveling to various state legislatures to challenge legislators to make welfare reform a success, and you are offering the legislators examples of what is working in other states and communities. HHS is currently putting together a suggested list of other states you might visit.

\*You have met with and talked to 14 CEOs interested in becoming involved in the welfare to work effort, many of whom are also working with Eli Segal, the NGA, and the National

Alliance of Business (NAB). You announced five of these CEOs during your State of the Union address. Additionally, the Office of Public Liaison and the DPC are building a list of more corporations interested in becoming involved. Presently, the list tops 100 and is growing. We are sharing this list with Eli Segal and others.

\*You and Mrs. Clinton have met with religious leaders both at the White House Prayer Breakfast and at the Congressional Prayer breakfast, both times challenging the faith community to help with the welfare to work effort. The Office of Public Liaison is currently coordinating a broader outreach effort to all faith-based institutions.

\*Public Liaison has held several briefings for organizations interested in welfare to work and will continue to do so.

\*The Department of Health and Human Services has consistently provided technical assistance and guidance to states as they implement their welfare to work plans.

Also key to our outreach will be to connect with and build on newly emerging welfare to work efforts. Following are private outreach efforts underway.

\*Eli Segals Work Now (WN) will soon be established as a 501 (c) (3) organization whos mission will be to help businesses of all kinds move people permanently from welfare to work. WNs customers will be the businesses themselves, rather than welfare recipients, legislatures, Governors, or state welfare agencies. WN will encourage, mobilize, reward, and provide technical assistance to large and small companies and a broad range of so-called intermediaries that act as job placement and retention organizations.

\*The NGA is beginning a process that connects Governors with private sector employers interested in hiring welfare recipients. In addition, the NGA will be collecting model programs and best practices for distribution in states. (White House Intergovernmental Affairs recently facilitated a meeting between Eli Segal and the NGA to discuss the welfare to work initiatives of both entities and possible areas of collaboration.)

\*The National Alliance of Business (NAB), a Washington, DC-based business supported and led organization that helps companies with workforce development, is beginning its welfare to work initiative. NAB hopes its initiative will make employers involvement in the welfare to work effort more effective.

#### Coordinating the Outreach Strategy

Though outreach efforts are underway within the Administration and through private nonprofit organizations, both the outreach efforts and the welfare to work message are fragmented and lack coordination. We believe we should build upon existing and new outreach efforts to create a coordinated and comprehensive outreach and communications strategy. Following is a brief outline of what such a strategy might look like.

The following three-part plan should be run by the White House -- specifically the DPC, Office of Public Liaison, Communications, Cabinet Affairs, and Intergovernmental Affairs -- and is designed to ensure that the work provisions of the new welfare law are successfully implemented.

\*Interagency Coordination. Coordinate all intergovernmental efforts related to welfare to work, particularly those ongoing at HHS, Labor, HUD, and the Departments of Commerce and

Transportation, (add National Service Corps, etc.) through regular meetings and conference calls with a designated group. With the help of the involved agencies, catalogue all welfare to work related activities ongoing at the agencies into one central document and regularly update that document.

\*Outreach. Through outreach, build a comprehensive list of state legislators, nonprofit organizations, businesses, and faith organizations interested in becoming involved in the welfare to work effort who we need to educate. At the same time, build a list of those states, legislators, and private organizations with good programs in place to whom we can refer others.

\*Communications. Discover, disseminate, and celebrate model public and private welfare to work efforts and existing Federal government programs that will help states, nonprofits, businesses, and religious organizations structure successful welfare to work programs. Disseminate information through written materials, public liaison briefings, the World Wide Web, and a speakers bureau made up of representatives from all of the agencies and departments involved.

MEMORANDUM FOR ERSKINE BOWLES

THROUGH:Franklin D. Raines

FROM:Sally Katzen

SUBJECT:Heads-up on EPA Proposed Rule on Ozone Transport

We are about to conclude review of an EPA proposed rule that is directly related to the implementation of the new ozone ambient air quality standards. In setting the new standards, we emphasized that there was a process -- the Ozone Transport Assessment Group (OTAG) -- through which the 38 easternmost States agreed to take measures to tackle the problem of ozone transport across State lines. EPA stated that if the States complied with the requirements coming out of that process, there would be few areas out of attainment with the new ozone air standards.

The proposed rule we are clearing would set the NOx reduction requirements for the OTAG States (a State would file a State Implementation Plan one year after the final rule (roughly September 1999) that shows how it intends to meet the limits by 2007). Rather than imposing requirements on all 38 OTAG States, EPA's proposal would set statewide NOx emissions "budgets" for only 23 of the States. At the same time, the limits set are at the high end for electric utilities (and in the middle for other States) of the OTAG recommendation. While there are no new requirements on the remaining 15 States (generally on the periphery of the OTAG region), they can take action that will enable them to get "credit" toward the new ozone standards.

The cost of the new requirements is at least \$2 billion per year. As expected, the bulk (75 percent) of the cost will fall on electric utilities (and their customers). The reaction will be predictable -- we anticipate opposition from industry (particularly the electric utility industry) and support from the environmental groups (although the groups located in the Northeast may argue for more aggressive action). The States will likely be split, with the Northeast States supporting and the Midwestern and Southern States in opposition.

The agency is likely to announce the rule this week. Please call me if you have any questions.

cc: Maria Echaveste  
Rahm Emanuel  
John Hilley  
Ann Lewis  
Thurgood Marshall, Jr.  
Sylvia Mathews  
Katie McGinty

Bruce Reed  
Gene Sperling  
Don Gips  
Elena Kagan  
Victoria Radd  
Kathy Wallman  
Lynn Cutler

MEMORANDUM FOR ERSKINE BOWLES

FROM: Sally Katzen

SUBJECT: Heads-up on Final OPM Rule Restricting Panama Canal Severance Pay

We are about to conclude review of an OPM final rule that would disallow severance pay for approximately 6,000 U.S. Federal employees (virtually all of whom are Panamanian citizens) of the Panama Canal Commission (PCC) when, by virtue of treaty agreements, the Canal is transferred to the Panamanian Government on December 31, 1999. The reason this rule is necessary is because an existing OPM rule requires severance pay for Federal Government employees even when they receive comparable jobs and pay. This rule was a product of the Reagan Administration effort to privatize government functions and was thought necessary and desirable to keep Federal employees on the job through the transition period. The OPM final rule would disallow severance pay for those PCC employees who receive comparable jobs and pay (presumably, the vast majority will become employees of the Panamanian entity that assumes operational control of the Canal); those PCC employees who do not have comparable jobs and pay would be given severance pay.

The notice of the proposed rule (issued in July 1995) produced negative comments from the Panamanian Government and two international labor unions -- the International Organization of Masters, Mates & Pilots and the International Association of Machinists and Aerospace Workers. The State Department agrees with OPM that the rules cost savings (\$68 million) outweigh any potential foreign policy disadvantages. Because the rule is targeted only to PCC employees, it is unlikely that domestic labor unions will actively oppose the rule. Finally, several Members of Congress filed comments supporting the rule.

It is possible that this issue may come up at next months international conference on the Panama Canal, in Panama, which will be attended by senior Administration officials. Please call me if you have any questions.

cc: Sandy Berger  
Maria Echaveste  
Rahm Emanuel  
Thurgood Marshall, Jr.  
John Hilley  
Ann Lewis  
Sylvia Mathews  
Mack McLarty  
Bruce Reed  
Gene Sperling  
Elena Kagan  
Kathy Wallman

Victoria Radd  
Barry Toiv  
Michael Waldman  
Gordon Adams  
Michael Deich  
Larry Haas

Draft only

February 24, 1999

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: BRUCE REED

ELENA KAGAN

SUBJECT: Administration Position on Comparable Worth

Senator Harkin has asked the Administration to support his equal pay legislation which provides for comparable worth, a controversial method that requires companies to equalize wages between "equivalent jobs." On March 10, the DPC held a meeting to discuss this issue with many offices inside the White House and with several agencies. The majority of people at the meeting felt that the Administration could not support comparable worth. This memorandum sets forth the positions of the relevant WH offices and agencies.

#### I. Participants of the Meeting

The following offices within the White House attended the meeting:

- \*Council of Economic Advisors (CEA)
- \*White House Counsels Office
- \*Domestic Policy Council (DPC)
- \*Legislative Affairs
- \*National Economic Council (NEC)
- \*Office of Management and Budget (OMB)
- \*Office of Public Liaison (OPL)
- \*Vice Presidents Domestic Policy

The following outside agencies attended the meeting:

- \*Commerce
- \*Equal Employment Opportunity Commission (EEOC)
- \*Justice
- \*Labor
- \*Office of Personnel Management (OPM)
- \*Small Business Administration (SBA)
- \*Treasury

#### II. Agency Positions

Comparable worth seeks to equalize wages within firms, not across firms, for "equivalent jobs." The Harkin/Norton legislation would prohibit employers from paying lower wages for jobs dominated by employees of a particular sex, race, or national origin than for jobs dominated by employees of the opposite sex or different race or national origin for work on

"equivalent" jobs. "Equivalent jobs" is defined as jobs that may be dissimilar, but whose requirements are equivalent when viewed as a composite of skills, effort, responsibility, and working conditions. The EEOC would establish criteria for determining whether jobs are dominated by employees of a particular sex, race or national origin. The bill also provides that no wage rates may be reduced in order to comply with comparable worth requirements. There have been several cases where jobs have been deemed equivalent, and the female-dominated job received a pay raise: in Wisconsin, female-dominated word processing operators and male dominated meatcutters; in Los Angeles County, female-dominated childrens social service workers and male-dominated probation officers; and in Illinois, female-dominated registered nurses and male-dominated electricians.

DPC began the meeting by having CEA define the scope of the wage gap. Last year, CEA published a report on the wage gap, showing that women earn approximately 75 percent of what men earn, without accounting for differences in skills, experience, industry, occupation, and union status. Accounting for these differences raised the female/male pay ratio in the late 1980s from about 72 percent to about 88 percent, leaving around 12 percent as an "unexplained" difference. CEA estimates that only about 5 percent of the 12 percent could be corrected by implementing comparable worth, which would still leave an "unexplained" gap of about 11 percent. Because comparable worth can only correct for differences within firms, it cannot solve, what CEA suspects is a greater problem, the payment of unequal wages for the same or equivalent jobs across firms. However, these differences in pay could result not only from discrimination, but market forces, and other individual employee differences in areas such as skill and experience.

Ida Castro, Chairwoman of the EEOC, then argued in favor of comparable worth. The EEOC stated that the Equal Pay Act, which was enacted in 1963, sought to address the prevailing problem of its time -- the payment of unequal wages for the same or similar jobs. However, as EEOC enforces the Equal Pay Act, it believes that the problem today is not the paying of unequal wages for the same job. The EEOC thinks that the Harkins bill is the only one that attacks the current problem in a credible fashion.

Labor's chief economist then reiterated that comparable worth does not solve the problem of paying unequal wages across different establishments. Labor also mentioned that there may be market forces which contribute to pay differences and that the implementation of comparable worth could lead to job losses because it requires the raising of wages, without regard to supply and demand. Labor also pointed out that comparable worth has only been implemented in about 8 state governments, not the private sector, and that the cost to state governments is not comparable to the private sector.

Commerce then pointed out that comparable worth is more invasive of private business decision-making than other Federal mandates. For example, compared with the minimum wage which is uniform in its application and is relatively easy to administer, comparable worth would require more extensive record-keeping, incur greater administrative expenses, and affect wage levels and resource allocations without regard to productivity and other market conditions. Commerce argued that, as the American economy becomes more and more flexible, the rigid job classification framework of the Harkin/Norton bills would move us backwards -- against the tide toward more flexible job definitions, individual merit-based pay, and work teams. Commerce also argued that the process of deciding which jobs are "equivalent" is difficult and could lead to increased litigation.

CEA then stated that comparable worth only addresses a small amount of the remaining wage gap -- only about 1 percent. CEA also stated that implementing comparable worth would lead

to dislocations in the labor market and could create a problem in hiring.

DPC then argued that with our support of Senator Daschles bill, which strengthens existing law but does not support comparable worth, we have the political high ground. If we support comparable worth, we will not be able to maintain a consensus and could risk losing this as a viable political issue. Senator Daschles bill has 20 cosponsors currently (Sen. Harkin has yet to cosponsor, although he has in the past). On the House side, Congresswoman DeLauros bill, H. R. 541, has 34 cosponsors. Both of these bills are part of the "Democratic Leadership" package of bills. Senator Harkins bill had 8 cosponsors in the last Congress, while the House version garnered 64 cosponsors. (By contrast, last Congress, Senator Daschle brought 23 Democrats on board, while Congresswoman DeLauros bill had 95.) The Harkin-Norton bill is unlikely to attract more cosponsors because of lack of support from the leadership, lack of strong lobbying efforts by interest groups, and its controversial nature. The Daschle-DeLauro represents the bill with the greatest ability to move, to draw some bipartisan support, and to have some chance of passage.

As a political matter, the Daschle bill offers Democrats the ability to raise the issue on the floor, highlight our commitment to the issue, and spotlight differences between supporters and opponents. If the bill fails to pass, the vote would give members a record of fighting the wage gap and demonstrate that on a moderate bill where there is a national consensus, opponents of equal pay denied passage. Whether the bill passes or not, the attention such a fight would receive would focus attention on the problem and broaden the constituency for further measures, including, possibly, for Senator Harkins bill. In contrast, endorsement of the Harkin bill at this time would likely drive members away from the issue altogether in fear that they will be tarred as supporting government wage-setting and radical interference in the labor market.

In the end, nine agencies were against comparable worth: CEA, Commerce, DPC, OMB, Justice, NEC, SBA, Treasury, and the VPs Office. WH Counsel, Labor, and OPM did not take a position. Only EEOC and OPL (the Womens Office) were in favor of comparable worth.

### III. Options & Recommendation

By backing Senator Daschles bill as a first step, the Administration has gained an excellent position from which to lead a national debate on the wage gap and advocate for policies that will lead to more fairness in the workplace. In contrast, endorsing comparable worth at this point would likely breakdown the chance to build momentum on the issue, and spark only a debate over big government interference with the market. Indeed, a recent Wall Street Journal op-ed attempted to attack the Daschle bill on the grounds that it promoted comparable worth, while giving only partial attention to the existence of a wage gap -- a shift in focus that would be greatly accelerated by Administration support for Harkins bill. We believe that the Administration should keep opponents of equal pay on the griddle by keeping the nations attention focused on the existence of the wage gap and the common-sense first steps we all should be able to agree to in attacking it.

\*

June 9, 1998

REMARKS AT EQUAL PAY EVENT

DATE: June 10, 1998

LOCATION: Rose Garden EVENT TIME: 2:30 pm - 3:30 pm

FROM: Bruce Reed

Gene Sperling

Audrey Tayse-Haynes

I. PURPOSE

To commemorate the 35th anniversary of President Kennedys signing of the Equal Pay Act, to call on Congress to pass Senator Daschles and Congresswoman DeLauros equal pay bills, to announce a Council of Economic Advisors report on the gender wage gap, and to announce a Department of Labor report that provides a historical perspective on the wage gap.

II. BACKGROUND

You will be making remarks to approximately 150 people, including equal pay and civil rights advocates, labor leaders, business persons, legislators, and persons from Cabinet agencies. This is an opportunity to highlight womens progress since the signing of the Equal Pay Act and to call for legislative action on the remaining wage gap.

The CEA report shows that a significant gap between the wages of women and men remains today although it has narrowed substantially since the signing of the Equal Pay Act. In 1963, the year that the Equal Pay Act was signed, women earned 58 cents for every dollar men earned. Today women earn about 75 cents for every dollar men earn, a 29 percent increase over the 1963 levels. Despite these gains, there continues to be a significant gap between mens and womens wages, even after accounting for factors such as educational attainment, work experience, and occupational choice.

III. PARTICIPANTS

Briefing Participants:

Gene Sperling

Elena Kagan

Audrey Tayse-Haynes

Janet Yellen

Rebecca Blank

Event Participants:

The Vice President

The First Lady

Mrs. Gore  
Senator Barbara Boxer  
Congresswoman Eleanor Holmes Norton  
Dr. Dorothy Height, President Emeritus of the National Council of Negro Women  
\*Janet Yellen and Deputy Labor Secretary Kitty Higgins will be seated on the stage.

IV. PRESS PLAN

Open Press.

V. SEQUENCE OF EVENTS

- YOU will be announced onto the stage accompanied by the Vice President, the First Lady, Mrs. Gore, Senator Boxer, Congresswoman Norton, and Dr. Dorothy Height.
- The First Lady will make remarks and introduce Congresswoman Norton.
- Congresswoman Norton will make remarks and introduce Senator Boxer.
- Senator Boxer will make remarks and introduce Mrs. Gore.
- Mrs. Gore will make remarks and introduce the Dr. Height.
- Dr. Height will make remarks and introduce the Vice President.
- The Vice President will make remarks and introduce YOU.
- YOU will make remarks.
- YOU will then work a ropeline and depart.

VI. REMARKS

Provided by Speechwriting.

Attachments

- Background memo on Daschle Equal Pay Legislation
- Photo of Signing of Equal Pay Act Legislation in Oval Office in 1963
- Executive Summary of CEA Report

March 9, 1999

MEMORANDUM FOR ELENA KAGAN

FROM: THOMAS FREEDMAN  
MARY SMITH

SUBJECT: Equal Pay Data Collection

This memorandum describes several alternatives for improving collection of wage data by the federal government. Last year, the Administration endorsed Senator Daschles bill which currently contains only a Sense of the Senate provision, recognizing that the Administration should look into ways to collect this data. A previous version of Daschles bill contained a general provision that required employers to submit wage data to the EEOC, broken down by race, sex, and national origin, but this provision was removed at the Administrations request. Recently, however, Senator Daschle has made it clear that he intends to return some kind of data collection provision to his bill before Equal Pay Day on April 8 -- either what he previously included or some other recommendation from the Administration. This memorandum outlines how the federal government currently collects wage data, how it uses this data, and what efforts could be made to improve data collection.

#### I. Current Methods of Collecting Wage Data

There are three major uses of wage data: enforcement, technical assistance, and research. Both the Equal Employment Opportunity Commission (EEOC) and the Department of Labors Office of Federal Contract Compliance Programs (OFCCP) currently collect data that is used for enforcement. The Bureau of Labor Statistics and the Bureau of the Census both collect data that is used for informational and research purposes, but not for enforcement.

#### A. EEOC

The EEOC currently collects annual data regarding the demographic breakdown of the workforces of private employers with 100 or more employees and of federal contractors with 50 or more employees on the EEO-1 form. However, the EEOC does not currently collect salary data with respect to private employers. (The EEOC does collect pay data from state and local governments through the EEO-4 form.) The EEOC uses the data on the EEO-1 form, after an individual claimants charge is filed, to examine a companys practices. In addition, the EEOC uses this data to determine whether it will file a Commissioners charge, a charge filed by the EEOC, not by a private citizen.

After a charge is filed, the EEOC can investigate and obtain wage data from an individual employer. This data could then be used in litigation. However, by statute, the data on the EEO-1 is subject to privacy protections, and the EEOC cannot give this data to the public.

## B. OFCCP

OFCCP currently collects wage data from contractors when they are performing an compliance review on-site. While OFCCP is on-site, they obtain detailed wage data on individual employees. OFCCP has taken this data off-site in some instances. They use this data to settle cases with contractors and ensure that contractors correct their pay policies. OFCCP also uses the EEO-1 form in helping to determine which contractors they will audit. Recently, OFCCP has requested wage data before venturing on-site, at the earlier stage of the audit called the "desk audit" phase. However, they are formally requesting OMB to allow them to do this for all cases.

## C. BLS and Census

In general, BLS gathers data from employers and from households. In virtually every case the respondents contribute information voluntarily. BLS, in turn, pledges to maintain the confidentiality of all survey responses and the identity of survey respondents.

The household-based surveys are the principal source of data on earnings by demographic variables such as sex and race. The employer-based surveys do not gather wage data on a demographic basis. BLS believes that voluntary employer-based surveys are not useful vehicles for obtaining demographic information.

The Census also collects some wage data by household but not by employer.

New Wage Gap Report. As announced by the Vice President last year, BLS will soon be issuing a report on womens earnings. This report will provide greater detail than previous reports. The data will be culled from the Current Population Survey (the major household survey). BLS intends to publish figures on womens earnings by various characteristics, such as full-time and part-time status; union status; occupation; educational attainment; and marital status. This compendium of tables will be accompanied by a brief analytical text.

## II. Possible New Methods of Collecting Wage Data

Below are listed some options for collecting wage data for enforcement, technical assistance, and informational purposes.

### A. Wage Data for Enforcement and Technical Assistance

If data were collected for enforcement or technical assistance, either the EEOC or OFCCP should collect this data.

#### 1. EEOC

The most likely way for the EEOC to collect this data would be to add back in a provision to Daschles bill. The old version of Daschles bill provided for the collection of pay information by the EEOC from employers with 100 or more employees, analyzed by the race, sex, and national origin of the employees. It was somewhat vague on exactly how the wage data would be collected. In particular, it did not specify that the data needs to be collected on the EEO-1 form, which is the form used by the EEOC to collect employment data.

Senator Harkins bill also requires employers to submit wage data with respect to job

category, sex, race, and national origin. Unlike Senator Daschles bill which requires employers with 100 employees or more to submit this data, however, Senator Harkins bill requires employers with 25 or more employees in the first two years and 15 or more employees in subsequent years to submit this data. Furthermore, under Harkins bill, the EEOC is authorized to publish this data and may provide specific employers reports to the public. This provision is very controversial. As noted above, Senator Daschles bill had originally contained a requirement for greater collection of wage data, but the Administration felt this would draw a great deal of fire from Republicans and the business community and it was replaced with Sense of the Senate language that the President should increase the amount of information available on wage disparities.

The main concerns with collecting data on the EEO-1 form centered around opposition from the business community and Congress. The EEO-1 form has remained virtually unchanged for the past 30 years, despite its review every 3 years for OMB paperwork clearance (most recently in 1997). The nine occupational categories are so broad that each job category contains many individual jobs. As a result, many in the business community perceive the EEO-1 form as a waste of time and money. (OMB estimates that adding wage data would likely increase the compliance costs dramatically -- possibly by several hundred-fold -- although creating a supplement to the form or limiting it to a subset of the reporting universe could mitigate some of these costs.) Nonetheless, the EEOC believes that collecting wage data on the EEO-1 form would greatly improve its ability to target and prioritize discrimination cases. It also would assist the Department of Labor (DOL) in targeting its enforcement efforts and monitoring affirmative action programs.

There is consensus that any attempts to add wage data to the EEO-1 form will draw immediate fire from the Republicans and the business community. Indeed, any announcement of a process to determine the best way to gather this data would likely provoke a rider and risk the increase in funds requested for the EEOC in our FY2000 budget. (The budget requests \$312 million for the EEOC -- \$33 million or 12 percent more than enacted in the 1999 budget. Almost one-third of the increase, or \$10 million, will be used for our Equal Pay Initiative. EEOC will advance outreach to businesses and employees to educate them about the legal requirements for paying equal wages, provide technical assistance, improve training for EEOC employees to better identify wage discrimination issues, and launch a public service announcement campaign to highlight the wage gap.)

We might consider adding in a more narrow provision to the Daschle bill such as a supplement to the EEO-1 form to send to a subset of businesses and/or federal contractors which would require employers to disclose data on experience, education, race, wages, and gender. This could be targeted on an industry basis. This data could be used for technical assistance and enforcement by both OFCCP and EEOC.

## 2. OFCCP

There are two basic methods by which OFCCP could collect wage data: (1) a Scheduling Request which is currently pending at OMB and (2) a new Affirmative Action Summary. The Scheduling Request at OMB proposes to collect detailed wage data (which identifies individual employees) by mail from the 5000 or so federal contractors that are scheduled for compliance reviews each year. (Incidentally, OFCCP has already requested and received this same data from some contractors without explicit OMB approval). While OFCCP currently is able to obtain this data on-site at a later stage of the review process, this pending request seeks to get detailed pay information on every single employee at a particular site by mail at the early "desk audit" stage of the process. This data would be permitted to be

used for technical assistance and enforcement. The Department of Labor requested that the decision on this issue be extended by 90 days until May of this year.

The other option for OFCCP to collect wage data would be in a proposed Affirmative Action Summary (also known as 60-2). For several years, OFCCP has been authorized to issue a regulation that would allow them to collect summary information from all the approximately 200,000 federal contractors, including wage data, by mail. OFCCP informs us that this proposal currently is being reviewed by their Solicitors Office. OFCCP believes the advantages of this proposal are two-fold: (1) OFCCP will be able to get some idea of how the entire universe of federal contractors, not only those scheduled for compliance reviews, are implementing the civil rights laws; and (2) every federal contractor, simply by being required to compile this data, will become more aware of how they can better implement the civil rights laws by paying equal wages and preventing discrimination.

Both of these options have received strong resistance from the business community and strong support from the womens groups. OMB, DPC, and the Womens Office have met with both contractors and the womens groups on the pending request at OMB. The business community believes that the request is overly burdensome because businesses do not keep in a readily available format the pay information that OFCCP is requesting. The business groups also do not believe that this is the most effective method for OFCCP to determine whether discrimination based on race, sex, and pay exists. They do not, however, have a better proposal, but OMB is setting up a meeting between the business groups and Labor to discuss further the issue. The womens groups, on the other hand, do not believe the pending request advances the data collection issue at all. The womens groups believe that this request is merely a reaffirmation of existing OFCCP authority. In their minds, they believe that this request is separate and distinct from trying to come up with other ways to collect wage data.

As for the Affirmative Action Summary, even though the request has not even cleared Labor, the business community is already gearing up for a fight on this issue. While the womens groups believe this summary would be a powerful tool because it would reach every single contractor, it is clear that Labor will not have this proposal ready for April.

#### B. Wage Data for Informational Purposes

BLS and the Census Bureau would be the appropriate places to explore if we decide to collect more pay data for informational purposes. BLS does not allow matching of its data with the data gathered from enforcement or regulatory agencies, owing to the clear differences in the respective missions. The Census Bureau and BLS have research programs that allow approved researchers, under carefully structured conditions, to gain access to "microdata" (the basic responses provided by survey respondents) in order to produce new research on relevant economic or social issues.

However, BLS asserts, as a general matter, that it can be a very complex undertaking to add additional data to existing surveys or to expand the surveys sample sizes. There are issues regarding cost and design that have to be taken into account while balancing the desire for new data with an attempt to maintain survey response rates and not add to respondent burden.

In addition, Treasury has suggested funding a grant for a third party academic study. They believe this would lead to useful information. We have asked them to draft a brief proposal for our meeting on March 10.

FF

FF

February 9, 1999

MEMORANDUM FOR JOHN PODESTA

FROM: BRUCE REED  
LARRY STEIN  
ELENA KAGAN

SUBJECT: Equal Pay

The Administration has supported Senator Daschles equal pay bill which strengthens enforcement of the Equal Pay Act. The Administration has not supported Senator Harkins bill which provides for comparable worth, a method that tries to address wage discrimination by equalizing wages between "equivalent" jobs. This memorandum discusses the differences between the equal pay bills by Senators Daschle and Harkin and describes what actions the Administration has taken with respect to equal pay. Finally, this memorandum discusses some of the issues surrounding data collection with respect to equal pay.

#### I. Administration Actions

Last year, the Administration held two equal pay events, on April 3 and June 10. This year, the Presidents radio address on January 30 announced \$14 million in the FY2000 budget for a new equal pay initiative for the Equal Employment Opportunity Commission (EEOC) and the Department of Labor.

Last April 3rd, the Vice President announced the Administrations support for Senator Daschles legislation to improve the enforcement of wage discrimination laws and to strengthen the remedy provisions in the Equal Pay Act by permitting victims of wage discrimination to seek compensatory and punitive damages.

In addition, the Vice President also announced the following:

\*Memorandum Of Understanding (MOU) Between EEOC and DOL. EEOC and DOL are developing an MOU to train each others staff on pay issues, to refer potential violations to the applicable EEOC or DOL office for appropriate action, and to permit the DOLs Office of Federal Contractor Compliance Programs (OFCCP) to serve as the EEOCs agent for purposes of seeking damages for wage discrimination.

\*10-Step Voluntary Self-Audit for Businesses and Employees. To help employers who would like to improve their pay and hiring practices, DOL placed on the Internet a 10-step package that gives companies guidelines in determining whether they offer equal pay, hiring, and promotional opportunities. A similar checklist for employees, to help them determine if they are being paid equitably, also is on the Internet.

\*Self-Audit for Agencies. To make the federal government a "model" employer, federal

agencies will conduct a self-audit, similar to the one described above, and use these results to monitor their efforts on equal pay.

\*Increased Data Analysis on Pay Equity. DOL will publish an annual report on pay differences by gender. The purpose of this report will be to highlight the important issue of wage disparities. The Department of Labor estimates that this report will be ready in late March or April 1999.

\*Guide to Recruitment and Retention of Women in the Federal Government. OPM published a new Guide on Recruitment and Retention of Women in the Federal Government, which contains information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women.

\*Federal Contractor Best Practices. DOL will publicize successful programs of federal contractors by placing them on DOLs web site.

On June 10, the President commemorated the thirty-fifth anniversary of President Kennedys signing of the Equal Pay Act and urged passage of Senator Daschles and Congresswoman DeLauros legislation to strengthen the laws that prohibit wage discrimination against women. In addition, the President released a Council of Economic Advisers (CEA) report on the gender wage gap, and announced a Department of Labor report that provides a historical perspective of the wage.

The CEA report found that there still exists a significant wage gap that cannot be explained by differences between male and female workers in labor market experience and in the characteristics of jobs they hold. In 1963, the year that the Equal Pay Act was signed, women earned 58 cents for every dollar men earned. Today, women earn about 75 cents for every dollar men earn -- a 29-percent increase over the 1963 levels. The most recent detailed longitudinal study found that in the late 1980s about one-third of the gender pay gap was explained by differences in the skills and experience that women bring to the labor market and about 28 percent was due to differences in industry, occupation, and union status among men and women. Accounting for these differences raised the female/male pay ratio in the late 1980s from about 72 percent to about 88 percent, leaving around 12 percent as an "unexplained" difference.

Most recently, in his January 30, 1999 radio address, the President announced that his FY2000 budget includes funding for a \$14 million equal pay initiative for the EEOC and the DOLs Office of Federal Contractor Compliance (OFCCP):

Equal Employment Opportunity Commission

The Presidents FY2000 budget includes \$10 million for the EEOC to:

\*triple the number of EEOC enforcement staff who receive training in identifying and responding to wage discrimination;

\*provide, for the first time ever, training and technical assistance to employers (about 3,000 in total) on how to comply with equal pay requirements; and

\*develop public service announcements to educate employees and employers on their rights and responsibilities under equal pay laws.

The Department of Labor

The Presidents FY 2000 budget includes \$4 million for the Labor Departments OFCCP to:

\*help women obtain and retain employment in non-traditional jobs by identifying and disseminating model employer practices and assisting contractors to finding qualified women employees, including through the new nationwide network of One-Stop Career Centers established by last years Workforce Investment Act; and

\*increase outreach, education, and technical assistance to federal contractors on equal pay issues, by providing legal guidelines and industry best practices.

## II. Endorsement of Daschle Bill

The Administration has endorsed "The Paycheck Fairness Act," introduced by Senator Daschle and Congressman DeLauro, to strengthen laws prohibiting wage discrimination. The highlights of this legislation include:

\*Increased Penalties for the Equal Pay Act (EPA). The legislation would provide full compensatory and punitive damages as remedies for equal pay violations, in addition to the liquidated damages and back pay awards currently available under the EPA. This proposal would put gender-based wage discrimination on equal footing with wage discrimination based on race or ethnicity, for which uncapped compensatory and punitive damages are already available.

\*Non-retaliation provision. The bill would prohibit employers from punishing employees for sharing salary information with their co-workers. Many employers are currently free to take action against employees who share wage information. Without the ability to learn about wage disparities, it is difficult for employees to evaluate whether there is wage discrimination.

\*Training, Research, and Pay Equity Award. The bill would provide for increased training for Equal Employment Opportunity Commission employees to identify and respond to wage discrimination claims; research on discrimination in the payment of wages; and the establishment of an award to recognize and promote the achievements of employers in eliminating pay disparities.

\*Data Collection. Daschless bill contains only a Sense of the Senate that the President should take appropriate steps to increase the amount of information available with respect to wage disparities.

## III. Harkins Bill

Last year, Senator Harkin introduced a comparable worth bill called the "Fair Pay Act of 1997." (It doesnt appear that he has reintroduced the bill this year.) The highlights of this legislation include:

\*Comparable Worth. Harkins bill amends the Fair Labors Standards Act to prohibit the paying of unequal wages for work on "equivalent jobs" dominated by employees of a particular sex, race, or national origin and those dominated by a different sex, race, or national origin. The legislation defines "equivalent jobs" as "jobs that may be dissimilar, but whose requirements are equivalent, when viewed as a composite of skills, effort, responsibility, and working conditions." It exempts from this provision wage differences on the basis of seniority, a merit system, or an quality/quantity system.

\*Data Collection. The other major provision of Harkins bill is the requiring of employers to submit wage data to the EEOC. Employers must submit data not only with respect to job category but also with respect to sex, race, and national origin. Furthermore, the EEOC is authorized to publish this data and is authorized to provide specific employers reports to the public. This provision also is very controversial.

\*Non-Retaliation Provision. Harkins bill also contains a non-retaliation provision and a provision to permit the awarding of expert fees.

\*Education, Training, and Technical Assistance. The bill also provides for research, education, and technical assistance.

#### IV. Issues Surrounding Comparable Worth and Data Collection

The Administration decided last year that it could not support comparable worth because it is difficult to administer and it would impose severe burdens on employers.

In addition, the Administration removed a more substantive data collection provision from the Daschle bill that would have collected wage data on the EEO-1 form and replaced it with a Sense of the Senate. There was a consensus that any attempts to add wage data to the EEO-1 form will draw immediate fire from the Republicans and the business community. In addition, the thought was that any announcement of a process to determine the best way to gather this data would likely provoke a rider and risk the increase in funds requested for the EEOC in the budget.

Currently, there are two data collection issues pending at OMB. They are:

\*OFCCP Information Collection Request for Affirmative Action Plans and agency reviews of federal contractor compliance: The request raises two important issues, the reviewability of OFCCP desk audits by OIRA and the collection of detailed compensation data at the desk audit stage of OFCCP compliance reviews. This came in for review in mid-December and is due on February 20. The Department of Labor has asked for a 90-day extension on this.

\*Bridgestone/Firestone - OFCCP dispute: This dispute on which OMB has been asked for an opinion involves the collection of information by OFCCP from Bridgestone/Firestone during a compliance review. Bridgestone/Firestone contends that OFCCP was making a standardized data request that was not covered under the previous submission of the collection discussed above. OMB staff are currently deliberating the claim.

#### V. Next Steps

It doesn't seem likely that the Administration will be able to support comparable worth anytime soon. However, there are a couple of items where we could do more:

\*Data Collection. The DPC is starting a process to review how we might be able to collect more data, either through the EEOC or the Department of Labor.

\*Strengthening the Daschle bill. At a recent meeting, the AFL-CIO suggested about four or five minor changes we could make to the Daschle bill. The EEOC has done a preliminary review and feels that we should be able to make a few of these changes.



## \*EQUAL PAY ANNOUNCEMENT

Roosevelt Room

2:15pm - 3:00pm, Thursday, April 2, 1998

Briefing prepared by Robin Leeds

## EVENT

You are participating in a White House event and press conference to announce the Administrations support for Senator Daschles and Congresswomen DeLauros equal pay legislation and to announce new Administration initiatives to enhance enforcement of wage discrimination laws and to encourage equal pay practices in the public and private sector. This event will be attended by approximately 50 people, including equal pay and civil rights advocates; labor leaders; Senators and Congress people; and representatives from the DOL, OPM, and EEOC. You will also be announcing the Administrations intent to nominate Ida Castro, currently head of the Labor Departments Womens Bureau, to serve as Chair of the EEOC. Note: This event is open to pool press and specialty print reporters.

## LOGISTICS

1:45pm You are briefed by Susan Liss, Audrey Tayse Haynes, Sally Katzen and Elena Kagan;  
2:00pm You meet program participants for an event pre-brief;  
2:15pm Secretary Herman opens, provides equal pay framework and introduces Senator Daschle and Representative DeLauro;  
2:20pm Senator Daschle highlights his commitment to Equal Pay, share a South Dakota story, and mention his Senate bill;  
2:25pm Congresswoman DeLauro speaks and highlights House bill, and introduces Thompson;  
2:30pm AFL-CIO Vice President Linda Chavez Thompson highlights "Working Women Count" survey and shares a "real story", then introduces Susan Bianchi Sand;  
2:35pm National Committee on Pay Equity Executive Director, Susan Bianchi Sand highlights significance of Equal Pay Day, national organizing efforts, and shares a "real story", then introduces you;  
2:40pm You announce endorsement of Daschle/DeLauro and other new initiatives and announce the nomination of Ida Castro to serve as Chair of the EEOC;  
2:55pm Event closes and you depart.

## YOUR ROLE AND CONTRIBUTION

This event will give you the opportunity to highlight the significance of EQUAL PAY DAY and the positive role of women in the economy. The event also gives you the opportunity to:

1. Announce the Administrations support for legislation, introduced by Senator Daschle and Congresswoman DeLauro, to improve enforcement of wage discrimination against women and to strengthen the remedy provisions in the Equal Pay Act to allow for compensatory and punitive damages. Highlights of this legislation include: Increased Penalties for the Equal Pay Act; Non-Retaliation Provision; Class Actions; Training, Research, Education, and Outreach; and a Pay Equity Award.

2. Announce several Administration initiatives aimed at enhancing enforcement of wage discrimination both in the private sector and the federal government: Annual study by the Bureau of Labor Statistics to analyze the wage gap; MOU between EEOC and DOL to cross train staff and to permit DOL to seek damages as EEOCs agent; DOL publication of federal contractor best practices on the Internet; 10-Step voluntary self-audit for businesses and employees; federal agencies will conduct a self-audit; and OPM Guide to Recruitment and Retention of Women.

#### PROGRAM NOTES

\*April 3 is the day on which American womens wages, added to their previous years earnings, equal what men make in just one calender year. The President is issuing a proclamation declaring April 3, 1998 as National Equal Pay Day. There are 650 local Equal Pay events planned across the country organized by the AFL-CIO and the National Committee on Pay Equity. Most of these events are being held on Friday, April 3.

\*More than three decades after the passage of the Equal Pay Act and Title VII of the Civil Rights Act, women and people of color continue to suffer the consequences of unfair differentials. The average woman works a full year, plus three more months, just to earn the same pay that men earn in one calender year. According to the Department of Labor, the average woman who works full-time earns just 74 cents for each dollar that men earn. For women of color, the gap is even wider. On average, African American women earn only 63 cents, and Hispanic women earn only 53 cents for each dollar earned by white men. Some wage differences exist due to differing levels of experience, education, and skill. However, studies show that even accounting for differences in education, experience, and occupation, there is still a significant wage differential.

\*Equal pay is good for the economy. Higher, fairer wages for women will increase their purchasing power. A growing number of businesses support the elimination of wage discrimination as "good business" and believe that pay equity is not inconsistent with staying competitive.

\*On the federal level, The Paycheck Fairness Act, which you are endorsing today, has been introduced in the Senate by Senator Daschle and the House by Congresswoman Rosa DeLauro. The Paycheck Fairness Act would amend the Equal Pay Act and the Civil Rights Act of 1964 to provide more effective remedies to women who are not being paid equal wages for doing equal work. The Fair Pay Act has been introduced in the Senate by Senator Tom Harkin and in the House by Congresswoman Eleanor Holmes Norton. The Fair Pay Act addresses the issue of comparable worth by expanding the Equal Pay Acts protections against wage discrimination to workers in equivalent jobs with similar skills and responsibilities, even if the jobs are not identical. The Administration has not endorsed that bill.

#### ATTACHMENTS

Policy Announcement.  
Questions and Answers.  
List of Participants.

November 6, 1995

MEMORANDUM FOR DISTRIBUTION

FROM:Debbie Fine and Jeremy Ben-Ami

SUBJECT:Attached on Partial Birth Abortion Ban Bills

In addition to the e-mail that went out this evening, attached are several documents you might find helpful as a follow-up to our meeting last week:

- \*suggested internal talking points;
- \*statements/letters from American College of Obstetricians and Gynecologists, the California Medical Association, American Medical Women's Association, Planned Parenthood (American Association of Nurse Practitioners have also released a statement that we are waiting to receive);
- \*the SAP that went to the House (Senate SAP is likely to be virtually the same);
- \*a couple of news articles; and
- \*an ad placed by NARAL.

cc:Carol Rasco  
Alexis Herman  
George Stephanopoulos  
Martha Foley  
Nancy-Ann Min  
Jennifer Klein  
James Castello  
Elena Kagan  
Mary Ellen Glynn  
Kitty Higgins  
John Hart  
Betsy Myers  
Judy Gold  
Barbara Woolley  
Tracy Thornton  
Barbara Chow  
Janet Murguia  
Marilyn Yager

November 6, 1995

SUGGESTED TALKING POINTS FOR INTERNAL USE ONLY

## ON THE "PARTIAL BIRTH ABORTION BAN ACT"

\*The President believes that the decision whether or not to have an abortion should be between a woman, her doctor and her faith; and that abortions should be safe, legal and rare. He has consistently opposed late term abortions except to protect the life or health of the mother.

\*H.R. 1833 does not include consideration of the health of the mother. This is the wrong policy. The President believes it is wrong in this case to substitute political decision making for medical decision making. These decisions must be made on the basis of the woman's health.

\*It is also in conflict with constitutional law, since the Supreme Court has ruled in Roe v. Wade that women's health must always be considered as a factor in such decisions.

\*For these reasons, the Administration cannot support H.R. 1833.

January 17, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN

SEAN MALONEY

SUBJECT: Recent Information Items

We are forwarding the following recent information items:

(A) Memo from Chuck Ruff on the Farmer Case -- responds to your question concerning University and Community College System of Nevada (Reno) v. Farmer; case involves a white female professor who alleges the University violated Title VII in hiring a black male instead of her to fill a faculty position; she also claims after she was eventually hired that the University engaged in gender discrimination and violated the Equal Pay Act; the trial court ruled in her favor; the Nevada Supreme Court reversed, concluding the University's affirmative action plan was constitutional and pay disparities were justified by market conditions unrelated to gender; plaintiff has filed a writ of certiorari with the U.S. Supreme Court; while comparisons to Piscataway are inevitable, this case is different in that it involves hiring, not firing; the hiring of a minority did not preclude hiring a non-minority; the University has a demonstrable need to promote diversity; and there is some evidence the minority candidate was more qualified.

(B) Note from Ann Lewis re: New York Times Ad to run tomorrow. Sara Ehrman wanted you to see ad (attached), sponsored by Center for Middle East Peace and Cooperation and signed by many of your supporters. Ad features your picture and quote from you upon receiving Rabin-Peres award and is timed to coincide with Netanyahu and Arafat visits.

(C) First Annual America Reads Challenge Report from Carol Rasco -- first report since your 1997 State of the Union Challenge; Carol says in the first year, over 830 colleges and universities and 160 organizations signed up; urges making America Reads legislation a priority; must pass by July 1, 1998 or the initiative will lose funds reserved in the FY98 budget. We have forwarded copies of the report to Bruce Reed and Elena Kagan.

(D) Economist article on the Asian Crisis forwarded by Larry Summers -- says, "Here is a perspective relatively close to ours which appeared on January 10;" article argues that IMF intervention, while creating some bad incentives/moral hazard with respect to investors, was, on balance, necessary given the small though not negligible risk of systemic failure and the opportunity to spare Asian economies much pain.

(E) Nikkei Survey on PM Hashimoto's Policies forwarded by Tarullo -- Dan says it "reinforces my belief that Japanese politics rarely reflect popular views in a direct fashion; tempts me to believe that a bold series of policy steps could contribute to a realignment of the political dynamic within Japan;" poll shows only 30.4% support Hashimoto (down from 35% in December); 41% favor more income tax cuts and public spending; and 49% want an economic stimulus package from the government (up from 37% last June).

(F)Berger Memo on Chilean Salmon -- you asked how the Commerce Departments Jan. 12 ruling on the dumping of Chilean Salmon related to your Nov. 25 discussion with Frei; Sandy says U.S. industry has been pursuing a dumping action and a separate subsidy/countervailing duty action. Chile won the countervailing duty case just before APEC, and your comment to Frei related to that case; however, NSCs talking points had incorrectly characterized it as a dumping case; last Monday there was a preliminary finding in the dumping case in which Commerce assessed only a 5.79% duty -- far less than the 40% being sought by U.S. industry; Chiles reaction has been muted because the penalty is very small and may yet be thrown out by the ITC.

(G)Advance Seminar Thank You Letter forwarded by Podesta -- John says, "We received a lot of very positive feedback from our advance seminar. Thank you for your participation. I think you and HRC recharged a lot of batteries;" he forwards a thank you letter from Roshann Parris praising the seminar.

(H)Outline of Gov. Bushs proposal to end "Social Promotion" in Texas public schools. Forwarded by Rahm who thought you would find it interesting.

(I)Note from Sen. Daschle forwarded by Brophy -- Daschle says, "My family and I want to thank you for taking the time to meet with us the day after Christmas. It was the highlight of their trip! And I am glad they got to talk with you personally and meet Buddy at the same time! We hope 1998 is filled with good health and happiness. I look forward to going through it with you."

(J)Letter from Arthur Schechter forwarded by Paul Begala -- Paul says Arthur loved your talk in Houston; Schechter says your speech was "excellent" and that you made a real impression on the students and on him.

(K)Articles from Sid Blumenthal on Mid-East. Sid sends you a piece by Jonathan Broder from the online magazine Salon -- Broder is the Washington correspondent for The Jersulam Report, and a piece from Mort Kondracke in Roll Call.

We have also received the following items:

\*Note from Begala on the Harvard/"Nieman Report" on the Media -- report was sent out to some 570 opinion makers, news organizations, etc.

\*Note from Ann Lewis passing along message from Mel Weiss -- Ann spoke in NYC on Wednesday and Weiss (of Milberg Weiss) wanted you to know that: "your meeting in Argentina had a real impact on getting action on the terrorists who blew up the Jewish Community Center. I travel often to Argentina and there has a real change in attitude."

August 15, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN  
PHIL CAPLAN

SUBJECT: Recent Information Items

We are forwarding the following recent information items:

(A) Mikva/Kagan memo on federal law enforcement. Discusses three subjects: violent threats to law enforcement from right-wing extremist groups; the "Good Ol' Boys Roundup"; and Ruby Ridge. Note that hearings on both militias and Ruby Ridge are planned for September. Ab and Elena suggest that our the broader message linking these three subjects should be emphatic support for our law enforcement agents, but also insistence that they live up to their own high standards -- a message of reciprocal responsibility between law enforcement and the broader community. Several policy suggestions are offered, including: continued advocacy of counterterrorism legislation; support of legislation to ban paramilitary training; withholding monies from communities that deny federal authority over lands; issuance of directives relating to the way Justice handles cases involving threats or assaults on federal agents.

(B) Senator Ford press release on tobacco announcement. From Leon. Calls your action disappointing. Says his farmers lost out to the zealots. "No one...was attempting to block the President's position of reducing underage smoking. We were offering a fair and enforceable way to get there. Mr. Kessler wanted a scalp on his belt and the White House was determined to give it to him." He says he will not be vindictive and will introduce a bill after recess that he thinks we can accept.

(C) Pena memo on air traffic control outages. Secretary Pena outlines a multi-part plan to address recent outage problems, including: 1) expert teams from FAA will visit each air traffic control center starting August 21 to review emergency and backup procedures and report by November 15; 2) within 60 days, an outside expert in power systems and backup procedures will complete a review of systems in each center; 3) new training courses will begin in October to better train technicians on the maintenance of 30 year-old systems; 4) 116 new technicians will be hired by September 30. Also, the FAA last week moved forward with a \$65 million plan to replace the computers in five key facilities -- Chicago, Cleveland, Dallas-Ft. Worth, New York and Washington -- 16 months ahead of schedule.

(D) CIA task force on state failures. From Tony Lake in response to your inquiry. Task force formed in June 1994 to examine factors that could be used in predicting the failure of states -- defined as revolutionary wars, ethnic conflict, abrupt regime transition and genocide -- over the past 40 years. Task force found that a combination of three variables -- infant mortality, level of foreign trade and level of democracy -- can be used to predict, with 70% confidence, failure or non-failure of states two years in advance. Tony

emphasizes that while the report indicates new empirical relationships between state failure, quality of life, trade and governance, it does not suggest specific policy approaches and shouldn't be considered without expert regional qualification.

(E)Rasco update on immunization program. The Vaccines for Children program has been sharply criticized on two grounds: (i) that cost is not a major barrier to immunization, so VFC funds would be better spent on improving public clinics than on purchasing so much free vaccine; (ii) that VFC is poorly run. Drug companies hate the program because it gives HHS the right to purchase a much larger amount of vaccine than it did before the program. Manufacturers and some Members will try to kill the program this fall, probably by folding it into a Medicaid block grant. We have a two-part strategy: (1) get out the word that VFC is valuable and is filling a critical need; while (2) preparing a fall-back position that will preserve some part of public purchase, perhaps as entitled grants to states rather than as a true entitlement.

(F)Rubin memo on status of North American Development Bank. Responds to your recent request. Provides overview of program and remaining steps.

(G)Mack comment on John Brown's recent letter. Mack endorses Brown's counsel, particularly his comments on two very popular presidents, FDR and JFK, who offered hope and a positive outlook for the future, contrasted with LBJ, Carter and Bush, whom he describes as "handwringers."

(H)Letter from Senator Leahy on telecommunications. Leahy commends you for the strong stand you are taking on the bill. He offers to be supportive in any way on this matter and thanks you for the ride back to Washington from Vermont.

(I)Appreciation from Major Meadows' family. When learning that you were going to award him with the Citizens Medal, Meadows asked that the presentation be delayed until the July 29 reunion of those involved with the Son Tay prison raid. Dying from leukemia, Meadows passed away unexpectedly the night before the reunion. His family received the medal on his behalf and was very grateful and appreciative.

(J)Regional and local Medicare clips. Generated by release of the county-by-county numbers on the impact of the Republican Medicare cuts.

(K)Regional media update from McCurry. On tobacco, the budget and Charlotte trip.

(L)Cisneros/Roger Kennedy paper on anger in American public life. A 47-page historical thought piece that grew out of conversations Henry had in the aftermath of Oklahoma City with Roger Kennedy, Director of the National Park Service.

FOR INTERNAL DISCUSSION PURPOSES ONLY

## Child Care Policy Options

### Draft Working Paper

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

The Dependent Care Tax Credit (DCTC) is an income tax credit for taxpayers who incur employment related expenses for child care or elder care. The credit is now available to single parents who work and to two-parent families in which both parents work. The maximum allowable credit, available on a sliding scale depending on income, ranges from \$480 to \$720 for families with one child and from \$960 to \$1440 for families with two or more children. Since the credit is not refundable, it cannot be used by most low income working families with incomes below the federal income tax threshold (approximately \$24,000 for a family of four).

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

Low-income families face major obstacles in finding or affording child care services. While the average family spends about 7 percent of their income on child care, low-income families spend approximately a quarter of their income for child care services. An estimated 10 million children from working families will be eligible for federal child care assistance, yet only 1-1.4 million children currently receive assistance. Among working families earning 150% of poverty, 4 out of 5 do not receive federal child care assistance. Among working families earning at or below the poverty line, 2 out of 3 do not receive assistance.

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

Research confirms that the quality of child care can impact childrens language and cognitive development and can affect school-readiness. Yet study after study reveals a crisis in the quality of child care across the country. At the White House Conference on Early Childhood Development and Learning, the President pointed to the military child care program as a model for the rest of the country. Of particular note is the militarys focus on establishing family child care networks, achieving outside accreditation of its facilities, and tying professional training to compensation.

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

As the number of infants and toddlers in care increase, many families are turning to small

family child care homes to provide a more home-like setting for their children. One of the most effective strategies for improving the quality of these settings is the establishment of networks of support and training specifically designed for family child care providers.

5. Establish a Scholarship Program for Child Care Professionals By Exploring Loan Forgiveness and Scholarship Funds

Research confirms the importance of early childhood staff to the quality of child care services. Yet child care providers receive inadequate wages and there are limited resources to recruit and retain staff. When scholarships are provided, the quality of care improves (as seen in the TEACH scholarship program in NC).

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

The need for after-school care has grown dramatically in recent years. With the vast majority of parents with school-age children in the workforce, millions of school-age children go home to an empty house after school. Yet most schools close at 3:00 pm and remain closed in the summer months. While the number of school-age programs has grown over the last decade, there are still dramatically few school-age programs for low-income working families, particularly for children aged 10-13. Despite poor access to quality programs, recent research documents the positive effects that school-age programs can have on academic achievement of low-income children. FBI studies report that crime rates increase between 3-6pm.

RE

July 24, 1997

MEMORANDUM FOR DISTRIBUTION

FROM: Jennifer Klein, DPC/OFL  
Nicole Rabner, DPC/OFL

RE: Background for Working Group Meeting on Child Care

Attached please find a draft working paper of policy options relating to child care for your review in advance of the working group meeting at the White House, which will take place on Tuesday, July 28 at 5:15pm, in room 180 OEOB. The paper is meant for discussion purposes only and does not represent an exhaustive list of ideas for consideration and discussion. Please bring reactions, as well as other suggestions, to the meeting, and feel free to call either of us at 202/456-6266. Thank you.

DISTRIBUTION:

Elena Kagan, DPC  
Cynthia Rice, DPC  
Olivia Golden, HHS  
Cherrie Carter, OPL  
Faith Wohl, NPR  
Ann Rosewater, HHS  
Joan Lombardi, HHS  
Mary Bourdette, HHS  
Keith Fontenot, OMB  
Jeff Farkas, OMB  
Jennifer Friedman, OMB  
Mark Mazur, DPC/NEC/CEA  
Anne Lewis, NEC  
Kris Balderston, WH Cabinet Affairs  
Emily Bromberg, WH IGA  
Lynn Cutler, WH IGA  
Janet Murguia, WH Legislative Affairs  
Carolyn Beecraft, DOD  
Linda Smith, DOD  
Carrie Wofford, Labor  
Martha Johnson, GSA  
Pauline Abernathy, DOE  
Michael Barr, Treasury  
TBD, Labor  
TBD, SBA  
TBD, Commerce

☐☐

July 25, 1997

MEMORANDUM

TO:Elena Kagan  
FROM:Nicole Rabner  
CC:Jennifer Klein  
RE:Child Care

Our first child care working group meeting is set up for Tuesday, July 28, with representation from the appropriate agencies (list attached). You had asked Jen and me to distribute paper to the working group on possible policy options for discussion. With Olivias blessing, we sent out the attached 2-page document, which is a shortened version of the document that HHS sent to us earlier.

Also attached is a summary of the focus groups you chaired, prepared by Joan and her staff for internal use, as well as the final, released statement by the President on the conference and the accomplishments document.

We also have a meeting scheduled with the First Lady, Melanne, David Hamburg and Deborah Phillips to discuss child care and get feedback from them on policy- and conference-development direction.

☐☐

July 25, 1997

MEMORANDUM

TO:Hillary Rodham Clinton  
FROM:Nicole Rabner  
Jennifer Klein  
CC:Melanne Verweer  
RE:Child Care

As you know, over the past many weeks, we have been meeting with child care experts and Administration officials on child care, both to consider policy options and to begin thinking about the structure and message of the White House Conference in October. Attached for your review and comment are several documents:

- A Draft Working Paper on Child Care Policy Options
- A Summary of the Focus Group Meetings on Child Care
- A Statement by the President on the White House Conference
- Administration Accomplishments on Child Care

On your schedule for Wednesday, we have a meeting with David Hamburg, Deborah Phillips, Elena Kagan and Joan Lombardi from the Child Care Bureau to discuss the direction and themes of the Conference and to consider child care policy options.

Notes from March 31, 1997

#### Education Strategy Meeting

Key people attending: Bruce Reed, Elena Kagan, Mike Smith, Mike Cohen, Kay Casstevens, Bob Shireman, Bill Kincaid, Terry Peterson.

#### Upcoming Events

The first 50 minutes of the meeting was devoted to 6 April education events and the themes of each.

\*California testing endorsement/CEOs (4/2). The Cal. State superintendant will accept the Presidents challenge to adopt the national reading and math tests. No one is sure how Governor Wilson will react (some think he will not make an issue of it.) The State board of education will likely support Wilsons position, whatever it is.

\*D.C. Netday (4/4). The Vice President will participate in a school wiring event. There was not much discussion of this.

\*FLOTUS event in Tallahassee (4/7). No topic yet.

\*Al Shanker memorial (4/9). USIA plans to announce the renaming of an existing fellowship program for Al Shanker. (Note- this proposal was faxed to us by Bruce Reeds office on 4/1 for review. The Ed. Branch is checking with the USIA examiner to see if there would be any problems with this. We have no problem with it.)

\*Zero to Three Conference (4/17). Mike Cohen is following up on early learning standards. The head of Georgia's PTA organization is talking about organizing parents of preschool children to get them informed about what services preschools should be providing so that they can hold these schools accountable. Mike Smith noted that the Head Start organizations will hate this effort.

There was a lengthy discussion of options for what new policy or program the President could announce at this event. Some of these would have resource needs not reflected in the Presidents Budget. Options discussed included:

- Elaboration on the current budget proposal to spend \$100 million over 5 years to support board certification of teachers. The group was concerned that there wasn't enough "new" here to warrant being the major theme.
- The Administration could talk about the need for clear, rigorous standards for entry-level teachers.
- The Administration could announce a higher education reauthorization proposal for teacher training (perhaps an inter-State testing proposal currently under development within ED).

NOTE - Smith indicated that ED's plan was to get this done by May or June, but that if asked, they could accelerate it. No one at the meeting mentioned that there is no money in the 1998 Budget for the new authority they are considering.

-The Administration could talk about the need to make the teaching profession more attractive by making retirement benefits portable from State to State. Perhaps the Federal government could take the lead in calling for (or setting up) an intermediate bank for teacher pensions.

-The Administration could piggyback on the reading and math standards, challenging universities to put together courses that would really teach students how to teach math, and perhaps reading too. Mike Smith noted that many or most elementary teachers don't know the k-8 math curriculum themselves and couldn't pass the TIMMS. Mike Cohen asked if NSF could spend some of their money on this. Smith said he didn't think NSF funding was focused on this now, but thought it could be. He noted that NSF has become very sensitive to external pressure to shift priorities.

May/June/July events. There was a long discussion of what the President might want to do during these months with State legislatures, mayors, and other groups (once his leg has healed) to push his education agenda. Interesting tidbits from the discussion:

-Washington State's legislature wants to repeal participation in GOALS 2000. They do have a strong charter schools initiative. Mike Cohen suggested the President might want to address the legislature directly, making clear that GOALS 2000 is not Federal intrusion, but praising their efforts to move ahead on charter schools.

-Los Angeles has 3 or 4 initiatives underway to help low-achieving kids meet high standards.

-Chicago would likely sign on to the national tests. In Illinois, the focal point for national testing will need to be individual districts, since Illinois has a law that limits the amount of time any child can spend on State-required tests to a total of 25 hours over the k-12 period. Some suggested the President might want to appeal to the Illinois voters to change this law. (The national tests will be a total of 3 hours: 1 1/2 for reading in 4th grade and 1 1/2 for math in 8th grade.)

-Someone suggested the President might want to meet with test publishers (as opposed to test developers), or a group of midwestern mayors. In the end, the consensus was that inviting a half dozen mayors to DC for a testing-related event would probably be the best option.

#### Miscellaneous Items.

The WH is sitting on the "Community Schools Guide", but it's ready to go.

ED's Title 1 report on "Barriers to Parent Involvement" is ready.

The Early Pre-reading Report is scheduled to be released at the 0-3 event.

A community colleges event is scheduled for April 12-15.

The America Reads event is still to be scheduled. Something is happening with Reading is Fundamental on April 22-25.

HOPE Scholarships.

Bob Shireman ran this discussion, noting that Sunday's (3/30) Washington Post and New York Times had both carried very unfavorable articles. David Longanecker is drafting a response. The WH and Education Department are looking for outsiders to write Op-eds and other pieces in support of the proposal.

Student organizations (USSA, USPIRG, and Rock the Boat) support some important aspects of the President's plan (they like the tax credits if they aren't offset by Pell). Shireman suggested that they make the effort to work with student groups so that when they visit Congress, they declare their support for "something like" the President's proposals.

Daschle, Kennedy, Rangel, and Clay plan to introduce the legislation soon, and then seek co-sponsors. They want a briefing about guarantee agency issues first.

Mike Smith noted the serious inconsistencies in the Administration proposal (poor kids get only \$1500 and must maintain a "B" average; rich kids can go to expensive schools, get a "D", and receive a tax deduction worth \$2800). He thought it was time to consider modifications that would make it more defensible.

There was widespread agreement that we are losing the PR war. But most felt it was too soon to signal a willingness to change our proposal. The group agreed that the WH and ED need to be more aggressive (in their own presentations to organizations, in getting op-eds and other favorable stories printed, and seeking endorsements from organizations that represent the broader public...like the PTA). At some later time, the Administration can consider signalling its willingness to make changes.

America Reads

There was a brief discussion of America Reads as the meeting was breaking up. Bob is definitely the key WH person on this now, so we should probably stay in close touch with him. Things that were discussed yesterday:

-The WH is looking for the right "event" to announce the legislation.

-Susan Frost is still looking at options for changing the legislation to pacify the education organizations. (NOTE - on 4/3, we saw some draft language from ED on this, with changes suggested by Bob Shireman.)

-ED met with Goodling (and continued with his staff after he left). Goodling is very supportive -- and believes there is bipartisan support -- of the aspects of the President's reading challenge that do not require legislation (e.g., using work study students as reading tutors).

-There was speculation by the group that there might even be bipartisan support for the legislation if the Americorps piece was dropped. Kay Casstevens agreed with this, but said this was not a question she was comfortable asking on the Hill.

-Bob Shireman noted that there was slow progress getting college presidents to commit their work-study students. He suggested that one way to begin to build bipartisan support would be to seek out Republican members of Congress and get them to call the college and university presidents.

The meeting concluded around 6 pm when Bruce Reed and ED officials had to leave.

May 29, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Elena Kagan  
Deputy Assistant to the President for Domestic Policy

SUBJECT: Cloning Policy Options

Two upcoming events create the need to develop a position on legislation banning the cloning of human beings. First, the National Bioethics Advisory Commission (NBAC) is about to complete the review you requested of the ethical and legal issues associated with cloning human beings. On Saturday, June 7, at its final public meeting, NBAC is expected to vote in favor of a legislative ban. Second, France has proposed that the Denver Summit communique include a paragraph urging countries to pass domestic legislative bans; and to work together toward a global ban.

We recommend: (1) that you support domestic legislation banning human cloning, and that you announce specific legislation at the top of your June 10th press conference; and (2) that the U.S. support France's proposed cloning paragraph while insisting on critical modifications.

DISCUSSION

NBAC's Findings and Recommendations

In its draft final report, NBAC unanimously concludes that "it is morally unacceptable for anyone . . . to attempt to create a child" using the technology that created Dolly the sheep -- that is, the transfer of the nucleus from an adult somatic (non egg or sperm) cell into an enucleated egg. NBAC bases this conclusion on safety concerns, finding that the technology is "likely to involve substantial risk to the potential child." The report also states that "serious ethical concerns... require a great deal more widespread and careful thought and public deliberation before this technology should be used."

NBAC also concludes, however, that some forms of "human cloning" -- such as the cloning of DNA sequences, cell lines, and tissues -- are scientifically important and not ethically problematic. Moreover, NBAC finds that nuclear transfer cloning in animals is ethically acceptable and promises important benefits. Hence, the Commission cautions that any restrictions on cloning should not preclude these activities.

The Commission notes that current restrictions effectively prohibit federally funded and regulated entities from attempting to clone a human being through somatic cell nuclear transfer. However, fertility clinics and other privately-funded clinical and research establishments face no prohibition on human cloning. NBAC expresses doubt in certain organizations' willingness to adhere to a voluntary moratorium.

Accordingly, NBAC calls for carefully-worded national legislation prohibiting anyone from "attempting to create a child through somatic cell nuclear transfer techniques." The

Commission specifies that the legislation should include a sunset provision and that, prior to the sunset date, an oversight body should review and report on the status of somatic cell nuclear transfer technology and the ethical and social issues associated with its use in humans. NBAC also recommends that the U.S. cooperate with other countries to enforce mutually-supported cloning restrictions.

#### National Legislation

We recommend that you embrace NBAC's proposal to establish a narrowly crafted time-limited legislative moratorium. Legislation is the only way to establish a comprehensive, enforceable prohibition on cloning entire human beings in all research and clinical settings. If carefully written, it will not preclude important research.

Reaction to proposed legislation should be primarily favorable. A national and international consensus is emerging that attempting to apply the technology used to clone Dolly to humans is morally wrong. The American Medical Association has conveyed this view to NBAC, and the World Medical Association has issued a similar statement. Given NBAC's recommendation, we expect many in the scientific and ethics communities to support a legislative moratorium.

But some who agree that cloning a human being using nuclear somatic cell transfer is morally unacceptable will oppose a legislated moratorium. In particular, the biotechnology and pharmaceutical industries strongly oppose legislation. These two industries are deeply concerned that a legislative debate will produce broadly drawn language that impairs critical research. Some academic researchers may share this view. Fertility clinics may also oppose legislation, but to date have not signaled a position. Finally, some in the right-to-life community will argue that NBAC's proposed approach will not fully protect embryos.

We recommend that you announce your support for legislation and propose specific legislative language on June 10, at your scheduled press conference, three days after NBAC's recommendation will become public. By acting quickly you can maintain your leadership on the issue and carefully frame the legislative debate. As a practical matter, the biotechnology and pharmaceutical industry associations understand you may choose to take this approach and, notwithstanding their opposition to a bill, have quietly advised us on legislative language.

Approve \_\_\_ Disapprove \_\_\_

#### Group of Eight Statement on Cloning

France has proposed the following paragraph for inclusion in the G-8 communique:

We have taken note with great concern of recent scientific experiments which could open the way to reproductive human cloning. We agree that the prohibition of any form of reproductive human cloning needs both strict domestic legislation and close international cooperation to adapt current international law. We are encouraged by the reflections underway within national ethics committees as well as in various regional and international fora. We are determined to give a strong impetus to their work with a view to arriving as soon as possible at a universal ban on reproductive human cloning.

Germany will support the statement; Canada will support it with some modification.

U.S. biotechnology and pharmaceutical industries strongly oppose including any paragraph on cloning in the communique. They fear that it will not be carefully drafted and may inadvertently extend to the cloning of genes and cells as well as entire human beings. Further, industry is concerned a statement on cloning could ultimately provide cover for protectionist efforts to restrict U.S. biotechnology products and activities.

Nevertheless, we recommend that the Administration support the french proposal with critical modifications. Specifically, we suggest that the U.S. insist on changes to: (1) affirm the potential medical and agricultural benefits of cloning technology; (2) limit the prohibition to "the use of somatic cell nuclear transfer technology to create a child;" and (3) propose a time-limited moratorium instead of a ban. USDA and HHS support this position.

Approve \_\_\_Disapprove \_\_\_

May 29, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Jack Gibbons  
Assistant to the President for Science and Technology

Elena Kagan  
Deputy Assistant to the President for Domestic Policy

SUBJECT: Cloning Policy Options

Two upcoming events create the need to develop a position on legislation banning the cloning of human beings. First, the National Bioethics Advisory Commission (NBAC) is about to complete the review you requested of the ethical and legal issues associated with cloning human beings. On Saturday, June 7, at its final public meeting, NBAC is expected to vote in favor of a legislative ban. Second, France has proposed that the Denver Summit communique include a paragraph urging countries to pass domestic legislative bans, and to work together toward a global ban.

We recommend: (1) that you support domestic legislation banning human cloning, and that you announce specific legislation at the top of your June 10th press conference; and (2) that the U.S. support France's proposed cloning paragraph while insisting on critical modifications.

DISCUSSION

NBAC's Findings and Recommendations

In its draft final report, NBAC unanimously concludes that "it is morally unacceptable for anyone . . . to attempt to create a child" using the technology that created Dolly the sheep -- that is, the transfer of the nucleus from an adult somatic (non egg or sperm) cell into an enucleated egg. NBAC bases this conclusion on safety concerns, finding that the technology is "likely to involve substantial risk to the potential child." The report also states that "serious ethical concerns... require a great deal more widespread and careful thought and public deliberation before this technology should be used."

NBAC also concludes, however, that other forms of "human cloning" -- such as the cloning of DNA sequences, cell lines, and tissues (which do not involve the creation of entire human beings) -- are scientifically important and not ethically problematic. Moreover, NBAC finds that animal cloning by somatic cell nuclear transfer is ethically acceptable and promises important benefits. Hence, the Commission cautions that any restrictions on cloning should not in any way impede these activities.

The Commission notes that current restrictions effectively prohibit federally funded and regulated entities from attempting to clone a human being through somatic cell nuclear transfer. However, fertility clinics and other privately-funded clinical and research

establishments face no prohibition on human cloning, and NBAC questions whether some of these organizations will adhere to a voluntary moratorium.

Accordingly, NBAC's draft final report calls for carefully-worded national legislation prohibiting anyone from "attempting to create a child through somatic cell nuclear transfer techniques." The Commission specifies that the legislation should include a sunset provision and that, prior to the sunset date, an oversight body should review and report on the status of somatic cell nuclear transfer technology and the ethical and social issues associated with its use in humans. NBAC also recommends that the U.S. cooperate with other countries to enforce mutually-supported cloning restrictions.

#### National Legislation

We recommend that you embrace NBAC's proposal to establish a narrowly crafted time-limited legislative moratorium. Legislation is the only way to establish a comprehensive, enforceable prohibition on cloning entire human beings in all publicly and privately funded research and clinical activities. If carefully written, it will not preclude important research.

Reaction to proposed legislation will be mixed. A national and international consensus is emerging that attempting to apply the technology used to clone Dolly to humans is morally wrong. The American Medical Association has conveyed this view to NBAC, and the World Medical Association has issued a similar statement. Given NBAC's recommendation, we expect many in the scientific and ethics communities to accept a legislative moratorium.

But some who agree that cloning a human being using somatic cell nuclear transfer is morally unacceptable will oppose a legislated moratorium. In particular, the biotechnology and pharmaceutical industries strongly oppose legislation. These two industries are deeply concerned that a legislative debate will produce broadly drawn language that impairs critical research. Some academic researchers may share this view. Fertility clinics may also oppose legislation, but to date have not signaled a position.

Finally, some in the right-to-life community will argue from the other side that NBAC's proposed approach does not go far enough. This community will push for a comprehensive ban on the creation of embryos -- through any means -- for research purposes (i.e. not for the purposes of creating a child), a restriction you have applied to federally-funded research. This is an issue NBAC declined to review and that we do not recommend revisiting it in this context.

We recommend that you announce your support for legislation and propose specific legislative language on June 10, at your scheduled press conference, three days after NBAC's recommendation will become public. We anticipate that the release of NBAC's report will prompt Congressional hearings and legislative proposals. By acting quickly you can maintain your leadership on the issue and carefully frame the legislative debate, making clear the value of biotechnology research while prohibiting an unethical use of a specific technology.

Approve \_\_\_ Disapprove \_\_\_

Group of Eight Statement on Cloning

France has proposed a paragraph for inclusion in the G-8 communique embracing national and international bans on "reproductive human cloning." Germany will support the statement; Canada will support it with some modification.

U.S. biotechnology and pharmaceutical industries strongly oppose including any paragraph on cloning in the communique. They fear that it will not be carefully drafted and may inadvertently extend to the cloning of DNA, cells, and tissues as well as entire human beings. Further, industry is concerned a statement on cloning could ultimately provide cover for protectionist efforts to restrict U.S. biotechnology products and activities.

Nevertheless, we recommend that the Administration support the French proposal with critical modifications. Specifically, we suggest that the U.S. insist on changes to: (1) affirm the potential medical and agricultural benefits of cloning technology; (2) limit the prohibition to "the use of somatic cell nuclear transfer technology to create a child;" and (3) propose a time-limited moratorium instead of a ban. USDA and HHS support this position.

Approve \_\_\_ Disapprove \_\_\_

Attachment

#### **FF** France's Proposed Language for G-8 Communique

We have taken note with great concern of recent scientific experiments which could open the way to reproductive human cloning. We agree that the prohibition of any form of reproductive human cloning needs both strict domestic legislation and close international cooperation to adapt current international law. We are encouraged by the reflections underway within national ethics committees as well as in various regional and international fora. We are determined to give a strong impetus to their work with a view to arriving as soon as possible at a universal ban on reproductive human cloning.

#### Our Proposed Substitute Language

We have taken note that further development of the technology that enabled the recent cloning of a sheep offers the promise of enormous medical and agricultural benefits. We have also taken note with great concern that this scientific advance could open the way to using this technology (by which we mean somatic cell nuclear transfer technology) to create a child. We agree on the need for appropriate domestic legislation and close international cooperation to prohibit the use of somatic cell nuclear transfer to create a child while countries explore ethical and scientific implications in greater depth. We are encouraged by the reflections already underway within national ethics committees as well as in various regional and international fora. We are determined to give a strong impetus to their work with a view to arriving as soon as possible at a universal moratorium on the use of somatic cell nuclear transfer to create a child.

DRAFT

April 10, 1997

## MEMORANDUM FOR THE PRESIDENT

FROM: Melanne Verveer  
Elena Kagan

RE: White House Conference on Early Childhood Development and Learning

As you know, on Thursday, April 17, you and the First Lady will host the White House Conference on Early Childhood Development and Learning: What New Research on the Brain Tells Us About Our Youngest Children. The purpose of this memorandum is to provide for you the plan leading up to the Conference, an overview of the Conference and the likely policy announcements to be unveiled, pending your approval.

## Lead Up to the Conference

The lead up to the Conference may well be our best opportunity to frame the discussion on why issues relating to childrens early development are important, and why your Administration has invested so heavily to enhance those years of life.

Your radio address on Saturday 4/12 (which you are scheduled to tape on Friday, 4/11) will be an important opportunity for you to introduce for the Nation the themes of the Conference and its significance. On Monday, 4/14, the First Lady will host a roundtable with reporters, in which she will build on your radio address and underscore the themes of the Conference. On Wednesday, 4/16, the First Lady will host an event at the White House to announce an initiative to encourage pediatricians to "prescribe" that parents read to their children, when families visit the doctor. This announcement builds on an existing program, based on the generous donation of childrens books by Scholastic, Inc. This event will be optional on your schedule, pending activity on the budget.

## Conference Overview

The Conference will spotlight the exciting new findings about how our children develop and explore how we can make the most of this information to give our children what they need to thrive. Central to the Conference will be a discussion of your Administrations accomplishments in this area, in terms of significant investments that target early childhood development, such as Early Head Start and WIC.

The Conference will be divided into two parts -- a morning session and an afternoon session, each of which will follow the format of a roundtable discussion.

## Morning Session

You and the First Lady will make remarks to open the Conference and frame the day,

outlining why this Conference and the issues it will underscore are important. This will also be the opportunity for you to make a policy announcement on child care, outlined below. In this session, you will be joined on a panel by experts who will present an overview of the emerging knowledge on early childhood development in neuroscience and behavioral science. Dr. David Hamburg, President, Carnegie Corporation of New York will help to facilitate the brief presentations of the first three speakers, listed below.

Dr. Donald Cohen, Director of the Yale Child Study Center, will discuss how children's behavior helps us understand their cognitive, emotional and social development.

Dr. Carla Shatz, Neuroscientist at University of California, Berkeley, will explain how children's brains grow and develop in the earliest years of life.

Dr. Patricia Kuhl, Chair of the Department of Speech and Hearing Sciences at the University of Washington, will discuss how children learn language.

A discussion session will follow these presentations, in which the presenters from the opening session are joined by the experts listed below -- who represent front line services for young children and their parents -- to address concerns and questions of parents about their children's development and their own parenting. These concerns of parents will be generated by a poll conducted by Hart Research with parents across the country for Zero To Three, an advocacy and umbrella early development organization. You and the First Lady will pose these concerns of parents to the experts assembled, as well as other "hot button" questions for discussion, such as "does this research suggest that it would be better if women did not work?" or "does this research suggest that adopting an older child is a bad idea?" The panel of expert will be ready to engage in this discussion.

Dr. Ezra Davidson, Drew University of Medicine, can address the importance of prenatal and perinatal services.

Dr. T. Berry Brazelton, Harvard University, can discuss the pediatrician's role in early childhood development.

Dr. Deborah Phillips, Institute of Medicine, can address how child care can affect early development.

You and the First Lady will close the session.

#### Luncheon

The luncheon in the State Dining Room will be optional on your schedule, and is intended for informal discussion among the Conference participants.

#### Afternoon Session

The purpose of the afternoon session is to highlight model efforts that communities are undertaking to support parents and enhance early childhood development. We intend for this panel to be action-oriented, so that you would highlight your Administration's policy achievements and new initiatives during the course of the panel discussion. The discussion participants include:

Dr. Gloria Rodriguez, Avance Family Support Program, San Antonio, TX

Avance is a widely acclaimed family support and education program serving predominantly Hispanic communities.

Harriet Meyer, Ounce of Prevention, Chicago, IL

Ounce of Prevention is a statewide program in Illinois that develops and tests innovative early childhood development programs for replication, and runs model Early Head Start and child care programs.

Melvin Wearing, Chief of Police, New Haven, CT

Will talk about a pioneering initiative that trains community police officers to use child development principles in their work.

Arnold Langbo, The Kellogg Company CEO, Battle Creek, MI

Kellogg launched a community-wide effort last fall to provide practical early brain development information to every Battle Creek parent and caregiver.

Rob Reiner, CastleRock Entertainment

Los Angeles, CA

Will talk about the "I Am Your Child" campaign launched this month, and the media's role in making early childhood development information available.

Respondents:

Governor Bob Miller, Nevada, Co-chair of the NGA Children's Task Force

TBD Republican Governor

Policy Announcements

Child Care Proposal

Child care experts believe the Defense Departments child care system is the best in country and possibly also the best in the world. This was not the case as recently as the early 1980s, but legislation enacted in the late 1980s has led to dramatic improvements in DoDs child care and parenting programs. DoD child care is now characterized by: high standards enforced by four unannounced annual inspections and an 1-800 hot line for parents to report concerns; a high percentage of accredited centers; relatively generous wages and benefits that have reduced staff turnover; wages tied to training and an "up or out" personnel policy requiring completion of training requirements; and adequate funding to make quality child care affordable, although there are still waiting lists.

We recommend you hold the DoD child care system up as a model for the nation and issue an executive order at the Conference directing the Secretary of Defense to share the Departments expertise with civilian child care communities by: each military child development center adopting a local civilian child care center to help increase its quality and training; local military bases partnering with state and county governments to provide on-the-job training to welfare recipients in their child care programs; establishing military regional "Child Care Masters Programs" that local civilian child care managers could attend for two to three weeks to learn best practices; publicizing more widely DoDs model designs for child care facilities and playgrounds; and providing DoDs benchmarks for cost, compensation, evaluation, standards against which local child care programs could evaluate themselves. Clearly, most civilian child care systems will come up short against DoDs benchmarks, particularly in terms of salary, benefits and

affordability, but a debate on this topic might help build public support for greater investment in child care.

To show that you are serious about the DoD system being a model for civilian child care, the executive order could also direct the GSA to evaluate its child care centers against DoDs model practices and report back to you and recommended actions.

[Elena, based on what I can see, I would not release the RAND report. It does not say it is the greatest thing since sliced bread; it says the Bush Administration legislation has worked to improve the program dramatically. We have not gotten feedback from Joan on these DoD proposals. We are continuing to try to reach Joan.]

America Reads Challenge Early Childhood Kits for Families and Caregivers: Ready\*Set\*Read

You will announce the release of the America Reads Challenge Early Childhood Kits. The kits include booklets for families and caregivers suggesting activities for children ages 0 to 5, a calendar listing ideas for daily activities, and a developmental growth chart. The kits will be released at early childhood programs and through requests by callers to the Department of Educations 1-800-USA-LEARN phone line.

CEO Summit

Kaiser Permanente, whose CEO David Laurence will be in the audience at the Conference, will convene a CEO Summit in the fall of 1997 to discuss what businesses can do to enhance early childhood development -- for their own employees in terms of family-friendly workplace practices, for the communities in which they have a presence, and for their own products and services. This effort will be announced at the Conference, with you challenging Kaiser and the Summit to follow the themes raised at the White House Conference.

Childrens Health Initiative

In your remarks, you will discuss the importance of insurance coverage for childrens health and development, and you will highlight the Childrens Health Initiative in your 1998 budget proposal. In 1995, 10 million children did not have health insurance. Your childrens health proposal will extend coverage to up to 5 million of those children by the year 2000. The proposal includes: (1) grants to states to cover workers and their families between jobs; (2) a program to cover children whose families earn too much to qualify for Medicaid but too little to afford private coverage; and (3) efforts to strengthen Medicaid and ensure that all eligible children are enrolled. The deans of academic medical centers will endorse your proposal at the conference.

We are also planning a follow up childrens health event, where you will release a study showing the links between insurance coverage, health status and development and learning for children from 0 to 18 years old, talk in more detail about your health proposal, and announce a project by Kaiser-Permanente to spend \$100 million over the next 5 years to provide health insurance to uninsured children.

November 17, 1997

MEMORANDUM TO THE PRESIDENT

FROM:Chris Jennings

SUBJECT: Quality Commissions "Consumer Bill of Rights"

cc: Rahm Emanuel, Bruce Reed, Gene Sperling, Ann Lewis, Elena Kagan

On Thursday, an event has been scheduled for you to accept the Quality Commissions "consumer bill of rights." In preparation for this must anticipated report, this memo provides background on the Commission, summarizes its key recommendations, compares it with major bills on the Hill, and outlines the likely reaction by the major interest groups and elite validators. It also suggests a how you might best respond to the Commissions first report to you.

Background. In reponse to growing concerns about quality shortcomings in the rapidly changing health care system, you pledged to establish a Quality Commission during the 1996 campaign. In March of this year, you unveiled the 34-Member Advisory Commission on Quality and Consumer Protection. This Commission has a broad-based membership of business, labor, provider, consumer, insurer/HMO, and state and local representatives, is co-chaired by Secretary Herman and Secretary Shalala, and is required to report to you through the Vice President.

At the Commissions inception, you asked the members to produce -- as their first order of business -- recommendations for a "consumer bill of rights." This week they are responding to that charge by releasing their final report on this issue. Their preliminary recommendations received widespread acclaim by the elites. They achieved this by balancing the desires of the consumer advocates and providers against the fears of the insurers and business community. Not surprisingly, the former generally felt the recommendations did not go far enough and the latter concluded they generally went too far.

The Commission was structured to end up to the middle/left of this debate from the beginning,

as Donna and Alexis insisted that all final recommendations be done on a purely consensus basis. But what really assured that the business and insurer community would not make excessively loud complaints was the Commissions decision to push off making recommendations regarding how the "rights" would be enforced. It may or may not be able to resolve the Federal enforce-ment issue by the time the final report is released next March. (That report will also include recommendations that could have the most long-lasting impact on the health care

delivery system; it will focus on how to measure and actually improve quality outcomes.)

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While 52 percent of Americans said that government should protect consumers of managed care, 40 percent said that such intervention is not worth the increased costs that could result.

Key Findings of the Commission. The Quality Commissions "bill of rights" do not include a host of insurance and benefit reforms that some consumer groups would like to see (such as elimination of life-time caps, 48-hour rules for mastectomies, and required coverage of reconstructive surgery following a mastectomy.) However, the Commissions eight rights do include the access to provider and appeals process provisions that most consumer groups feel are their highest priority, including:

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However, if you go too far down this road, there is a danger of splintering the Commission, undermining their ability to be as effective as they have been so far in developing consensus in these areas. So far, businesses and insurers have stayed invested in the work of the Commission. Also, strong leadership from you could cause businesses and insurers to step up their campaign while Congress is out of session, creating a difficult environment for to move this agenda forward when they return. (Too negative?) We would recommend that while you call for Federal legislation to make these protections real, that you look forward to working with all of the relevant parties to determine which of these rights should be ensured by Federal legislation and which should be left to the private sector.???

We would also recommend that you applaud the Commission and state that their work provides a good framework that will guide you during this debate. However, as discussed above, we would not recommend that you fully accept all of the Commissions specific recommendations.

We are also working with HHS and the Labor Department to determine if they can come up with executive actions that illustrate our commitment to apply the Commissions recommendations to Federal government programs. Some are arguing that even though the recommendations of the Quality Commission are not as objectionable as they might have expected, that the Administration is planning to use these recommendations as a way to spark another health care debate in which we will recommend far more comprehensive reforms.

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Harvard Law School  
Cambridge MA 02138

draft 2

9:51am

MEMORANDUM FOR THE PRESIDENT

THROUGH: ERSKINE BOWLES  
SYLVIA MATHEWS

FROM: CHRISTOPHER EDLEY, JR.      1 Any useful elements of this memorandum reflect discussions with Sylvia Mathews, Sid Blumenthal, and Michael Waldman, Judy Winston and John Hope Franklin. Other members of the White House staff who will have an ongoing role in the confidential effort to prepare your report include Paul Begala, Maria Echaveste, Elena Kagan, Ann Lewis and Susan Liss. Under Sylvias leadership, we will involve a somewhat broader group of internal and external advisers on a regular basis.

1

Professor of Law

RE: Preliminary Thoughts on Your Race Report

This memorandum sketches the approach we propose for working with you to prepare your report to the American people next fall. It suggests some parallels to the Affirmative Action Review, while noting that this is a far larger undertaking. Accompanying it are two other documents: A Sid Blumenthal essay on identity, community and One America; and a notional table of contents for your report.

Recapping 1995

In the 1995 review of affirmative action, you rejected the values framework of extreme colorblindness and gender neutrality, choosing instead a framework that acknowledges some moral and other costs to using color and gender in decisionmaking, while insisting that those costs are worth paying in some circumstances because:

I. affirmative action is needed as an effective tool to remedy and prevent discrimination;  
and

II.

some organizations need diversity to achieve excellence in their mission and to build a better nation.

Race Report Outline: November 3, 1997p.2

You also rejected a flat insistence on substituting class for color. Race-neutral measures are always preferable, ceteris paribus, but there are situations in which effective

responses to the demands of remediation and inclusion must include some attention to race. Finally, however, you insisted that affirmative action be done "the right way."

In our discussions, though not always in public communications, we wrestled with the problem that easy, familiar phrases very often obscure and even intentionally mislead. To the far left, "discrimination" means any social or economic disparity; to the far right, it means only individually identifiable acts revealing rabid racial animus. Across the spectrum from Farrakhan to Edley to Connerly to David Duke public voices proclaim their commitment to antidiscrimination principles. So too with "equal opportunity," "fairness" and the American Dream. Consensus at this level counts for something, but not enough. Both in staff discussions and with you, therefore, we sought to get beyond the platitudes by wrestling with a series of hard questions, or hypotheticals, designed to refine a coherent values framework. We considered, for example:

I. the Coal Miners Daughter hypothetical, pitting the poor white woman against the prosperous black man in university admissions;

II.

Piscataway, contrasting recruitment, hiring, promotion and layoffs;

I. targeted NSF graduate fellowships for women;

II.

how to reconcile the celebration of diversity-as-excellence with support for black and womens colleges;

I. whether prosperous minorities should participate in programs for disadvantaged businesses.

One of our basic conclusions was that this is complicated, and context matters. Hence, "Mend it, dont end it."

A last point: Our method in 1995 was, in my mind, based on a conviction that appealing to shared values is unlikely by itself to bridge our deep differences. This is because (a) those basic values can readily be given sharply differing specific content, and (b) we share a number of values, some of which are in tension when it comes to the toughest issues. Therefore, we worked hard not just to contemplate what unites us, but also to understand what divides us and why. (The Vice Presidents comments to the Advisory Board on September 30 sounded this theme.) In a sense, the success of your Race Initiative this year depends in part on whether we can take the next step: a set of strategies to overcome those divisions by building bridges to connect communities across lines of color and class. Once we understand the differences in value commitments and perceptions, what is to be done? You have heard me say, This is not rocket science. This is harder.

Beyond Affirmative Action: This Initiatives Broader Canvass

When you finally report to the American people, the central element of that living document must be Bill Clintons vision of what racial and ethnic justice mean for the 21st century, and why your vision is preferable to the alternatives. The rest of the report should provide the motivation for that vision and a workplan to move the nation towards it, including ideas for public and private action, from national to local to personal. Instead of a blizzard of policy plumbing details, which should be left to supporting documents, you should offer a combination of principles and promising practices. A suggestive outline of what we contemplate in your book, or report, is attached. It is very preliminary, and will evolve based on our own work and on feedback from you.

We envision a process similar to 1995: simultaneously working on the plane of framework or basic values, and on the plane of "hard questions" and practical examples. Over the months, with you, we will develop more detail and more confidence in the framework and

prescriptions. Some serious writing will take place in connection with your speeches; borrowing from that, the drafting for your report will begin in earnest in the summer. Of course there is no sharp division between the conceptual tasks and the communications work. As an approximation, however, we will concentrate first on getting the ideas and evidence right, then worry about how best to communicate them.

The Advisory Board and Judy Winstons staff have several missions not directly related to your report. Nevertheless, their role here is important. The Board will offer recommendations on both programs and "values," and will assemble thoughtful essays by a range of contributors. The staff is working on several fronts to assemble evidence and information that are important to the Boards mission of public education, but will also provide background for expository sections of your report. Thus, for example, we know we want your report to include examples of replicable promising practices. Therefore, even before your public comments on September 30, Judys staff was at work constructing an appropriate process to collect examples and separate the bridge-building efforts that have effective public relations from those that promise effective change. (Your comments tripled the pace.) Similarly, we think your report should contain a chapter describing "Where America is on race," providing some authoritative information on demographics, disparities, discrimination and intergroup relations. The staff and several agencies are at work producing supporting information, and the public presentations on September 30 were related to that effort. The evolving outline of your report will be the single most important guidance for the Board and staff as they implement priorities for study and deliberation.

#### The Substance

On the plane of values, stated too abstractly, the Initiative must face at least these four broad questions:

1. One America: In your vision, how do we reconcile (or perhaps integrate) the competing claims of individualism, melting pot, multiculturalism, nationalism, universalism, identity politics and so forth? Accompanying this memorandum is an essay by Sid Blumenthal on the subject, which we will debate at length in the coming months. The answer to this broad question has implications for countless particular issues. For example: What are we to make of the black communitys ambivalence about integration? Whats wrong with allowing overwhelmingly white suburban communities to wall themselves off (fiscally and literally) from the challenges of central city schooling and housing? Do claims for "language rights" threaten a conception of the American identity to which we in fact subscribe and who is "we"? And when we have achieved your vision of racial justice, what will be the continuing social significance of racial difference?

2.

The Limits of Race: What is a "race" problem and what isnt? When are public and private fights about class or competence or culture, rather than color? Many whites accuse minorities of being too color-conscious, while many minorities see in our civic discourse a pernicious trend towards denying that race matters. We must face this broad question when wrestling with such questions as: Whats the best way to define and detect discrimination? Should integration of K-12 schools and diversity in higher education be focused on class rather than color? What are the dimensions of unfairness within the criminal justice system from alleged police misconduct to crack sentences and are those racial problems? To what extent are our fights over immigration policy and bilingual education importantly about color? something most civil rights leaders know in their bones to be true.

1.

The Public-Private Distinction: What are the respective roles of the government, private, civic and personal spheres their roles as part of the problem, and as part of the solution?

Implicit in this are value choices about how intrusive we want government to be as regulator or even nanny, and how much we want to leave to more autonomous and private decision.

1.

The Role of History: Fundamentally, history explains why race is different, why many people are impatient for justice, and why others believe that progress must take still more time. Expressions of white male backlash and resentment reflect, in part, a stance towards history (and autonomy) that limits or even denies personal responsibility for sacrificing to create solutions. On the other hand, demands for reparations or for proportional results in various economic settings reflect a view of history in which there is a continuing legacy that requires remedy, now. Ultimately, your vision of racial justice in our future, and your sense of the appropriate urgency in pursuing it, will depend upon your stance towards our history.

Just as we wrestled in 1995 with the value choices posed by arguments over color-blindness, or class-based substitutes for racial targeting, we will work at the staff level to refine our views on the major issues above, coming to you at appropriate junctures to frame decisions and seek guidance.

The slate is not blank. You have said a great deal. And, beyond the matter of color, you have developed a set of conceptual and rhetorical foundation stones for leadership in several areas. Among these are: [I need help here, especially from Michael W., Sid B.]

I. investing for the future; preparing for the 21st century

II.

opportunity and responsibility

I. playing by the rules

II. partnerships: public-private-civic, and federal-state-local

III. broad-based strategies; rather than narrow-interest sops

IV. positive focus on what unites us

V.

pragmatic solutions that avoid failed approaches of the past, and that avoid ideological extremes

I.

government that is fiscally responsible and "reinvented"

I. inclusion

II. community: One America

III. our children

IV. continuity with your personal history

All of these will play a role in your race report. (Or it wouldnt be yours.)

**FF**Edley, Blumenthal, Mathews

The Presidents Report

draft outline

Introduction: Americas Challenge

1. the sense in which we have lost our way, and why it is imperative that we find it again

2.

the nature of the problem is somewhat the same, and somewhat different

1.

framework: the values and commitments that provide a framework for us, including the meaning of identity and community in One America

1. we need both a workplan for nation, and leadership at all levels

2. Where is race, and where are we going?

\ demographic history and trends

\ disparities, socioeconomic indicators, economic mobility, opportunity measures

\ discrimination: authoritative data using various methodologies How much discrimination is there?

\ intergroup relations: how integrated are our lives, how have attitudes and stereotypes changed, etc.

3. Policy and racial justice

\ the effects of key public policies and private practices on the state of racial justice today

\ the effects of race on our civic discourse: how race poisons politics and policymaking, overtly or subtly

4. Vision: Bill Clintons vision of racial and ethnic justice in the 21st century, and why it is preferable to competing visions

\ seeking clarity about our value commitments and ambitions for One America

\ this pivotal section is an elaboration of the framework sketched in speeches and in the introduction to this Report

5. Wrestling lessons: What vexes us, and constructive engagement of our differences

\ "modeling" how we can face up to some of the hardest questions dividing us in an honest and constructive way (list to be developed)

\ applying the values and vision to address a few major issues (list to be developed)

6. Promising practices: examples of public and private efforts to promote racial reconciliation and racial justice, and some counterexamples of destructive practices

\ criteria for making these judgments

\ examples from different sectors: government, business, the media, the faith community, education, nonprofit sector, etc.

\ establishing an ongoing program to recognize and replicate promising practices

7. A workplan for the nation over the next decade

\ policy prescriptions building on the preceding sections, including action items for governments at all levels

\ practice prescriptions for private, voluntary, community and personal actions

\ leadership call to action, recruiting a cadre of leaders from all sectors who will dedicate themselves to learning, teaching and practicing the difficult tasks of building One America

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Notes:

(i) The Core Group will refine this preliminary outline iteratively, developing detail and wrestling with the many difficulties it suggests.

- (ii)The policy time frame is long a decade or more; this is grander than the budget and legislative agenda for one or two years.
- (iii)Occasional meetings, as appropriate, with the President and Vice President.
- (iv)Discrete supporting tasks will be delegated to the Initiative Staff, the Advisory Board, White House policy councils, agencies, and to outside experts and friends.
- (v)The developing effort on the Report will inform work on speeches and events.
- (vi)Report will be completed late fall 1998.

November 17, 1997

MEMORANDUM TO THE PRESIDENT

FROM: Chris Jennings

SUBJECT: Quality Commissions "Consumer Bill of Rights"

cc: Rahm Emanuel, Bruce Reed, Gene Sperling, Ann Lewis, Elena Kagan

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However, if you go too far down this road, there is a danger of splintering the Commission, undermining their ability to be as effective as they have been so far in developing consensus in these areas. So far, businesses and insurers have stayed invested in the work of the Commission. Also, strong leadership from you could cause businesses and insurers to step up their campaign while Congress is out of session, creating a difficult environment for to move this agenda forward when they return. (Too negative?) We would recommend that while you call for Federal legislation to make these protections real, that you look forward to working with all of the relevant parties to determine which of these rights should be ensured by Federal legislation and which should be left to the private sector.???

We would also recommend that you applaud the Commission and state that their work provides a good framework that will guide you during this debate. However, as discussed above, we would not recommend that you fully accept all of the Commissions specific recommendations.

We are also working with HHS and the Labor Department to determine if they can come up with executive actions that illustrate our commitment to apply the Commissions recommendations to Federal government programs. Some are arguing that even though the recommendations of the Quality Commission are not as objectionable as they might have expected, that the Administration is planning to use these recommendations as a way to spark another health care debate in which we will recommend far more comprehensive reforms.

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CLOSE HOLD. Page 1 June 8, 1998

## DRAFT BACKGROUND MEMORANDUM FOR EOP PRINCIPALS MEETING

FROM: REBECCA BLANK  
ELENA KAGAN  
SALLY KATZEN  
JOE MINARIK

Subject: Meeting on Income and Poverty Measures

## Purpose of the Meeting

In early 1999, the Census Bureau will publish alternative measures of poverty based on the proposals contained in the 1995 National Research Council (NRC) report, *Measuring Poverty: A New Approach*. The current official poverty measure dates back to the 1960s, and while it has been an important contributor to public debate and policymaking, the NRC report reflects a broad consensus that the measure is out-of-date and in need of revision.

Poverty measurement involves two concepts: (1) A definition of family income; and (2) A "threshold" against which income is compared to determine if a family is poor. Changes in these two concepts will have a direct impact on statistics used by the public for informational purposes. Changes will also likely have an effect on Federal programs as well.

Because of the importance of an independent statistical system, the Census Bureau plays the major role in deciding technical issues regarding poverty measurement. However, because of the important policy and political implications of the poverty concept, Census has asked for advice from the EOP (because OMB, through OIRAS Statistical Policy Office, is the statutory arbiter of the "official" poverty measurement methodology) on the upcoming report.

In response to Census request, CEA, DPC, NEC, and OMB formed a policy working group. (Among the agencies, only the Deputy Assistant Secretary for Human Services Policy at HHS was invited to participate because of her expertise on poverty measurement.) This working group has held a series of meetings, and prepared the attached memo to outline its tentative guidance to Census. The meeting of EOP Principals is intended to review the working groups conclusions before they are transmitted to Census. It is important to emphasize that we are only being asked to give advice to the Bureau of the Census; what it actually publishes is its decision.

There are four global issues to be decided; the first two are most pressing because we need to give guidance to Commerce as soon as possible:

- 1) Should the Census Bureau select or highlight a single alternative poverty measure, or present several equally in its forthcoming report? Do the principals have a single preferred measure that they would like to see replace the current official measure? Would anointing a single measure at this time be premature, and prejudice the analytical process? Would it raise ire in the Congress? If we do not anoint a single preferred measure at this time, will it be difficult to select one later should we want to switch the "official" definition to one of the proposed alternatives?

2) There are also two technical issues (policy options 1 and 4 in the background memo) that require careful consideration.

\*Should we advise Census to benchmark the new poverty measure to the old poverty rate in the current year (so that the number of people classified as poor would remain the same, although the distribution would change)? Should Census implement the NRC recommendations, which would result in a higher poverty rate (e.g., 18% rather than 13.7% in 1996)?

\*If there is only one measure reported by Census, should it account for differences in medical out-of-pocket (MOOP) expenditures among households in the way recommended by the NRC, namely, subtracting them from income before a family's poverty status is calculated? (An alternative choice is to add them to the thresholds -- which of these methodologies should be used is a technical choice best left to Census.) If we believe that several measures should be equally reported by Census, should one of them account for medical expenditures using a different methodology?

3) How should the Administration proceed toward a new official measure of poverty? Should it proceed along a timetable to replace the current official measure before the end of this Administration? If so, what process do we need to establish to move forward on this in a timely fashion? Or, should the Administration proceed more cautiously, letting a consensus build around a preferred measure among the community of users of poverty statistics, but possibly lessening the chances that the official measure is ultimately changed?

4) In addition to OMB's designation of the "official" poverty measurement, HHS also issues administrative poverty guidelines, used in certain program eligibility calculations. If revised poverty thresholds are adopted as part of a new poverty measure, would the Administration continue the old administrative poverty guidelines, or make them consistent with the new threshold measure? If the guidelines are made consistent, would the Administration make programmatic changes to mitigate the effects on eligibility and spending of switching to the new guidelines?

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#### TECHNICAL BACKGROUND ON INCOME AND POVERTY MEASURES

##### The Current Poverty Measure

The methodology by which current poverty thresholds are determined was developed in the early 1960s by Mollie Orshansky, a staff economist at the Social Security Administration. She developed a set of poverty thresholds that vary with the number of adults, the number of children, and the age of the family head. These thresholds represent the cost of a minimum diet multiplied by 3 to allow for non-food expenditures. The multiplier of 3 was chosen because the average family in 1955 spent one-third of its after-tax income on food. Since the late 1960s, the thresholds have simply been updated annually to adjust for price inflation -- i.e., the measure of poverty has remained virtually unchanged for 35 years, despite substantial changes in family behavior and government policy.

The NRC panel identified several weaknesses in the current poverty measure:

\*The current poverty measure takes no account of changes in taxes (i.e., the expansion of the EITC) or in-kind benefits (i.e., Food Stamps).

\*The current measure does not distinguish between the needs of working and non-working

families. In particular, it does not reflect the cost of child care and other work expenses for working low-income families.

\*The current poverty measure takes no explicit account of medical care costs, which vary significantly across families and have increased substantially since the current poverty measure was developed.

#### The NRC Recommendations

In order to understand the NRC panels recommended revisions, one must understand the basics of determining poverty. A family is considered poor when its resources fall below a predetermined poverty line or threshold. Therefore, one must develop a methodology for estimating family resources and for defining the threshold resource level below which a family is considered poor.

#### 1. Defining Family Resources

Under the current poverty calculation, the definition of family resources is cash income. The NRC recommendations would estimate family resources as:

Family resources = Cash income + Near-money in-kind benefits - Taxes - Child care costs - Work expenses - Child support payments - Out of pocket medical care expenditures (including health insurance premiums)

The rationale for subtracting taxes, work and medical expenses from family resources is that these expenditures are typically not discretionary and reduce the family income available to achieve a basic quality of life.

There is near consensus among researchers that adjusting for near-money in-kind benefits (primarily Food Stamps and housing subsidies) and taxes would be an improvement in how poverty is measured. There is slightly less agreement on whether child care costs, work expenses, and child support payments should also be deducted because an unknown proportion of these expenses is likely discretionary. (The NRC proposes to cap the amount of child care and work expenses that can be subtracted to deal with this problem.) As discussed below, the adjustment for out-of-pocket medical care expenditures is more controversial.

#### 2. Defining a Poverty Threshold

A threshold must be determined against which to compare a family's resources. The NRC panel recommends basing the threshold on expenditures on "necessities" (food, shelter, and clothing) plus a little more. Specifically, the NRC panel recommends selecting the 30th to 35th percentile in the distribution of annual expenditures on food, shelter, and clothing among families of four (two adults and two children), and then multiplying this expenditure level by between 1.15 and 1.25. Thresholds for other family sizes and types would be determined by an equivalency scale calculation.

The NRC recommends adjusting these thresholds to take into account geographic variation in cost of living, based on differences in housing costs by region and by city-size. It also recommends adjusting the thresholds over time by recalculating them from expenditure data on an annual basis.

## OPTIONS FOR DISCUSSION

## 1. Recommendation regarding determining the level of the poverty threshold.

The NRC panel acknowledges that the actual level at which the poverty threshold is set (and hence the final poverty rate) is inherently arbitrary and cannot be determined on the basis of purely statistical judgements. There are two primary options:

A. The NRC alternative. As described above, the NRC panel recommends establishing a threshold based on the 30th-35th percentile in the distribution of annual expenditures for a family of four, with a small multiplier to account for additional small personal expenditures. As shown in Tables 1 and 2, column 3, this would raise the 1996 poverty rate from 13.7% to 18%, and increase poverty among all subgroups. In addition, (as described further in Option B) this change will alter the composition of poverty among various subgroups.)

B. Benchmarking. The NRC panel also considered poverty estimates that benchmark the alternative poverty rate to equal the old poverty rate in a given year. The Census has done a number of such benchmarked calculations for 1996, as shown in Tables 1 and 2, column 2. (The report issued early next year would benchmark to 1997.) Benchmarking would assure that the aggregate poverty rate is identical for the official and the alternative measure in the benchmark year. But the distribution of poverty among subgroups within each measure would differ (see Table 2). In general, working families and families with large out-of-pocket medical expenses become poorer and non-working families with substantial in-kind benefits become less poor. This has geographic as well as subgroup poverty rate implications. Similarly, both historical and future trends would differ. For instance, the alternative measure is identical in 1996 but higher in 1991. (The faster fall using the alternative measure is largely due to the expansion in the EITC.)

Pros of using the NRC measure:

\*Incorporates the recommendations of the NRC panel, based on their professional judgement from the best available evidence.

\*Generates dollar threshold levels that are quite similar to the current dollar thresholds (although the resources to which the thresholds would be compared are quite different).

Cons of using the NRC Measure:

\*Results in a higher poverty rate (although the trends over time are similar.)

Pros of Benchmarking:

\*May provide an easier transition to the new methodology because there will not be a change in the overall level of poverty.

\*Focuses the arguments on the relative distribution of who is poor rather than how many people are poor.

Cons of Benchmarking:

\*Violates the NRC recommendation that the threshold should be based on the 30th-35th percentile in the expenditure distribution. In order to benchmark, the threshold falls to (about) the 25th percentile of expenditures on food, shelter, and clothing.

## 2. Recommendation regarding updating the thresholds over time

Currently the poverty threshold is updated annually using the CPI. This, however, does not allow for adjustments that reflect changes in underlying consumption patterns that might affect the revised thresholds. For instance, food prices have decreased relative to other goods over time, while housing prices have increased. There are two options:

(A) Recalculate the thresholds annually as a share of consumption on food, shelter, and clothing. (This is recommended by the NRC panel.)

(B) Update the thresholds on a year-to-year basis using a price index (preferably one based only on food, shelter and clothing). Implement a regular process (every 5-10 years) of reviewing the poverty measure and recalculating the thresholds.

### Pros of Re-calculating the Thresholds:

\*Regular recalculation will allow the poverty thresholds to reflect more accurately changes in consumption patterns and standards of living.

\*Without an expectation that the thresholds will be re-calculated regularly, it may be hard to update them at all.

\*Under certain data circumstances, recalculation could move the threshold a large amount or in an unexpected direction. This might raise substantive and political concerns.

### Pros of Updating Using the CPI:

\*Using the NRC methodology, the poverty thresholds are somewhat relative (i.e., they are affected by changes in the distribution of household expenditures.) As a result, they are a moving target and do not provide an absolute standard of need. A CPI adjustment would make it easier to compare poverty from year-to-year against a constant standard.

\*Because consumption patterns and standards of living change slowly, it may be better to take them into account periodically rather than annually.

\*An update with a CPI for necessities only (food, clothing, and shelter) may capture most of the relevant changes and would make it easier in the short run to understand the updating procedure.

\*The data may not be good enough for an annual re-calculation of the thresholds.

NOTE: The EOP Policy Working Group recommends Option (B).

## 3. Recommendation as to whether thresholds should be adjusted for geographic variation.

The NRC panel recommended adjusting the poverty thresholds for cost-of-living differences across regions and by city size. Census proposes to make such adjustments based on housing cost differences (which have much greater regional/city size variation than food or clothing.)

Pros of Adjusting for Geographic Variation in Cost of Living:

\*Most statisticians and economists agree that such adjustments should be made if data are available.

Cons of Adjusting for Geographic Variation in Cost of Living:

\*There is no one "right" way to make such adjustments and the issue could be highly politicized.

\*The data available to make such adjustments are limited and may not be entirely reliable.

\*Implementing such an adjustment in the poverty line threshold could lead to pressure to provide regional cost adjustments in a wide variety of other government programs, from Social Security benefits to tax payments.

NOTE: The EOP Policy Working Group recommends against geographic price adjustments.

#### 4. Recommendation regarding how to account for medical care expenditures.

Since the mid-1970s, analysts have been concerned that the official poverty rate overstates the extent of poverty among beneficiaries of Medicare, Medicaid, and private health insurance. At the same time, the official poverty rate may understate the extent of poverty among populations with large medical expenditures. Most analysts agree that, in principle, medical care "needs" should be incorporated into the calculations of the threshold and family resources (i.e., families with higher medical needs should have higher thresholds; those with more generous medical benefits should be considered to have more resources; and those who must spend more to achieve "good health" should have those expenses subtracted from their resources). However we cannot observe a family's medical need. In addition, it is not clear that one can simply impute the cash value of insurance benefits and add this to income. The "extra" benefits received from insurance to cover expensive medical services do not provide income that can be used for any other purpose.

To understand the difficulties, consider including medical benefits into the income calculations. Adding medical benefits to income, without also adjusting the poverty threshold, has the perverse effect of making sicker individuals appear better off. Other proposals to adjust the poverty threshold (without also adjusting resources) run into similar problems.

In the end, the NRC panel recommended subtracting all medical out-of-pocket (MOOP) expenses (including health insurance premiums) from income, without trying to value health insurance as a part of income or medical need as a part of the thresholds. Hence, family resources are measured net of MOOP. Those individuals with good insurance will have few out-of-pocket expenses; those without insurance who face health problems will have lower measured incomes as they pay more for medical care.

This adjustment accounts for the larger poverty rates using the NRC methodology. For example, in 1996 the poverty rate was 13.7% using the current methodology; it would have been 18% using the NRC methodology, but only 13.2% using the NRC methodology without the medical expenses adjustment. This adjustment nearly doubles the poverty rate for the elderly, raising it almost to the rate for children. This adjustment is one of the most

controversial of the NRC recommendations.

There is general agreement that ignoring medical care and medical expenses entirely is not a good idea, particularly given the rapid increase in medical costs in the past 30 years, the extent of uninsurance among the low-income population, and this Administrations concern with it. In addition, if we do not adjust for medical care (in some way) now, it may be much harder to do so in a few years when we will have better data (because the change will be so dramatic it will be viewed as another big methodology change).

There are three approaches to incorporating medical care and expenses:

(A) Follow the NRC recommendation and subtract MOOP from family resources. This makes families with unreimbursed medical expenses less well-off than other families.

(B) MOOP could be added to the thresholds rather than subtracted from resources. (The choice between options (A) and (B) is a technical decision that Census should address.)

(C) Try to impute the value of health insurance to resources, so those with insurance have higher resources. Health insurance should then also be imputed into the thresholds.

Pros of Adjusting for MOOP (either options (A) or (B)):

\*While not perfect, under the NRC recommended adjustment families with higher unreimbursed medical expenditures will be "poorer." The NRC recommended adjustment would also be sensitive to changes in health care financing that would decrease MOOP and thereby increase disposable income and reduce poverty.

Cons of Adjusting for MOOP (either options (A) or (B)):

\*The data that are currently available are out-of-date (but we should have updated information available in a more timely fashion within another year.)

\*The NRC recommended approach relies on the controversial assumption that all medical care expenditures are nondiscretionary. (This concern could be mitigated to some extent by imposing a cap on the amount of medical expenses.)

Pros of Imputing the Value of Health Insurance into Resources and Thresholds:

\*Provides a more complete accounting of all medical resources available to a family.

Cons of Imputing the Value of Health Insurance into Resources and Thresholds:

\*There is no accepted "correct" way to do this. The data here are probably more unreliable than the data needed to impute the value of MOOP to families.

\*Many analysts agree with the NRC panel that the value of health insurance is quite different than (say) the value of food stamps, which are far more fungible. Mixing in health insurance coverage with economic need causes interpretational and conceptual problems to a measure of economic need.

\*To date, Census has been following the NRC recommendation. If we asked them to switch to this approach, it might require substantial additional work and seriously delay their report.

NOTE: The EOP Policy Working Group recommends that Census incorporate medical care in some way and recognizes that option (A) is the most practical and realistic for the short term.

However, the group strongly recommends that Census thoroughly investigate the impact of option (B), and continue work on other approaches to incorporating medical care and expenditures, such as by valuing medical health insurance (option (C)).

5. Recommendations regarding which alternatives Census should publish and/or how they should be presented.

The current plan is to publish a small number (maybe 3) of alternatives. For instance, the Census could publish a 1997-benchmarked poverty rate and a NRC-alternative poverty rate, providing two alternatives. Or it could publish a 1997-benchmarked poverty rate including all of the NRC recommendations, and then publish the same thing without MOOP, or without geographical price variation. (There will be extensive appendices in this report that will report a wide variety of different poverty calculations, to demonstrate the statistical properties of the poverty measurement recommended by NRC.)

\*Will it be confusing to publish multiple (even a small number of) alternatives, as opposed to only one alternative? How will this affect how the report is received? How should these be presented?

\*What problems will it create to have multiple alternatives if at some future point we want to redefine the official poverty rate to one of these improved alternative measures?

Table 1. Poverty Rates and Thresholds under Alternative Measures, 1991-96, CPS

Official measure	Benchmarked to 1996	NRC Experimental
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Poverty Rates

1991	14.2	14.5	18.9
1992	14.8	15.3	19.6
1993	15.1	15.7	20.2
1994	14.6	14.7	19.0
1995	13.8	13.8	18.2
1996	13.7	13.7	18.0

Thresholds for 2 adults and 2 children (in dollars)

1991	13,812	11,891	13,891
1992	14,228	12,249	14,309
1993	14,654	12,616	14,738
1994	15,029	12,938	15,115
1995	15,455	13,305	15,543
1996	15,911	13,698	16,002

Table 2. Poverty Rates under Alternative Measures, 1996, CPS

Official measure	Benchmarked to 1996	NRC Experimental
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All persons	13.7	13.7	18.0
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Children 20.5      18.1 23.8  
 Nonelderly adults 11.4      11.5 15.0  
 Elderly 10.8      15.6 20.4

White 11.2      11.8 15.6  
 Black 28.4      25.2 32.0  
 Hispanic origin 29.4      28.5 37.7

One or more workers 9.5      10.0 13.6

Persons in family of type:

Married couple 6.9      7.8 11.1  
 Female householder 35.8      32.3 40.4

Geographic regions:

Northeast 12.7      14.3 18.8  
 Midwest 10.7      10.3 13.8  
 South 15.1      14.2 18.3  
 West 15.4      16.1 21.0

Metro/CC 19.6      19.2 24.7  
 Not CC 9.4      10.6 14.1  
 Nonmetro 15.9      13.5 17.5

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#### APPENDIX

#### The Effect of the Poverty Measure on Program Eligibility and Benefits

The Congressional Research Service has identified 26 programs that are affected by the measure of poverty. Many of the program connections to the poverty definition are unique, and many are highly complex. Hence, we do not yet have a precise estimate of how program costs or coverage would be affected.

We should not leap to the conclusion that this large number of programs would dictate a large Federal cost impact of a new measure of poverty. Many of the affected programs are small, and many of the programs may be affected to only a limited degree by even a change in the measured aggregate incidence of poverty. Some of the programs are discretionary, meaning that their aggregate cost is set by appropriation; a change in the measure of poverty would affect only the geographic distribution of those funds (though that could, in itself, be a matter of political concern, if such reallocations should prove to be significant). However, where at least a few large programs are involved, it is essential to investigate the potential impact carefully.

There are two schools of thought on the potential budgetary or allocational effect of a change in the definition of poverty.

Gordon Fisher, the analyst at HHS who oversees the production of the poverty guidelines used in some programs, presents one perspective in a recent paper:

A number of people believe that the poverty guidelines affect many big entitlement

programs. That belief is an exaggeration of the actual situation. Most of the Federal programs using the guidelines are medium-sized or small, with only a few big programs. Moreover, most...are discretionary programs...Only a few programs using the guidelines are mandatory: Medicaid, the Food Stamp Program, and child nutrition programs (mainly the National School Lunch Program).1G. Fisher, " Disseminating the Administrative Version and Explaining the Administrative and Statistical Versions of the Federal Poverty Measure." Clinical Sociology Review, vol. 15 (1997), p. 165.1

Offering a different perspective, a recent issue of Focus, the periodical of the Institute for Research on Poverty, notes:

For example, the NRC study panel proposed that the measure take into account work-related expenses in families where at least one person is employed. Such a change could have important implications for the allocation of federal funds between local areas where the proportions of working and nonworking families differ. Including geographic variations in housing costs might have similar far-reaching effects. Before introducing a new property measure for program purposes, policy makers must determine whether the resulting redistribution of resources will be more equitable, or will have unexpected and capricious effects.

As Fisher suggests, the discretionary - mandatory distinction is important. As noted above, the issue for discretionary programs is not the amount of funding, which is determined by appropriations (though Congress could change future appropriations under the influence of a changed measure of poverty), but rather the geographic allocation of a fixed amount of appropriations. The geographic allocation of relevant discretionary program funds can depend upon the incidence of poverty in particular locations. Therefore, these programs are affected by the actual poverty measure, based on the official thresholds and income concept. The ties between these programs and poverty vary considerably, and staff are undertaking the task of determining how much effect a change in the poverty concept could have. These allocations may or may not change by much, depending upon the extent to which the new poverty measure reallocated poverty geographically; the role of poverty in the allocation of the discretionary funds (some programs use poverty as only one of several indexes by which to distribute funding); the lag between the measurement of poverty and the actual effect on the program (some programs use poverty as measured in the decennial census); and other factors that can be determined only through a program-by-program search.

Besides the official poverty thresholds and the income definition, there are poverty guidelines. The Federal poverty guidelines are the version of the official poverty measure used for program purposes. They are issued by HHS annually, and are based on a simplified and updated version of the previous years Census poverty measure.

Staff are in the process of determining the potential effects of a change in the poverty measure on the two largest programs affected by the poverty measure, Medicaid and the Food Stamp Program, as well as the smaller programs. In Medicaid, while most recipients qualify for coverage because of their participation in other means-tested programs such as TANF and SSI (programs that do not use the poverty line in their eligibility criteria), changes in poverty thresholds could affect at least three major Medicaid eligibility groups: women, infants and children up to age 6 with family incomes below 133 percent of poverty and children from age 6 to 18 with incomes at or below the poverty level (this provision is being phased in for all poor children under age 19 by FY 2002); families, children and other uninsured in the Medicaid waiver States that have extended coverage beyond current law requirements based on income in relation to the poverty guidelines; and new groups of

low-income Medicare beneficiaries who qualify for partial coverage under Medicaid. In all, people whose eligibility for Medicaid is related to the poverty line are estimated to account for about 20 percent of Medicaid recipients. Since most are in families with incomes well below the specified level, only a small fraction would actually be affected by a poverty line change. Further, most of the new enrollees would be children, whose average health care costs are low. Still, Medicaid is such a large program that even a small proportionate change in costs could involve a significant number of dollars.

The poverty guidelines are used in the Food Stamp Program to set gross income eligibility--only families with gross incomes below 130% of the poverty line are eligible for food stamps. Actual food stamp benefits are calculated based on net income, however--income after deductions for work expenses and various other things. Net income is compared to a specific benefit allotment, determined nationally for each family size, and that benefit is reduced by 30 cents for every dollar of net income the family receives. In practice, the benefit allotment for most families with incomes near the gross income eligibility limit would be small. Many families would be eligible only for zero benefits. Even where families are eligible for some positive benefits, take-up rates among those eligible for small amounts of food stamp benefits tend to be low--the hassle of getting and using food stamps exceeds their value for most such eligibles. Thus, the gross income eligibility cut-off for food stamps is more theoretical than real--families at or near 130% of the poverty line will almost always be eligible only for very low or zero benefits, and are unlikely to participate in the program. For these reasons, we would expect the effect on Food Stamp costs to be smaller than that for Medicaid.

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CLOSE HOLD. Page 1 June 8, 1998

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FROM: REBECCA BLANK  
ELENA KAGAN  
SALLY KATZEN  
JOE MINARIK

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\*The current poverty measure takes no explicit account of medical care costs, which vary significantly across families and have increased substantially since the current poverty measure was developed.

## The NRC Recommendations

In order to understand the NRC panels recommended revisions, one must understand the basics of determining poverty. A family is considered poor when its resources fall below a predetermined poverty line or threshold. Therefore, one must develop a methodology for estimating family resources and for defining the threshold resource level below which a family is considered poor.

### 1. Defining Family Resources

Under the current poverty calculation, the definition of family resources is cash income. The NRC recommendations would estimate family resources as:

Family resources = Cash income + Near-money in-kind benefits - Taxes - Child care costs - Work expenses - Child support payments - Out of pocket medical care expenditures (including health insurance premiums)

The rationale for subtracting taxes, work and medical expenses from family resources is that these expenditures are typically not discretionary and reduce the family income available to achieve a basic quality of life.

There is near consensus among researchers that adjusting for near-money in-kind benefits (primarily Food Stamps and housing subsidies) and taxes would be an improvement in how poverty is measured. There is slightly less agreement on whether child care costs, work expenses, and child support payments should also be deducted because an unknown proportion of these expenses is likely discretionary. (The NRC proposes to cap the amount of child care and work expenses that can be subtracted to deal with this problem.) As discussed below, the adjustment for out-of-pocket medical care expenditures is more controversial.

### 2. Defining a Poverty Threshold

A threshold must be determined against which to compare a family's resources. The NRC panel recommends basing the threshold on expenditures on "necessities" (food, shelter, and clothing) plus a little more. Specifically, the NRC panel recommends selecting the 30th to 35th percentile in the distribution of annual expenditures on food, shelter, and clothing among families of four (two adults and two children), and then multiplying this expenditure level by between 1.15 and 1.25. Thresholds for other family sizes and types would be determined by an equivalency scale calculation.

The NRC recommends adjusting these thresholds to take into account geographic variation in cost of living, based on differences in housing costs by region and by city-size. It also recommends adjusting the thresholds over time by recalculating them from expenditure data on an annual basis.

## OPTIONS FOR DISCUSSION

## 1. Recommendation regarding determining the level of the poverty threshold.

The NRC panel acknowledges that the actual level at which the poverty threshold is set (and hence the final poverty rate) is inherently arbitrary and cannot be determined on the basis of purely statistical judgements. There are two primary options:

A. The NRC alternative. As described above, the NRC panel recommends establishing a threshold based on the 30th-35th percentile in the distribution of annual expenditures for a family of four, with a small multiplier to account for additional small personal expenditures. As shown in Tables 1 and 2, column 3, this would raise the 1996 poverty rate from 13.7% to 18%, and increase poverty among all subgroups. In addition, (as described further in Option B) this change will alter the composition of poverty among various subgroups.)

B. Benchmarking. The NRC panel also considered poverty estimates that benchmark the alternative poverty rate to equal the old poverty rate in a given year. The Census has done a number of such benchmarked calculations for 1996, as shown in Tables 1 and 2, column 2. (The report issued early next year would benchmark to 1997.) Benchmarking would assure that the aggregate poverty rate is identical for the official and the alternative measure in the benchmark year. But the distribution of poverty among subgroups within each measure would differ (see Table 2). In general, working families and families with large out-of-pocket medical expenses become poorer and non-working families with substantial in-kind benefits become less poor. This has geographic as well as subgroup poverty rate implications. Similarly, both historical and future trends would differ. For instance, the alternative measure is identical in 1996 but higher in 1991. (The faster fall using the alternative measure is largely due to the expansion in the EITC.)

Pros of using the NRC measure:

\*Incorporates the recommendations of the NRC panel, based on their professional judgement from the best available evidence.

\*Generates dollar threshold levels that are quite similar to the current dollar thresholds (although the resources to which the thresholds would be compared are quite different).

Cons of using the NRC Measure:

\*Results in a higher poverty rate (although the trends over time are similar.)

Pros of Benchmarking:

\*May provide an easier transition to the new methodology because there will not be a change in the overall level of poverty.

\*Focuses the arguments on the relative distribution of who is poor rather than how many people are poor.

Cons of Benchmarking:

\*Violates the NRC recommendation that the threshold should be based on the 30th-35th percentile in the expenditure distribution. In order to benchmark, the threshold falls to (about) the 25th percentile of expenditures on food, shelter, and clothing.

## 2. Recommendation regarding updating the thresholds over time

Currently the poverty threshold is updated annually using the CPI. This, however, does not allow for adjustments that reflect changes in underlying consumption patterns that might affect the revised thresholds. For instance, food prices have decreased relative to other goods over time, while housing prices have increased. There are two options:

(A) Recalculate the thresholds annually as a share of consumption on food, shelter, and clothing. (This is recommended by the NRC panel.)

(B) Update the thresholds on a year-to-year basis using a price index (preferably one based only on food, shelter and clothing). Implement a regular process (every 5-10 years) of reviewing the poverty measure and recalculating the thresholds.

### Pros of Re-calculating the Thresholds:

\*Regular recalculation will allow the poverty thresholds to reflect more accurately changes in consumption patterns and standards of living.

\*Without an expectation that the thresholds will be re-calculated regularly, it may be hard to update them at all.

\*Under certain data circumstances, recalculation could move the threshold a large amount or in an unexpected direction. This might raise substantive and political concerns.

### Pros of Updating Using the CPI:

\*Using the NRC methodology, the poverty thresholds are somewhat relative (i.e., they are affected by changes in the distribution of household expenditures.) As a result, they are a moving target and do not provide an absolute standard of need. A CPI adjustment would make it easier to compare poverty from year-to-year against a constant standard.

\*Because consumption patterns and standards of living change slowly, it may be better to take them into account periodically rather than annually.

\*An update with a CPI for necessities only (food, clothing, and shelter) may capture most of the relevant changes and would make it easier in the short run to understand the updating procedure.

\*The data may not be good enough for an annual re-calculation of the thresholds.

NOTE: The EOP Policy Working Group recommends Option (B).

## 3. Recommendation as to whether thresholds should be adjusted for geographic variation.

The NRC panel recommended adjusting the poverty thresholds for cost-of-living differences across regions and by city size. Census proposes to make such adjustments based on housing cost differences (which have much greater regional/city size variation than food or clothing.)

Pros of Adjusting for Geographic Variation in Cost of Living:

\*Most statisticians and economists agree that such adjustments should be made if data are available.

Cons of Adjusting for Geographic Variation in Cost of Living:

\*There is no one "right" way to make such adjustments and the issue could be highly politicized.

\*The data available to make such adjustments are limited and may not be entirely reliable.

\*Implementing such an adjustment in the poverty line threshold could lead to pressure to provide regional cost adjustments in a wide variety of other government programs, from Social Security benefits to tax payments.

NOTE: The EOP Policy Working Group recommends against geographic price adjustments.

#### 4. Recommendation regarding how to account for medical care expenditures.

Since the mid-1970s, analysts have been concerned that the official poverty rate overstates the extent of poverty among beneficiaries of Medicare, Medicaid, and private health insurance. At the same time, the official poverty rate may understate the extent of poverty among populations with large medical expenditures. Most analysts agree that, in principle, medical care "needs" should be incorporated into the calculations of the threshold and family resources (i.e., families with higher medical needs should have higher thresholds; those with more generous medical benefits should be considered to have more resources; and those who must spend more to achieve "good health" should have those expenses subtracted from their resources). However we cannot observe a family's medical need. In addition, it is not clear that one can simply impute the cash value of insurance benefits and add this to income. The "extra" benefits received from insurance to cover expensive medical services do not provide income that can be used for any other purpose.

To understand the difficulties, consider including medical benefits into the income calculations. Adding medical benefits to income, without also adjusting the poverty threshold, has the perverse effect of making sicker individuals appear better off. Other proposals to adjust the poverty threshold (without also adjusting resources) run into similar problems.

In the end, the NRC panel recommended subtracting all medical out-of-pocket (MOOP) expenses (including health insurance premiums) from income, without trying to value health insurance as a part of income or medical need as a part of the thresholds. Hence, family resources are measured net of MOOP. Those individuals with good insurance will have few out-of-pocket expenses; those without insurance who face health problems will have lower measured incomes as they pay more for medical care.

This adjustment accounts for the larger poverty rates using the NRC methodology. For example, in 1996 the poverty rate was 13.7% using the current methodology; it would have been 18% using the NRC methodology, but only 13.2% using the NRC methodology without the medical expenses adjustment. This adjustment nearly doubles the poverty rate for the elderly, raising it almost to the rate for children. This adjustment is one of the most

controversial of the NRC recommendations.

There is general agreement that ignoring medical care and medical expenses entirely is not a good idea, particularly given the rapid increase in medical costs in the past 30 years, the extent of uninsurance among the low-income population, and this Administrations concern with it. In addition, if we do not adjust for medical care (in some way) now, it may be much harder to do so in a few years when we will have better data (because the change will be so dramatic it will be viewed as another big methodology change).

There are three approaches to incorporating medical care and expenses:

(A) Follow the NRC recommendation and subtract MOOP from family resources. This makes families with unreimbursed medical expenses less well-off than other families.

(B) MOOP could be added to the thresholds rather than subtracted from resources. (The choice between options (A) and (B) is a technical decision that Census should address.)

(C) Try to impute the value of health insurance to resources, so those with insurance have higher resources. Health insurance should then also be imputed into the thresholds.

Pros of Adjusting for MOOP (either options (A) or (B)):

\*While not perfect, under the NRC recommended adjustment families with higher unreimbursed medical expenditures will be "poorer." The NRC recommended adjustment would also be sensitive to changes in health care financing that would decrease MOOP and thereby increase disposable income and reduce poverty.

Cons of Adjusting for MOOP (either options (A) or (B)):

\*The data that are currently available are out-of-date (but we should have updated information available in a more timely fashion within another year.)

\*The NRC recommended approach relies on the controversial assumption that all medical care expenditures are nondiscretionary. (This concern could be mitigated to some extent by imposing a cap on the amount of medical expenses.)

Pros of Imputing the Value of Health Insurance into Resources and Thresholds:

\*Provides a more complete accounting of all medical resources available to a family.

Cons of Imputing the Value of Health Insurance into Resources and Thresholds:

\*There is no accepted "correct" way to do this. The data here are probably more unreliable than the data needed to impute the value of MOOP to families.

\*Many analysts agree with the NRC panel that the value of health insurance is quite different than (say) the value of food stamps, which are far more fungible. Mixing in health insurance coverage with economic need causes interpretational and conceptual problems to a measure of economic need.

\*To date, Census has been following the NRC recommendation. If we asked them to switch to this approach, it might require substantial additional work and seriously delay their report.

NOTE: The EOP Policy Working Group recommends that Census incorporate medical care in some way and recognizes that option (A) is the most practical and realistic for the short term.

However, the group strongly recommends that Census thoroughly investigate the impact of option (B), and continue work on other approaches to incorporating medical care and expenditures, such as by valuing medical health insurance (option (C)).

5. Recommendations regarding which alternatives Census should publish and/or how they should be presented.

The current plan is to publish a small number (maybe 3) of alternatives. For instance, the Census could publish a 1997-benchmarked poverty rate and a NRC-alternative poverty rate, providing two alternatives. Or it could publish a 1997-benchmarked poverty rate including all of the NRC recommendations, and then publish the same thing without MOOP, or without geographical price variation. (There will be extensive appendices in this report that will report a wide variety of different poverty calculations, to demonstrate the statistical properties of the poverty measurement recommended by NRC.)

\*Will it be confusing to publish multiple (even a small number of) alternatives, as opposed to only one alternative? How will this affect how the report is received? How should these be presented?

\*What problems will it create to have multiple alternatives if at some future point we want to redefine the official poverty rate to one of these improved alternative measures?

Table 1. Poverty Rates and Thresholds under Alternative Measures, 1991-96, CPS

Official    BenchmarkdNRC  
measure    to 1996Experimental

Poverty Rates

1991	14.2	14.5	18.9
1992	14.8	15.3	19.6
1993	15.1	15.7	20.2
1994	14.6	14.7	19.0
1995	13.8	13.8	18.2
1996	13.7	13.7	18.0

Thresholds for 2 adults  
and 2 children (in dollars)

1991	13,812	11,891	13,891
1992	14,228	12,249	14,309
1993	14,654	12,616	14,738
1994	15,029	12,938	15,115
1995	15,455	13,305	15,543
1996	15,911	13,698	16,002

Table 2. Poverty Rates under Alternative Measures, 1996, CPS

Official    BenchmarkdNRC  
measure    to 1996Experimental

All persons	13.7	13.7	18.0
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Children 20.5    18.1 23.8  
 Nonelderly adults 11.4    11.5 15.0  
 Elderly 10.8    15.6 20.4

White 11.2    11.8 15.6  
 Black 28.4    25.2 32.0  
 Hispanic origin 29.4    28.5 37.7

One or more workers 9.5    10.0 13.6

Persons in family of type:

Married couple 6.9    7.8 11.1  
 Female householder 35.8    32.3 40.4

Geographic regions:

Northeast 12.7    14.3 18.8  
 Midwest 10.7    10.3 13.8  
 South 15.1    14.2 18.3  
 West 15.4    16.1 21.0

Metro/CC 19.6    19.2 24.7  
 Not CC 9.4    10.6 14.1  
 Nonmetro 15.9    13.5 17.5

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#### APPENDIX

##### The Effect of the Poverty Measure on Program Eligibility and Benefits

The Congressional Research Service has identified 26 programs that are affected by the measure of poverty. Many of the program connections to the poverty definition are unique, and many are highly complex. Hence, we do not yet have a precise estimate of how program costs or coverage would be affected.

We should not leap to the conclusion that this large number of programs would dictate a large Federal cost impact of a new measure of poverty. Many of the affected programs are small, and many of the programs may be affected to only a limited degree by even a change in the measured aggregate incidence of poverty. Some of the programs are discretionary, meaning that their aggregate cost is set by appropriation; a change in the measure of poverty would affect only the geographic distribution of those funds (though that could, in itself, be a matter of political concern, if such reallocations should prove to be significant). However, where at least a few large programs are involved, it is essential to investigate the potential impact carefully.

There are two schools of thought on the potential budgetary or allocational effect of a change in the definition of poverty.

Gordon Fisher, the analyst at HHS who oversees the production of the poverty guidelines used in some programs, presents one perspective in a recent paper:

A number of people believe that the poverty guidelines affect many big entitlement

programs. That belief is an exaggeration of the actual situation. Most of the Federal programs using the guidelines are medium-sized or small, with only a few big programs. Moreover, most...are discretionary programs...Only a few programs using the guidelines are mandatory: Medicaid, the Food Stamp Program, and child nutrition programs (mainly the National School Lunch Program).1G. Fisher, " Disseminating the Administrative Version and Explaining the Administrative and Statistical Versions of the Federal Poverty Measure." *Clinical Sociology Review*, vol. 15 (1997), p. 165.1

Offering a different perspective, a recent issue of *Focus*, the periodical of the Institute for Research on Poverty, notes:

For example, the NRC study panel proposed that the measure take into account work-related expenses in families where at least one person is employed. Such a change could have important implications for the allocation of federal funds between local areas where the proportions of working and nonworking families differ. Including geographic variations in housing costs might have similar far-reaching effects. Before introducing a new property measure for program purposes, policy makers must determine whether the resulting redistribution of resources will be more equitable, or will have unexpected and capricious effects.

As Fisher suggests, the discretionary - mandatory distinction is important. As noted above, the issue for discretionary programs is not the amount of funding, which is determined by appropriations (though Congress could change future appropriations under the influence of a changed measure of poverty), but rather the geographic allocation of a fixed amount of appropriations. The geographic allocation of relevant discretionary program funds can depend upon the incidence of poverty in particular locations. Therefore, these programs are affected by the actual poverty measure, based on the official thresholds and income concept. The ties between these programs and poverty vary considerably, and staff are undertaking the task of determining how much effect a change in the poverty concept could have. These allocations may or may not change by much, depending upon the extent to which the new poverty measure reallocated poverty geographically; the role of poverty in the allocation of the discretionary funds (some programs use poverty as only one of several indexes by which to distribute funding); the lag between the measurement of poverty and the actual effect on the program (some programs use poverty as measured in the decennial census); and other factors that can be determined only through a program-by-program search.

Besides the official poverty thresholds and the income definition, there are poverty guidelines. The Federal poverty guidelines are the version of the official poverty measure used for program purposes. They are issued by HHS annually, and are based on a simplified and updated version of the previous years Census poverty measure.

Staff are in the process of determining the potential effects of a change in the poverty measure on the two largest programs affected by the poverty measure, Medicaid and the Food Stamp Program, as well as the smaller programs. In Medicaid, while most recipients qualify for coverage because of their participation in other means-tested programs such as TANF and SSI (programs that do not use the poverty line in their eligibility criteria), changes in poverty thresholds could affect at least three major Medicaid eligibility groups: women, infants and children up to age 6 with family incomes below 133 percent of poverty and children from age 6 to 18 with incomes at or below the poverty level (this provision is being phased in for all poor children under age 19 by FY 2002); families, children and other uninsured in the Medicaid waiver States that have extended coverage beyond current law requirements based on income in relation to the poverty guidelines; and new groups of

low-income Medicare beneficiaries who qualify for partial coverage under Medicaid. In all, people whose eligibility for Medicaid is related to the poverty line are estimated to account for about 20 percent of Medicaid recipients. Since most are in families with incomes well below the specified level, only a small fraction would actually be affected by a poverty line change. Further, most of the new enrollees would be children, whose average health care costs are low. Still, Medicaid is such a large program that even a small proportionate change in costs could involve a significant number of dollars.

The poverty guidelines are used in the Food Stamp Program to set gross income eligibility--only families with gross incomes below 130% of the poverty line are eligible for food stamps. Actual food stamp benefits are calculated based on net income, however--income after deductions for work expenses and various other things. Net income is compared to a specific benefit allotment, determined nationally for each family size, and that benefit is reduced by 30 cents for every dollar of net income the family receives. In practice, the benefit allotment for most families with incomes near the gross income eligibility limit would be small. Many families would be eligible only for zero benefits. Even where families are eligible for some positive benefits, take-up rates among those eligible for small amounts of food stamp benefits tend to be low--the hassle of getting and using food stamps exceeds their value for most such eligibles. Thus, the gross income eligibility cut-off for food stamps is more theoretical than real--families at or near 130% of the poverty line will almost always be eligible only for very low or zero benefits, and are unlikely to participate in the program. For these reasons, we would expect the effect on Food Stamp costs to be smaller than that for Medicaid.