

NLWJC – Kagan

Hard Drive – Folder 10

CLINTON ADMINISTRATION OUTLINES TOBACCO SETTLEMENT REVIEW PROCESS

Today, during the signing of the Drug-Free Communities Act, President Clinton reiterated his commitment to a rigorous public health review of the proposed settlement. The President also announced that Secretary of Health and Human Services Donna E. Shalala and Domestic Policy Advisor Bruce Reed will lead the comprehensive analysis.

Public Health Review

As President Clinton said today, the Administrations preliminary analysis will be conducted by four interdepartmental review panels. Each panel will include representatives from the Domestic Policy Council (DPC) and the Department of Health and Human Services (HHS). Where appropriate, each of them will also include representatives of other federal agencies, such as the Departments of Treasury, Justice, Labor, Agriculture, Veterans Affairs, Interior, and Defense, the General Services Administration, and the Environmental Protection Agency. The four panels will focus on four key areas:

Regulatory Issues. The regulatory panel will primarily review the elements in the proposed settlement affecting FDA jurisdiction. The panel will also examine issues surrounding environmental tobacco smoke.

Program and Budget Issues. The program and budget panel will look at proposed uses of settlement funds, including the anti-smoking advertising campaign, grassroots programs, smoking cessation, and any issues that involve research on nicotine, tobacco and health, and smoking cessation.

Legal Issues. The legal panel will examine issues around liability, enforcement, compliance, and the disposition of tobacco industry documents.

Industry Issues. The industry issues panel will examine the settlements proposed targets, penalties and incentives; evaluate potential international impacts of the settlement; and conduct an economic analysis.

President Clintons Plan to Reduce Youth Tobacco Use

On August 23, 1996, President Clinton announced the nation's first-ever comprehensive program to protect children from the dangers of tobacco and a lifetime of nicotine addiction. The Presidents program was launched with the publication of the Food and Drug Administration's (FDA) final rule on tobacco and children, and with FDA's initiation of a process to require tobacco companies to educate children and adolescents -- using a national multi-media campaign -- about the dangers of cigarettes and smokeless tobacco. The first provisions of the rule -- making 18 the age for the purchase of tobacco products nationwide and requiring photo IDs for anyone under age 27 -- became effective February 28, 1997. The Presidents comprehensive and coordinated plan is intended to reduce tobacco use by children and adolescents by 50 percent in seven years. This ambitious initiative will work to accomplish this objective while preserving the availability of tobacco products for adults. The proposed tobacco settlement will be evaluated within this framework to evaluate whether it meets the Presidents objectives.

Working Toward Our Fundamental Goal

As the President has said, protecting the public health -- and particularly our childrens health -- is and has always been our primary concern. We know that nearly 3,000 young people become regular smokers each day, and nearly 1,000 of these children and adolescents will die early from their use of tobacco products. We must do everything in our power to dramatically reduce smoking by young people because they deserve a life free from the disease that comes with using tobacco.

RE

You will also be announcing that Bruce Reed and Secretary Shalala will be overseeing the Administrations tobacco settlement review process. HHS and the White House have convened four working groups -- Regulatory Issues (chaired by Elena Kagan); Program and Budget Issues (chaired by Chris Jennings); Legal Issues (chaired by Elena Kagan); and Industry Performance and Accountability (chaired by Bruce Reed). You will be announcing that you have asked a review team to focus on public health questions, outline the working groups, and announce that Secretary Shalala and Bruce Reed will host a number of White House meetings with leading health experts and Members of Congress over the next several weeks to benefit from their expertise.

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Youth Tobacco Roundtable
Roosevelt Room
1:05 p.m. - 1:50 p.m, Friday, June 5, 1998

Meeting requested by Ron Klain.
Briefing prepared by Toby Donenfeld and Satish Narayanan.

EVENT

You will meet with approximately 40 tobacco-free kids in grades 8 -12 to discuss the need for the Senate to act quickly to pass comprehensive tobacco legislation. The format is similar to the tobacco forums you hosted around the country, in that you will engage these young people in a discussion about the dangers of tobacco and ways young people can work to discourage their peers from smoking. This event is pool press.

LOGISTICS (As of this writing, subject to change)

- *Bruce Reed and/or Elena Kagan, Ron and Toby will brief you in your West Wing office prior to the event on the latest debate in the Senate and discuss Q & A with you.
- You will enter the Roosevelt Room and be seated on a stool surrounded by kids.
- *You will deliver brief opening remarks and moderate a discussion with the kids.
- *You will close the discussion and depart.

YOUR ROLE/CONTRIBUTION

This event provides you with the opportunity to call on Congress to act quickly and pass comprehensive tobacco legislation to reduce youth smoking. You will also have an opportunity to hear about the activities these young people are undertaking to fight against youth tobacco use.

ATTACHMENTS

- *Draft talking points for you. (These will be provided to you on cards on Friday)
- *List of attendees and short biographies.

*List of possible questions for the participants. (These will be provided to you on cards on Friday)

*Talking points on the Gramm marriage tax penalty amendment. (Additional Q & A and talking points will be provided to you on paper or verbally in the briefing tomorrow).

FFDRAFT

TALKING POINTS FOR YOUTH TOBACCO ROUNDTABLE

FRIDAY JUNE 5, 1998

Im here today to talk about the importance of keeping Americas children tobacco-free. Each and every day, tobacco companies spend \$13 million to convince you to start smoking. And far too often, all that cash and effort works -- and lure kids into a lifetime of addiction.

Each and every day, 3,000 kids become regular smokers. And only 600 will ever be able to quit.

Each and every day, more than 1,000 Americans die from smoking. Thats almost as many deaths as the number who died when the Titanic sank -- and smoking deaths are a disaster we know how to avoid.

Too many people have lost their lives because of tobacco habits they picked up as kids, but -- when it comes to your generation -- its not too late for us to change course and avoid the icebergs of tobacco and the deadly disease it causes. Thats why the President and I have unveiled a comprehensive plan to stop young Americans from smoking before they start.

Today, I am calling on Congress to act quickly to pass comprehensive tobacco legislation, reduce youth smoking, and give all of Americas kids a brighter, smoke-free future. The coming weeks are a historic window of opportunity for protecting Americas children. Congress should pass comprehensive tobacco legislation now -- before that window is shut -- and stops the breeze of change.

Next week, the Senate will vote on whether to end the debate -- and begin to decide the fate of our children. The time for talk is over -- the time for action has come. I applaud the work the Senate has already done, but urge them to act quickly while we have the momentum, and not let this historic opportunity pass us by.

FFYOUTH TOBACCO ROUND TABLE PARTICIPANTS

You will meet with approximately 40 kids ages 9-18 primarily from the Washington, D.C. metropolitan area. Below is a brief synopsis of the anti-tobacco programs they are involved in within their community. In addition, two of the regional Tobacco-Free Kids annual award winners will be in the group. A brief biography of their activities is included below.

School Without Walls -The majority of the students (approximately 20) are from the Washington D.C. School Without Walls in grades 9-12. These students participated in the George Washington University Coalition for a Smoke-Free Youth as a class project. Throughout this project they take part in information sessions and workshops on the dangers

of smoking and the effects of smoking on the body.

Students Oppose Smoking -This is a group of 8-12 grade student smokers and non-smokers from Montgomery County, Maryland who are dedicated to curbing the problem of teen tobacco use. They have made several proposals to reduce teen smoking in the Montgomery County school system. For example, they have proposed that the schools provide pulmonary function machines in health rooms to show the damage inflicted by smoking and second-hand smoke. In addition the students would like there to be more anti-tobacco laws in their community and in their school and they want the laws and the consequences to be posted in their schools. They would also like to start tobacco cessation programs during school hours with trained counselors that can work with students.

Tobacco Free Childrens Project -This is a project being conducted throughout the D.C. School System. The students participating in this project have been lobbying the Metro Transit Authority to provide space on all buses for posters, essays and paintings of anti-tobacco messages for youth. Additionally, they are providing their classmates with information on the consequences of smoking using information from adults who have been smoking. In the future they plan on creating a web-site with a focus on anti-tobacco information for youth.

1998 Tobacco-Free Kids Regional Award Winners

Deanna Durrett -Deanne is the Campaign for Tobacco-Free Kids 1998 South Region Youth Advocate of the Year. She is 16 years old and a 10th Grade student at Louisville, Kentuckys Sacred Heart Academy. She has testified before the Kentucky House of Representatives Health and Welfare Committee and lobbies regularly to gain support for stronger tobacco control policies. In addition she also is a leader in helping other teens voice their opinions on youth tobacco use. She also works with the Alcohol Beverage Control Board in "sting" operations to make tobacco less accessible to teens.

Amanda Tunnell -Amanda is 16 years old and in 10th grade. She is the Campaign for Tobacco-Free Kids 1998 Central Region Youth Advocate of the Year. Amanda became involved because her mother was suffering from second hand smoke in restaurants and other public areas. In addition she was a strong force in pushing a bill that allowed Oklahoma cities to license tobacco retailers and provide stiff fines for retailers selling tobacco to minors.

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QUESTIONS FOR YOUTH TOBACCO ROUNDTABLE

*Why do you think kids smoke? Why did you decide to smoke or not to smoke?

*What kinds of things do you think make kids want to smoke?

*What have you been doing to discourage kids from smoking? And what do you think the best ways to keep kids from smoking?

*Do you see a lot of advertisements for cigarettes? Where do you see them?

*If you wanted to buy cigarettes, do you think it would be easy?

*How easy do you think it is to quit smoking or chewing tobacco?

*Do you think that if the price of the pack of cigarettes went up, that fewer kids would smoke?

*How many of you have tried to stop other kids from smoking? How?

*What made you decide to be so active in keeping kids from smoking?

*Many of you are working for stronger anti-smoking laws. What kinds of laws and why are you pushing for them?

*I understand that we have two of the regional winners of the Tobacco-Free Kids here with us today who have been active in their community. Would you like to tell us about your activities?

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Tobacco Review Meeting
West Wing Office
12:30 p.m. - 1:00 p.m., Wednesday, September 10, 1997

Meeting requested by Ron Klain.
Briefing prepared by Toby Donenfeld.

EVENT

You will meet with Bruce Reed, Kevin Thurm, Deputy Secretary of HHS and others to discuss the White House review of the proposed tobacco settlement. Bruce Reed and Secretary Shalala are expected to recommend to the President that he outline principles he would support in a legislative plan, rather than specifically addressing the proposed settlement. Bruce and others will explain the key issues which they will recommend to the President and discuss some of the issues that remain to be resolved. (The President is scheduled to be briefed on Friday).

Participants

Bruce Reed, DPC
Elena Kagan, DPC
Kevin Thurm, Deputy Secretary of HHS
Bill Corr, Chief of Staff at HHS
Ron Klain
Don Gips
Toby Donenfeld

Note: Secretary Shalala very much wanted to be at this meeting but is traveling today. She requested a phone conversation with you.

CONSENSUS ISSUES

The following issues have been agreed to by the White House review group:

("They," referred to below, are the participants in the White House review process).

*FDA Authority. Ensure full FDA authority to regulate tobacco and nicotine. Take out the provisions in the settlement requiring the FDA to wait 12 years to regulate nicotine and

require FDA to submit a formal rulemaking and prove that there will be no contraband sales of tobacco. They support codifying FDA's authority to regulate tobacco, using a "reduced risk standard," rather than a safety and effectiveness standard.

*Cut Tax Break for Industry. Remove the \$50 billion tax break Congress put in the budget agreement.

*Take care of Tobacco Farmers. They support any side agreement the tobacco industry makes with U.S. tobacco farmers to continue to buy a certain amount of tobacco from U.S. farmers for years into the future. Support using money from the settlement to buy out farmers or offer economic assistance to affected communities.

*No cap on punitive damages for future wrongdoing. The proposed settlement provides a cap on punitive damages for past and future wrongdoing. They would strongly oppose a cap on future wrongdoing by the tobacco industry. Note: They would not take a position on the ban of class-action lawsuits.

*Significantly strengthen the look-back penalties. (Unsure by how much). They feel strongly that the look-back penalties for not meeting targets in youth smoking should be severe and are working on how much more the penalties would cost and how they would be calculated. In the settlement, the industry would be capped at \$2 billion per year on penalties and get a 75% rebate for good faith effort. They strongly oppose the cap and the rebate.

OUTSTANDING ISSUES

*Disclosure of Documents

The settlement includes the enactment of a three federal judge panel to review disputed claims of privileged industry documents. This panel would be the exclusive avenue of resolution for the release of documents, removing a judge's discretion in individual court cases. There would also be no appeal of the panel's decision. The White House review participants would insist that the regular disclosure of documents through the discovery process in litigation be retained in addition to the three judge panel.

Congressman Waxman and others have suggested that the industry should abrogate its attorney-client privilege and turn over all its documents before a settlement is made. (Obviously, this would be a deal-breaker for the industry).

Although many believe that the industry has been using the attorney-client privilege to shield itself from releasing damaging information, the White House efforts to strengthen this portion has been difficult because the Department of Justice is strongly opposed to the waiving of "attorney-client" privilege. (The DoJ believes that waiving the attorney-client privilege in this case could open itself up to similar challenges in other cases in the future).

*How Much Money?

As you know, the proposed settlement is estimated to cost the industry \$368 billion, which would result in an increase of approximately 62 cents per pack of cigarettes. Staff at the Department of Treasury has said that due to the overwhelming support of the proposed tobacco settlement by Wall Street, they believe an increase in the cost to the industry is warranted. Senator Kennedy and others are believed to support a settlement cost in the range of \$800 billion (\$1.50 per pack increase). However, the industry may just simply walk away from the deal if they believe the cost becomes too great.

The DPC will bring a chart to the meeting tomorrow to outline the spectrum of the cost of the settlement.

Meeting

West Wing Office

5:15 p.m. - 5:30 p.m., Wednesday, September 10, 1997

Meeting requested by Rick Gonzales and Toby Donenfeld.

Briefing prepared by Toby Donenfeld.

EVENT

You are meeting with Congressman Henry Waxman to discuss the tobacco settlement. Waxmans staff indicated that the Congressman would like to discuss the policy and political issues surrounding the proposed tobacco settlement and how he sees this issue playing out in the House.

We understand that Congressman Waxman has the following recommendations regarding the proposed tobacco settlement:

1) Full disclosure of all industry documents before any deal.

The Administration position thus far has been that it would be impossible to negotiate such a deal with the industry. Also, the Department of Justice is opposed to waiving the Attorney-Client privilege, which Waxman would support.

2) Strengthening the penalties for not meeting reductions in youth smoking.

The Administration review participants agree and will recommend to the President significant increases in penalties and a major commitment to pursuing companies who dont meet the targets.

You may want to ask Waxman if he has any suggestions for exactly how he would strengthen the penalties.

3) \$1.50 to \$2.00 per pack increase.

Many public health groups believe that in order to bring down youth smoking rates, a large increase in the cost of a pack of cigarettes (\$1 - \$2) is necessary.

You may want to ask Congressman Waxman if he believes that increasing the total cost of the settlement or adding on an excise tax would be the better avenue to pursue to achieve this goal.

FYI: (This information has not been confirmed and should not be mentioned to Congressman Waxman). As we understand it, Congressman Waxman may be working with David Kessler, Attorney General Skip Humphrey and others to design an alternative or supplement to the settlement. If he is doing that, he will likely bring up his plan with you.

April 8, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN
TOM FREEDMAN

SUBJECT: KENTUCKY TRIP AND ROUNDTABLE WITH TOBACCO FARMERS

On Thursday, April 9, you will travel to Carrollton, Kentucky to meet with tobacco farmers, community leaders, and children. During this trip, you will reaffirm your commitment to protect tobacco farmers and their communities, while also emphasizing the need to reduce youth smoking. The trip will also allow you to express support for a plan to protect tobacco farmers authored by Senator Ford that is included in Senator McCain's legislation.

Structure of the Trip

You will first travel to a tobacco warehouse where you will hold a roundtable discussion on how to protect farmers and their communities. In this discussion, you should note that Senator Ford's proposal on tobacco farmers, contained in Senator McCain's bill and detailed in this memo, is a strong proposal to protect tobacco farmers. You should not imply, however, that it is the only farming proposal you could support, or that you agree with every detail (or every dollar) of the proposal.

The participants in the discussion are expected to be: a local farmer; a farmer who represents growers statewide and has worked with the Campaign for Tobacco Free Kids; a minority farmer who has raised many foster children using her revenue from tobacco; the owner of the warehouse you are visiting, a student who wants to be a farmer; the head of the state farm bureau; a local religious leader; a community activist who has helped bring farmers and health advocates together; and Secretary Glickman. Governor Patton and Senator Ford will be present, but will not participate in the panel.

After the roundtable, you will travel to a school where you will talk to students about the need to reduce youth smoking. Governor Patton and Senator Ford will also speak at this event.

FF

Background on Kentucky Tobacco Farmers

There are two main types of tobacco -- flue-cured and burley. Burley tobacco is the primary crop in Kentucky, with revenues of more than \$800 million in 1997 for the nearly 450 million pounds grown. In 1997, approximately 70 percent of the burley tobacco produced in the United States came from Kentucky.

Tobacco is a major part of the Kentucky economy. Tobacco sales account for over 40 percent of the total crop revenue for Kentucky, and over 20 percent of all agricultural sales in Kentucky.

Many Kentucky tobacco farms are very small. The average Kentucky tobacco farm plants only 4.5 acres of burley tobacco. In contrast, flue-cured tobacco farms in North Carolina and South Carolina average 16.1 and 25.5 acres of tobacco per farm, respectively.

Notwithstanding the number of small tobacco farms in Kentucky, large farms dominate the States burley tobacco business. Last year, 70 percent of the total burley sold came from only 26 percent of the farms.

According to USDA, Kentucky experienced an abnormal year for its 1997 burley tobacco crop. Adverse weather conditions resulted in tobacco with high moisture content that was of generally low quality and received a lower prices than expected.

Tobacco Program Background

Since the 1930s, tobacco prices have been supported and stabilized by the federal governments commodity support program. One part of the program involves limiting supply through a quota program. A quota -- which can be sold, rented, or leased -- entitles the owner to grow a certain percentage of the national supply of tobacco for that year. Under the quota program, the government determines each year how much tobacco the companies expect to buy, how much will be sold overseas, adds a modest reserve, and then divides up the right to grow that full amount among the quota holders.

The tobacco program also guarantees an acceptable price at which farmers can sell their tobacco. The price-support system ensures that farmers can sell tobacco at a statutory minimum price to their cooperatives if companies cease to buy on the open market. In this program, the government loans funds to the cooperatives to purchase tobacco, with the loans repaid from the proceeds of future sales.

Producers of the different kinds of tobacco vote in triennial referenda to determine if they wish to continue the federal tobacco program for their kind of tobacco. In a referendum in late February, 97.5 percent of burley producers voted to continue the price support-production control program.



The AGs Settlement Agreement

The settlement agreement with the Attorneys General did not outline a plan to compensate farmers for the diminished domestic tobacco sales that might result from comprehensive legislation. In evaluating the settlement agreement and laying out your five principles for comprehensive tobacco legislation, you insisted on the need to protect tobacco farmers and their communities.

Legislative Background

Two main approaches to the tobacco farming issue have emerged in Congress. The first seeks to maintain some kind of production control and price support system (though perhaps in a modified form), while compensating farmers for any decrease in the amount of tobacco sold due to tobacco legislation. The tobacco section of Senator McCains bill, sponsored by

Senators Ford, Hollings, and Frist, and detailed further below, is the primary example of this approach. The second, advocated by Senator Lugar, would buy out all current quota holders, and then subject tobacco prices to the free market. Senator Lugar's approach has little support among tobacco producers, but may become part of the Congressional debate as tobacco legislation moves forward.

Farmers Legislation Included in McCain Tobacco Bill

Senators Ford, Frist, and Hollings, the three members of the Senate Commerce Committee from tobacco-growing states, joined together to include a generous farmer provision in the McCain tobacco legislation. Their proposal also has the support of Senator Robb. While maintaining a production control system for all tobacco farmers, this package sets up somewhat different systems for burley and flue-cured tobacco.

For burley tobacco (grown mostly in Kentucky), the package includes an optional buy-out for quota holders at \$8 per pound, while retaining the basic quota system for those who do not take the buyout. To the extent that the national quota declines, the bill provides transition payments to remaining quota holders, lessees, and tenants.

For flue-cured tobacco, the plan provides for a mandatory buyout of existing quota holders, and replaces the quota system with a permit system that gives the new no-cost permits to active producers, regardless of whether they previously held a quota. This transfer of quotas from inactive quota holders to actual producers is intended to allow active farmers to sell tobacco without incurring the cost of buying or renting quota.

The McCain package also provides approximately \$500 million for assistance to tobacco-producing communities. The entire package costs \$2.1 billion per year for the first ten years and \$500 million for years 11-25 for a total of \$28.5 billion. For the most part, tobacco farmers are very pleased with the proposal included in the McCain legislation.

Below is a table with the major provisions for tobacco farmers in the McCain legislation.

Payments to Tobacco Farmers Under Proposed Legislation

Burley, fire-cured, and dark air-cured tobaccos
Flue-cured tobacco

Buy-out

Optional one-time buy-out at \$8/lb over 10 yrs or less
Mandatory buy-out of all quota holders at \$8/lb over 10 yrs or less

Those who remain in program --quota or permit

Those who do not take the optional buy-out retain their existing quota
Active producers will be issued a permit at no cost -- changing the old quota system to a new permit system for flue-cured tobacco, and allowing only active producers to stay in program. Permits may not be sold or leased, but may be transferred to descendants.

Payments to remaining quota holders who remain in system

Remaining quota holders get payments to the extent quota falls equal to \$4/lb for every

pound quota drops, with a lifetime limit of \$8/lb times the entire quota
No remaining quota holders

Lessees (burley), renters (flue-cured); and tenants (essentially sublessees)
Lessees and tenants get (1) option to acquire relinquished quota (if any), and (2) payments to the extent quota falls equal to \$2/lb for every pound quota drops, with a lifetime limit of \$4/lb times the entire quota
Renters and tenants get (1) permits to produce future crops, and (2) payments to the extent national quota falls equal to \$2/lb for every pound quota drops, with a lifetime limit of \$4/lb times the entire quota

Other Provisions:

Tobacco Community Economic Development Grants: Block grants to tobacco states will be made annually for rural business enterprise grants, farm ownership loans, initiatives to create farm and off-farm employment, long-term business technical assistance, supplemental agricultural activities, value-added agricultural initiatives, and compensation to warehouse owners. The program is authorized for \$375 million. At least 20 percent of the funds must be spent on agricultural activities, 4 percent on long-term technical assistance, and 6 percent on warehouse owners.

Benefits for Dislocated Workers: Up to \$25 million annually for 10 years will be made available to provide benefits based on the NAFTA displaced workers program. This program will be administered by the Secretary of Labor.

Farmer Opportunity Grants: Quota holders and active tobacco producers and their families are eligible for higher education grants of up to \$1,700 per academic year, adjusted upward every five years by \$300. Academic eligibility is modeled after Pell grants, and the program is administered by the Secretary of Education.

Total Costs: \$2.1 billion per year for the first ten years, \$500 million for years 11-25, for a total of \$28.5 billion.

*Annual payments to tobacco farmers set at \$1.65 billion annually for first ten years.

*Economic development grants set at \$375 million annually for first ten years.

*Assistance for dislocated workers set at \$25 million annually for first ten years.

Secretary Glickmans Trip to Kentucky

Secretary Glickman traveled to Lexington, Kentucky last Friday to attend a Farm Forum at Gentry Tobacco Warehouse with 600 to 700 farmers, government officials, and agribusiness leaders. The farmers were generally supportive of the Administration. Their main concerns were that the tobacco program be kept in place and that small farmers not be adversely affected.

Attachments

- *Background on General State of the Tobacco Industry (prepared by USDA)
- *Background on Farmer Portion of the McCain Legislation (prepared by USDA)
- *Highlights of Kentucky Tobacco Farmer Survey from February 10-19, 1998 (Campaign for Tobacco-Free Kids and the Kentucky Health and Agriculture Forum)
- *Maps showing the distribution of tobacco production in Kentucky
- *Regional Press Clips from Secretary Glickmans Trip to Kentucky

August 26, 1998

MEMORANDUM FOR ERSKINE BOWLES

FROM: Elena Kagan

SUBJECT: Tobacco

Attached is a one-pager to give to the Attorney General. As you can see, I have labeled the proposed agreement the "Scruggs Proposal"; if you would prefer me to describe it differently, please let me know.

Two further thoughts occurred to me as I was writing up the one-pager. First, we must figure out whether our trade obligations prevent us from entering into certain kinds of agreements to protect farmers (e.g., an agreement by the companies to buy a set amount from American farmers). Second, we should consider whether the punitive damage set-off suggested by Scruggs will lead states to adopt laws prohibiting the award of punitive damages against tobacco companies, thus providing the companies with the protection they long have wanted against punitive damages.

August 22, 1998

MEMORANDUM FOR THE PRESIDENT

THROUGH: Erskine Bowles

FROM: Bruce Reed
Elena Kagan

SUBJECT: Tobacco Idea

Dick Scruggs called us yesterday with an idea for how to achieve our goals on tobacco without legislation. We have discussed this idea with Erskine, and all of us believe that it is very interesting. If you agree that Scruggs's suggestion is worth pursuing, Erskine will take the steps necessary to do so. Until he does, we should not raise this idea with anyone else.

Scruggs proposes that the federal government enter into a consent decree with the tobacco companies to settle our claims for Medicare costs. As a matter of mechanics, we probably would do this by filing two documents simultaneously with a court: a complaint against the companies and a proposed settlement agreement.

Under Scruggs's proposed consent decree, the companies would make the payments called for in the June 20th settlement agreement -- i.e., \$368 billion plus capped industry-wide lookbacks. About \$200 billion of this amount would go to states settling their own suits against the companies, with the remainder going to the federal government. Any state that wished to continue its suit against the companies could do so, but the states share of the money then would revert to the federal government. Scruggs had no view on whether the states should have to use some portion of their money for specified purposes (e.g., child care). He did note that the federal government would have to leave the full \$200 billion with the states, rather than seek to recapture its usual share of Medicaid recoveries.

In addition to containing these monetary provisions, the consent decree would require the companies to drop their legal challenge to the FDA rule and to accept the FDA's assertion of jurisdiction over tobacco products. The decree also would mandate that the companies adhere to all the youth access and advertising restrictions contained in the June 20th settlement agreement.

The consent decree of course could not give the companies the liability protections contemplated in the June 20th agreement; for that, an act of Congress is necessary. Scruggs suggests, however, that the decree contain some kind of set-off or credit for punitive damages. Under the scheme he proposes, a company could subtract from its required payment to a state any punitive damages awarded against the company in that state's courts, up to the full amount of the required payment. Scruggs believes that the states will go along with this provision, even though it appears to put everything they get out of the settlement at some risk (at least if their courts award punitive damages).

Scruggs also proposes that the consent decree give the settling companies some kind of

protection against new entrants to the tobacco market (or existing companies with tiny market shares). This protection, according to Scruggs, is necessary to alleviate the fear of the companies that agreeing to this settlement will allow new companies to undercut them. Although Scruggs is uncertain about precisely how to provide this protection, he suggests that the FDA agree to regulate settling companies somewhat differently from other companies -- for example, by agreeing not to ban products manufactured by settling companies, but retaining authority to ban products manufactured by all others.

Erskine and we believe that as outlined here and putting aside all legal questions, the settlement is deficient in two respects. First, the settlement does not include any protection for farmers. We could solve this problem by insisting that the companies agree to purchase a set amount of tobacco leaf each year from American farmers. Second, the settlement seems slightly underfunded. We need to get something -- even if not much -- more than the original \$368 billion (perhaps the \$428 in Senator Hatch's bill) to sell this settlement as a huge victory.

Even more important, we will have to address a number of legal issues before we can enter into this kind of settlement. First, we will have to figure out a legal way of giving about \$200 billion in settlement monies to the states; this provision potentially conflicts with the federal government's obligation to place legal awards in the U.S. Treasury for later appropriation by Congress or with the federal government's obligation to recoup a portion of state Medicaid recoveries. Second, we will have to find a sure way to protect the FDA rule; the settling companies agreement to drop their suit is insufficient if other parties (e.g., retailers, advertisers, other manufacturers) can continue the suit, or bring a very similar suit the next morning. Third, we will have to inspect very closely any proposals to give a competitive advantage to settling companies, in light of both our antitrust policies and our regulatory objectives.

All that said, we think this approach presents us with an exciting opportunity. According to Scruggs, key Wall Street analysts have told him that the industry might well be interested in this kind of deal. (Scruggs claims not to have talked with industry officials.) We think you should give Erskine the go-ahead to send out some feelers.

*December 30, 1997

Health Division
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Route to: Deputy Director
Director

Through: Richard Turman
Barry Clendenin

Subject: Tobacco Settlement Spending: FDA & CDC Alternative Spreads - - Decision Needed

From: Jim Esquea & Marc Garufi ACTION:

Decision

Signature X

Comment

As requested Information

Phone: 202/395-4925

Fax: 202/395-3910

Room: NEOB #7025 Needed By:

Date: / /

Time: : am/pm

Copies to:

Josh Gotbaum, Barry Anderson, Joe Minarick, HD Chron, HPS Chron, HPS, TR, M. Miller

Post this Document on HD Intranet? NO

Following up on the tobacco meeting this morning, we have modified the table to address the format suggestions (Attachment A).

We consulted with Josh and also recommend changing the split of the additional \$300 million for FDA and CDC (which favored FDA in this morning's table) to one that starts out with a bigger increase for prevention and phases in the FDA increase over three years (Attachment B).

The Tobacco Settlement envisions a comprehensive FDA licensing program for tobacco, which the Administration has not fully evaluated. Because a licensing system would be expensive, the settlement proposes \$300 million annually for FDA tobacco enforcement. Given that a comprehensive FDA tobacco/licensing system would take several years to fully implement and that the Administration has not come to a consensus on this issue, we recommend phasing in the FDA increase of \$250 million over three years, while providing funding for HHS/CDC smoking prevention programs in the earlier years. This would allow us to fund a part of a Tobacco Settlement line, "HHS Grants to Reduce Tobacco Use," that we were not able to fund in the Attachment A version.

Josh spoke with Elena Kagan about moving the funds from FDA to HHS/CDC, and she expressed concern about not "fully funding" the FDA consistent with the Tobacco Settlement recommendations. Our recommended phased in approach (Attachment B) would eventually increase FDA enforcement activities to levels consistent with the agreement AND also fund activities that were recommended in the Settlement but were not funded in our "Modified Settlement Uses" table of this morning.

Please let us know by c.o.b if you concur with our phased in approach for total FDA tobacco funding and we will let Elena Kagan know. Also we will then be able to work with Barry Anderson and HHS to get these numbers into MAX.

Note also that Elena Kagan advised Josh that she and Bruce Reed wanted the table to be presented in the Budget in real terms only. In an effort to assuage some of that concern, we have added a stream of numbers showing the per pack equivalent in real terms to the table.

Attachments

*Memorandum for: Bruce Reed, Elena Kagan

From: Cynthia Rice

Date: April 20, 1997

Re: Events to Promote the President's \$600 Million
Welfare to Work Transportation NEXTEA Plan

Presidential Event

At a White House event, the President would announce pilot grants to 25 states to develop welfare to work transportation plans. He would underscore the importance of transportation to the success of welfare reform by introducing a former welfare recipient who gets to her job every day because of a federally funded transportation pilot project. He would promote his plan to provide \$600 million in welfare to work funds (part of his NEXTEA transportation bill) by receiving endorsements from a bipartisan group of governors and members of Congress. He would direct Secretary Slater to hold a series of regional meetings in collaboration with other Cabinet Secretaries around the welfare to work transportation issue.

Attending the event would be:

*A former welfare recipient who can get to her job in the suburbs because of a federally-funded pilot project (probably someone assisted by the HUD Bridges to Work project in Baltimore or Chicago).

*Governors of both parties who a) are receiving welfare to work pilot grants and b) will endorse the welfare to work portion of the President's NEXTEA transportation bill.

*Members of Congress who have proposed legislation funding welfare to work initiatives (i.e., Senators Specter and Santorum).

White House Briefing

A briefing at the White House would be held for organizations concerned about welfare reform to describe the welfare to work proposal in NEXTEA and the training and employment opportunities it provides for welfare recipients.



Vice Presidential/Cabinet Events

Louisville, Kentucky

The Vice President could attend a ceremony launching the renovation of the Nia Travel and Employment Center, a model transportation, job training, and development project located in an Empowerment Zone.

East Cleveland, Ohio

Secretary Shalala could attend a ribbon-cutting ceremony at the Windermere RTA/Head Start

Transit Center, the first phase of a complex that will include the renovation of the Hayden bus garage, the Windermere Transit Station, and a Head Start Center. The project is located in East Cleveland, which has an unemployment rate of 10.9% and a 94% minority population.

Regional Meetings

The Department of Transportation could hold a series of meetings in May and June that focus on the issue of transportation as part of welfare reform. The meetings would highlight best practices for local officials.

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January 30, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

Health Care -- Medicare Commission Update: Your Wednesday event highlighting the need to dedicate a portion of the budget surplus to the Medicare trust fund was extremely well received by the Democrats and even by Senator Breaux. Professor Uwe Reinhardt effectively validated the economic need and rationale for the dedication of these revenues for this purpose. While the event went very well, it also highlighted the fact that the Medicare Commission has yet to formally acknowledge the need for these revenues. In addition, it is important to note that Democrats on the Medicare Commission, with the exception of Senator Kerrey, remain extremely disturbed about Senator Breaux's lack of responsiveness to their concerns about his current proposal. Following this week's Commission meeting, Senator Kennedy delivered a scorching critique of Senator Breaux's premium support proposal and other elements of the Chairmans mark, including provisions that increase the age of eligibility to 67 and require beneficiaries to pay copayments for home health services. We are working with HHS, OMB, and key White House advisors to develop options around the Commission for your consideration. These include the development of principles of reform, a strategy to work with the Commission to improve its current proposal and shape it into an acceptable package, or the development of your own counter-proposal.

Education -- Reaction to ESEA Proposals: Overall initial reaction to your education proposals has generally been positive within the education community and in the press. The education community is supportive of your proposals, understands clearly the need to meet the challenges of raising standards, turning around failing schools, ending social promotions and the use of unqualified teachers. At the same time, many are worried about their capacity to meet these challenges, and will be looking to the Administrations budget and ESEA reauthorization proposals for financial, programmatic and technical support to carry out the needed reforms. Your proposals have also generated considerable press attention, with several stories this week in the New York Times, Washington Post, and USA Today. These stories have focused on the content of your proposals -- particularly on the pros and cons of ending social promotion -- and on the threat that states and school systems could lose funding if they fail to implement them. There have been a number of favorable editorials, including one by Diane Ravitch in the Wall Street Journal, NYU education professor John Zimmerman in the New York Times, and Timothy Noah in Slate magazine. Criticisms of your proposal have come from David Broder, who charges that your proposals merely replicate and add a layer of federal bureaucracy to what the states are already doing, and Lamar Alexander, Checker Finn are quoted in a number of stories criticizing your proposal as a federal takeover of state and local education systems.

Education -- Ed-Flex: The Senate Health, Education, Labor and Pensions Committee marked-up and reported out an Ed-Flex bill last week, on an 11-0 partisan vote. The bill would give authority to waive selected federal education requirements to states that have

academic standards, assessments, school report cards and a mechanism for intervening in failing schools. No Democrats were present at the session, which occurred shortly after several key votes in the impeachment trial. Kennedy, Dodd, Harkin, Reed and other committee Democrats (except Wellstone) reluctantly supported a similar version of this bill last year and expect to ultimately vote for it again when it comes to the floor. They and we would much prefer to address Ed-Flex as part of ESEA reauthorization, and we expect it will be taken up in that context regardless of the fate of this separate bill. Sen. Lott has made Ed-Flex a top priority, and has indicated that the Senate will take it up shortly. Republicans hope to score a quick, bipartisan victory with a strong local control message. DPC is working with Sen. Democrats to develop a series of amendments that will attempt to (1) strengthen the accountability provisions in the underlying bill, particularly by including all of the accountability provisions in your State of the Union Address; (2) counter the Republican message with an amendment that would also authorize the Class Size Reduction initiative for the full seven years as you originally proposed, and (3) ensure that Ed-Flex is revisited as part of the ESEA reauthorization by sunseting this provision when ESEA reauthorization is complete.

Crime -- National Instant Check System (NICS): On Thursday, the U.S. District Court of D.C. denied the NRA's motion for a preliminary injunction to block the FBI from retaining records on gun purchasers as part of the NICS. As you know, the FBI's policy of temporarily retaining certain records is intended to ensure the integrity and effectiveness of the NICS while protecting the privacy of gun purchasers.

Crime -- Gun Show Directive: In response to your November 6, 1998 directive, the Treasury and Justice Departments are ready to submit a joint report to you with their recommendations on gun shows. The report will be released as part of next week's radio address. The report indicates that there were over 4,400 gun shows advertised in 1998, most of which were promoted by about 175 firearm collector organizations and individuals. While federally-licensed firearms dealers (FFLs) comprise 50 to 75 percent of the vendors at most gun shows -- and are required by the Brady Act to conduct background checks on prospective purchasers -- non-FFL vendors are under no legal obligation to conduct a background check or keep records on their sales, making it impossible for law enforcement to trace firearms they sell which are later recovered at crime scenes.

The report confirms that gun shows provide a forum for illegal firearms sales and trafficking, and serve as a source for firearms later used in crimes. In compiling the report, Treasury and Justice reviewed 314 gun show-related investigations involving more than 54,000 firearms. The investigations span a wide range of federal firearms violations, including straw purchases, transactions by FFLs without Brady checks, and the sale of kits to modify semiautomatic firearms into automatic firearms. Over 46 percent of the gun show-related investigations involved felons buying or selling firearms. In more than a third of the investigations, the firearms involved were known to have been used in subsequent crimes, including homicide, assault, robbery, and drug offenses. Many of the investigations involve numerous firearms: more than a third involved over 50 firearms and about one-tenth involved over 250 firearms.

In order to close the gun show "loophole", Secretary Rubin and Attorney General Reno's key recommendations include:

(1) Broadly defining "gun shows" to cover not only traditional gun shows but also flea markets and other similar venues where firearms are sold.

(2) Requiring gun show promoters to register with ATF. Promoters would be required to provide the time and location of every gun show, a list of vendors (both FFLs and non-FFLs), ensure that all vendors are given information about their legal obligations, and require vendors to acknowledge receipt of it. Failure to fulfill these obligations could result in revocation or suspension of registration or civil or criminal penalties.

(3) Requiring Brady background checks on all firearms transferred at gun shows. All firearms would be transferred by, or with the assistance of an FFL. Thus, FFLs would conduct a Brady checks and retain records for all sales by a non-FFL.

(4) Reporting information to the ATF's National Tracing Center (NTC) on firearms sold at gun shows. This would require FFLs to submit certain information (e.g., manufacturer, serial number) on all firearms transferred at gun shows to ATF's NTC and retain such information to assist in future firearms trace requests by law enforcement.

(5) Developing an educational campaign, in conjunction with the firearms industry, to encourage all firearms owners to take steps to ensure that firearms do not fall into the hands of prohibited persons such as criminals or juveniles.

In addition, the Departments are continuing to review the definition of "engaged in the business" of selling firearms to make future legislative and regulatory recommendations. The Gun Control Act requires that those who seek to "engage in the business" of importing, manufacturing, or dealing in firearms must obtain a Federal firearms license. Engaging in the business without a license was involved in more than half of the 314 investigations reviewed by Treasury and Justice.

The report also recommends committing more resources to combat illegal firearms sales at gun shows. During the radio address, you will announce that your FY 2000 budget includes \$24 million in new funds to hire over 120 additional ATF agents to bolster firearms enforcement. The new agents will be used to support investigations at gun shows, the arrest of violent criminals and gun traffickers, illegal attempts to buy firearms, and to expand the Youth Crime Gun Interdiction Initiative from 27 to 37 cities. The budget also includes an additional \$5 million for U.S. Attorneys to increase firearms prosecutions.

Welfare Reform/Community Empowerment -- Implementation of FY 99 Initiatives: Last week, to complement your announcement of FY 2000 budget initiatives related to welfare to work, three agencies also announced grant competitions for FY 1999 funding for three of your initiatives. The Department of Labor announced the availability of \$240 million in FY 99 Welfare-to-Work competitive grants, with priority for projects focusing on non-custodial parents or long-term welfare recipients with disabilities, substance abuse problems, limited English proficiency, or domestic violence (this is the third round of competitive grants). HUD announced the first competition for 50,000 welfare-to-work housing vouchers, which are available to housing authorities who collaborate with their welfare and workforce partners to provide assistance to help families get or keep a job. And, HHS announced the first grant competition under the Individual Development Account demonstration program you signed into law in October (at the Microenterprise event on February 5th, you will announce that your new budget includes \$20 million for IDAs, which doubles the FY 99 funding level).

Welfare -- NYC Food Stamp and Medicaid Case: This week, Judge William H. Pauley III of Federal District Court in lower Manhattan issued an injunction directing the New York City to allow "all persons applying for food stamps, Medicaid and cash assistance . . . to apply for such benefits on the first day that they visit a Job Center" and to revise its training

and procedures to insure that workers are following federal law. The city must submit a corrective action plan by February 10. As you know USDAs preliminary investigation found the city did violate federal law; HHSs investigation is still on-going.

Children and Families --Budget Initiatives: This past week, the Vice President and the First Lady hosted a series of events to announce new budget initiatives relating to children and families: (1) the Vice President unveiled that your FY 2000 budget will include a \$607 million increase in Head Start, which would be the largest Head Start increase ever enacted and serve 42,000 additional children; (2) the First Lady announced that your budget will include \$300 million over five years to provide enhanced support to children who emancipate from foster care, turning 18 without being adopted or permanently placed (a new Medicaid eligibility option and greater support for vocational and life skills training); (3) the First Lady announced that your budget will include \$67 million in new dollars for childhood asthma research, surveillance, and management; (4) the First Lady announced \$40 million to provide freestanding childrens hospitals -- for the first time -- with Federal financing for graduate medical education; and (5) the Vice President and the First Lady met with the womens groups and pro-choice advocates to announce that your FY 2000 budget will include an historic \$25 million increase for Title X family planning services, as well as \$25 million dollars for the United Nations Population Fund (the UNFPA).

Summaries of Leadership Bills

S. 7 -- The Public Schools Excellence Act: Senate Democrats have introduced the Public Schools Excellence Act (S. 7), which includes our school modernization and class size reduction proposals and an after-school initiative incorporating both the 21st Century Learning Program and funds for community-based after-school programs through the Child Care and Development Block Grant. The bill also includes a Teacher Excellence Act which closely tracks one we have been developing as well as relevant aspects of your accountability proposals. The bill would provide \$1.2 billion to states and local school districts to help raise teacher certification standards, recruit excellent teacher candidates, retain and support promising beginning teachers and provide veteran teachers and principals with ongoing professional development needed to help all children meet high standards. Under this teacher quality proposal, states and school districts would be accountable for reducing the number of teachers with emergency credential and out-of-field placement of teachers.

S. 2 -- ESEA Reauthorization: Senate Republicans also introduced a bill (S. 2) to extend ESEA. However, the bill contains only a statement of themes and principals -- returning control to parents, supporting exceptional teachers, making schools safe, directing federal dollars to the classroom, and stressing basic skills and proven practices -- that will eventually be translated into specific legislative proposals.

S. 5 -- The Drug Free Centuries Act: In lieu of an omnibus crime bill, the Senate Republican leadership introduced an anti-drug bill, the Drug Free Centuries Act. The bill has four titles: international supply reduction, domestic law enforcement, demand reduction, and funding for federal counter-drug enforcement agencies. Overall, the bill does not contain many new proposals, but is intended to augment and complement many of the drug interdiction programs and funding increases enacted in last years FY 99 omnibus appropriations act. To this end, the bill increases funding and establishes earmarks for specific Customs, Coast Guard, DEA, Treasury and Defense counter narcotic operations and

equipment. Moreover, the bills provisions on international supply reduction borrow significantly from the Administrations international crime bill introduced last year.

On the domestic front, the bill increases the number of border patrol agents to 15,000 and contains modest prevention proposals including a \$10 million drug-free teen drivers incentive grant program and \$5 million DEA drug-free families grant program. While the bill does not contain many changes to criminal penalties, it includes a controversial proposal to establish greater parity on cocaine sentencing by significantly lowering the threshold amounts of powder cocaine necessary to receive mandatory federal sentences (from 500 grams to 50 grams for a 5-year sentence, and from 5 kilograms to 500 grams for a 10-year sentence).

S. 9 -- The Safe Schools, Safe Streets, and Secure Borders Act of 1999: S. 9 is an omnibus crime bill introduced by the Senate Democratic leadership, similar to legislation introduced at the end of the last Congress. The Democratic bill contains a two-year extension for many programs authorized in the 1994 Crime Act, including COPS, the Violent Offender Incarceration/Truth-in-Sentencing programs, VAWA, and drug courts. The legislation incorporates a scaled-back version of the Democratic juvenile crime bill including provisions on the federal prosecution of juveniles as adults; grants for states to incarcerate violent youths; prevention programs for at-risk youth; and a number of Administration-supported firearms measures including a prospective ban on gun ownership for violent juveniles ("juvenile Brady") and an expansion of the Youth Crime Gun Interdiction Initiative. The bill also contains provisions to assist victims, including a model bill of rights for crime victims in the federal system. In addition, the bill contains numerous Administration-sponsored provisions on money laundering, international crime and hate crimes.

HR. 358 -- Patients Bill of Rights: The Senate Leadership reintroduced the Daschle-Kennedy Patients Bill Of Rights, which is the companion to the Ganske-Dingell bill. They included very few changes, and chose not to modify the old remedy / enforcement provision. They believe that they want to start the process with as strong a bill as possible and then negotiate off of it.

S. 10 -- The Health Protection and Assistance for Older Americans Act: This bill incorporates three major initiatives including: (1) your long term care initiative, (2) your Medicare buy-in, and (3) the reauthorization of the Older Americans Act, which you explicitly endorsed last year. Obviously, these initiatives will be broken out into separate bills when and if the legislative process commences. However, this bill reflects the Democrats growing belief that they need to particularly emphasize their sensitivity and responsiveness to issues of importance to older Americans.

S. 17 -- the Child Care ACCESS Act: The Democratic Leadership bill on child care is called the ACCESS Act -- Affordable Child Care for Early Success and Security. It largely mirrors your FY 2000 budget request on child care, although it is more expensive, mainly because it makes the Child and Dependent Care Tax Credit (DCTC) refundable for low-income families. The bill adopts our proposals for \$7.5 billion over five years for enhanced child care subsidies for low-income families and greater tax relief through the DCTC for middle-income families. Also, it incorporates your call to expand after-school programs by tripling to \$600 million the 21st Century Learning Program. Similar to our budget, the bill provides tax relief through the DCTC for parents who stay at home with their young children, but, unlike our proposal, makes this tax relief refundable, as well. To improve child care quality and promote early learning, the bill provides \$2 billion over five years for States and \$2.5 billion for communities, while your budget includes \$900 million over five years

for States to invest in quality improvements and \$3 billion over five years for communities to promote school readiness. Finally, to boost private sector investment in child care, the bill adopts your proposed tax incentive for employers who offer child care services, but, unlike our proposal, also includes \$400 million over five years to create challenge grants in which communities that generate funds from the business sector could receive matched federal dollars.

S. 18 -- the SAFER Meat and Poultry Act (Safe and Fair Enforcement and Recall): Senator Harkin has again introduced the food safety bill we supported last year that gives USDA much-needed leverage in regulating food processors and handlers. The SAFER Meat and Poultry Act, one of the Democratic Leadership Initiatives, would: (1) require processors and handlers to notify the USDA about contaminated meat and poultry products; (2) authorize USDA to conduct mandatory recalls of unsafe products; (3) clarify and reinforce the USAs authority to refuse or withdraw inspection of plants that violate safety standards or procedures; and (4) give the USDA the power to assess civil fines for violations. Currently, the USDA can respond to food safety violations only by bringing criminal actions or withdrawing inspections; and all recalls are done on a voluntary basis and no civil penalties are available.

S. 74 -- Paycheck Fairness Act: The Paycheck Fairness Act, an equal pay measure the Administration supported last year, is also included in the Democratic Leadership Initiative. The legislation, introduced by Senator Daschle, includes three major provisions:

Increased Penalties for the Equal Pay Act (EPA). The legislation adds full compensatory and punitive damages as remedies, in addition to the liquidated damages and back pay awards currently available under the EPA. The 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. Currently, many employers are free to take action against employees who share wage information

Training, Research, and Pay Equity Award. The bill provides for increased training for EEOC employees on wage discrimination; more field research on equal pay; and the establishment of a national award to recognize model employers.

S. 11 -- Campaign Finance Reform: At Senator Feingold's suggestion, the Democratic Leadership introduced campaign finance reform legislation (S. 11) modeled on the bill that passed the Senate in 1993. The legislation includes a ban on "soft money," voluntary spending limits, anti-bundling provision, and reduced-price television time. In order to maintain the aura of bipartisanship around McCain-Feingold, the Democratic Leadership decided to use the 1993 bill. Senator Feingold's staff believes there is greater momentum in the House for passage of bipartisan campaign finance reform and have adopted a "House first" strategy.

S. 20 -- Brownfields And Environmental Cleanup Act of 1999: This bill (S. 20), whose author is Senator Lautenberg, is based on legislation introduced in prior Congresses is in part based on EPA's current "brownfields" program. The legislation would: 1) provide grants to local and state governments to evaluate brownfields sites. These evaluations would inform interested parties about what is required to clean up sites, and which types

of reuse would best suit the properties; 2) furnish funds to state and local governments to establish and capitalize low interest loan programs for cleanups. These funds could be loaned to prospective purchasers, municipalities, and other parties; 3) limit the potential liability of innocent property buyers. So long as purchasers or landowners have made reasonable inquiries about possible contamination, they would be exempt from liability under federal Superfund law, as would owners of contiguous properties who did not cause or contribute to the release and exercised appropriate care.

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March 27, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

Health Care -- Update on our organ donation effort:. We have just received a report that there has been a significant but still inadequate increase in organ donation rates (a six percent increase as opposed to one percent over the past two years) as a result of the Administrations recently implemented regulation to increase organ donations. We believe this success will be augmented as public attention to this increases, as the number of public figures -- including retired NFL football star Walter Payton -- have developed conditions that require organ transplants. There is great interest in the organ donation advocacy community for you to highlight this problem sometime in the next three weeks. You could announce a \$5 million grant program and some major private sector commitments from AFL-CIO, the UAW, Aetna Health Plans, and Kaiser Permanente at such an event to coincide with National Organ and Tissue Donor Awareness Week.

Health Care -- Actions to prevent the inappropriate use of physical restraints in institutional settings: On Thursday, Senators Lieberman and Dodd announced their plan to introduce the Freedom From Restraint Act of 1999, which prohibits hospitals and mental health facilities participating in the Medicare and Medicaid program from imposing physical restraints except upon the written order of a physician and only when necessary to ensure the physical safety of the patient or of other patients. (In 1987, legislation was enacted to prevent inappropriate physical and chemical restraints in nursing homes.) This legislation was inspired by a series of cases in Connecticut during October of 1998 in which several mentally ill children residing in psychiatric institutions died after being inappropriately restrained by facility staff. However, we have received reports of similar abuses nationwide. In addition to indicating your initial support for this legislative effort, we have directed HHS to expedite a regulation that administratively extends these protections to acute care, psychiatric, rehabilitation, long term care, and childrens hospitals participating in the Medicare program, program and intermediate care facilities for the mentally retarded, and institutions of mental disease participating in the Medicaid program. The only facilities we believe require explicit new statutory authority are hospices and residential care facilities for children. If there is interest, we may want to have you highlight this regulation when it becomes final later this summer.

Health Care -- Update on Medicare: Despite the failure of Republicans to attract any Democrats beyond Senators Breaux and Kerrey to their Medicare amendment (criticizing your surplus policy and supporting the Breaux-Thomas proposal), it is clear that Senator Daschle and the moderate Democrats need and strongly desire an alternative Medicare plan. In contrast, the House Democrats have little or no appetite for a serious Medicare reform proposal. Our meeting with the House Democratic leadership on Wednesday made it clear that they view any policy that could be defined as reform with grave suspicion. The challenge of developing a politically viable policy is to balance the need for credible reform with

the equally challenging need to not totally alienate our Democratic base. Interestingly, both proponents and opponents of reform are increasingly wary of placing traditional provider cuts on the table. As the Medicare trustees report will no doubt show when it is unveiled next Tuesday, projected Medicare spending has significantly declined and incoming revenues have significantly increased. These trends will no doubt significantly push out the solvency date of the Medicare program and will also decrease any appetite for traditional provider reductions as Congress will be responsive to provider complaints that they have already made a major contribution to the health of the trust fund. The inability to attract much support for provider savings will make it difficult to find offsetting savings to pay for a prescription drug benefit, thus placing even greater pressure to look towards the surplus to make a significant contribution towards the cost of any such benefit. Immediately following the release of the trustees report, NEC / DPC will request the actuary to do a series of cost estimates for Medicare policy reform options that we are contemplating for your review. We anticipate that in the interim we will work with Senator Daschle and his moderate Democrats to determine their definition of serious and acceptable reforms.

Children and Families -- Child Care: With the strong leadership of Senator Dodd, the Senate passed an amendment to its budget resolution increasing mandatory funding for the child care block grant by \$5 billion over five years, off-set by a reduction in the tax cut. This action is a significant demonstration of bipartisan support for boosting funding for child care subsidies, which your budget does by \$7.5 billion over five years. The amendment also includes a non-binding provision stating that any child care tax relief for child care (i.e. expansion of the CDCTC), must benefit all working families (i.e. by making the credit refundable) and assist stay-at-home parents who care for an infant. After a motion to table the amendment was defeated, it won by voice vote. The twelve Republicans voting with the Democrats were Senators Abraham, Campbell, Chafee, Collins, Dewine, Frist, Hatch, Jeffords, Roberts, Snowe, Specter, and Warner.

Education -- Ed-Flex. Both the Senate and House have now appointed conferees to work out differences in the two bills. This week, 205 members of the House -- overwhelmingly Democrats -- voted in favor of a motion to direct conferees to eliminate the Jeffords-Lott class size provision that would allow local districts to spend already appropriated class size funding for special education. The Senate Democrats have 31 of the 34 signatures they are seeking on a letter recommending a veto of the Ed-Flex bill if the Jeffords-Lott provision is not dropped. OMB is preparing a letter from Jack Lew to the conferees to convey that your senior advisors would recommend a veto if the class size provision remains in the bill and to reiterate support for strengthened accountability to ensure that waivers lead to increased student achievement. Secretary Riley will also send a letter to the conferees echoing those concerns and providing additional detailed comments about the House and Senate bills.

Education -- Charter schools and desegregation: An op-ed by Clint Bolick in the Wall Street Journal this week attacked Bill Lann Lee for "waging a war" against charter schools through Justice Department civil rights investigations into a few proposed charter schools in Louisiana communities under desegregation orders. The editorial criticized Justice Department efforts to either block the creation of charter schools or require additional steps to create diverse student populations, and suggested that pro-charter school Democrats shouldn't support Lee's nomination. The Justice Department has conducted a number of investigations to ensure that charter schools comply with existing desegregation orders or consent decrees.

This week, we discussed and rejected sending an immediate White House response to Bolick's op-ed -- mostly because of a belief that this could hurt rather than help Lee's confirmation, and to some extent because we are still reviewing how to handle and communicate the Administration's civil rights enforcement policy for charter schools. At an Education Department conference last week, it became clear that there is some concern among the charter school community that rigid enforcement of desegregation orders could block the creation of charter schools in predominantly minority neighborhoods that might reverse desegregation efforts by leading minority parents to take their children out of more integrated schools. There are also concerns that desegregation orders could be used by recalcitrant school districts to block the creation of charter schools. Meanwhile, the Justice Department and Education Department Office of Civil Rights are concerned that some charter schools could indeed reverse desegregation efforts, and the Education Department has developed draft guidance to be disseminated nationally on these issues. DPC, WH Counsel's office, Justice and Education Departments will meet next week to discuss this guidance, and the issues raised in it.

Education -- Mayoral control of Detroit Schools. The Michigan legislature has passed a bill that gives Detroit Mayor Dennis Archer 30 days to appoint a reform board to oversee the Detroit schools. The seven member board will be comprised of six Detroit residents appointed by the Mayor and the State Superintendent who will hold the seventh spot as Gov Engler's appointment. None of the current school board members can be appointed to the reform board. Once the board is in place for five years, Detroit residents will be allowed to vote on whether to retain the reform board. The proposal was highly controversial. It exacerbated racial tensions and was viewed by many as an attempt by a white governor and white legislature to oust a school board elected by a city that is 75 percent black. Earlier versions of the proposal would have had the entire reform board appointed by Engler or replaced the school board with a monitor appointed by Engler. Both Engler and Archer favored the proposal that eventually passed giving control over the reform board to Archer. The present school board will be retained as an unpaid advisory board.

Tobacco -- Medicaid Recoupment: As you know, the Senate supplemental appropriations bill contains Senator Hutchisons bill to waive federal claims to tobacco settlement funds without a commitment from the states to spend the federal share to prevent youth smoking, protect tobacco farmers, improve public health, or assist children. The House bill contains no such provision. Legislative affairs tells us that the House leadership is intent on keeping controversial riders out of the supplemental bill and that may help us eliminate the tobacco provision from the bill, but as you know the provision has strong support from the states. We had conversations with both Governor Carper and his staff this week who told us that given the Senates overwhelming rejection of Specters alternative, the best they could sell to other governors would be "sense of the Congress" type language that the tobacco settlement funds should be used for health, children, and tobacco farmers with a report to Congress in a couple of years on how the funds were spent. Carpers staff noted that a veto threat over this particular provision would strengthen our hand (this provision was one of many cited in the Senate SAP saying senior advisers recommend a veto of the bill). Public health advocates are going to use this two week recess to have constituents meet with appropriations conferees and other key players in their districts and urge the provision be dropped. The advocates urge us to be more public in our support of an alternative, and to try to get the state Attorneys General to do so as well. In the meantime, Rep. Waxman, Dingell, Rangel and John Lewis introduced a bill in the House this week that is similar to Senator Specters amendment but has an even stronger federal role. The Waxman bill requires states to spend 25 percent of tobacco settlement funds on tobacco control and farmers and 25 percent on other health activities, as did Specters, but it also

requires a portion of the tobacco prevention funds to go to a federal fund for a national education campaign and efforts directly at minority tobacco use (rather than have all such funds be spent by the states). The bill would also direct USDA to enact regulations to put in place purchase guarantees for tobacco product manufacturers to ensure they continue to purchase domestically grown tobacco.

Tobacco -- Florida Teen Smoking: Cigarette smoking in Florida declined in every grade since the state began its anti-smoking campaign last year, according to a study released this week. The state-sponsored survey found cigarette use declined 19 percent among middle school students and 8 percent among high schoolers. Florida spent \$71 million of its tobacco settlement dollars on this campaign last year (about 13 percent of the total), a third on a counteradvertising campaign and the rest on community and school based programs. Nine out of ten youth surveyed were aware of the edgy advertising campaign, dubbed the "truth" campaign by teens who helped develop it (the CDC has made many of these ads available to other states who want to air them). There's currently a big fight in Tallahassee over the programs funding levels for next year -- while the Governor's budget contained \$61.5 million, the Republican House appropriated no funds and the Democratic Senate included \$50 million.

Workforce Investment Act Rule: In early April, the Department of Labor will publish an interim final rule to implement the Workforce Investment Act (WIA) you signed last August to reform the nation's job training system. The rule provides guidance to states and communities to help implement key provisions of the law including the development of a network of comprehensive One-Stop Career Centers that provide a single point of entry to a wide range of employment services for job seekers and employers. When the program is fully implemented, DOL expects that there will be at least 2,500 such One-Stop centers. Currently there are about 1,000 state and local variations of one-stops, but none of them are as comprehensive as what is envisioned under WIA. The rule will also implement Individual Training Accounts to provide individuals with access to quality job training of their choice. Consistent with the goal of consolidating and streamlining job training programs, the new regulation is approximately half the length of the old rule it replaces. DOL has coordinated with other federal agencies in developing this rule, and has consulted broadly with state and local government, key Congressional committees, and other stakeholders. While states have until July 2000 to fully implement the Act, a handful of states are expected to file their state plans shortly. We will work with DOL to identify any potential announcements.

Welfare Reform -- Economist article: We thought you might like to see the attached Economist article highlighting the Welfare to Work Partnerships success and chronicling how welfare reform "has worked better than anyone dared hope." The article notes that there are challenges ahead -- particularly in large cities where caseloads are falling more slowly -- and mentions some of your welfare to work budget initiatives.

NOTE TO Elena: Unfortunately, the picture accompanying the actual Economist article is not as upbeat as the article (shows a woman and her kids who appear to be living in one small room). We can either send this, or use the Lexus version without the picture. We've provided both so you can choose.

Welfare Reform -- Urban Caseloads: You sent us a note saying we should do more to strengthen welfare to work efforts in cities with slower caseload declines. We wanted to report on two efforts now underway. The Department of Labor just launched a two-year technical assistance initiative to help 10 large cities (Boston, Houston, Detroit,

Philadelphia, Chicago, Los Angeles, New York, Seattle, New Orleans, and Minneapolis) develop strategies to move hard-to-employ welfare recipients into good jobs, with an emphasis on job retention and advancement and ensuring close coordination between the welfare and workforce systems. Teams from these cities are meeting together for the first time next week. The Welfare to Work Partnership has a targeted effort in 30 cities with high poverty rates and large concentrations of welfare recipients, including Atlanta, Baltimore, Chicago, Los Angeles, Miami, New Orleans, New York, Philadelphia, and Washington, D.C. In August, the Partnership is holding a major convention in Chicago for delegations from these cities; this could be a good opportunity to mark the third anniversary of the welfare law and Eli Segal hopes you will participate.

You also asked whether the slower rate of caseload decline in some cities is related to unemployment. In general, those cities with slower rates of caseload decline did have higher unemployment rates. For example, El Paso, Los Angeles, New York, and Philadelphia had the slowest caseload declines and three of the four had central city unemployment rates above 7% in August 1998 when the caseload decline was measured (Philadelphias rate of 5.9% was also well above the national average of 4.5%). However, Baltimore and Cleveland had high unemployment, but also had somewhat greater caseload declines.

Welfare -- Food Assistance: You asked what we could do to ensure that families obtain food assistance, in light of reports that more working families are seeking help from private food banks. We are working to address these issues on two fronts: first to ensure states follow the food stamp law and provide assistance to all eligible individuals who seek assistance; and second, to develop and implement new initiatives to make the food stamp program more accessible to working families.

We have taken numerous steps in recent months to ensure states follow the food stamp law. USDA has launched investigations of state and local practices, including an inquiry in New York City which found local welfare offices were not allowing individuals to apply for food stamps on their first visit to the office. (USDA has issued a formal warning and will impose penalties if these practices are not changed. Meanwhile, a U.S. District Court judge has issued an injunction and has required the city to provide a corrective action plan, which remains sealed.) At the same time, USDA issued formal guidelines to every state reminding them of their obligations to ensure that applicants are aware of their right to file an application for food stamps, process applications in a timely manner, and continue food stamp benefits when TANF benefits are denied or terminated.

In addition to these enforcement actions, we are working with USDA and others to develop and implement efforts to make food stamps more available to eligible families. Historically, individuals with earned income who are eligible for food stamps have been about half as likely to obtain them as individuals receiving cash assistance. There are several possible reasons for this. First, individuals with earnings are eligible for far less in food stamps and they may decide the amount is not worth it. For example, the monthly food stamp allotment for a family of three with a \$300 weekly income and \$500 monthly rent is \$40. When the same family reaches weekly earnings of \$342, the household is no longer eligible. Second, families need to follow somewhat cumbersome procedures to report their earnings to the food stamp office and it is often difficult for working families to get to this office during open hours.

We are currently working with USDA and OMB to devise administrative proposals to help address these and other potential barriers and we will provide you with an analysis of our options soon. While some of the options under consideration can be implemented through

regulation, they may cost several hundred million dollars. In order to ensure we maintain our commitment to saving the surplus, we must enact other regulations saving a comparable amount -- a requirement OMB imposes on an agency-by-agency basis (e.g., USDA savings must pay for new USDA costs). These regulatory offsets could be difficult to obtain.

In addition to possible administrative actions, we will be working to enact the proposals in this years budget to increase funds for food stamp outreach (the budget contains \$3.5 million to provide a 50 percent federal match for activities including media campaigns and distributing informational materials at various community locations such as shelters, senior centers, and churches) and to provide \$60 million for eligibility for an additional 15,000 legal immigrants who become elderly after their pre-1996 arrival. (The Agricultural Research Act restored benefits to those elderly as of 1996, as well as children, people with disabilities, and refugees.)

Drunk Driving -- .08 BAC studies: The Department of Transportation is planning to release three studies next week on the effects of lowering the illegal blood alcohol concentration (BAC) from .10% to .08%. Two of the three studies show that .08 BAC laws have a deterrent effect on drinking and driving, particularly in conjunction with other drunk driving laws and programs such as administrative license revocation (where police immediately suspend the driver's license of a driver arrested for DWI). The third study which looked at .08 BAC in a single state (NC) found no statistically significant impact of the law in drunk driving crashes.

(1) Nationwide study: This study looked at the effects of illegal per se BAC laws (.08 BAC and .10 BAC) and administrative license revocation (ALR) laws in all 50 states over a 16-year period. The study estimated that .08 BAC laws resulted in 275 fewer fatalities in the 16 states with .08 BAC laws in effect in 1997, and estimates that an additional 590 lives could have been saved in 1997 if all 50 states had .08 laws.

(2) Eleven-state study: This multi-state study analyzed the impact of .08 BAC and ALR laws and found that .08 BAC laws were associated with significant reductions in alcohol-related fatalities in five of the 11 states studied (VT, KS, NC, FL, NM). Two other states (VA, CA) registered reductions following the adoption of both .08 BAC and ALR laws. The remaining four states (UT, OR, ME, NH) experienced slight decreases or increases in their alcohol-related fatalities that were not considered statistically significant.

(3) North Carolina study: This study found little separate effect of a .08 BAC law in North Carolina even though the state recorded a modest reduction alcohol-related deaths during the study period. North Carolina has an aggressive enforcement program, with the .08 law just one of the steps they have taken to help decrease in drunk driving deaths. The finding of this study conflicts with the 11-state study cited above, which indicates a positive impact of the .08 BAC law in the state in reducing alcohol-related deaths.

The three independent studies were commissioned by the National Highway Transportation Safety Administration (NHTSA). On a related note, the GAO is preparing to release in June a review of a number of .08 BAC studies, including the three listed here. The GAO report was required under the omnibus transportation bill signed last year. The GAO review will criticize the methodologies used in earlier NHTSA studies, but generally confirm the soundness of the new studies. The GAO will conclude that .08 BAC laws can be effective in reducing alcohol-related deaths in combination with other laws, particularly ALR. However, the alcohol industry is likely to use the GAO report to discredit the previous DOT studies

on .08 and the need for a national .08 standard.

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April 17, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

Children and Families -- Child Care: To dissuade budget conferees from deleting the Dodd-Jeffords amendment to boost child care subsidy funding by \$12.5 billion over ten years, the two senators this week offered a motion to instruct the conferees to include the funding increase. The motion won with strong bipartisan support (66-33) adding 10 Republicans to the 12 who had previously voted for Dodds child care amendment. The final budget agreement includes specific mention of raising child care funding, though it reduces significantly the amount Dodd and Jeffords sought -- the agreement calls for \$3 billion over 10 years in new subsidy funding and \$3 billion over 10 years in enhanced child care tax relief. We will now turn our attention to working with the Senate Finance Committee, which has jurisdiction over child care subsidy and tax issues; fortunately, the Committee includes four Republicans who voted for the Dodd-Jeffords measure (Senators Jeffords, Hatch, Chafee, and Grassley).

Education -- National Teacher of the Year: On Monday, you are scheduled to announce the National Teacher of the Year in a ceremony in Presidential Hall. Your remarks will focus on the importance of high-quality teachers and challenging young Americans to become teachers. After your remarks, you will present Andrew Baumgartner with the 1999 National Teacher of the Year award. Baumgartner has taught for 22 years and is currently teaching kindergarten in Augusta, Georgia.

Education -- ESEA: On Monday, staff from DPC and the Department of Education will meet with civil rights advocates including Hugh Price, Wade Henderson, Bill Taylor and others as part of an ongoing effort to reach a compromise on a social promotions policy. We also continue to reach out to relevant constituents and met with representatives from the National Education Association and the American Federation of Teachers on Friday. If you do not participate in the class size study announcement (see below), you will announce the ESEA bill on April 28.

Education - Ed-Flex: On Monday, Secretary Riley sent conferees a letter threatening a veto over the Senate Republican provisions to weaken class size. It is possible the the House will consider the conference report on the "ed flex" bill next week.

Education - Class-Size Study: On April 29 at the National Press Club Senator Patty Murray, representatives from the NEA, and other leaders plan to announce the most recent findings of Project STAR -- the Tennessee study that has tracked the performance of a control group of students against others who were in smaller classes in grades K-3. So far, the findings show that: students in smaller classes in the early grades were taking college entrance tests (ACT, SAT) slightly more frequently than their peers in larger classes; the gap

between college entrance test-taking --between minority and less well off children on one hand, and other children -- was substantially reduced among students in smaller classes; and SAT and ACT test scores among students who had been in smaller classes in the early grades were no different than test scores among students in larger classes. Senator Murray and others will argue that this is a good finding -- that normally when more students take college entrance tests, test scores go down. Senator Murray's office and NEA have requested your participation in the release of the study, but we are waiting to see if stronger additional data becomes available from the researchers comparing the performance of students in smaller vs. larger classes on high school graduation rates, completion rates of advanced placement and other challenging courses, and grade point averages.

Education -- Florida School Reform bill: On March 24, the Florida House passed an education reform bill reflecting policies that Governor Bush considers his top legislative priorities. The House bill includes: annual testing in grades 3-10; a prohibition on social promotion; ratings for public schools; tougher standards for teacher certification and extra money for those who score well; monetary rewards for excellent and improving schools; freedom from regulations for the top-rated schools; changes to fix failing schools; and -- most controversially -- a program to allow students attending failing schools to either attend a better-rated public school or use a state voucher to attend a private school (including religious schools). The bill is still under consideration in the Florida Senate and on Tuesday, the Senate voted to limit the voucher provision to the lowest-performing students (bottom quartile) in failing schools. The Florida Senate is expected to approve its plan by the end of next week. The bill would make Florida the first with a statewide offering of tuition vouchers. We are preparing a memorandum for you that goes into more detail on this proposal.

Tobacco -- Billboards: As part of the state tobacco settlement, tobacco companies agreed to remove their outdoor and transit advertising by Friday, April 23 -- although the settlement does not prohibit smaller signs that are placed inside or outside retail establishments or billboards at adult-only events. The companies also agreed to keep paying for the space after taking down their billboards until their leases expire so that states and tobacco-prevention groups can display anti-tobacco ads. Preliminary estimates from HHS conclude that the value of this anti-tobacco advertising could be as high as \$100 million. To support efforts to replace tobacco industry billboards with tobacco-prevention messages, CDC, FDA, and the National Cancer Institute (NCI) have been working together to provide technical assistance and the bulk printing of a select set of billboards. Thirty-nine states are expected to put up tobacco-prevention billboards, with 26 using the CDC/FDA selected ads and the remaining 13 states choosing to do their own. April 23rd coincides with the NATO summit, which may prohibit White House involvement, but we are hoping Secretary Shalala can do an event, perhaps in Boston.

Welfare -- Illegitimacy Bonus Rule: This week HHS published a final regulation defining how it will distribute \$100 million a year in bonuses to states that reduce the percentage of children born out of wedlock. Up to five states and three territories may qualify for bonuses of up to \$25 million each. This bonus was included in the 1996 welfare reform law. The statute makes clear that bonuses will go only to states that simultaneously reduce both out of wedlock births and abortions. Nationwide trends are moving in the right direction -- preliminary 1997 data show that the out-of-wedlock birth rate has declined for three years in a row after rising for 20 years, although the percentage of births to unmarried women, on which the bonus will be based, has remained at just over 32 percent in recent years after many years of increases. We will work with HHS to identify appropriate announcement possibilities once they know more about the outcome of the competition.

Welfare -- Legal Immigrants Benefits: This week, Sen. Moynihan and Rep. Levin introduced a bill to restore health, disability and nutrition benefits to certain legal immigrants. The bill includes our \$1.3 billion proposal to restore SSI and Medicaid to immigrants arriving after 1996 who become disabled, furnish food stamps to those in the U.S. by 1996 once they become elderly, and to provide states the option to provide Medicaid or CHIP to children and pregnant women who arrive after 1996. The Moynihan/Levin bills food stamp and SSI restorations are more expansive than ours (the bill does not contain any offsets) but its Medicaid/CHIP proposals are identical. We are currently completing the legislative language for our proposal and will begin seeking bipartisan sponsors shortly.

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May 8, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Legislative Update: Although Senator Lott vacillated somewhat in the press this week, it appears he still intends to bring the McCain bill to the Senate floor on May 18th. We hope to begin talks shortly to develop an agreed upon managers amendment as well as an amendment strategy for the floor. We have spent this week in internal meetings preparing for these negotiations in order to nail down our position and strategy on issues related to price, lookback penalties, smuggling, an antitrust exemption, preemption of local suits, environmental tobacco smoke, attorneys fees, and international tobacco control.

The Commerce Committee released their report this week, along with a revised bill that incorporated several of our proposed technical corrections. In response to their request for assistance in restructuring the bill so that it could operate effectively whether or not the industry consents, we met with Senator McCains staff and provided them with proposed revisions that separated out all the provisions requiring the consent of participating manufacturers -- as well as the benefits they are seeking, such as the liability cap -- into a single stand-alone title. The other titles would apply to all manufacturers, whether they consent or not, and include advertising restrictions originally included in the FDA rule but not the broader ones that raise constitutional difficulties (those would be put in the separate title). McCains staff appeared receptive to these changes, and they are considering including them in a managers amendment.

We also met with Senator Hatch to assess his interest in these proposed structural changes, hoping that they could give him a way to leave his mark on the McCain bill constructively. While he expressed some interest in the proposal, he also reiterated concerns he raised during the Judiciary Committee hearing on smuggling -- namely, that the McCain bill would result in increased smuggling and would bankrupt the companies.

Tobacco -- Scoring: Through staff conversations, OMB has learned that the Joint Tax Committee is going to score the price per pack increase in the McCain bill at \$2, instead of the \$1.10 estimated by Treasury. We attribute this difference to Joint Tax's more conservative assumptions about the amount of industry payments that will be passed through to price, smuggling and coverage of tobacco products other than cigarettes. We have asked OMB to draft a proposal which would ensure that as the volume of cigarette sales fall due to reduced smoking rates, the price would not rise accordingly.

Tobacco -- House Activity: Representatives Hansen, Meehan, and Waxman announced that they would introduce a bipartisan comprehensive tobacco legislation which would raise the price of cigarettes by \$1.50 over three years, reduce youth smoking by 80% over 10 years (compared to 60% in McCain), contain very strong company specific penalties (but no

industry-wide penalties), provide full FDA authority to regulate tobacco under the existing drug and device titles, and have strong protections against environmental smoke. The proposal would raise approximately \$500 billion over 25 years, with 10% of spending for public health and education programs, 35% for the states, and 55% for federal debt reduction. The proposal does not provide any assistance to farmers. Drs. Koop and Kessler endorsed the bill.

Health Care -- Medicare and Abortion Coverage: Recently, a provider sponsored organization (PSO), which is a member of the Catholic Health Association (CHA), was informed by a Health Care Financing Administration (HCFA) regional office that it could not participate in Medicare unless it agreed to provide abortion services for Medicare beneficiaries. Although a little known fact, Medicare does provide reimbursement for those limited occasions when a disabled Medicare beneficiary is pregnant and seeks an abortion. The CHA requested that we attempt to find an exception for PSOs that object to providing the service on religious/moral grounds. Senator Nickles is also placing great pressure on HHS to develop a formal position. He is reportedly drafting legislation that would apply the Hyde Amendment to Medicare if we conclude that Hyde does not have the statutory reach to apply to Medicare. (HHS initial review has concluded that Hyde does not apply, but we are having White House lawyers review this analysis.) Even if Hyde does not apply, we believe we may have found a way to respond to CHA's request. Specifically, PSOs that have "conscience clause" policies could be exempt from providing abortion services; beneficiaries in these plans could go to a physician that billed Medicare directly for the service. Unfortunately, Senator Nickles is not likely to accept this option, even if CHA does. He clearly sees this as an extremely attractive election year issue. Ironically, however, since the Hyde amendment has a rape or incest exception, our approach -- which would not require that these PSOs reimburse for any abortion -- is more responsive to and consistent with the CHA position. We have a working group from DPC, Council's office, OMB, and HHS reviewing legal, policy and strategic options. You will receive an options memo on this issue shortly.

Health Care -- Genetic Discrimination Update: Senator Jeffords, Chairman of the Senate Labor and Human Resources Committee, has indicated his intention to produce a bipartisan bill -- likely with Senator Dodd -- that prohibits insurers from accessing and inappropriately utilizing genetic coding information. This is consistent with your challenge to Congress to pass legislation to bar both insurers and employers to use genetic information in a discriminatory fashion. The Senator's announcement was as surprising as it is welcome; we will be sending Administration witnesses to testify at the Labor Committee's hearing on this subject within the next two weeks. While it will take work, we believe this Committee activity has every real chance of making a significant contribution toward passing this bill either as a free standing measure, as part of a patients bill of rights bill, or as part of a broader medical records/privacy initiative.

Child Care -- Democratic Working Group: House Democrats have formed a Child Care Working Group led by Congressman Fazio and have begun work on a child care bill that they plan to introduce in the next several weeks. We are meeting with the Members and staff next week to review their bill, but we expect it to include most of the elements of your proposal (including subsidies for families, tax credits for families and businesses, quality improvements, and after-school programs) as well as a tax credit to help parents who stay at home. We will continue to work with them and use the introduction of the bill to generate new momentum for child care legislation; however, it seems likely that the group intends to craft a comprehensive and expensive proposal that will give them an opportunity to champion child care throughout the Fall rather than a bill that has a chance of passage

during this legislative session.

Child Care -- Kids Count: We participated in a panel discussion and release of the Annie E. Casey Foundation's KIDS COUNT Databook, annual publication tracking the status of children in the United States. This year, the report highlights the need for safe and affordable child care, particularly for the 10 million children who grow up in low-income working families, and concludes that ensuring adequate child care is crucial to the success of welfare reform.

Welfare Reform -- Federal Hiring Initiative: The federal agencies continue to make progress on their commitments to hire welfare recipients. The total number of hires increased by 22 percent in the past month, from 3,688 in March to 4,494 in April. Treasury hired almost 400 people in the past month and has already hired more than double its commitment through the year 2000. DOD hired an additional 200 people in the past month.

Crime -- Uniform Crime Report: Next weekend (May 15-17), the FBI will release its preliminary estimate of the number of crimes reported to law enforcement in 1997. These figures indicate that crime is down 4% from the previous year -- and down for the 6th year in a row. A significant decline in the number of murders and robberies (9% each) helped fuel an overall drop of 5% in violent crime; property crime fell 4%. All regions of the country and cities of all sizes reported declines in the number of serious crimes.

Crime -- COPS: On Thursday, the COPS Office announced \$32.8 million in funding to hire 463 additional officers and deputies. The grants will go to 138 law enforcement agencies nationwide, bringing the total number of officers funded under the COPS Program to over 73,000.

Drugs -- Republican Plan: Following up on last week's "deployment ceremony," the Speaker's Task Force for A Drug-Free America declared this week "Drug-Free Schools and Campuses Week" and highlighted the following items: (1) a House-passed resolution expressing the sense of the House that Americans must remain committed to combat the sale and use of illegal drugs to children; (2) the drug-free student loans provision included in the Higher Education bill; and (3) legislation introduced by Representative Mica that authorizes a demonstration program for the voluntary drug testing of teens applying for driver's licenses, and an incentive grant program to combat drugged driving. As you know, in October of 1996 you signed a directive on this issue, and former Transportation Secretary Pena and Director McCaffrey jointly recommended the creation of a demonstration program for pre-licensure drug testing; however, in the FY 1998 transportation appropriations, Republican appropriators barred DOT from using its funds such an initiative. Since then, we have been working to identify alternative funding within the Justice Department for demonstrations in Arizona and Florida.

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May 15, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Legislative Update: On Monday, the Senate will begin consideration of the McCain bill. We have spent this week negotiating with Senators McCain and Hollings to develop an agreed upon managers amendment as well as an amendment strategy for the floor.

On Thursday, the Finance Committee marked up those sections of the McCain bill that are within its jurisdiction. The Committee adopted a Conrad amendment raising the per pack price from \$1.10 to \$1.50, adopted a Nickels amendment to remove the child care authorization language, and struck language from the Committee mark which would have devoted revenues raised under the bill to health care related tax relief.

Tobacco -- Scoring: On Thursday, the Joint Committee on Taxation released their score of the McCain bill, estimating a per pack price increase of \$1.89 in 2003 (adjusted for inflation), instead of \$1.10 estimated by Treasury (in 1998 dollars). The Joint Tax estimate, however, is only \$1.69 when viewed in terms of 1998 dollars. The differences in our analysis and Joint Tax are attributable to a number of technical assumptions based on the expected volume of tobacco product sales. We assume that wholesalers and retailers will not add an additional markup to the \$1.10 price increase, that states will not add new tobacco taxes (due to the large payments they will receive under the legislation), and that smuggling will be minimized through a system based on the current successful model for alcohol.

Tobacco -- House Activity: On Thursday, Representatives Hansen, Meehan, and Waxman introduced bipartisan comprehensive tobacco legislation which would raise the price of cigarettes by \$1.50 over three years, reduce youth smoking by 80% over 10 years (compared to 60% in McCain), contain very strong company specific penalties (but no industry-wide penalties), provide full FDA authority to regulate tobacco under the existing drug and device titles, and include strong protections against environmental smoke. The proposal would raise approximately \$500 billion over 25 years, with 10% of spending for public health and education programs, 35% for the states, and 55% for federal debt reduction. The proposal does not provide any assistance to farmers. The bill had 90 original cosponsors. 11 were Republican.

Health Care -- Breast Cancer Legislation: During the Senate Finance Committee mark up of the tobacco legislation, Senator DAmatos mastectomy amendment passed by a narrow 11 to 9 vote. This legislation requires health plans to allow women to stay in the hospital as long as is medically necessary following a mastectomy, to cover breast reconstruction, and to guarantee women a second opinion on breast cancer. It did not pass by an overwhelming

vote for a number of reasons. Some felt that tobacco legislation was an inappropriate vehicle for this legislation; some were concerned that this proposal just contains "body part mandates" rather than broader patient protections, such as assuring access to specialists, emergency care, and an external appeals process for patients to address grievances. Others argued that the DAMato legislation is designed to be a substitute for a more comprehensive patients bill of rights, such as the bill of rights recommended by your quality commission or the Dingell/Kennedy or Norwood legislation. While we generally support this legislation, we agree with the Democratic Leadership that it should be done in the context of the broader set of patient protections that you have been advocating. We do believe, however, that this issue will resonate with both the disability and the womens community. Therefore, we are tentatively scheduling an event with you to underscore the importance of the patients bill of rights to women and to unveil some type of report that underscores the need legislation.

Health Care -- Health Care Tax Deductions: The Senate Finance Committee also voted to reject Senator Roths proposal to dedicate a portion of the tobacco revenues to offset the cost of two health care tax deductions: a faster phase-in of the self-employed tax deduction (\$5.5 billion over five years) and a deduction for those who buy in the individual health insurance market (about \$12 billion over five years). The rationale for the Committees decision to reject these proposals mirrored our stated concerns. That the proposal was inappropriate in this context because it would undermine the potential to invest dollars from tobacco legislation in public health, research, and programs to benefit children. With regard to the proposal to allow deductibility for individual health insurance market, we underscored that such an approach is regressive, will not significantly increase the number of insured, could create an incentive for some employers to drop coverage, and is not advisable, particularly in the absence of broader reforms in the individual insurance market. Because there remains a real possibility that Republicans will insist on some type of tax proposal in the tobacco legislation, we have established a process to review options in this regard.

Elena should we delete this section? It was already briefly discussed in the first tobacco section.

Welfare Reform -- Vice President's Coalition Meeting: On May 19th the Vice President will hold the third meeting of the Welfare to Work Coalition to Sustain Success. The Coalition consists primarily of non-profit and faith-based organizations who are involved in helping welfare recipients succeed on the job through mentoring and other supports. This meeting will focus on connecting small businesses with the community-based organizations who can help them retain welfare recipients. The VP and SBA Administrator will facilitate a town-hall meeting in the OEOP, with 14 satellite sites around the country hosted by the SBA regional administrators and other federal partners. The panel will also include two Coalition members (such as the YMCA and Women's Missionary Union), at least one small business (possibly one of SBA's Welfare to Work award winners to be recognized as part of Small Business Week that begins on May 31st), and a former welfare recipient on the panel. Participants at each site will include representatives from small businesses, community-based organizations, and public agencies.

Welfare -- New Database Beginning to Find Parents Who Owe Child Support: Since it became operational in last October, the National Directory of New Hires, established by the welfare reform law, has identified 900,000 parents who owe child support. The database has information on new hires, as well as wage and unemployment insurance data for all workers. In all of the cases identified through the new database, states were unable to find the

absent parent using in-state data alone. Once these parents are found, states then follow up by using wage withholding to begin to collect the overdue payments. Database operations will greatly improve after October 1998, when HHS will have in place a national registry of child support orders, and will no longer have to rely on states to request information on individual child support orders.

Note: It would be good to get this item in this week, because HHS is testifying on the database before Shaw on Tuesday. (Its expected to be a friendly hearing.) HHS was planning to announce the 900,000 number below at the hearing, but theyll hold it if we want them to do so. Possible opportunities to announce the number are the signing statement for the child support felony bill or, if we hold off longer, a signing statement/ceremony for the child support incentives bill. (Maybe the number will be over 1 million by then.)

Note: USA had a story on this number on April 24, but the number reported then was 700,000 matches. This is more up to date.

Crime -- Police Week: This week is Police Week, dedicated to honoring law enforcement officers around the country. On Wednesday night, the Attorney General participated in the annual candlelight vigil held on the Mall; on Friday, the Vice President will speak at the Peace Officers' Memorial to commemorate officers slain in the line of duty. In 1997, 159 law enforcement officers were killed in the line of duty. This represents an increase of almost 40% from the number killed in 1996 (116). By the end of the week, we expect Congress to pass two bills that are strongly supported by law enforcement and the Administration. One establishes a grant program to help local law enforcement agencies purchase bulletproof vests for their officers; the other helps fund counseling services for dependents of slain officers.

Crime -- Law Enforcement Technology: Next Tuesday, the Vice President will announce a partnership between the Departments of Energy, Justice, and Treasury to provide for the transfer of key technologies from the National Laboratories to federal, state and local law enforcement to be used to fight crime, drugs, and terrorism. Examples of these technologies, which will be on display in the Indian Treaty Room, include: a miniaturized gas chromatograph -- the size of a calculator -- which can analyze forensic evidence at the crime scene; and the "team leader" multimedia system, which enables law enforcement to simultaneously collect and transfer crime scene data as well as communicate with other team members and their command post.

Crime -- Missing Children: Next Thursday, the Justice Department will release a guide developed to give family members the information and tools they need to work with law enforcement to find their missing child. The guide was written by parents who have experienced the trauma of a missing child (including Patty Wetterling and Colleen Nick), with the assistance of law enforcement and youth service professionals. National Missing and Exploited Children's Day is May 25.

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May 22, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Senate Update: On Monday, the Senate began consideration of the McCain bill. Members filed approximately 100 amendments and debate has proceeded at a slow pace. The following amendments were considered:

- *Faircloth amendment to impose a \$250 per hour cap on attorney fees.. Rejected.
- *Kennedy amendment to increase the price to \$1.50 per pack phased in over three years. Rejected: 58-40.
- *Ashcroft amendment to strike the \$1.10 per pack price increase. Rejected: 72-26.
- *Gregg-Leahy amendment to remove the \$8 billion liability cap and other liability protections. Adopted 61-37.
- *Gramm to eliminate the tax codes marriage penalty.
- *Durbin amendment to increase the company-specific penalty and reduce the industry wide-penalty.
- *Amendment to strike Senator Fords LEAF Act (and keep the Lugar farm provisions.)

Given the slow speed at which they are proceeding, it is currently unclear whether the Senate can wrap the bill up before the Memorial Day recess, or whether debate will continue after they reconvene in June. [THIS IS SUMMARY AS OF 4:00PM THURS; WILL NEED TO BE UPDATED.]

Tobacco -- MMWR Study: The Centers for Disease Control released on Thursday new statistics on teenage smoking patterns and addiction. The data found that: (1) teenagers find it difficult to quit smoking -- 86 percent of teens who smoke daily and try to quit are unsuccessful; (2) teenagers underestimate the addictiveness of nicotine -- 75 percent of teenage daily smokers who expect to quit are still smoking five years later; (3) casual smokers become hooked -- 42 percent of young people who smoke as few as three cigarettes per month go on to become regular smokers. Currently, 36.4 percent of high school students smoke.

Immigration -- H-1B visas: Last Wednesday, the House Judiciary Committee approved by a vote of 23-4 a bill, authored by Rep. Lamar Smith, increasing the cap on H-1B visas while making substantial reforms to protect qualified U.S. workers from being displaced or passed over in favor of temporary foreign workers to the program. Unfortunately, the Smith bill does not contain a training component. Prior to the mark-up, Secretaries Daley and Herman and the Attorney General sent a letter to Chairman Hyde indicating that the Administration would support the bill if it were modified to include a meaningful training provision and a more modest increase in the cap.

Last week, the Senate passed a similar bill that temporarily increases the cap and

authorizes money for increased training through Title IV of the JTPA, but does not include any meaningful reform of the H-1B program. OMB sent a Statement of Administration Position (SAP) that related if the final bill did not include meaningful reform of the H-1B program, the Secretary of Labor would recommend a veto.

Immigration -- INS Reform: Last Wednesday, Rep. Rogers introduced an INS restructuring bill that generally tracks the recommendations of the United States Commission on Immigration Reform. The bill was referred to the Judiciary Committee. INS has prepared draft legislation that would implement our restructuring plan, which we plan to have introduced soon after the Memorial Day break (possibly by Rep. Watt or Sen. Kennedy). Sen. Abraham has announced his intention to hold hearings starting in June on INS restructuring, though he has stated it is unlikely that a restructuring plan would be in place by the end of this Congress.

Crime -- COPS Event: Next Friday, we have an event tentatively scheduled to: 1) celebrate the milestone of the 75,000th cop funded under your COPS initiative; and 2) launch a new pilot project to target COPS funding toward distressed neighborhoods. The first phase of the pilot will fund more than 500 officers; the COPS office is currently finalizing the list of participating cities which they expect will include 10 large and 10 small cities across the country.

Crime -- Police bills: Last Friday, the Congress passed two bills strongly supported by law enforcement and the Administration. One bill creates a grant program to help local law enforcement agencies purchase additional bulletproof vests; the other helps fund counseling services for dependents of slain officers. We are working with Rahm Emanuel and Legislative Affairs to schedule a signing ceremony for these bills as part of the COPS event, or at some later date.

Drunk Driving -- .08 BAC: Last weekend, conferees to the highway bill agreed to include a new \$500 million incentive grant program for states with .08 BAC laws instead of imposing sanctions on states that fail to pass .08 laws. MADD and others such as Senator Lautenberg and Representative Lowey were extremely disappointed with the outcome on the .08 issue. Conferees and committee staff are pushing hard to complete their work to allow the Congress to vote on the final bill prior to the Memorial Day recess.

Health Care -- Patients Bill of Rights Update: There were reports this week that Speaker Gingrich is trying to stop any patients bill of rights legislation from moving this year by stalling and diluting the efforts of his Republican task force led by Rep. Hastert. We have learned that Rep. Norwood shares our frustration and is quietly talking to Rep. Dingell about a possible discharge petition to bypass the House Republican Task Force and the Committees of Jurisdiction. We are extremely encouraged by these discussions and are pursuing this and other strategies to move this legislation. To increase momentum on this issue, you are scheduled to participate in an event next week to release a state-by-state analysis to illustrate how many Americans are not covered by state patient protection laws, even where they exist (125 million). This event will also highlight why the patients protections are so important to women -- women are larger consumers of health care than men and reports now confirm that complaints made by women are seen as less urgent than men and consequently, women are less likely to be referred to specialists. Nancy Dickey, the newly-appointed first women chair of the American Medical Association, is also scheduled to participate in this event.

Campaign Finance Reform -- Free TV Petition: Today, the Federal Communications Commission (FCC) will place into circulation a Notice of Inquiry (NOI), opening a proceeding on free

and discounted air time for candidates. The NOI is expected to pass within the month at which point it will become open for public comment. The FCC will conclude the NOI and submit a report to Congress by the end of the year. The recommendations of The President's Advisory Committee On the Public Interest Obligations of Digital Broadcasters will be included in the FCC's final report to Congress.

Education -- Bilingual Education: The House Subcommittee on Children, Youth and Families reported out a bill offered by Rep. Riggs that would replace the current bilingual and immigrant education programs with a block grant to states to help LEP students master English within two years. States would be required to cut off funds to any local program that does not meet the 2-year deadline for all students, and would be prohibited from exempting any students from state testing programs in English if the student has been in school for two years. Funds under this bill would be less effectively targeted to high need communities than in the current program. The bill also ends funding for teacher training. In addition, this bill would void existing compliance agreements between the Education Departments Office of Civil Rights and local school districts regarding the provision of services to LEP students, and would prohibit the Department of Education from entering into additional agreements until it proposes, and Congress ratifies, guidelines and compliance standards for Title VI. DPC staff have been working closely with other WH offices and the Education Department to develop a strategy for addressing the Riggs bill, and to prepare alternative legislation that could be introduced if appropriate, which fully reflects the principles for strengthening programs for LEP students you approved along with the decision to oppose the Unz Initiative. We will send you a more detailed status report on this issue this coming week.

Note to Elena: You may recall that we have been talking about linking any veto threat to the Riggs bill to the introduction of an alternative bill reflecting our anti-Unz principles--despite the wishes of the Hispanic Caucus that we threaten to veto but not propose an alternative. The bill that was marked up today is a new Riggs bill, including civil rights and testing provisions described above that were not included in the draft we had seen. I believe that the new Riggs bill may change our calculations about linking the veto threat and alternative legislation, because the civil rights provisions seem to be so objectionable on their own. I've written the paragraph above to give us the room to consider this possibility, and hope that your final version will do the same.

Education -- Class Size: Congressional Democrats and the NEA, AFT and other education groups are upset that the agreement we reached with NGA on spending the state share of tobacco funds did not include your class size reduction proposal, and some fault us for walking away from this initiative. In response, we met with Sen. Patty Murray, the prime Senate sponsor, and agreed to look for ways to help keep this issue alive, including looking for offsets that would enable her to bring this to the floor for debate. Even though the chances of enactment are slim, our ability to mobilize the education groups behind our overall education agenda as we head into the Fall depends in part on continuing to press for funding for your class size proposal.

Education -- New Orleans Schools: Several weeks ago you expressed concern about a controversy involving the Education Departments Office of Civil Rights and the New Orleans schools, regarding the use of IQ tests for admission to the Benjamin Franklin High School, a selective magnet school. OCR has been working with the local school board to resolve a complaint about the use of IQ test cutoff score as an admissions requirement regardless of grades or other indicators of academic performance. The local school board has already agreed to halt that practice, and to develop a new approach that would still maintain high

admissions standards. The immediate controversy revolved around a decision by the local school board to rescind admission decisions that had already been announced for the next school year. OCR has told the board not to rescind its admissions decisions for the coming year, but instead to focus on developing new admissions criteria for the following school year. OCR understands the importance of working with New Orleans to resolve this in a fashion that enables the school to maintain high standards, and that does not undermine the Administrations commitment to high standards and testing.

Welfare Reform -- Welfare-to-Work Celebration: A series of activities are scheduled for May 27th to celebrate the success of the welfare-to-work effort, with a particular spotlight on the Welfare-to-Work Partnership and on the importance of job retention. As part of the celebration, you will join a small working meeting of CEOs from the Board of the Partnership and key Cabinet officials in the Roosevelt Room, where you will have a chance to congratulate these businesses for their extraordinary success in both hiring and retaining welfare recipients, and urge them to sustain their commitment. Over the last year, the Partnership has grown from 100 businesses to 5,000 today, and their business partners have hired 135,000 welfare recipients. In a recent survey of these businesses by the Wirthlin group, 75% found welfare recipients to be good, productive employees. United Airlines and others have found that the people hired off welfare have higher retention than other new employees.

Following the working meeting is an event in the East Room where you will be joined on the program by the VP, Eli Segal, Jerry Greenwald from United, and a welfare-to-work success story. At the event, you will announce the first round of Welfare-to-Work Competitive grants and the latest welfare caseload reductions, and you will challenge the Partnership to double the number of people hired by their business partners in the coming year. In the front row will be the success stories you met in Wichita and St. Louis, along with new success stories from United, UPS, and other companies. Other invitees include a group of Welfare-to-Work Competitive grant winners (from local governments, PICs, and non-profit organizations). In conjunction with the event, the Partnership will release a report called the Road to Retention, which profiles the retention successes of 16 large and small businesses. The Partnership will also release welfare-to-work PSAs.

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May 29, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Senate Update: When the Senate returns from recess, it is scheduled to return to the McCain legislation and resume consideration of an amendment by Sen. Durbin to increase look back penalties and an amendment by Sen. Gramm to devote most of the bills revenues to a tax cut for married couples with income of less than \$50,000 per year (advertised as an elimination of the marriage penalty). The Gramm amendment would provide a significant tax cut to low- and middle- income people, but would require a 78 percent cut in spending for public health, medical research, farmers, and the states. We are still deciding whether to develop and/or support a smaller tax cut proposal. Such a proposal would take the pressure off Democrats to vote for the Gramm amendment and if passed, would enhance the attractiveness of the bill to Republicans; inevitably, however, the proposal would diminish the funds available for spending on health research and public health programs.

Tobacco -- Tobacco Farmers: This week the Senate may begin consideration of those provisions of the tobacco bill relating to tobacco farmers. The legislation currently includes a provision drafted by Sen. Lugar that would buy-out all farmers from the quota program within 3 years at a cost of \$18 billion, eliminating the government program and creating a free market in tobacco in its place. The legislation also includes Sen. Fords measure, which the Administration supports, to preserve the program and give farmers the option of being bought out, at a total cost of \$28.5 billion spread over 25 years. USDA calculates that the Lugar approach would lead to dramatic increases in the amount of tobacco grown in the U.S., and a reduction in the cost of tobacco for companies. Last week, the Washington Post ran an article that included USDAs calculation that tobacco companies will save \$800 million a year or \$20 billion over the next 25 years if Lugar becomes law. In addition, OMB estimates that the Lugar provision would necessitate a 69% cut in the research and other public health programs called for in the McCain legislation. Armed with these numbers, public health groups like the Campaign for Tobacco-Free Kids have lobbied the Senate for the Ford measure. Procedurally, the next move is for both Sens. Ford and Lugar to try and strike the others measure from the bill. Along with USDA, we will continue to work with Sens. Ford, Robb, and Hollings to build support for their farmers provision and simultaneously seek to fashion a compromise that might garner significant Republican votes.

Welfare Reform -- State Reinvestment of TANF Savings: During your meeting with Welfare-to-Work Partnership Board members last week you stressed the importance of states reinvesting their welfare savings in child care, transportation and training. We will work with HHS to analyze state expenditure data for TANF and child care. Unfortunately, this data is not as timely as we would like. In the meantime, there is some encouraging information in the NGA Fiscal Survey of States released on May 27th. The report indicates that States are shifting the spending of their welfare funds from cash to work-related

supports. Comparing expenditures in 1996 with planned spending for 1998, the percent of welfare spending on cash assistance dropped 27 percent (roughly comparable with caseload declines), while spending on child care increased by 55 percent and spending on work activities increased 34 percent. Total welfare spending declined by 9 percent, but given caseload reductions, this actually represents increased spending per person.

Education -- Gov. Carpers Testing Program: Prior to your speech to the Delaware State Legislature, Gov. Carper related to you that Delaware's testing program tests students against both state and national standards, by combining test items aligned with state standards with items from NAEP. He reiterated this point in a recent letter following up your trip. We have followed up with Gov. Carpers staff to get more information about the state testing program. While it is true that Delaware does have a "hybrid" testing program, it is more accurate to say that it tests students against national norms, rather than national standards. Approximately 25% of the items on the Delaware test are taken from the SAT 9 (the Stanford Achievement Test), and this is sufficient to tell how an individual student ranks compared to other students nationwide. It does not, however, provide information on student performance relative to national standards, such as those in NAEP. You may recall that the National Academy of Sciences is studying the feasibility of statistically linking state tests with NAEP, so that state tests could in fact test students against national standards. Preliminary indications are that the NAS report, due July 1, will indicate that few state testing programs will meet the technical requirements for this kind of linking.

Education -- GAO report on national testing: Next week the GAO will issue a report, requested by Rep. Goodling, on the relationship between the Education Department and NAGB in developing the tests, and the procedures for awarding contracts for test development. The report affirms that the Education Department has honored the requirements of the law which placed control of test development with NAGB. In addition, GAO stated it had no concerns with regard to contracting procedures. While we do not expect the report will alter Rep. Goodling's position, it does negate one set of arguments he had planned to utilize.

Education -- Adult Education: You recently asked what the Administration had accomplished with respect to Adult Education, literacy training and the GED, and whether we need to take additional steps. The Senate and House Workforce bills, which are expected to be passed by July 1, provide for the reauthorization of Adult Education programs. Your FY 1999 budget requests a \$16 million increase in adult education for state grants, which funds local literacy, GED and adult education programs. It also includes a request for funds to develop model English as a second language programs for adults, since 40% of adult education participants are in such programs. The Education Department has also funded a PBS series, "Crossroads Cafe" that is a "Sesame Street" for adults learning English. The program is now shown in 35 states (and 50 countries) and will be expanded shortly. DPC will work with NEC and the Education Department to explore how we can best highlight the efforts we already have underway, and what additional steps would be appropriate.

Health Care -- Assisted Suicide Update: Next week we plan on releasing the Justice Department interpretation that concludes that the Drug Enforcement Agency (DEA) has no legal authority to prohibit physicians from prescribing drugs with the intention of hastening death. As you will recall, Senator Hatch and Congressman Hyde had requested that the DEA/Justice determine if there was any Federal authority to address Oregon's assisted suicide law, which permits physicians to provide medications for the purposes of aiding in an assisted suicide. Consistent with your instructions, we will release this interpretation, but will also make clear that you maintain your longstanding position of

opposition to assisted suicide and remain open to workable legislative approaches that address this issue. We expect that Senator Hatch and Congressman Hyde will respond by introducing legislation that provides DEA the explicit authority to press charges against physicians who assist in suicide. As you know, we believe that a DEA approach is ill-advised. We will carefully roll-out the announcement of your position on this issue with both Members and interested organizations, such as the Catholic Health Association and the American Medical Association and will keep you advised of legislative developments.

Health Care -- HCFA Letter to Ravenswood Hospital in Chicago: Last week, 15 year old Christopher Sercye died of gunshot wounds just 35 feet from Ravenswood Hospital in Chicago, where friends had brought the young man for help. Hospital workers did not leave their posts and apparently would not even give police officers a stretcher to help the young man. In response, the Health Care Financing Administration sent out a letter to the President of Ravenswood Hospital on Friday stating that the hospital will lose its Medicare funding on June 19, 1998, unless the facility takes steps to ensure that the events that led to the tragic death of Christopher Sercye will not be repeated. You released a statement to highlight the Administrations strong action. In addition, your statement urges all hospitals to follow the recently released guidance by the American Hospital Association that advise hospitals to change any policies that prevent taking appropriate actions in a medical emergency.

Health Care -- Medicare Commission: Next Monday, the Medicare Commission will be holding another meeting to respond to its Members concerns that they have not had enough time to have intensive discussions about the major issues of benefits, costs, eligibility, administration, and financing. Senator Breaux, troubled about the perception of the Commissions irrelevance, has asked Sens. Lott and Daschle to open up the meeting with words of encouragement on the charge and the potential of this Commission. The Democrats, including our Commission members, are becoming increasingly nervous that the Commissions staff and Congressman Thomas are focusing much too heavily on highly speculative, numbers-driven policy and much too little time on how best to reform the Medicare program to respond to the delivery challenges it faces in the next century. We expect they will urge the Commission to dedicate as much time to program design as to program financing. Our members are increasingly seeking answers from us as to how comfortable we are in allowing them to engage in serious discussions about controversial policy reforms on benefits (including requiring higher cost sharing and more benefits like prescription drug coverage), eligibility age changes, income-related means-testing, and the possibility of putting new revenues on the table. In general, we believe that it would be constructive for the Commission to engage in general discussions on all of these issues with the exception of new revenues. We believe our members should only address the revenue issue only if it is determined that traditional saving approaches alone will be insufficient to satisfactorily address the programs financing challenges. We are working closely with Gene Sperling and the NEC to assure we have a coordinated message.

Health Care -- Long Term Care: Aging and disability advocates are increasingly pressing us to address the issues surrounding long-term care. The demographic changes in the population make clear that, in the absence of major new breakthroughs in cures and treatments, there will be an extraordinary increase in demand for services targeted to the nations aging and disability population. Because of cost and other limitations, both the public and private sectors have been slow to develop responses to this challenge. Although comprehensive solutions are politically and financially unrealistic, we believe that we should begin a series of targeted policy options to begin to address this problem. These could include, requiring FEHBP to offer (but not pay for) private long-term care policies,

educating Medicare beneficiaries that Medicare does not cover long term care and advising them of other options, developing policy options that provide more flexibility to States to provide home and community-based personal care options for Medicaid elderly and disabled eligibles, and developing possible tax incentive approaches that could potentially increase the purchase of private long-term care policies. We believe that you may want to take steps in this area relatively soon and capture at least part of an issue that has extraordinary political and policy dimensions.

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June 11, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Senate Update: The Senate passed two amendments to the McCain bill this week. The first, approved by a 52-46 vote, is a Craig-Coverdell amendment which authorizes about \$2 billion per year for anti-drug efforts, creating another competitor for the diminishing pool of public health dollars. The amendment also includes a permanent prohibition on the use of federal monies for needle exchange and a program to allow education vouchers to students who have been the victims of school violence. A Democratic alternative to the Craig-Coverdell amendment, which spent less money and did not contain the permanent needle exchange ban or voucher provision, was defeated by a vote of 53-45.

The Senate also passed by a vote of 50-48 the Gramm tax-cut amendment. The Gramm amendment costs \$16 billion over the first four years, an additional \$30 billion in the next five years, and one-third of the funding under the bill after that. The amendment provides all couples with annual incomes below \$50,000 a new tax deduction of \$825 this year, rising to \$3,300 in 2008, and would provide full deductibility of health insurance for the self-employed. The Senate rejected a less costly substitute offered by Senator Daschle by a vote of 55-43.

As a result of these votes, key groups have expressed concern over the diminishing dollars available for other purposes under the legislation. The Governors have drafted a letter objecting to the state financing section of the bill because the funding level has dropped below the \$196.5 billion over 25 years originally contained in the bill to settle state suits (the same level contained in the June 20, 1997 settlement agreement with the Attorneys General). Public health groups such as the Campaign for Tobacco Free Kids, the American Cancer Society, and the American Heart Association, are concerned that funding will not be available for public health programs. Secretary Shalala, Erskine, and we met with them on Friday and explained that the bill would not move through the Senate without funding for tax cuts and anti-drug provisions, and have urged them to work hard over the next few days to achieve final passage.

Key amendments are still expected on hot-button issues such as attorneys fees, resolving the disputed proposal on farmers, as well as two Republican substitute bills. We are hopeful that the Senate will move on to final passage by the end of the week.

On Monday, you will be speaking to 200 high school Presidential scholars in the East Room, where you will have an opportunity to urge swift passage of the tobacco legislation.

Education -- National Testing: There are several new reports which support our efforts on national testing. First, GAO has confirmed in a letter to Goodling and Ashcroft, that the

Education Department already has sufficient authority to develop and conduct national tests, and does not require additional Congressional authorization. Second, on June 12 the National Academy of Sciences (NAS) will release an interim report on the Goodling-proposed study, required by the compromise legislation last fall, examining the feasibility of statistically linking scores from existing commercial and state tests to each other and to NAEP. The NAS has concluded that it is not technically feasible to compare student scores across different tests to each other or to the NAEP standards. This conclusion completely undermines Goodling's argument that existing tests could be used to accomplish the purpose of the national test. While both of these reports bolster the case for our testing initiative, they are not likely to dampen Goodling and Ashcroft's opposition. Earlier this week, they received assurances from Gingrich and Lott that an anti-testing rider would be added again to the Labor-HHS-Education Appropriations bill.

Crime -- Kids and Guns in Schools: On June 18, the National Parents' Resource Institute for Drug Education (PRIDE) will release their annual survey on teen drug use and violence for the 1997-98 school year. Over 154,000 students grades 6-12 were interviewed for the survey. While we have not yet seen the data on illicit drug use by teens, PRIDE has shared some of their findings with us on school violence. One key finding is that the percentage of students who reported carrying a gun to school decreased by over a third since the 1994-94 school year -- from 6% to 3.8% (3.8% represents nearly 1 million students). However, of those students who brought a gun to school, almost half did so 6 or more times; over half threatened to harm a teacher; and nearly two-thirds threatened to harm another student. Moreover, monthly drug use was very high for students carrying guns: 30% used cocaine; 32% used stimulants such as methamphetamine; and 31% used hallucinogens. In addition, the survey reaffirms the effectiveness of involving kids in after school programs and school activities. Students who did not bring guns to school were 53% more likely to be involved in after school programs and 34% more likely to be active in school activities such as band and sports than gun-carrying students.

Child Care -- House Legislation: On June 9, The First Lady and Secretary Shalala joined House Democrats as they unveiled a comprehensive child care bill that includes all the pieces of your child care initiative, as well as other proposals, such as a stay-at-home tax credit. The over \$20 billion package will be sponsored by more than 100 Representatives. The proposal does not specify funding sources.

Health Care -- Patients Bill of Rights: On Wednesday, Larry Stein, Chuck Brain, and Chris Jennings met with Congressman Dingell to discuss the patients bill of rights. He informed us that he wants to work closely with the Administration should any serious discussions commence between Congressman Norwood and himself to develop a unified bill to be the vehicle for a discharge position. For the moment, Mr. Dingell believes (and Mr. Norwood and we agree) that he should stay strong on his state-court liability enforcement provisions and take the position that a "right is not a right without a remedy." The patients bill of rights advocates should be able to maintain their strong position on enforcement as long as CBO does not come out with a high estimate of the costs associated with this provision, which could be reported as early as next week. CBO staff are now informally advising us that they are getting more pressure on these costs estimates than was the case during the worst days of the Health Security Act. They are also telling us that the Republican leadership is insisting on reviewing their estimates before they are released.

Health Care -- Vice Presidents Announcement of the Quality Forum: Next Wednesday, the Vice President is scheduled to unveil a planning committee to establish "a quality forum", a

private sector entity designed to develop a plan to ensure the widespread availability of comparative information to hold health plans more accountable in providing high quality care. The "forum" was included in the final recommendations of the Quality Commission and you asked the Vice President to launch this process. In conjunction with this announcement, we are releasing a report that highlights the many shortcomings of the current system. For example, one study estimates that preventable errors in hospital care leads to 180,000 needless deaths each year, and 23 percent of tympanostomy tube insertions for children with ear infections were found to be inappropriate. Developing consistent information has great potential to improve health outcomes, increase confidence in the health care system, and save costs. We will cast this as the next logical step beyond the patients bill of rights to improve and monitor rapid changes in the health care delivery system.

Health Care -- FDA Commissioner: Should the tobacco legislation be adopted by the Senate early next week, we hope to announce the nomination of the new FDA commissioner --Jane Henney. Preliminary, informal calls have elicited neither major objections nor overwhelming support for this nomination. While Henney should be confirmed on her merits, this confirmation may be a challenge, particularly if Republicans portray her as a Kennedy choice and a David Kessler protg. One positive development is that Senator Domenici has agreed to accompany her on courtesy visits to Republican members of the Senate Labor Committee.

Health Care -- False Claims Act and Fraud and Abuse: Senator Bond and Senator Hollings are including in appropriations legislation language to water down the False Claims Act (FCA). Their action is in response to the hospital industrys criticisms that the Justice Department has enforced this Act far too aggressively. While there are some legitimate concerns related to enforcement, the Department is addressing these concerns through administrative actions. OMB, HHS, and DPC feel strongly that undermining the enforcement provisions of the FCA would be extremely counterproductive to our anti-fraud enforcement activities. We recently authorized a Justice Department letter recommending a Presidential veto, which received strong support from a Washington Post editorial. This may be an issue that we should push back extremely hard on to illustrate our strong commitment to fight fraud and abuse, the issue that most Americans--particularly seniors--believe is one of the primary contributors to an escalation of health care costs.

Housing/Welfare Reform -- Welfare-to-Work Housing Vouchers: On Tuesday, the Senate VA, HUD Appropriations Subcommittee provided \$40 million for new incremental "self-sufficiency" housing vouchers targeted for people moving from welfare-to-work. The demonstration program would provide grants to seven sites -- New York City, Los Angeles, Cleveland, Miami-Dade, Anchorage, Charlotte, and Prince Georges County. While providing substantially less vouchers than the Administrations request -- 7,000 instead of 50,000 -- this is an important victory for the initiative. We hopeful that the House Subcommittee will fund more vouchers in the Senate, since Chairman Lewis has indicated interest in this program.

Welfare Reform -- Portland Shows Strong Evaluation Results: HHS is preparing to release an evaluation of Portland, Oregon's welfare reform program showing impacts on employment, earnings, and reduced welfare expenditures that are among the strongest for a large-scale mandatory program, comparable to those of the Riverside program. After two years, participants had 35 percent higher earnings, 11 percent higher employment levels, and received 17 percent lower welfare payments than those in the control group. These gains were sustained for two years and are expected to persist into the third year. Even in this high quality program, 41 percent of the participants were receiving welfare after two years

although this compares favorably with 53 percent for the control group. The study, by MDRC, tracked over 5,500 recipients from 1993 through mid-1996 and is part of HHS' seven site national evaluation of welfare-to-work strategies that began under the JOBS program.

Portland's program had a strong employment focus, with a particular emphasis on job quality. Compared to some other programs that emphasize taking any job, Portland participants were encouraged to look for and take "good jobs" -- full time, paying above the minimum wage, with benefits and potential for advancement. Follow-up results show that participants were more likely to be working in full-time jobs, at higher earnings and with employer-provided health benefits than those in the control group. While the program emphasized job search and job placement, a significant number of participants also participated in short-term education and training. The program had strong positive impacts both for those with few barriers to employment and those considered "harder to place". Participation in the program was required, and 21 percent of participants were sanctioned for failure to comply (in the mid-range of sanction rates in other programs). Families with children older than one were required to participate (compared to age 6 in the Riverside demonstration) and staff emphasized child care arrangements in their case management. Not surprisingly, the program had higher child care usage and costs than other programs, but this did not result in higher total program costs.

Welfare Reform -- New Jersey Family Cap Study: Secretary Shalala has sent you a memo on the New Jersey family cap policy, providing helpful background information regarding the Rutgers University evaluation that received considerable press attention last week. The press reports focused on evaluation findings that the family cap policy resulted in a "small but non-trivial" effect on abortion rates (an additional 240 abortions per year over what would be expected based on population trends in NJ). Both the state and HHS have pointed out serious methodological concerns with the Rutgers study and believe it is too early to draw conclusions about the family cap policy's impact on abortions. The report will be revised, but it is likely that researchers and interest groups of various kinds will continue to debate the implications of future research findings and of the policy itself.

New Jersey was the first state to receive a waiver, under the previous Administration, to implement a family cap policy. We granted waivers to 14 more states to test the policy. The federal welfare reform law left it up to states to decide whether to implement a family cap, and a total of 22 states have now adopted such a policy.

Welfare Reform -- Assisting the Disabled Return to Work: Last week, the House passed a bill sponsored by Reps. Bunning and Kennelly to implement an Administration initiative to move people on the SSDI and SSI rolls into the workforce by using a "pay for performance" approach. Currently, SSDI and SSI beneficiaries get rehabilitation services through state vocational rehabilitation agencies, which are reimbursed for their costs and have a mixed record of success. Under this bill, SSDI and SSI beneficiaries could choose their own public or private rehabilitation providers. Providers who successfully assist beneficiaries in leaving the rolls and returning to work would be paid a percentage of the disability benefits saved. These payments would continue only as long as the person remained off the rolls, up to a maximum of five years. Because providers would be rewarded for results rather than for their costs, this should encourage providers to have a continuing interest in their clients' long term success.

The bills fate in the Senate is uncertain. Senators Jeffords and Kennedy dont want to move it unless it is paired with their legislation to extend Medicare and Medicaid benefits to

those leaving SSDI or SSI. We have a number of problems with their initial proposal, including its complexity, its partial Medicaid benefit package, its cost to the Medicare trust fund, and its overall cost of \$1 billion per year, and are working to develop alternatives to the Jeffords-Kennedy approach.

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June 19, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Health Care -- Gores Family Conference: Next week, the Gores will be hosting their annual family conference on the subject of health. You and the Vice President will be announcing a new Executive Directive on childrens outreach and a multi-faceted national health initiative for older Americans, which includes: new preventive benefits for Medicare beneficiaries; a national Internet site for Medicare beneficiaries; and a new nationwide public/private Medicare council with over 80 organizations to ensure older Americans have the information they need to select health plans and to encourage prevention and wellness. To highlight the new Medicare preventive benefits, the First Lady will also announce a new public service announcement on osteoporosis, featuring her and Mrs. Gore. You will also renew your call to pass a patients bill of rights and reiterate your commitment to continue to push Congress to pass comprehensive, anti-tobacco legislation.

Drugs -- Drug Courts: In response to your interest in drug courts, we are working with Rahm Emanuel on preparing to time the release of Justice Department drug court grants for an event the week of July 6. Approximately 150 jurisdictions will receive \$27 million in grants to help plan, implement, enhance, or evaluate drug courts. Some of the cities receiving grants include San Francisco, Omaha, Little Rock, Washington, D.C., and Atlanta. The drug court grants could be announced at the event to launch the national roll out of the youth anti-drug media campaign tentatively scheduled for July 9.

Drugs -- PRIDE Survey: On Thursday, the National Parents' Resource Institute for Drug Education (PRIDE) released the findings of its survey on teen drug use for the 1997-98 school year. The annual PRIDE report is a survey of 154,350 students grades 6-12. Overall, drug, alcohol, and tobacco use by teens dropped -- the first across-the-board declines since the 1990-91 school year. The key exception to the declines were students in the 12th grade, who reported slight increases in their use of cigarettes, cocaine, uppers, and downers. However, for the first time in the 11 years of the PRIDE survey, cigarette use by junior high students fell (from 32% in 1996-97 to 29% in 1997-98). Marijuana use among both junior and senior high students also fell from last year's levels (from 15% to 13%, and from 36% to 33%, respectively).

Drugs -- Pulse Check: On June 25, ONDCP will release Pulse Check, its biannual report on the use and distribution of illicit drugs in 30 cities. The information contained in Pulse Check is gathered from ethnographers, law enforcement officials, and drug treatment providers. Some of the report's key findings include: (1) methamphetamine has continued its spread eastward and is now considered an emerging drug in Baltimore, and Columbia, MD; (2) heroin use is stable or rising, with young users who snort or smoke the drug increasing

across the country; (3) crack is failing to attract new users, although powder cocaine use is rising among the affluent in a few areas; and (4) marijuana use is widespread, crossing economic and social groups. Director McCaffrey is planning to unveil Pulse Check with DEA Administrator Tom Constantine and NIDA Director Alan Leshner.

Crime -- Modified Assault Weapons: This week in the Senate Treasury-Postal FY 99 appropriations markup, we successfully fought off an attempt to undermine the Administration's recent decision to bar the importation modified assault weapons. Opponents of the Administration's decision had previously attempted to offer an amendment -- which was later withdrawn -- to grandfather more than a hundred thousand of these weapons into the country. To prevent such a broad-based amendment from passing, the Administration helped craft an amendment that passed to reimburse importers for a limited number firearms that were already in or en route to bonded warehouses (roughly 2,000-3,000 weapons). The weapons will then be destroyed.

Crime -- Drunk Driving/Zero Tolerance: As you know, the zero tolerance for underage drinking and driving provision you signed into law in 1995 required states to adopt this tough standard by October 1, 1998. On June 29, South Carolina will become the 50th state to enact a zero tolerance law. We would note, however, that Delaware's zero tolerance law does not fully comply with the federal standard and needs to be amended.

Education -- Teacher Education: Sen. Bingaman has proposed an amendment to the Higher Education Bill to be taken up by the Senate next week, that would impose new accountability requirements on teacher education programs. The bill would require teacher education programs to publish the pass rate for students on state teacher certification tests and would ultimately cut off student financial aid to students in programs with less than a 70% pass rate. The amendment has the strong support of the NEA, is opposed by the higher education community, and by Sens. Jeffords, Kennedy, Coats and Dodd. We have been working with Bingaman and Kennedy to try to find an approach that retains the strong accountability emphasis without penalizing students for the low quality of their program.

Education -- Charter Schools: The Senate Human Resources Committee will mark-up a bill to expand the charter schools program when the Senate returns from the July 4th recess. The House passed a similar bipartisan bill last summer, which you supported. We are working with Sen. Kennedy to bolster his support for this bill, and to ensure that it provides incentives both for the more rapid expansion of charter schools and for strong accountability measures.

Welfare Reform -- U.S. Conference of Mayors Report: At its meeting in Reno on Friday, the USCM is releasing a report called "The Welfare Challenge Facing America's Cities." The report presents the results of a 125-city survey of mayor's views on welfare reform. The tone of the report is more positive than the report they released last June. They take a pragmatic view: while many mayors are concerned about the impact of welfare reform, they are working hard to facilitate the transition from welfare to work for their residents. They see some cause for optimism after the first 18 months, but also see the challenge of creating enough jobs and connecting people to those jobs. They cite concerns about adequate child care, transportation, skills training, and affordable housing near employment.

The report also estimates low-skills job gaps in many urban counties, based on projections

by Regional Financial Associates, an economic consulting firm. RFA compared the number of low-skilled job seekers with the projected growth in low-skill jobs over the next five years, and concluded that there could be two job seekers for every low-skilled job. Specifically, the number of welfare recipients needing jobs over this period could exceed the number of jobs available by 353,000.

Projecting job gaps is difficult, and it appears that this study, like most similar studies, ignores the fact that some welfare recipients are already working and that they can take advantage of turnover in the labor market--not just new jobs. While the magnitude of the gap is hard to validate, the study does underscore important regional variations. In areas such as Fort Worth, Las Vegas, Little Rock, Miami, Phoenix, and San Francisco, projected job growth exceeds the expected number of job seekers; in areas including Detroit, Providence, Newark and Cleveland, the projected ratio of low skill jobs seekers to jobs is at least 10 to 1.

Nevertheless, the implication is that we need to work hard to ensure that welfare recipients can access employment opportunities created by our growing economy. We are already spurring economic development in urban areas, through our Community Empowerment Fund, Community Development Financial Institutions, and a second round of Empowerment Zones. Our welfare-to-work transportation initiative and welfare-to-work housing vouchers will both go a long way to address this issue, as will the \$3 billion in welfare to work grants we secured in the Balanced Budget Act and the Welfare to Work Partnerships successful welfare to work hiring efforts.

Welfare Reform -- Federal Agencies to Issue Guidance to States on Civil Rights and Welfare Reform: After meeting with civil rights leaders several months ago, Secretary Shalala agreed to issue guidance to states on how civil rights laws apply to welfare reform, particularly the new parts of the welfare law relating to work and the time limit. As a result, HHS, DOJ, EEOC, DOL, and other agencies have finished draft guidance that they will share in the coming weeks with civil rights groups, states, and advocates. We share HHS's view that a user-friendly guide for states and caseworkers would be useful at this time. However, we want to ensure that states understand that these requirements are not new, and not misinterpret the guidance as imposing new requirements.

The guidance does include our first interpretation of how states may run afoul of the law in issuing exemptions to the five-year time limit. Our civil rights experts are in agreement that our guidance should say that a racially neutral criterion that excludes a disproportionately greater number of minorities than non-minorities is permissible, so long as there is a substantial and legitimate justification for this criterion and there is no comparably effective alternative that excludes fewer minorities. We are working with HHS to ensure a smooth roll-out of this draft with the states.

Immigration -- Agricultural Guestworkers: On March 12th, the House Judiciary Subcommittee on Immigration approved legislation sponsored by Rep. Bob Smith (R-OR) that provides for a new pilot program for the employment of temporary foreign agricultural workers. The bill includes provisions that would weaken or eliminate many of the worker protections provided for in the existing program (the H2A program). In a letter to the subcommittee, the Secretary of Labor stated that if the bill were presented to you, she would recommend a veto. However, in response to concerns expressed by growers and members of Congress (including Sens. Wyden and Graham and Rep. Bishop) about inefficiencies in the current H2A program, we initiated an inter-agency process to develop a streamlined proposal. We anticipate that several of the regulatory reforms contained in this proposal will be in

place by the next growing season. Also, we intend to explore what substantive reforms we could effect to address the longstanding concerns by domestic farm workers that the H2A program does not adequately protect their interests.

Food Safety Initiative -- Senate Update: Of the Administration's proposed \$96 million food safety initiative for USDA and FDA, we received only \$16.8 million in the House Appropriations Committee and only \$2.6 million in the Senate. On Monday, the Senate is expected to begin voting on the Agriculture bill. Sens. Leahy, Harkin, and Daschle are willing to work with us to offer amendments, but have indicated that they will only do so if we present an offset. On Thursday, we suggested an offset involving user fees which was rejected by Harkins staff. OMB is working to develop some other possible offsets. In order to highlight the problem of food safety and to shine light on some non-legislative solutions that the Administration has already undertaken, the DPC is working on a possible event for Wednesday. Because summer is the most dangerous time of year for food safety, we believe that the July 4th radio address may be an appropriate time to raise the budget and other food safety issues that are currently pending in Congress. In addition to your FY1999 budget, there are other legislative proposals involving food safety currently pending. These proposals include mandatory recall for meat and poultry, civil fines for violations, and increased FDA inspection authority for imported foods.

January 16, 1998

TO: MARIA ECHAVESTE
ELENA KAGAN

FROM: BILL WHITE
DIANA FORTUNA

SUBJECT: BACKGROUND ON DISABILITY APPOINTEE MEETING

DATE/TIME: Friday, January 16, 1998
3:00 - 4:00 PM

LOCATION: OEOB - Room 211

PURPOSE: To follow-up on the issues raised at Erskines meeting last year and to explore ways to better integrate disability into the Presidents initiatives.

BACKGROUND: The appointees would like to discuss the following issues:

Executive Order: Final draft is circulating with comments due by COB today. We should ask their input on roll-out. They will want a Presidential event and mention in the SOTU.

SOTU: The world will end if the President fails to mention disability.

Medicare: They will ask why didnt we include all people with disabilities into our Medicare Buy-In announcement last week. They will say this is a missed opportunity in their efforts to get people with disabilities (PWD) off the rolls. Answer: PWD will greatly benefit, especially those with pre-existing conditions such as epilepsy, MS, diabetes, etc, who meet the criteria in the 55-64 age bracket. Our proposal is self-financing; including all PWD would have cost.

IDEA: Serious concern about level funding for special education. (I have yet to figure out a good rationale for our decision.)

Job Training/Computer Tech Initiative: How can we include the disability community.

Child Care: Why no reference to disability in child care initiative. What about funding targeted to training child care workers on meeting the needs of kids with disabilities. Answer, we will be meeting with key advocates for children with disabilities next week. We believe there are several opportunities where kids with disabilities will/can benefit (training and early learning fund, research and evaluation fund, safety and health standards enforcement funds). This is the beginning of a process b/c we are proposing an initiative, not a specific piece of legislation.

Personal Assistant Services: Why doesnt our budget seriously address the issue of long term care and PAS. We are proposing a demo at HHS. We are sending Gingrich a letter on CASA saying...

NEXT STEPS: When can we meet with Erskine and waste his time. Answer, when you get new leadership. We should ask when is Marca stepping down as Chair of NCD?

PARTICIPANTS: Marca Bristo Chair, National Council on Disability
Andy Imparato General Counsel, National Council on Disability
Judy Heumann Education, A/S Special Education
John Lancaster Pres Comte on Employment of People w/ Disabilities
Bob Williams HHS, DAS for Planning & Evaluation
Michael Winters DOT, Associate Administrator

January 16, 1998

TO: MARIA ECHAVESTE
ELENA KAGAN

FROM: BILL WHITE
DIANA FORTUNA

SUBJECT: BACKGROUND ON DISABILITY APPOINTEE MEETING

DATE/TIME: Friday, January 16, 1998
3:00 - 4:00 PM

LOCATION: OEOB - Room 211

PURPOSE: To follow-up on the issues raised at Erskines meeting last year and to explore ways to better integrate disability into the Presidents initiatives. The appointees feel that many high-level officials at the White House do not view disability issues as a priority for the President, although they feel that he himself is very sensitive to disability issues. They want a disabled person working on policy at the White House.

BACKGROUND: The appointees would like to discuss the following issues:

Executive Order: Final draft is circulating with comments due by COB today. We should ask their input on roll-out. They will want a Presidential event and mention in the SOTU.

SOTU: The world will end if the President fails to mention disability.

Budget-Medicare: They will ask why didnt we include all people with disabilities into our Medicare Buy-In announcement last week. They will say this is a missed opportunity in their efforts to get people with disabilities (PWD) off the rolls. Answer: PWD will greatly benefit, especially those with pre-existing conditions such as epilepsy, MS, diabetes, etc, who meet the criteria in the 55-64 age bracket. Our proposal is self-financing; including all PWD would have serious cost implications and driven the Medicare premium up from \$300 to \$500 per month. But we have work to do to eliminate work disincentives for PWD.

Budget-Return to Work: The appointees will ask why we aren't doing more in our budget to encourage people with disabilities to leave the SSI/SSDI rolls and return to work, especially by providing them with health care. They may note we had two small health care initiatives in last year's President's budget, but do not have any in the new budget. Answer: This issue is the focus of the executive order. Also, one of our health initiatives last year actually passed Congress, and we are continuing to carry our "ticket" proposal in the budget. There is Congressional action on this issue (Bunning?).

Budget-IDEA: Serious concern about level funding for special ed. (I have yet to figure out a good rationale for our decision) and rehabilitative services.

Budget-Child Care: Why no reference to disability in child care initiative. What about funding targeted to training child care workers on meeting the needs of kids with disabilities. Answer: We need to say that we have not done a great job on outreach to the disability community on child care. We will be meeting on Tuesday at 3:00 with key advocates for children with disabilities. We believe there are several opportunities where kids with disabilities will/can benefit (training and early learning fund, research and evaluation fund, safety and health standards enforcement funds). There is \$5 million targeted to meeting the needs of kids with disabilities. This is the beginning of a process because we are proposing an initiative, not a specific piece of legislation.

Budget-Personal Assistant Services: Why doesn't our budget seriously address the issue of long term care and PAS. Why haven't we engaged Gingrich on this subject. Answer: HHS has a working group on this issue that is working to develop a demo. We plan to work with Gingrich on this issue. This issue is difficult to address because of cost; ADAPTS bill (CASA) would cost about \$12 billion.

NEXT STEPS: They probably will push to meet with Erskine.

PARTICIPANTS: Marca Bristo, Chair, National Council on Disability
Andy Imparato, General Counsel, National Council on Disability
Judy Heumann, Education, A/S Special Education
John Lancaster, Pres. Comte on Employment of People w/ Disabilities
Bob Williams, HHS, DAS for Planning & Evaluation
Michael Winter, DOT, Associate Administrator

01*MEMORANDUM

TO:ELENA KAGAN

FROM:TOM FREEDMAN, MARY SMITH, TANYA MARTIN, JULIE MIKUTA

RE:FEDERAL ENFORCEMENT OF CIVIL RIGHTS LAWS

DATE:AUGUST 1, 1997

SUMMARY

Attached is a brief description of the structure and legal authority of the civil rights offices across the federal government, the current status of the office and potential improvements that might be pursued as a part of the Race Initiative. The last section describes a process/timetable for potential next steps for the workgroup addressing administration of justice.

I.OVERVIEW OF FEDERAL CIVIL RIGHTS ENFORCEMENT

*Prior to the Civil Rights Act of 1957, the federal civil rights effort was limited to the enforcement of a few post-Civil War criminal statutes.

*Since 1957, Congress and the President have expanded greatly the Federal civil rights effort through the creation of additional substantive rights and additional enforcement agencies.

*The Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968 are among the initial pieces of legislation that were enacted to address barriers to equal opportunity in employment, voting, public accommodations, education and federal financial assistance. Attached as Appendix A is a list of the relevant civil rights laws.

A.Methods of Enforcement

Every government agency, department and commission is involved in some aspect of civil rights enforcement -- external or internal -- and in most cases, both:

*External - agencies are responsible for prohibiting discrimination by recipients of federal financial assistance (Title VI of the Civil Rights Act of 1964); moreover, some agencies have additional freestanding civil rights enforcement authority;

*Internal - Equal Employment Opportunity Commission (EEOC) regulations apply to all agencies in their own hiring activities.

While this memorandum focuses on external enforcement activities, information on internal compliance with civil rights requirements should also be gathered from agencies, as agency hiring practices and external enforcement of programs are often discussed in tandem. (see Section XIV).

B.Federal Agencies

The July 15 memorandum on the race initiative policy process, identified nine participating

agencies for the workgroup on the administration of justice. All nine, along with the U.S. Commission on Civil Rights, are discussed in this memorandum. Brief descriptions are provided of civil rights activities in other federal agencies.

*Agencies with broad overview.

These agencies have responsibility across the government for civil rights enforcement:

- *U.S. Commission on Civil Rights -- civil rights monitoring and reporting
- *Justice Department -- government-wide civil rights enforcement
- *EEOC -- employment

*Agencies with principal responsibilities.

The U.S. Commission for Civil Rights identified the following agencies, along with Justice, as having principal responsibility for civil rights enforcement:

- *Department of Education -- educational opportunity
- *HHS, Office for Civil Rights -- health care; welfare
- *HUD --housing
- *Labor -- federal contracts

*Other agencies with civil rights enforcement activity participating in workgroup.

- *Treasury -- fair lending
- *Interior - Indian civil rights
- *USDA - minority farmers

*Other agencies with civil rights enforcement activities:

Finally, there are a number of other agencies that have active civil rights issues including the Small Business Administration (Section 8/minority businesses); Commerce (minority business development); EPA (environmental justice); Transportation (road/transit system location and maintenance); and the FCC (broadcaster preferences).

II. U.S. COMMISSION ON CIVIL RIGHTS

A. Structure

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

*Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;

*Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice

*Serve as a national clearinghouse for information with respect to discrimination or denial of equal protection of the laws;

*Submit reports, findings, and recommendations to the President and Congress;

*Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

B. Current Status

*In FY 1998, the Commission requested a budget of \$11 million, an increase of \$1.3 million over the 1997 level of \$8.7 million.

*In July 1997, GAO reported the Commission lacks basic management and financial controls: key documents are lost or nonexistent; accurate cost data on programs or project is unavailable; and reports take so long to complete that published data is often outdated or inaccurate.

*The Citizens Commission on Civil Rights, which monitors civil rights enforcement, has also recently released a report critical of the U.S. Commission.

III.JUSTICE -- CIVIL RIGHTS DIVISION (CRD)

A. Structure

*Unless otherwise specified by law, the conduct of government litigation is reserved to the Department of Justice. CRD enforces a broad range of civil and criminal statutes and presidential executive orders. Although its initial focus was on voting and post-civil war criminal statutes, the Civil Rights Act of 1964 greatly expanded its authority.

*CRD can receive, investigate, and litigate complaints of discrimination in places of public accommodation, in school and colleges, in public facilities owned by State or local governments, in programs or activities receiving Federal financial assistance, and in employment.

FF*CRD has an office of Redress Administration (WWII internment/national origin), an office of Administrative Management, and 10 subject-matter sections:

- *Appellate;
- *Civil Rights Prosecution (criminal prosecutions e.g., hate crimes);
- *Coordination and Review (coordination of enforcement activity of all federal agencies);
- *Disability Rights (ADA);
- *Education Opportunities (school desegregation);
- *Employment Litigation;
- *Housing and Civil Enforcement;
- *Special Litigation (civil rights of institutionalized persons);
- *Voting; and
- *the Office of Special Counsel.

B. Process

The various sections of CRD have broad authority to receive, investigate, and litigate complaints of discrimination under the Constitution and civil rights laws. Alternatively, the sections can initiate litigation upon referral from the designated federal agency conducting investigations under the applicable civil rights law.

C. Current Status

*For FY 1998, CRD has requested a budget of \$67.4 million, an increase of \$6 million (8%) from FY 1997 level, to enhance prosecution of hate crimes and police misconduct, as well as for enforcement of the Americans with Disabilities Act.

*CRD started FY 1996 with 1,406 cases pending, received 366 new cases and terminated 406, ending the year with 1,366 cases pending.

*CRD started FY 1996 with 8,359 matters pending, received 4,358 new matters and terminated 4,177, ending the year with 8,720 matter pending.

*For FY 1998, Justice requested \$7.5 million for the Community Relations Service, established by the Civil Rights Act of 1964, to provide assistance to communities in preventing and resolving disputes arising from discriminatory practices.

D. Possible Improvements

*Caseload improvements -- because of the vast jurisdiction of the CRD, its overall workload is affected by nearly every expansion of civil rights protections.

*Coordination -- improve data collection/dissemination among agencies.

IV. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

A. Structure

*The EEOC was created in 1964 to investigate employment discrimination charges relating to race, color, religion, sex, or national origin.

* Since that time, the EEOC has become responsible for administering additional laws: (1) the Equal Pay Act of 1963, (2) the Age Discrimination in Employment Act of 1967, (3) the Equal Employment Act of 1972, (4) Section 501 of the Rehabilitation Act of 1973, (5) the Americans With Disabilities Act (ADA) of 1990, and (6) the Civil Rights Act of 1991.

*EEOC carries out its mission through 50 field offices that receive, investigate, and resolve charges of discrimination in the private sector, and it coordinates these activities in the public sector.

*A 5-member commission heads the EEOC. The President appoints the members, with the consent of the Senate, for rotating 5-year terms. No more than 3 members can be from the same political party.

B. Process

*Plaintiff has 180 days to file a charge of discrimination with EEOC.

*EEOC investigates whether there is cause to believe discrimination occurred.

*However, even if EEOC investigation is not completed, 180 days after the charge is filed, a plaintiff can request a "right to sue" letter, which permits the filing of the case in federal court

*Plaintiff has 90 days to file complaint in federal court after receiving "right to sue" letter.

*If the EEOC does investigate, then it either issues a "cause" finding or a "no cause" finding.

*"Cause" finding issued: EEOC encourages the parties to enter into conciliation procedures which either result in a settlement or if no settlement, the plaintiff is given a "right to sue" letter

*"No cause" finding issued: potential plaintiff is given a "right to sue" letter and the EEOCs determination of "no cause" is entitled to no deference in court

C. Current Status

*For 1998, the EEOC has requested a budget of \$246 million, an increase of \$6 million (2.65%) over the current level for 1997.

*During 1994, the EEOC issued 36,377 determinations following a full investigation, and 94.7% or 34,451 resulted in "no cause" findings in favor of the defendant. There were only 1,926 determination of "cause", a mere 5.3% of the total determinations.

*In 1994, the EEOC filed 347 substantive lawsuits, 26% involved sex discrimination, 21% involved age discrimination, 19% concerned race discrimination. The majority, 53% involved unlawful termination, 18% concerned discriminatory hiring.

*At one time the backlog was over 100,000 cases, but recently the Chairman testified before Congress that this backlog has been reduced to 75,000.

*In 1994, the EEOC stated that the average investigation of a claim took 328 days and that its backlog would take 18.8 months to clear.

D. Possible Solutions

*More funding for staff to address the backlog.

*Give the EEOC "cease and desist" authority, that is, authority to issue injunctions in cases of egregious violations.

*Give judicial deference to an EEOC determination of "cause" or "no cause," permitting only appellate review based on a "substantial evidence" standard of review.

*Encourage binding ADR on an accelerated schedule before EEOC does investigation.

*Criminalize job discrimination in the strongest cases, where there is profound damage and willful violations of the law with direct economic impact.

E. Solutions the EEOC Has Adopted Already

*In 1996, the EEOC adopted a national enforcement plan that sets priorities for the processing of charges and litigation on the national and local level. Priority is placed on class-action lawsuits, claims that involve allegations of company-wide discrimination, and those that are likely to develop key legal principles. The reforms mark a fundamental change for the agency because it no longer fully investigates every charge it receives.

*The EEOC beefed up its mediation strategy, using many volunteer mediators under the Administrative Dispute Resolution Act.

*The agency is also targeting high-profile cases to bring suit such as the Mitsubishi sexual harassment suit in Illinois.

V. DEPARTMENT OF EDUCATION -- OFFICE OF CIVIL RIGHTS (ED-OCR)

A. Structure

*ED-OCR is responsible for ensuring that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, disability, or age in the delivery of

services or the provision of benefits in programs or activities of schools, and institutions receiving financial assistance from ED.2 Civil rights enforcement for programs and services provided by schools of medicine, dentistry, nursing and other health-related schools remains with HHS.2

* Its enforcement authorities are rooted in five statutes: Title VI of the Civil Rights Act of 1964 (race/ethnic); Title IX of the Education Amendments of 1972 (sex); section 504 of the Rehabilitation Act of 1973 (disabilities); the Age Discrimination Act of 1975 and the Americans with Disabilities Act of 1990.

*ED-OCR has field staff in each of EDs regional offices whose activities include complaint investigations, compliance reviews, corrective action plan monitoring, enforcement litigation, policy development and program reviews. The majority of ED-OCR staff and resources are devoted to complaint investigations and compliance reviews.

B.Process

*ED-OCR conducts investigations and compliance reviews to ensure that federal assistance recipients adhere to nondiscrimination requirements. If a determination is made that a violation has occurred, an attempt is made to achieve voluntary compliance by the recipient.

* If ED-OCR cannot obtain voluntary compliance, it proceeds in one of two ways: it initiates an administrative enforcement proceeding seeking to terminate Federal financial assistance, or it refers the matter to the Department of Justice to seek injunctive relief in Federal Court.

C.Current Status

*For 1998, ED-OCR has requested a budget of \$61.5 million, an increase of \$6.5 million over 1997.

*In FY 1996, OCR received 4,828 complaints and resolved 4,886; it also initiated 146 compliance actions and resolved 173. By comparison, during FY 1991, OCR received 3,809 complaints and resolved 3,497 --- and initiated 41 compliance actions and resolved 22. During this same period FTEs have decreased from 820 in 1991, to 763 in 1996.

*OCR recently announced an investigation of complaints made against the admissions process at the University of California law schools following the implementation of Proposition 209.

D.Potential Improvements

*Reduce delay -- some education civil rights groups have complained to the Department about the speed of enforcement actions and delivery of the Elementary and Secondary School Survey data.

*Provide more proactive technical assistance/guidance to school districts/states.

VI.HEALTH AND HUMAN SERVICES -- OFFICE FOR CIVIL RIGHTS

(HHS-OCR)

A.Structure

*HHS-OCR administers numerous statutes that prohibit discrimination by providers of health care and social services: (1) Title VI of the Civil Rights Act of 1964; (2) Title IX of the Education Amendments of 1972; (3) section 504 of the Rehabilitation Act of 1973; and (4)

the Age Discrimination Act of 1975 which prohibit discrimination by recipients of Federal financial assistance based on race, color, national origin, sex, age and disability.

*HHS-OCR estimates that approximately 230,000 group and institutional providers of federally assisted services are subject to the nondiscrimination laws it enforces.

B. Process

*HHS-OCR relies on a compliance program that includes complaint investigations, compliance and other reviews, monitoring of corrective action plans, and voluntary compliance and other outreach activities.

*If a matter cannot be resolved voluntarily to the satisfaction of all parties, HHS-OCR may effect compliance by terminating Federal financial assistance, referring the matter to the Attorney General for enforcement proceeding, pursuing HHS administrative proceedings or invoking applicable State or local law.

C. Current Status

*The FY 1998 budget request for HHS-OCR is \$20.5 million, a \$1 million (5%) increase over the FY 1997 budget authority of \$19.5 million.

*This \$1 million increase will be used to help implement initiatives that address discriminatory issues involving immigration, inter-ethnic adoption, managed care, Medicaid waivers, nursing home care, home health care and welfare reform.

*The number of complaints received in FY 1993 (2,094) reflected an 82 percent increase over the FY 1987 level (1,148). This rise in complaints was, in part, attributable to large increases in the number of AIDS-related complaints and other 504 disability cases. These cases focus on protecting persons with AIDS against unlawful discrimination and ensuring that minorities have an equal opportunity to participate in federally assisted programs and activities designed to combat AIDS.

*In the North Carolina Law Review, Professor Sidney Watson criticizes HHS-OCR as being "ineffective in ending the health care discrimination caused by the myriad policies that disproportionately exclude minorities." Although numerous studies document the underutilization of health services by minorities, few studies have analyzed Title VI compliance by health-care facilities.

D. Potential Improvements

*Increase funding -- HHS-OCR is below its FY 1981 funding and FTE levels, while the number of complaints is increasing.

*Increase the availability of data on Title VI compliance by health care facilities

VII. HOUSING AND URBAN DEVELOPMENT

OFFICE OF FAIR HOUSING AND EMPLOYMENT OPPORTUNITY (FHEO)

A. Structure

*The majority of FHEOs civil rights responsibilities lie in its authority to enforce Title VIII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act of 1988, which prohibit discrimination on the basis of race, color, religion, sex, disability, familial status or national origin in the sale or rental, provision of brokerage services, or

financing of housing.

*FHEO also enforces provisions of Title VI (race/ethnic), section 504 (disability), Section 109 (housing and community development), the Americans with Disabilities Act, and related executive orders to ensure nondiscrimination in federally assisted programs and activities relating to housing and urban development

*FHEOs fair housing duties include the administration of two programs: (1) the Fair Housing Assistance Program (FHAP) provides financial assistance to supplement the enforcement activities of State and local enforcement agencies to ensure the prompt processing of Title VIII complaints; (2) the Fair Housing Initiatives Program (FHIP) provides support to public and private organizations for the purpose of eliminating or preventing discrimination in housing and for enhancing fair housing opportunities.

B. Process

*FHEO investigates complaints received from any person who claims to have been injured by a discriminatory housing practice or believes that an injury is about to occur.

*Those Title VIII complaints that fall within the jurisdiction of a substantially equivalent State or local agency are referred to those agencies for initial processing.

*After investigation, FHEO issues a determination indicating whether reasonable cause exists to believe that discrimination has occurred.

*If reasonable cause is found, any of the parties may elect to resolve the matter in Federal court through a HUD referral to Justice. Otherwise, the matter is resolved through the HUD administrative process.

*FHEO also conducts investigations, and compliance reviews to enforce the provisions of civil rights laws applicable to federal assistance recipients. If a violation is found, HUD may refuse to approve an application for federal funds, or terminate funds of a current recipient.

C. Current Status

*The FY 1989 budget request for FHEO is \$39 million, a \$9 million (30%) increase over FY 1997.

*Of the amount requested, \$15 million is for the FHAP (state/local enforcement) and \$24 million is for the FHIP (public/private initiatives).

D. Potential Improvements

*Increase the number of state/local agencies qualifying as "substantially equivalent" under the FHAP program. The number decreased due to the implementation of more stringent requirements in the Fair Housing Amendments Act of 1988. In 1990, approximately 125 agencies were certified, by 1993 the number qualifying was 52.

*In 1994, the Civil Rights Commission found that in most cases HUD did not reach a conclusion as to just cause within the 100-day benchmark set by Congress. The average case-processing time in 1993 was 151 days.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)
OFFICE OF CIVIL RIGHTS

A. Structure

*The enforcement authority of OFCCP encompasses several statutes and Executive Order 11246, as amended, to ensure nondiscrimination in employment based on race, sex, religion, color, national origin, disability or veteran status by Federal contractors at 290,000 sites with a total workforce of 22 million people.

*OFCCP is also responsible for reviewing employers policies and practices for adherence to the Family and Medical Leave Act of 1993.

*The Office of Civil Rights that is charged with ensuring compliance with Title VI and other nondiscrimination provisions in programs receiving federal financial assistance from DOL, as well as handling internal EEOC compliance.

B. Process

The enforcement activities of OFCCP focus in primarily four areas:

- *conducting compliance reviews and investigating complaints,
- *negotiating compliance agreements and letters of commitment, and monitoring subsequent compliance;
- *providing technical assistance to contractors; and
- *recommending enforcement actions by DOL or Justice.

C. Current Status

*In FY 1998, OFCCP requested a budget of \$69 million, an increase of \$10 million over FY 1997

*In 1998, OFCCP will conduct approximately 6,000 compliance reviews, 900 complaint investigations, and 4,100 other compliance actions.

*In FY 1998, the Office of Civil Rights requested a budget of \$4 million, a decrease of \$1 million from 1997.

D. Potential Improvements

*OFCCPs FY 1998 budget includes resources for a tiered-review process, which will reduce the paperwork burden on federal contractors and increase coverage of the contractor universe.

*Increase amount of compliance assistance provided to contractors

IX. TREASURY/COMPTROLLER OF THE CURRENCY (OCC)

A. Structure/Process

*As with all federal agencies, Treasury must enforce Title VI provisions that prohibit discrimination in programs and activities receiving federal financial assistance.

*The Community Redevelopment Act (CRA) regulates banks and other financial institutions to ensure that fair-lending practices are followed.

*The Office of the Comptroller of the Currency, an independent office within Treasury, responsible for regulating commercial banks, promulgates and enforces CRA regulations.

Treasury and Justice also pursue investigations against financial institutions that are violating fair-lending practices.

*Internal EEOC enforcement is part of Treasury's departmental management and administration function.

III.B. Current Status

*Line-item data on civil rights enforcement activities at Treasury was not provided in its FY 1998 budget.

*OCC has made enhanced CRA regulations and enforcement a priority.

X. INTERIOR - BUREAU OF INDIAN AFFAIRS (BIA)

A. Structure/Process

*The Indian Civil Rights Act of 1968 (ICRA) imposed restrictions on tribal governments similar to those found in the Bill of Rights.

*Other than habeas corpus actions, enforcement of ICRA takes place in tribal forums, tribal courts and Courts of Indian Offenses. Interior does not enforce or oversee enforcement of ICR. Exception: Tribes without their own courts can go to BIA courts for ICRA actions. The Office of Tribal Justice at DOJ reviews the administration of tribal justice across the federal government.

*Interior is also responsible for enforcing Title VI nondiscrimination requirements for all programs and activities that receive federal financial assistance.

B. Current Status

*BIA is working on a initiative to improve the way tribal courts provide services to tribe members.

C. Potential Improvements

*Enhance programs to strengthen tribal courts

XII. USDA - CIVIL RIGHTS ACTION TEAM

A. Structure

*Over the years, USDA has had a number of different offices responsible for Title VI and EEOC concerns at the agency.

*Title VI requires that programs and activities receiving funds from USDA be delivered free of discrimination. The Equal Credit Opportunity Act makes discrimination in USDA lending programs illegal as well.

*In December 1996, a group of black farmers demonstrated outside the White House calling for fair treatments in agricultural lending programs. The Civil Rights Action Team (CRAT) was appointed to report on civil rights issues across the agency and make recommendations for changes. Included in their report was a recommendation for a consolidated, visible Office of Civil Rights.

B. Procedure

*Currently, USDA has a civil rights policy office, civil rights enforcement (which is handled in regional offices), small & disadvantaged business office and a National Appeals Division.

*The CRAT report points out that the process for filing Title VI complaints at USDA is fragmented --generally, complaints are filed with the agency within USDA responsible for the program/activity at issue.

C. Current Status

*The budget requests for civil rights at USDA is not separately reported. The U.S. Commission on Civil Rights expressed concern that absence of specific funding for Title VI contributed to inadequate enforcement.

*The CRAT issued its report in February 1997, which documents the absence of adequate Title VI and EEOC enforcement at the agency.

D. Possible Improvements

*Implementation of centralized office for civil rights enforcement.

*Compilation and dissemination of reliable data on civil rights enforcement within USDA.

*Revision of regulations -- according to CRAT, the civil rights enforcement regulations have not been revised since 1973.

XIII. OTHER AGENCIES

In addition to enforcing Title VI protections for their programs and activities, these other agencies are also active on a variety of civil rights matters:

*

Small Business Administration -- provides assistance to Section 8 disadvantaged businesses, many of which are minority-owned.

*Commerce -- has programs to provide assistance to minority owned businesses.

*EPA -- pursues "environmental justice" cases. Minority communities have alleged that their communities are being used as dumping grounds for toxic substances, or are last priority for clean-ups of hazardous materials.

*Transportation -- complaints have been filed by communities alleging discrimination in the placement service delivery and maintenance of roads and public transit systems.

*FCC -- faces controversial issues around ensuring that minority broadcasters have access to wireless telephone, data-service, radio and other communication licenses.

XIV. POSSIBLE NEXT STEPS

*Initial planning meeting in early August with agency race initiative contacts and possibly

one person from the agency's civil rights office. Possible participants:

Agency Race Initiative Contact Office of Civil Rights
Education Leslie Thornton Norma Cantu
EEOC [Not listed by Cabinet Affairs]
HHSClay Simpson
HUDMercedes Marquez
LaborVirigina Apuzzo
JusticeDavid Ogden
InteriorDavid Montoya
TreasuryMichael Froman
USDAReba Evans

*Follow-Up Meetings by mid-September:

1. Agencies -- discuss preliminary recommendations for improvements

2. Outreach -- meet with groups monitoring civil rights enforcement for suggestions of possible improvements, such as:

*Citizens Commission on Civil Rights

*ACLU

*American Council on Education

*NAACP

*National Urban League

*National Council of La Raza

*National Asian-Pacific American Legal Consortium

*Urban Institute

3. Coordination Issues -- possible separate discussion with Justice on coordination of civil rights effort across the government.

*Feedback to agencies on improvement proposals in early October.

*Progress meetings on implementation of improvement proposals/ideas in Oct-Dec.

APPENDIX A

Major congressional and presidential landmarks affecting civil rights enforcement are the:

*Equal Pay Act of 1963

*Civil Rights Act of 1964

*Voting Rights Act of 1965

*President Johnson's Executive Order 11246 in 1965

*Age Discrimination in Employment Act of 1967

*Title VIII of the Civil Rights Act of 1968

*Equal Employment Opportunity Act of 1972

- *Title IX of the Education Amendments Act of 1972
- *Rehabilitation Act of 1973
- *Voting Rights Act Amendments of 1975
- *Age Discrimination Act of 1975
- *President Carters Reorganization Plan No. 1 and equal opportunity executive orders
- *Voting Rights Amendments of 1982
- *Civil Rights for Institutionalized Person Act of 1986
- *Housing and Community Development Act of 1987
- *Civil Rights Restoration Act of 1987
- *Civil Liberties Act of 1988
- *Fair Housing Amendments Act of 1988
- *Americans with Disabilities Act of 1990
- *Civil Rights Act of 1991
- *Voting Rights Language Assistance Act of 1992

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines

FROM: Sally Katzen

SUBJECT: Heads-up on final Access Board Telecommunications Accessibility Guidelines

We are about to conclude review of final Architectural and Transportation Barriers Compliance Board (Access Board) guidelines intended to ensure that new telecommunications equipment can be accessed and used by individuals with disabilities. The guidelines, which apply only when the technology is "readily achievable," would require accessibility for all types of disabilities (including hearing, vision, movement, manipulation, speech, and interpretation of information).

The Telecommunications Act of 1996 tasked the Access Board to develop these guidelines given their expertise on disability access issues. However, the Federal Communications Commission (FCC) was given enforcement power, including the ability to use the Access Board guidelines in full or modified form.

Reaction to the guidelines is expected to be mixed. The guidelines are based largely upon the recommendations of a representative advisory committee containing broad industry representation as well as organizations representing the access needs of individuals with disabilities. Disability groups will view the guidelines as a major accomplishment. Industry, however, may raise concerns that the guidelines are overly burdensome and could restrict technological innovation because they apply to each product rather than the product line (e.g. each pager must allow for access for each type of disability rather than having just one product in the line be accessible for individuals with a particular disability). Since these guidelines have no force and effect of law unless and until they are adopted by FCC, there will be other opportunities to evaluate this issue.

Please let me know if you have any questions.

cc: Maria Echaveste
Rahm Emanuel
John Hilley
Ron Klain
Thurgood Marshall, Jr.
Ann Lewis
Sylvia Mathews
John Podesta
Bruce Reed

Gene Sperling
Elena Kagan
Victoria Radd
Barry Toiv
Michael Waldman
Barbara Chow
Michael Deich
Larry Haas

Mr. Geoffrey R. Stone
The University of Chicago
5801 Ellis Avenue
Chicago, Illinois 60637-2786

Dear Mr. Stone:

Thank you for the letter of recommendation on behalf of Elena Kagan. Our administration appreciates your help in identifying quality candidates.

You speak highly of Ms. Kagan's qualifications and I have carefully noted your insights and support. I would like you to know that Ms. Kagan is being considered for this position and that I will keep your endorsement in mind.

On behalf of President Clinton, we welcome your views and hope that we can count on your continued support.

Yours truly,

Bob J. Nash
Assistant to the President and
Director of Presidential Personnel

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN

FROM: TOM FREEDMAN, MARY L. SMITH

RE: FOOD SAFETY COUNCIL TALKING POINTS

DATE: SEPTEMBER 23, 1998

This memorandum provides talking points for the goals, both short-term and long-term, for the Presidents Council on Food Safety. In addition, the following attachments are included: (1) executive order establishing Presidents Council on Food Safety; (2) draft charter for Presidents Council on Food Safety; (3) draft agenda for public meeting for the strategic planning process on October 2; (4) draft remarks of Neal Lane to open October 2 public meeting; (5) draft report on the Joint Institute on Food Safety Research; and (6) a USA Today article dated September 16 which describes PulseNet, a database that permits states to compare quickly the genetic fingerprints of bacteria responsible for outbreaks.

I. FOCUS OF THE COUNCIL

A. What should the Council accomplish?

*The Council should establish a seamless, science-based food safety system. In doing this, the Council should have an overarching framework that incorporates the following principles:

*efficiency

*cooperation and coordination with states and localities as well as within the federal government. We already are cooperating with states through the states through the PulseNet system, which tracks the genetic fingerprints of bacteria in outbreaks (see attached article).

*prevention

*measurable outcome goals

*Concurrently with developing the overarching framework in order to develop a seamless food safety system, the Council should tackle specific issues such as prevention, inspections, and eggs. For instance, there has been some discussion about consolidating responsibility for eggs in one federal food safety agency. Currently, USDA and FDA both have responsibility for different aspects of eggs.

B. Scope of Council (issues we need to focus on and have answers for October 2 meeting)

1. Does the Council deal with more than microbial --yes

2. Does it include water, pesticides -- yes

3. What is going on with research -- Neal will give update in his opening remarks.

II. Short-Term Goals

A. Respond to the NAS study-- within 180 days from August 25 --so it will be February 25

B. FY2000 budget -- except that we are just going to do the unified budget for the food safety initiative for the FY2000 budget, we will do the "coordinated budgets" for the

entire food safety activities starting in FY2001

C.Joint Institute for Food Safety Research -- has to report back by October 3 (the day after the October 2 meeting) (see attachment)

III.Long-Term Goals

A.Strategic plan

IV.Miscellaneous Issues

A.Procedures of the Council -- How often will the Council meet, etc. See attached draft charter.

B.How the Council will obtain public input. There will be three additional public meeting to obtain input for the strategic planning process

*October 20, 1998 in Sacramento, California

*November 10, 1998 in Schaumburg, Illinois

*December 8, 1998 in Dallas, Texas

FFACTIVITIES OF THE COUNCIL (with reference to executive order)

A.Comprehensive strategic plan. This plan is referenced in two sections of the executive order.

1.Section 2 states: "The purpose of the Council shall be to develop a comprehensive strategic plan for Federal food safety activities, taking into consideration the findings and recommendations of the National Academy of Sciences report "Ensuring Safe Food from Production to Consumption" and other input from the public on how to improve the effectiveness of the current food safety system. The Council shall make recommendations to the President on how to advance Federal efforts to implement a comprehensive science-based strategy to improve the safety of the food supply and to enhance coordination among Federal agencies, State, local, and tribal governments, and the private sector. The Council shall advise Federal agencies in setting priority areas for investment in food safety."

2.Section 3(a) states in pertinent part: "The Council shall develop a comprehensive strategic Federal food safety plan that contains specific recommendations on needed changes, including measurable outcome goals. The principal goal of the plan should be the establishment of a seamless, science-based food safety system. The plan should address the steps necessary to achieve this goal, including the key public health, resource, and management issues regarding food safety. The planning process should consider both short-term and long-term issues including new and emerging threats and the special needs of vulnerable populations such as children and the elderly."

B.Budget Activities. The Council will help coordinate the budget for food safety activities in two respects: (1) coordinated food safety budgets; and (2) a unified budget for the Presidents Food Safety Initiative.

1.Section 3(b) states in pertinent part: "[T]he Council shall advise agencies of priority areas for investment in food safety and ensure that Federal agencies annually develop coordinated food safety budgets for submission to the OMB that sustain and strengthen

existing capacities, eliminate duplication, and ensure the most effective use of resources for improving food safety."

2. The Council is also tasked with developing a unified budget for the Presidents Food Safety Initiative, which is a subset of all the food safety activities that are performed by the agencies.

*

March 3, 1998

FOOD SAFETY EVENT

DATE:March 4, 1998

LOCATION:Roosevelt Room

BRIEFING TIME:1:30 pm - 1:20 pm

EVENT TIME:1:45 pm - 2:45 pm

FROM:Bruce Reed

I. PURPOSE

To highlight the introduction of legislation in the Senate that you proposed to ensure the safety of imported fruits and vegetables, and to receive a progress report from USDA and HHS on the development of guidance on good agricultural and manufacturing practices.

II. BACKGROUND

You will be speaking to an audience of approximately 40 consumer advocates, food industry representatives, families, and Members of Congress.

You will be making the following announcements:

Challenge to Congress to Enhance FDA Oversight for Imported Foods. You will challenge Congress to pass the food safety legislation to be introduced by Senators Mikulski and Kennedy to require the FDA to halt imports of fruits, vegetables, and other food products from any foreign country with food safety systems and standards that are not equivalent to those of the United States. The legislation also will require the FDA to halt imports from countries or facilities that do not allow FDA inspections to occur. This legislation, which you proposed last fall, was previously introduced in the U.S. House of Representatives by Reps. Eshoo and Pallone. You have committed to providing approximately \$27 million in your Fiscal Year 1999 budget to enable the FDA to dramatically expand its international food inspection force.

Agency Report on Guidance on Good Agricultural and Manufacturing Practices. You will announce that you have received a report from Secretaries Shalala and Glickman on the progress they have made in providing guidance on Good Agricultural and Manufacturing Practices to domestic and international growers, harvesters, handlers, and transporters of fresh fruits and vegetables as requested in a Presidential Directive on Oct. 2, 1997. This report outlines the progress made -- and the steps still to be taken -- to develop the voluntary guidance by October 1998. The guidance -- the first-ever specific safety standards for fruits and vegetables -- will address potential food safety problems throughout the production and distribution system and help ensure the sanitation and safety practices of all those seeking to sell produce in the U.S. market. The report also provides both short- and long-term plans for technical assistance, education, and outreach activities to support the implementation of the guidance.

III. PARTICIPANTS

Briefing Participants:

The Vice President
Secretary Shalala
Secretary Glickman
Bruce Reed or Elena Kagan

Event Participants:

The Vice President
Senator Barbara Mikulski
Gloria Doyle, Chevy Chase, MD, who became ill after eating imported raspberries.

Standing on stage, but not speaking:

Secretary Shalala
Secretary Glickman
Lead Deputy Commissioner, FDA Michael Friedman
Congresswoman Eshoo and other Members of Congress

IV. PRESS PLAN

Open Press.

V. SEQUENCE OF EVENTS

- The Vice President will make welcoming remarks and introduce Senator Mikulski.
- Senator Mikulski will make remarks and introduce Gloria Doyle.
- Gloria Doyle will make remarks and introduce YOU.
- YOU will make remarks and then depart.

VI. REMARKS

Remarks Provided by Speechwriting.

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MEMORANDUM

TO: BRUCE REED
ELENA KAGAN

FROM: TOM FREEDMAN
MARY L. SMITH
DREW HANSEN

RE: CHILD SAFETY IN COMMERCIAL AIRPLANES

DATE: JULY 18, 1997

SUMMARY

An estimated 10,000 children each day fly as "lap children," held in the laps of an accompanying adult instead of being secured in a separate seat by a certified Child Restraint System (CRS). These children are exposed to serious risk of injury or death in case of an accident or turbulence. Current FAA policy is to "strongly encourage," but not mandate, the use of a CRS for children under two years of age. The FAA has opposed a CRS mandate because of fears that the increased cost of buying an extra seat would lead many families to drive, leading to a net increase in injury and death, and because there are some technical problems with adapting existing CRSs to airplane use. Legislation pending in the House (H.R. 754 and 1141) and Senate (S. 398) would require the use of CRSs for children under two years of age.

PROBLEM

Children under two years of age have long been permitted to sit in their parents laps during air travel. An estimated 10,000 children per day travel in this manner. But safety experts say that an unrestrained child traveling in an adults lap runs a much higher risk of injury or death in case of air turbulence or a plane crash than a child secured by a separate child restraint system (CRS) on an adjacent seat. From 1978-1994, five children under two died in plane accidents who would have lived had they been in child seats. During the same period, ten injuries to children under two might have been prevented by the use of child seats.

Several recent incidents involving "lap children" have brought the matter to the public's attention. On July 19, 1989, United Airlines Flight 232 crashed in Sioux City, Iowa. Of the four unrestrained children on that flight, one was found in an overhead bin 15 rows behind the original seat, and one died from smoke inhalation in the ensuing fire. On July 12, 1994, a DC-9 flown by US Air crashed in Charlotte, North Carolina. There were 37 fatal injuries on the flight, including a 9-month-old unrestrained child who was hurled three rows from her mother's arms and died of massive head injuries. Air turbulence also poses serious risks to the unrestrained child. On a flight in June of 1995, an unrestrained child flew through the air during a patch of turbulence, but was caught by a fellow passenger. In 1990, a DC-10 encountered turbulence near Puerto Rico. The only injury on the flight was sustained by an unrestrained infant, who suffered a fractured skull.

The use of child restraint systems has prevented injury or death in several other airline

accidents. On July 6, 1996, the engine of Delta Flight 1288 exploded on the runway in Pensacola, Florida. Several passengers were killed instantly, but a 15-month-old suffered only a scratch on her neck because her parents had strapped her into a CRS in a separate seat. On September 6, 1992, a Piper PA-30 crashed at Broussard, Louisiana. Parts of both wings and both horizontal stabilizers were torn off before impact. A four-year-old boy and ten-month-old girl who sat in child restraint systems in the rear bench seat suffered serious injuries, but survived. Their father was killed.

PROPOSED SOLUTION

Many organizations, including the National Transportation Safety Board (NTSB), the Aviation Consumer Action Project, and the Association of Flight Attendants (AFA), have supported legislation that would mandate the use of child restraint systems on commercial aircraft. On February 12, 1997, the White House Commission on Aviation Safety and Security Bills, headed by Vice President Gore, recommended that "all infants and small children below the weight of 40 pounds and under the height of 40 inches be restrained in an appropriate child restraint system, such as child safety seats, appropriate to their height and weight." Bills to this effect were introduced in the 104th Congress by Rep. Lightfoot (R-IA, H.R. 1309) and in the 105th Congress by Rep. DeFazio (D-OR, H.R. 754 and 1141) and Sen. Murray (D-WA, S. 398). Copies of H.R. 754 and 1141 and S. 398 are attached. H.R. 754 and S. 398 are almost identical; H.R. 1141 adds the provision that airlines would be prohibited from charging a price for the required additional seat that exceeds the lowest price charged by the carrier to any other paying passenger on the same flight. 1

POSSIBLE DIFFICULTIES WITH MANDATORY CRS LEGISLATION

1. Increased injury and death from travel diversion.

The FAA has refused to issue regulations mandating the use of child restraint systems because of fears that the increased cost to families of purchasing an extra seat would cause more of them to drive to their destination, leading to a net increase in injuries and fatalities.

A study by Apogee Research in 1990 found that the average cost of a trip to each family under mandatory CRS legislation would be \$185, leading to a total additional expenditure of \$252 million per year on airfare. Faced with this situation, Apogee predicted that 17% of families would forgo travel entirely or divert to another mode of travel, leading to a net increase of 1.6 fatalities, 4.8 serious injuries, and 218 minor injuries per year. The conclusions of this study were supported in broad outline by later studies by Windle and Dresner of the University of Maryland (1990) and in a briefing paper by McKenzie and Lee that was published by the Cato Institute (1990). Apogee conducted a second study for the FAA in 1993 coming to essentially the same conclusions. In the second study, however, Apogee contended that 95% of the safety gains of mandatory CRS legislation could be realized at low additional cost by requiring airlines to reserve empty seats next to parents with young children until the plane was absolutely full.² According to a July 3, 1997 article in the New York Times, many airlines will often reserve the seat next to a parent who does not buy a ticket for an infant. But these seats are not guaranteed on heavily booked flights. 2

Finally, a DOT-FAA study conducted pursuant to section 522 of the Federal Aviation Authorization Act of 1994 confirmed the results of earlier studies. The DOT-FAA study found that a CRS mandate could prevent an estimated five infant fatalities over ten years.

But the additional cost over ten years, assuming that the family pays full fare for every family seat, would be about \$200 to each family, per family trip, leading to an additional cost to families of \$109 million per year. In such a situation, 27% of families would still travel by air, 53% would not travel at all, and 20% would choose other modes of transportation. The shift to other modes of transportation would cause 82 more deaths among children and adults over ten years. Even if airlines responded to a mandatory CRS rule by lowering fares for infants or by some other marketing strategy, some travel diversion would still occur. The DOT-FAA study found that if carriers charged only 25% of the full fare, some families would still choose other forms of transportation, leading to a net increase of 17 child and adult deaths over ten years.

Instead of requiring CRS use, therefore, the FAA has embarked on a public education campaign strongly encouraging their use. In addition, Secretary Pea has asked carriers to establish incentives for parents to purchase seats for infants. Southwest Airlines, for instance, offers a discounted fare for children under two years of age.

But the results of these studies have been challenged by other organizations. The National Transportation Safety Board (NTSB), a longtime advocate of mandatory CRS legislation, has charged that the FAA studies are "based upon incomplete analysis."³ Testimony of Barry Sweedler, Director of the Office of Safety Recommendations, National Transportation Safety Board, before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, August 1, 1996, p. 2.3 The central contention of the NTSB is that airlines will not risk the revenue loss caused by entire families diverting to other forms of transportation, and will respond with innovations such as free seats for infants, group discounts, or special fares for traveling at off-peak times. In testimony before the U.S. House of Representatives on July 20, 1990, the Vice President of Operations for the Air Transport Association said that airlines would offer a special fare arrangement for families with infants "rather than risk the loss of one or more adult fares or perhaps an entire family unit." Even the DOT-FAA study concluded that there would be no net increase in infant fatalities if airlines charged 20% of the full fare, although travel diversion in this scenario would still lead to an additional 12.8 non-infant fatalities over ten years. Of course, if airlines chose not to charge to provide separate seats for infants in CRSs, there would be no net increase in deaths or injuries.

In response to the FAA studies, the Association of Flight Attendants (AFA) commissioned a study by Darryl Jenkins, a visiting scholar at the International Institute of Tourism Research at George Washington University, to re-examine the economic arguments on requiring CRS use. The AFA study contended that the FAA studies were based on incorrect modeling assumptions. According to the AFA study, the FAA studies did not have key data to determine price sensitivity, used an industry demand curve that unrealistically simplified a complex situation, did not take into account the price competition generated by low-fare carriers, and did not take into account the effects of income sensitivity. Basically, the contentions of the AFA study are 1.) that the airline industry is increasingly dominated by low-cost carriers, especially on frequently traveled routes, who are forcing prices down, and 2.) that the FAA studies incorrectly used "price elasticity" (who would choose not to fly if the cost increased) as a surrogate for "cross-elasticity" (who would switch into other modes of transportation, such as automobiles, if the cost of flying increased).

A key to resolving this dispute seems to be whether or not airlines are willing to follow the lead of Southwest Airlines and offer specially discounted fares for children under two years of age. The cuts in fares for children under two announced in the last two weeks seems to indicate that airlines are willing to cut fares to encourage families to buy a

separate seat for their young child. On July 2, 1997, American Airlines announced that children under two could ride in a separate seat for a fare of only 50% of the fare of the accompanying adult.⁴ Because the FAA studies are based on full-fare data, a 50% discount from the fare of the accompanying adult could approach the FAA's 20% threshold for no net gain in infant fatalities from travel diversion. If the accompanying adult was traveling on a special reduced-price ticket, for instance, a 50% discount on such a fare could be a considerable markdown from the price of a full-fare ticket. ⁴ This policy was quickly adopted by United Airlines, Delta, Northwest, and Continental. Contrary to FAA assumptions, the new pricing policy would not lead to a loss of airline revenue but could even lead to a small net gain. Robert W. Baker, the Vice President of Operations of American Airlines, said in the July 3, 1997 New York Times that American expected a modest increase in revenue as a result of the new fare.

2. Technical difficulties with CRS use in airplanes.

The second main argument against mandatory CRS legislation is that there are technical difficulties with using existing CRSs in airplanes. But even with these difficulties, children under two are always safer in an existing CRS than on the lap of an accompanying adult. The FAA currently recommends that children weighing under 20 pounds be restrained in a certified, rear-facing CRS, that children weighing between 20 and 40 pounds be restrained in a certified, forward-facing CRS, and that children weighing over 40 pounds be strapped in a regular lap belt. Margaret Gilligan, FAA Deputy Associate Administrator for Regulation and Certification, said last year in testimony before the House Subcommittee on Aviation that although the FAA is continuing their research on CRS design to achieve a greater safety margin, "no one contests our finding that children are better off in currently-marketed, approved CRSs [than in the lap of an accompanying adult]."⁵ Margaret Gilligan, Testimony before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, August 1, 1996, p. 5.5

A major study by the Civil Aeromedical Institute (CAMI) in 1994 also found that while current CRS designs were not perfect, they still provided more protection than sitting on the lap of an adult. An infant in a front-facing CRS, although still exposed to serious risks, was found to be safer than if he or she were held by an accompanying adult. The use of a rear-facing CRS, though, was found to be a "definite safety benefit."⁶ Civil Aeromedical Institute, "The Performance of Child Restraint Devices in Transport Airplane Passenger Seats," OAM Report AM-94-19, September, 1994, p. 22. ⁶ However, both front- and rear-facing CRSs were found to be often difficult to install and inconvenient to other passengers and staff. A forward-facing CRS is sometimes too big to install in seats with fixed arm rests, and airline lap belts often do not suitably secure the CRS to the seat. In addition, the lap belt does not always protect the child from being thrown out of the CRS and hitting his or her head on the forward row seat. A rear-facing CRS often interferes with passage between seat rows and the recline motion of a forward row seat.

Because of these difficulties, many efforts are currently underway to develop a CRS that would be more suitable for airline use:

*The Society of Automotive Engineers (SAE), an ad-hoc group, is currently trying to develop a standard of compatibility between seats for cars and seats for airplanes.

*The FAA is working on developing new types of restraints for children and better ways to secure a conventional CRS to an airplane seat.

*The FAA is also developing a prototype "platform" for in-seat installation of a forward-facing CRS, which in preliminary tests has significantly increased the

effectiveness of forward-facing CRSs.

*Two projects are currently underway, one in the United States and one in Canada, to develop an airplane-specific CRS. Both prototypes have been tested at CAMI in both forward- and rear-facing positions, and both performed much better than any currently available CRS.

In short, the use of any certified CRS provides better protection than being carried on the lap of an accompanying adult, although a rear-facing CRS is generally preferable to a forward-facing one. Advances in technology for an airplane-specific CRS and for better installation of conventional CRS devices should lead to even greater safety benefits for young children.

CONCLUSION

The recent fare cuts by U.S. airlines for children under two years old, the proven safety record of existing CRSs in airplanes, and the ongoing development of better CRSs seem to remove many of the problems with mandatory CRS legislation. H.R. 754 and 1141 and S. 398 would follow the recommendations of the NTSB, the Gore Commission, and many other organizations by requiring children under two years of age to be restrained in a CRS in a separate seat, potentially preventing several injuries and fatalities among infants in the next ten years.

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines

FROM: Sally Katzen

SUBJECT: Heads Up on DOTs Airbag Cutoff Switch Final Rule

We expect to conclude review of the DOT final rule allowing dealers and repair shops to install on/off switches for airbags in existing vehicles. You may recall that this was one piece of the four-part approach announced by the President last December (the other pieces, all well received, included warning labels, depowering, and extending authorization for on/off switches for the front passenger seat in new vehicles that do not have back seats). The rule we are about to clear has already been the subject of several critical news stories, and will be a major news event when it is published.

This rule is in response to the fact that while airbags save lives, there is a real risk of serious injuries and fatalities in low-speed crashes where the drivers are short-statured people sitting too close to the steering wheel and/or the passengers are unbelted children riding in the front seat (instead of being belted in the back seat). Everyone agrees that the at-risk group (which also includes infants (under 1 year old) in rear-facing seats who must ride in the front seat and individuals with certain medical conditions) should be allowed to turn off their airbags. The issue has been whether others should be allowed to deactivate their airbags and the role that DOT would play as a gatekeeper. A coalition of auto manufacturers, insurance companies, and safety advocates has opposed any form of broad-based deactivation of airbags (by which they mean if there is not prior approval by DOT to install the switches). DOT, on the other hand, claims it cannot process all of the applications it will receive, and it would not want to be responsible if there were an accident while an application was pending.

The DOT rule would require the vehicle owner to sign a form certifying (under penalty of law) that at least one occupant in his/her vehicle falls into one of the risk categories. It would expressly state that the dealers only responsibility is to see that the form is filled out, not to verify the appropriateness of the box checked. It would be accompanied by an education campaign to seek and minimize misuse (i.e. do not turn off if you are not at risk). This is important because the rule is calculated to save the lives of approximately 11 drivers and 44 passengers each year over the next four years; however, if there is as little as one percent misuse (i.e., drivers turning off the switch if they are not at risk) it will offset all of the benefits to drivers.

The message on roll-out (which we recommend be low key and at the Department level) is important because this is an interim step -- the real solution lies in smart airbags for which an NPRM is being prepared. Please let me know if you have any questions.

cc: Maria Echaveste
Rahm Emanuel
John Hilley
Ann Lewis
Thurgood Marshall, Jr.
Sylvia Mathews
Bruce Reed
Elena Kagan
Gene Sperling
Victoria Radd
Barry Toiv
Michael Waldman
Kathy Wallman
Michael Deich
Larry Haas

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines

FROM: Sally Katzen

SUBJECT: Heads Up on DOTs Airbag Cutoff Switch Final Rule

On October 6, 1997, we sent you a heads-up memo on a DOT final rule allowing individuals to obtain on/off switches for airbags in existing vehicles. Since then, DOT has given further thought to its role as "gatekeeper" and redrafted the final regulation to provide that individuals who want to have an on/off switch are to send the form to the government before the switch is installed. We are now ready to go and we understand that DOT will announce the rule next Tuesday. I have attached a copy of our October 6 heads-up memo to refresh your memory on the substance. Please give me a call if you have questions.

cc: Maria Echaveste
Rahm Emanuel
John Hilley
Ann Lewis
Thurgood Marshall, Jr.
Sylvia Mathews
Bruce Reed
Gene Sperling
Elena Kagan
Victoria Radd
Barry Toiv
Michael Waldman
Kathy Wallman
Michael Deich
Larry Haas

0.

NOT FOR FURTHER DISTRIBUTION

MEMORANDUM FOR Ken Apfel

Andy Blocker

Maria Echeveste

Kitty Higgins

John Hilley

Elena Kagan

Steve Kelman

Sylvia Mathews

John Podesta

Frank Raines

Doug Sosnick

David Strauss

Daniel Tarullo

Wendy White

FROM: Kathleen Wallman

SUBJECT: Draft Decision Memorandum Concerning Labor-Related Issues

COPY: Gene Sperling

DATE: February 12, 1997

I am sending you a draft of the decision memorandum that we discussed yesterday. I think that this draft should not be disseminated. In view of the time pressure, Gene has authorized me to share their preliminary draft prior to his review of it. I do not yet have two sections that Elena Kagan has graciously agreed to draft, but thought I should send around this portion to ensure that people agree that it properly reflects the nuances of yesterday's discussions. I will circulate another draft as soon as I am able that includes Elena's work.

I will consult with the Cabinet Departments, too. If there is anyone else in the White House who should see this draft whose name does not appear above, please alert me.

Please e-mail comments to me -- I am KM Wallman, not K Wallman -- or phone me at 65803. Thanks.

 Draft 2/12/97 11:30 a.m.

MEMORANDUM FOR THE PRESIDENT

FROM: GENE B. SPERLING

SUBJECT: POSSIBLE POLICY ANNOUNCEMENTS RELATED TO LABOR ISSUES

DATE:FEBRUARY 12, 1997

On February 18, the Vice President will address the Executive Council of the AFL-CIO at its Winter Convention in Los Angeles. The NEC has met and deliberated the merits of several possible executive actions and possible announcements of legislative positions that are of interest to the AFL-CIO and that the Vice President could announce at the convention. Our recommendations are offered below.

In general, the AFL-CIO acknowledges the unlikelihood in the near term of significant legislative changes that would improve labor and employment laws. Indeed, they acknowledge that their legislative agenda will be largely defensive in the coming months and years. But, as exemplified here, they seek the Administrations expression of support, in both symbolic and concrete ways, for the principle that unions have been and still are valuable forces in the workplace.

1. Possible amendments to federal procurement regulations.

Federal law provides that the government should maintain a position of neutrality in labor disputes between unions and federal contractors. Nevertheless, under current federal contracting policies, contractors may be reimbursed for the costs of resisting unionization efforts and litigating against unfair labor practice charges, and remain eligible to receive new contracts.

To address what it perceives as the unfair "tilt" against unions that these federal contracting policies embody, the AFL-CIO has urged that the Administration direct the Federal Procurement Council, which operates under the auspices of the Office of Federal Procurement Programs within OMB, to initiate a notice and comment rulemaking to amend the Federal Acquisition Regulations (FAR) in three respects. We summarize the actions under consideration and the pros and cons of each. Since all three proposals go to the unions neutrality principle, and since some members of your NEC believed it important to consider their impact together, we summarize the Cabinet Departments recommendations at the end of this section rather than at the end of the discussion of each individual proposal.

a. Amend the FAR to cease reimbursement to contractors for costs incurred to defend against unfair labor practice allegations that are in litigation.

The Federal Acquisition Regulations (FAR) currently do not permit federal contractors to be reimbursed for the costs of defending criminal and certain civil proceedings brought by the government, as well as penalties resulting from those proceedings. In the case of civil proceedings, reimbursement is disallowed, however, only where a monetary penalty could have been imposed. Since the National Labor Relations Act does not include monetary penalties, the current regulations have often been construed to permit reimbursement of defense costs associated with unfair labor practice proceedings initiated by the General Counsel of the NLRB.

Proposal: Amend the FAR, to make clear that any and all costs relating to defending unfair labor practice charges and complaints brought by the NLRB General Counsel are now allowable, both in evaluating bids for fixed price contracts as well as reimbursement for cost reimbursement contracts

Pro:Taxpayers dollars should not be used to "tilt the playing field" in favor of employers

against unions and employees. Eliminating this reimbursement will bring treatment of NLRB litigation costs in line with other kinds of litigation costs.

Con: No serious objections or downsides were identified, although a negative reaction from government contractors who have been permitted thus far to treat these costs as reimbursable is predictable.

b. Amend the FAR to cease reimbursement for costs incurred to try to persuade employees not to unionize.

The FAR currently provides that costs incurred by a contractor in maintaining satisfactory labor relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable costs. Under this provision, contractors have sought and been reimbursed for activities that undermine rather than promote satisfactory labor relations. On occasion, the costs that are being paid for by the taxpayers are for persistent anti-union organizing activity.

Proposal: Amend the FAR to provide that contractor costs incurred for activities related to influencing employees respecting unionization are specifically unallowable.

Pro: Taxpayers should not be subsidizing an employers efforts to defeat union organizing activities and that these activities are now designed, and do not have the effect of, "maintaining satisfactory labor relations." A number of other statutes explicitly prohibit the use of government funds to promote, assist, or deter union organizing activities, such as the Job Training Partnership Act, the National Community Service Act, Head Start, and Medicare. Accordingly, there is precedent for this kind of provision and auditors having to concern themselves with these other statutes have had to determine whether an employers labor relations costs were or were not allowable.

Con: Disallowing costs for employee meetings by contractors would be characterized by the business community as pulling the rug out from labor-management cooperation. They will argue that it will not be possible in practice to separate legitimate activities from anti-union persuasion. This provision will require auditors to make decisions about what costs are allowable that they are not well equipped to make. In addition, this provision will likely be viewed by the contracting community as an unnecessary and burdensome requirement not otherwise imposed in the private sector.

c. Amend the FAR to allow government contracting officers to consider, when deciding whether a contractor is a "responsible" contractor (a term of art under the existing FAR), the bidders record of labor and employment policies and practices.

The FAR provides that a prospective government contractor must be found to be a "responsible contractor" before being awarded a government contract. "Responsibility" requires that a prospective contractor be capable of performing the contract, that it has a satisfactory performance record, and that it has satisfactory "integrity and business ethics".

Under current practice, a prospective contractor may have engaged in egregious activities relating to labor or employment practices and still be eligible to receive federal contracts. These activities currently do not call into question any aspect of the prospective contractors responsibility. In some cases, the egregious activities may have

been adjudicated and found illegal, but more commonly, a contractor has no such finally adjudicated violations, and there are instead pending charges -- sometimes many of them -- that will take time to wend their way through the administrative process at the NLRB, the EEOC or through the courts. Sometimes the allegations are never adjudicated; for example, most unfair labor practice complaints are ultimately settled.

Proposal: Add to the FAR language indicating that the responsibility determination must take into account whether the bidder has "a satisfactory record of labor and employment policies and practices." (This language parallels the existing provision requiring "a satisfactory record of integrity and business ethics".)

Pro:The existing FAR already allows contracting officers to weigh the bidders "business ethics", its "integrity" and its "capability" to perform the contract. Factors that may be considered in assessing capability include "safety" and "energy/environmental considerations". Labor relations and employment conditions are and equally important and appropriate consideration, and the Administration ought to say so clearly in the FAR.

Con:Evaluating "satisfactory" labor relations and employment conditions is a qualitative judgment that contracting officers are not well equipped to make, especially where the disputed actions or conditions have not been adjudicated. Compliance will also be burdensome for contractors who will have to worry about meeting a non-quantifiable standard.

Positions: Labor recommends that you authorize all three actions. Commerce recommends that you authorize (a) ("defense costs") but not (b) ("persuading costs") or ("responsible contractor" amendments). Commerce believes that persuading costs will be too nettlesome to implement as a practical matter; contracting officers will not be able adequately to discern reimbursable activity from non-reimbursable activity. SBA urges that you authorize (a) but not (c). As to the responsible contractor amendments, SBA urges that the Procurement Council issue interpretive guidance indicating that labor and employment practices and policies should be taken into account, but that the FAR should not be amended. (This approach was explored with AFL-CIO, but was deemed by them inadequate to reach the goal since such interpretive guidance has no force of law.) OMB concurs with SBA. Treasury recommends that you authorize (a) and (c), but not (b) for the same difficulty of implementation reason offered by Commerce.

Recommendation: I recommend that you authorize all three initiatives. There is no disagreement as to (a). The second initiative is described by those who oppose it as difficult to implement, but not impossible. If we go forward with (a) and leave (b) undone, we will be subject to the reasonable criticism that we are continuing to allow the use of taxpayers money to underwrite anti-union proselytizing even though we have gone to the trouble to eliminate reimbursement of defense costs. The third initiative, the responsible contractor amendments, is a reasonable policy choice that puts the Administration clearly on record, through regulatory amendments that have the force of law, that a contractors practices and policies with respect to labor and employment are important considerations. Its practical effect will be to afford unions a "hook" in the regulations to present relevant information to contracting officers about truly egregious situations involving a pattern of abusive labor and employment practices.

_____ Agree _____ Disagree _____ Lets Discuss

2.Possible executive order encouraging the use of project labor agreements

Project labor agreements, also known as "pre-hire agreements," are specially negotiated agreements between a project owner or construction manager and one or more labor organizations. The agreements are reached at the outset of a project in order to ensure efficient, timely and quality work; establish fair and consistent labor standards and work rules; supply a skilled, experienced and highly competent workforce; and assure stable labor-management relations throughout the term of the project. These agreements have long been used for public and private construction projects that involve a large volume of work, extend over a substantial period of time, include a substantial number of contractors, and entail substantial costs. It is well established that these agreements are effective and may be lawfully used in both the private and public sector for construction industry projects.

Proposal: Issue an Executive Order that directs Executive departments and agencies authorized to implement or fund a project for the construction of a federal facility to determine on a project-by-project basis whether a project labor agreement will promote labor-management stability; advance the public interest in economical, efficient, quality and time project performance; and assist project compliance with applicable legal requirements governing health and safety, equal employment opportunity, and labor standards. The Executive Order would not require the use of a project labor agreement on any particular project.

Pro:Project labor agreements are useful and lawful, but federal agencies may not be aware of their availability and have not been using them in a significant way. Issuing an Executive Order would make clear that federal contracting agencies have this authority and should consider using such agreements in appropriate circumstances.

Con:No serious objections or downsides have been identified, although this action, in combination with other actions on the list of labor-related initiatives and announcements you authorize could send a signal as to the tone you intend to take on labor-management issues.

Positions: All of the agencies support issuance of an executive order that encourages but does not require the use of these agreements.

Recommendation: I recommend that you authorize issuance of the proposed executive order.

_____ Agree_____ Disagree_____ Lets Discuss

3.Possible linkage of flex time legislation to legislation that expands the FMLA

The two comp time bills currently being considered on the Hill -- both Republican-sponsored -- fail to address FMLA expansion, and provide fewer guarantees of employee choice and fewer protections against potential abuse than your flex time bill, which was sent to Congress last September.

Specifically, the bills do not exclude vulnerable workers; do not include special protections for workers whose employers go bankrupt; do not guarantee real choice for employees; among other shortcomings. The Ashcroft comp time bill in particular has provisions that would effectively eliminate the 40-hour week. The labor movement strongly opposes the Republican comp time bills, and finds these Ashcroft provisions to be particularly offensive.

With respect to FMLA, Democrats in both houses have introduced bills to expand the current law. Several bills are consistent with your proposal to expand FMLA for an additional 24 hours for the purposes of routine medical care for children and elderly parents or school related activities. Other Democratic bills would lower the threshold of FMLA applicability from 50 to 25 employees, a provision that was not included in your bill. Predictably, while most Republicans oppose FMLA expansion, the bills have support from womens groups and the labor movement. The Democratic legislative strategy is to try to add FMLA expansion to the Republican bills while criticizing their comp time components.

In light of this strategy, the labor movement has urged that the Administration threaten to veto any bill that does not (1) link FMLA expansion and flex time, and (2) improve the comp time provisions to provide real choice and real protections for employees (as in your flex time bill).

Proposal: Our proposal is different from what AFL-CIO is urging in that we think you should stop short of saying that you will veto any flex time bill that does not include FMLA expansion. Rather, we would establish as the Administrations position that there should be a link between FMLA expansion and any flex time legislation; that any flex time proposal should address our principles, as spelled out in your bill from last year (i.e., real choice for employees; real protection against employer abuse; and preservation of basic worker rights, such as the 40-hour work week); and that you will veto any comp time bill that does not address these flex time principles in a meaningful way.

Pro: This position would strengthen the position of congressional Democrats to improve the Republican bills. It would also be welcomed by constituency groups that view the Republican bills as a weakening of employee protection laws. Since this strategy does not threaten a veto if FMLA expansion is not in a final bill, the strategy does not lock you in to a veto of an otherwise acceptable flex time bill.

Con: AFL-CIO would prefer that you threaten to veto any bill that does not include an expansion of FMLA. Under this strategy, you might have to veto a comp time bill, although it would be one that falls far short of the family-friendly principles you have laid out.

Recommendation: I recommend -- along with the NEC members -- the proposal discussed above that you (1) express support for FMLA expansion and flex time and (2) threaten to veto a comp time bill if your principles are not addressed. I recommend that you not lock yourself into saying that you will veto any flex time bill that does not include FMLA expansion.

_____ Agree_____ Disagree_____ Lets Discuss

[Does Legislative Affairs want to offer a different recommendation?]

_____ Agree_____ Disagree_____ Lets Discuss

4. Position on Beck legislation aimed at limiting the use of union dues in political activity

[DPC (Elena) is writing this section of the memo]

Status and positions:

5. Restating last years veto threats on (i) TEAM legislation (ii) Davis-Bacon legislation and (iii) legislation to weaken OSHA.

Last year, you indicated you would veto the TEAM bill and the other two legislative proposals. It is proposed that the Vice President would restate your position in Los Angeles, with language that leaves room for improvements in TEAM legislation that you may conclude somewhere down the road that you may wish to sign.

Positions: There was consensus among the members of your NEC that restating your previous positions with carefully crafted language that does not prevent you from considering an improved TEAM bill would be the right path to take.

Recommendation: I recommend that we go ahead and restate your previous positions. The exact wording used will be vetted beforehand.

_____ Agree _____ Disagree _____ Lets Discuss

6. Welfare reform and minimum wage

[DPC (Elena) is writing this section]

FEBRUARY 8, 1996

MEMORANDUM FOR:CAPRICIA MARSHALL

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,"¹¹For 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 matter²²For 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, Natalie Williams, Miram Nemetz, Abner Mikva, Margaret Williams, 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,³³See 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,⁴⁴We 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, 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 12, 1996.

If you have any questions regarding the House subpoena, please call Special Counsel Jane

Sherburne (6-5116).

Attachment 2

MILITARY OFFICE OFFICE EMPLOYEES
JANUARY 20, 1993 - PRESENT

John Gaughan
Alphonso Maldon
Alan Sullivan
Captain Jay Yakeley, USN
Captain Mark Rogers, USN
Colonel Hames 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

DRAFT--NOT FOR DISTRIBUTION--DRAFT--NOT FOR DISTRIBUTION--DRAFT

I. DEFINITION OF "CANCEL": The House offer recommends use of the word "veto" in applying the new authority to direct spending and tax benefits. However, the Department of Justice has indicated constitutional problems inherent in authorizing a President to "veto" pieces of a bill, following signature of the overall bill.

While use of the word "suspend" is the preferred way of avoiding a constitutional defect, "cancel" may be another option if particularly when it is appropriately defined. Following is a definition for use of the word "cancel" with reference to new direct spending and targeted tax benefits:

NEW LANGUAGE TO BE ADDED TO SEC. 4. DEFINITIONS.

(7) The term "cancel" means--

(A) with respect to "new direct spending," the suspension of legal entitlement to claim any benefits deriving therefrom and suspension of the authority to obligate the United States pertaining thereto; and

(B) with respect to "targeted tax benefits," the suspension of legal entitlement to claim any Federal tax deduction, credit, exclusion, preference or other tax benefit deriving therefrom.

II. LOCKBOX:

The lockbox language, in the Senate bill and included in the House offer, would require the President to: reduce the statutory discretionary spending caps to reflect rescissions of discretionary budget authority; and to eliminate from the PAYGO scorecard any positive balance that would otherwise have accrued from applying the item veto to new direct spending or tax benefits.

This is problematic, especially on the discretionary side, because the automatic lowering of spending caps, would make it very difficult to accommodate supplementals later in the year. In addition, the technical drafting of the lockbox language is unclear.

Suggested improvement in the lockbox mechanism: Provide that the rescinded or canceled amounts be placed in an "emergency reserve" to be available to offset emergency supplementals and other emergency legislation. Although such "emergency legislation" does not legally require offsets, the availability of these emergency reserves might facilitate supplementals and other emergency legislation when needed.

In addition, the following amendments would: (1) clarify the amount by which spending caps

are to be reduced; and (2) would delete the application of the discretionary lockbox to the outyears (application of lockbox to the outyears would create complications by changing previously negotiated caps before an appropriations cycle has even begun).

FOLLOWING IS THE CURRENT LOCK-BOX LANGUAGE WITH PROPOSED CHANGES:

(1) IN GENERAL.--Not later than 45 days of continuous session after the President rescinds an item in an appropriations Act or vetoes cancels an item in an authorization, revenue, or reconciliation Act, the President shall--

(A) with respect to appropriations Acts, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each outyear by the amount by which the Act would have increased the deficit in each respective year the President reduced budget authority and outlays pursuant to authority provided under this Act; and

(B) with respect to a veto cancellation of direct spending or of a targeted tax benefit, reduce the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 by the amount by which the Act cancelled provisions would have increased the deficit in each respective year.

(2) EXCEPTIONS.--

(A) This subsection shall not apply if the rescinded item in an appropriation Act or the vetoed cancelled item in an authorization, revenue, or reconciliation Act becomes law, over the objections of the President effective due to enactment of a disapproval bill, before the President orders the reduction required by paragraph (1)(A) or (1)(B).

(B) If the rescinded item in an appropriation Act or the vetoed cancelled item in an authorization, revenue, or reconciliation Act becomes law over the objections of the President effective due to enactment of a disapproval bill, after the President has ordered the reductions required by paragraph (1)(A) or (1)(B), then the President shall restore the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 or the balances under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the limits and balances existing before the reduction ordered by the President in compliance with paragraph (1).

(3) EMERGENCY RESERVE ACCOUNTS.

(A) Any amount by which the discretionary budget authority and outlay limits described in paragraph (1)(A) are reduced shall be credited to a special account to be called "the Section 251 emergency reserve account," provided that such amounts may be used as provided in paragraph (C).

(B) Any amount by which the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 have been reduced shall be credited to a special account to be called "the Section 252 emergency reserve account," provided that such amounts may be used as provided in paragraph (C).

(C) When making emergency designations under sections 251 or 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the President and the Congress shall specify whether the requested emergency legislation is to be offset by amounts credited to a reserve account established under this paragraph.z

TO:John Hilley
Gene Sperling
Jack Lew
CC:Bruce Reed
Elena Kagan
FROM:Jennifer Klein
DATE:7/14/97
RE:Child Care Tax Proposals

As you continue your discussions about spending of the tobacco tax dollars, Bruce Reed asked me to send you descriptions of proposals to expand tax subsidies for child care.

1. Dependent Care Tax Credit

Currently, taxpayers may claim non-refundable income tax credits for eligible employment related expenses for dependent care. Eligible expenses include those for the care of a child under 13 or a disabled dependent or spouse. Eligible expenses are limited to \$2,400 for one dependent or \$4,800 for two or more dependents. The credit rate depends on income, with a 30 percent credit rate for those with adjusted gross income below \$10,000. The credit rate is reduced with income, so that those with incomes over \$28,000 have a 20 percent rate.

There are three options to expand the dependent care tax credit (DCTC).

(1) Make the DCTC refundable. The existing DCTC is non-refundable, meaning that taxpayers whose income tax liability is less than the credit do not receive the full benefit. As with the Earned Income Tax Credit, making the DCTC refundable would allow taxpayers with low tax liabilities to receive a check from the IRS for the amount by which the credit claimed exceeds their tax liability.

Treasury estimates the revenue cost of this proposal at around \$4 billion for 1998-2002. The Joint Committee on Taxation last year estimated that it would cost about half of the Treasury estimate.

(2) Increase the maximum amount of eligible dependent care expenses to \$3,600 for one dependent and \$5,400 for two or more dependents.

(3) Change the AGI range over which the 30 percent credit rate declines to 20 percent.

2. Kohl Business Tax Credit

Senator Kohl proposed to allow firms to claim a tax credit for up to 50 percent of the cost of building, renovating, or operation child care centers, with a credit limit of \$150,000 per year. The Joint Committee on Taxation estimated that the revenue cost of the Kohl proposal is \$2.6 billion over 1998-2002 (but note that the Kohl proposal is not available for years after 1999, reducing its overall revenue cost). The credit could also be limited to construction, expansion, and renovation expenditures (since those are the capital costs that may difficult for firms to finance), most likely reducing the revenue cost to well below \$1 billion for 1998-2002.

MEMORANDUM FOR ERSKINE BOWLES AND BRUCE REED

From: Sandra L. Thurman
Director, Office of National AIDS Policy
(202) 632-1090

Cc: Sylvia Matthews
Elena Kagan
Chris Jennings

Date: April 27, 1998

Re: Needle exchange debate and ONDCP

Attached is a press statement released by the authors of legislation that makes permanent the ban on federal support for needle exchange programs. You will note that Barry McCaffrey is cited as a supporting source.

I am concerned about the damage that is done when someone from this Administration so publicly contradicts established policy. It is certainly making it rather difficult to manage the issue.

Anything you can do to insure that ONDCPs public statements are consistent with this Administration's policy (and are factually accurate) would be greatly appreciated!

March 31, 1997

STATEMENT ON DISTILLED LIQUOR ADVERTISING ON TELEVISION

DATE:April, 1997
LOCATION:Roosevelt Room
BRIEFING TIME:12:40 pm - 1:10 pm
EVENT TIME:1:10 pm - 1:30 pm
FROM:Bruce Reed
Rahm Emanuel

I. PURPOSE

To highlight your commitment to reducing youth alcohol use.

II. BACKGROUND

You will be sending a letter to Reed Hundt asking the Federal Communications Commission (FCC) to 1) explore the effects -- on children in particular -- of the distilled liquor industrys decision to end its 50-year voluntary ban on broadcast advertising; and 2) determine what actions the FCC can take in response to the lifting of the ban.

A bipartisan group of 26 Members of Congress also wrote to the FCC requesting that they open an inquiry into the effects of liquor advertising.

In November, 1996, the Distilled Spirits Council announced that it had ended its almost 50-year voluntary practice of refraining from broadcast advertising. Although the major networks and cable companies have thus far refused to accept distilled spirits advertising, a few companies have run liquor ads on television and radio since the announcement and other companies are presently preparing large advertising campaigns.

Chairman Hundt has opposed any move toward liquor advertising. In December, he challenged broadcasters to refuse liquor advertising, and indicated that "government action" might be appropriate if the broadcasters did not do so.

III. PARTICIPANTS

Briefing Participants:

Sylvia Mathews
John Podesta
Rahm Emanuel
Bruce Reed
Elena Kagan
Ron Klain
Mike McCurry

Carolyn Curiel

Event Participants:
The Vice President

IV.PRESS PLAN

Pool.

V.SEQUENCE OF EVENTS

The Vice President will make opening remarks.

The President will make remarks.

After responding to questions from pool, the President and Vice President will depart.

VI.REMARKS

Statement prepared by Carolyn Curiel.

March 31, 1997

STATEMENT ON DISTILLED LIQUOR ADVERTISING ON TELEVISION

DATE: April, 1997
LOCATION: Roosevelt Room
BRIEFING TIME: 12:45 pm - 1:10 pm
EVENT TIME: 1:10 pm - 1:30 pm
FROM: Bruce Reed
Rahm Emanuel

I. PURPOSE

To highlight your commitment to reducing youth alcohol use.

II. BACKGROUND

You will be sending a letter to Reed Hundt asking the Federal Communications Commission (FCC) to 1) explore the effects -- on children in particular -- of the distilled liquor industry's decision to end its 50-year voluntary ban on broadcast advertising; and 2) determine what actions the FCC can take in response to the lifting of the ban.

A bipartisan group of 26 members of Congress also wrote to the FCC requesting that they open an inquiry into the effects of liquor advertising.

In November, 1996, the Distilled Spirits Council announced that it had ended its almost 50-year voluntary practice of refraining from broadcast advertising. Although the major networks and cable companies have thus far refused to accept distilled spirits advertising, a few companies have run liquor ads on television and radio since the announcement and other companies are presently preparing large advertising campaigns.

Chairman Hundt has opposed any move toward liquor advertising. In December, he challenged broadcasters to refuse liquor advertising, and indicated that "government action" might be appropriate if the broadcasters did not do so.

III. PARTICIPANTS

Briefing Participants:

Sylvia Mathews
John Podesta
Rahm Emanuel
Bruce Reed
Elena Kagan
Ron Klain
Mike McCurry

Carolyn Curiel

Event Participants:
The Vice President

IV.PRESS PLAN

Pool.

V.SEQUENCE OF EVENTS

The Vice President will make opening remarks.

The President will make remarks.

After responding to questions from pool, the President and Vice President will depart.

VI.REMARKS

Statement prepared by Carolyn Curiel.

MEMORANDUM

TO: BRUCE REED
ELENA KAGAN

FROM: TOM FREEDMAN
MARY L. SMITH
DREW HANSEN

RE: ALCOHOL MARKETING TO CHILDREN ON THE INTERNET

DATE: AUGUST 1, 1997

SUMMARY

Alcohol companies are currently engaged in a series of creative marketing efforts on the Internet, most of which seem to be targeted at children and adolescents. Home pages for beers and liquors offer games, contests, and virtual environments to attract younger Web surfers. These pages have no effective way to make sure that their visitors are over 21, and often do not even make a serious effort to warn younger readers away from the sites.

HOW ALCOHOL COMPANIES MARKET TO CHILDREN ON THE INTERNET

1. Games

Most alcohol sites on the web offer free games, with inevitable product tie-ins, to visitors. Many companies offer games that seem designed to appeal to young children. On the Jos Cuervo site (www.cuervo.com), the visitor is greeted with an opportunity to play "Beasts in a Blender," a game where the contestant must match three beasts to win. Other games on the Cuervo site feature J.C. Roadhog (potentially the Joe Camel of the late 1990s), the Cuervo mascot, in games such as the "Cuervo River Run," where the player moves J.C. Roadhog down a river, avoiding snakes and alligators and picking up Cuervo Gold bottles, salt shakers, and limes. Molsons (www.molson.com) makes "SRP," an interactive racecar game, available for download so that the visitor can "race" with other Molsons fans. Stolichanya Vodka (www.stoli.com) offers a game room that includes "Stoli Says," a Concentration-like game in which the player matches the mixed drink with the ingredients, and a virtual coloring book of a Stolichanya Vodka bottle.

Several alcohol companies introduce the visitor to more complex games of the kind that would appeal to adolescents, such as "mysteries" that the visitor must solve. Dewars (www.dewars.co.uk), for instance, urges the visitor to save disappeared multimillionaire Tommy Dewar by solving a set of four puzzles. Heineken (www.Heineken.com) offers the visitor a chance to play "Heineken Quest," a game in which the visitor accompanies "Sidney," the son of a millionaire, on a trip from Amsterdam to Australia. In each city, the player receives travel updates which present him or her with problems to solve to get to the next stage. Email messages are sent to the player when he or she has a new problem to solve. Of course, Heineken appears everywhere -- a day in Amsterdam is finished off by a quiet drink of Heineken in a local bar.

Another common type of game environment is the "virtual casino." Canadian Mist (www.canadianmist.com), for instance, offers access to the "Mist Arcade," where visitors

can play blackjack online. The Smirnoff site (www.purethrill.com) contains a casino where the visitor can play casino-style games.

2. Contests

Many sites offer contests with company-related merchandise as prizes. On the Budweiser site (www.budweiser.com), visitors are urged to submit a form predicting where Bud racecar driver "Ricky" will finish in his races. The Bacardi rum site (www.bacardi.com) has a contest to see who can build the best virtual sand castle. The weekly winner gets a bag of Bacardi gear. The Malibu Rum site (www.malibu-rum.com) boasts a "Surfin Safari" contest, in which entrants are urged to surf the Web to find the right answers to the contest questions. The contest, though, has only three questions: the first two are about surfing, and the third is "What two fruit juices, combined with Malibu Rum and creme de banana, make a Malibu Tropicale?"

3. Virtual Environments

Several alcohol companies attempt to create "virtual environments" on their Web sites for the visitor to explore. Malibu Rum introduces the visitor to a bright yellow page dotted with palm trees, and says "Welcome to the Malibu Beach Home! Were Ready to Start the Party!" A visit to "Cabana Cool" on the site is touted as an opportunity to relax at "a little poolside bar where you can discover island specialties...and let the bartenders in on your special trade secrets for making a Malibu drink that is ALWAYS the hit of the party." Bacardi offers "Club Bacardi," with an introductory scene of a nightclub with cartoon dancing girls, bartenders, and other guests. The homepage for Captain Morgans Rum (www.rum.com) is headed by a grinning pirate who presents "CyberShip 2: Voyage to the Bottom of the Net." The rest of the page is filled with pirate-theme messages like "Welcome Aboard, Swabbie!" and a chance to visit the "Yo Ho Ho Room." Rum isn't even mentioned until near the bottom of the page.

One of the more imaginative virtual environments on offer is Smirnoffs "Purethrill Hotel," where "nothing is as it seems." Playing on Smirnoffs popular, surreal ad campaign, the Purethrill Hotel places the visitor in an interactive world of shifting images and strange rooms to explore. The whole effect is much like that produced by "Myst," the popular home computer game.

AGE RESTRICTIONS ON ALCOHOL SITES

Age restrictions on alcohol sites range from small-print ("This site is not to be accessed unless you are 21 years of age or older. Thank you." (Cuervo)) to oblique ("Your visit to BUD ON-LINE is subject to The Legal Stuff." (Budweiser)) to tongue-in-cheek ("Remember, alcoholic beverages should be consumed in moderation and by persons of legal drinking age (21 in the U.S.) -- so if that isn't you, scram!" (Bacardi)).

Most sites will note on the "Age" section of contest entry forms that the contestant must be 21 or over, but there is no mechanism for ensuring that this is the case. In fact, I submitted a completely blank "registration" form to Canadian Mist to get into the casino, and instead of making me fill the form out again, they just linked me right into the blackjack area.

Some sites make the whole age requirement into a joke (see Budweiser and Bacardi above). Captain Morgans Rum has a hypertext link on "Avast! You Must be Twenty-one Years Old to

Enter This Site" (which doesnt even appear until halfway down the page). Following the hypertext link leads to a quiz to find out if you are legal or not: a set of ten true/false questions like "You think classic rock means the early Hootie" and "You are sitting on a phone book right now."

CONCLUSION

Alcohol companies appear to be engaged in an aggressive campaign to market beer and liquor to children through the Internet. Games, contests, and virtual environments provide younger Web surfers with an opportunity to engage with the companys images and marketing material, and even offer a chance for young visitors to win free bags of company merchandise. At this time, there is no way for companies to make sure that their viewers are over age 21, and most companies do not seem to take the age requirement at all seriously.

MEMORANDUM FOR ERSKINE BOWLES

FROM: Sally Katzen

SUBJECT: Heads-up on FDA Proposed Rule Requiring Alcohol Warnings on Pain Relievers

We are about to conclude review of a proposed FDA rule that will require alcohol warnings to be placed on all over-the-counter (OTC) drug products containing pain relievers (including aspirin, tylenol, and ibuprofen) labeled for adult use. The warning statements would advise consumers who drink at least three glasses of alcohol per day to consult a physician before using the product. FDA, following the recommendations of an advisory panel, has determined that data are sufficient to warrant an alcohol warning for these products; specifically, FDA found that individuals with a history of heavy alcohol use or abuse have increased risk of liver damage from the use of acetaminophen (tylenol) and an increased risk of gastrointestinal bleeding from the use of other pain relievers (including aspirin and ibuprofen).

FDA estimates that 600 manufacturers and distributors, many of which are small businesses, will be affected by the rule and that the costs of relabeling will run up to \$50 million (one-time cost). To ease industry concerns, particularly small businesses, FDA proposes to allow "stick-on labeling" for certain products during the early stages of implementation to allow industry to deplete their existing stock.

Given the widespread use of these products and the potentially unfavorable reaction by industry, we expect this rule to get a lot of press. Please call me if you have any questions.

cc: Franklin D. Raines

Maria Echaveste

Rahm Emanuel

Thurgood Marshall, Jr.

John Hilley

Ann Lewis

Sylvia Mathews

Bruce Reed

Gene Sperling

Chris Jennings

Elena Kagan

Don Gips

Victoria Radd

Barry Toiv

Michael Waldman
Kathy Wallman
Josh Gotbaum
Larry Haas

MEMORANDUM FOR THE DIRECTOR
THE DEPUTY DIRECTOR

From: Barbara Chow

Subject: Weekly Report, through March 20, 1998

Date: March 23, 1998

Update on Education legislation:

Education Opportunity Zones legislation. Cleared, but awaiting WH approval of transmittal timing.

Class Size Reduction legislation. Should be cleared this week.

Student Loan Interest Rate. The Senate education HEA reauthorization bill adopts the House committee proposal that sets the student interest rate at the level of the Administrations proposal, but requires taxpayers to pay a 50 basis point add-on to lenders. We understand that Senator Kennedy will indicate he is not committed to this proposal. Kennedys staff have asked for help from the Administration in explaining the effects of a sequester and pressing the Budget Committee to work toward an acceptable resolution of the interest rate problem. The Raines letter to Chairman Kasich, alerting him to the potential for a sequester if the House committee provisions on the interest rate are enacted, is being widely circulated.

Barbara Chow and Ed Deseve met with Education officials and Sallie Mae on March 24 to discuss Sallie Maes capacity to serve as lender of last resort in the event students lose access to loan capital because lenders withdraw from FFEL. Sallie Mae committed to one-third of their excess capacity (175,000 to 200,000 loans, or about \$800 million in volume), which suggests they could actually do more. ED and Sallie Mae still need to work out fees and other arrangements.

LABOR

Dislocated worker program net impact evaluation. HRD and OIRA met with DOL to follow up on DOLs efforts to address OMB concerns with its evaluation design. At the last meeting, OMB asked DOL to reconsider its approach, which would not permit any measure of the impact on employment and earnings of job search assistance, compared with training. DOL reports strong resistance among State and local programs to participation in any random assignment net impact evaluation, on grounds that (1) negative results would jeopardize high and rising funding; (2) creating a "no services control group" is extremely difficult in a one-stop system; and (3) denying services to needy dislocated workers is unethical. In response to OMB concerns, DOL has reconsidered its evaluation design, and now believes it will be able to obtain limited impact data on job search assistance in the 30 evaluation sites. Next steps are to meet with the NGA, NACo, and other interest groups to enlist their support for participation of local programs. Site selection and random assignment is expected to begin in September, with 30-month impact data available in 2003.

NEC job training and reemployment work group. HRD attend two meetings of this interagency workgroup, comprised of Labor, Education, Treasury, Commerce and CEA staff. The first

meeting explored a small business tax credit for employee training; the second discussed the Progressive Policy Institutes proposal for regional industry skill alliances. Treasury staff oppose a new employer training tax credit, on grounds that they are difficult to administer and subsidize current activity; however, they do support additional outreach to increase awareness and take-up of the Hope and Lifelong Learning credits. The group generally supports a \$50 million regional skill alliance initiative (to be carved out of our dislocate worker request in 1999), which would provide competitive grants of \$1-2 million each to help establish the alliance; identify industry skill shortages; and deploy existing training and education resources to address employer needs (no new training money is envisioned). DOL is drafting language to authorize such regional alliances that could be incorporated into a Kennedy-sponsored bill on the H1-B employment-based immigration program.

Environmental Tobacco Smoke. DPC (Elena Kagan) convened a meeting to address the Administration's position on the regulation of environmental tobacco smoke (ETS) or secondhand smoke. Attending were DOL, HHS, EPA, DOJ, and DOD, as well as OVP, OSTP, and OMB (OIRA, HRD, and HD). Administrator Browner and possibly Dr. Satcher of CDC will be testifying at a March 31st hearing on ETS. Most of the meeting was devoted to whether to exempt establishments in the hospitality industry--the industry where workers are at the highest risk for illness caused by ETS. Most of the tobacco settlement bills exempt the hospitality industry from regulation on ETS. However Senator Chafee (R-RI), Chairman of the Senate Environment and Public Works Committee which has jurisdiction over ETS, remains undecided on this issue. HHS feels strongly that there should be no exemption for the hospitality industry. OSHA appears somewhat gun-shy to take on the hospitality industry and noted that there was overwhelming opposition from the industry when OSHA proposed its indoor air quality standard. OSHA proposed that the Administration advocate a delayed implementation of regulations for the hospitality industry and work with the industry to meet compliance through instituting adequate ventilation systems or non-smoking policies. It was agreed that DOL, EPA, HHS, and DPC would raise this position to their principals and try to get agreement the week of the 23rd.

International Child Labor. NSC chaired a meeting with State, DOL, NEC and OMB on developing a position on trade and international child labor. Rep. Chris Smith (R-NJ) sponsored H.R. 2678, the International Child Labor Elimination Act of 1997, which the Administration has opposed, although it shares the bill's goal. The Administration objects to unilateral sanctions on assistance and trade finance which would be applied automatically, believing these are too blunt and instrument which could undercut our efforts to eliminate child labor and risk other foreign policy objectives. Although H.R. 2678 is not on the calendar, it may move after the Easter Recess. It was agreed that the Administration should develop an alternative to the Smith bill. NEC will coordinate work with the agencies.

Employment-Based Immigration: H-1B Meeting. NEC/DPC held a decision meeting on H-1B high tech worker shortage legislation. The H-1B program admits immigrants temporarily for employment in specialty occupations. DOL, DOC, INS, Treasury, OMB, OSTP, WH OPL, and WH Legislative Affairs attended the meeting. The meeting was prompted by Senator Kennedy's scheduled announcement of his proposal to address the labor shortage. Discussion centered around whether the Administration should continue its current position on the IT labor shortage (i.e., train American workers and enact needed labor reforms, prior to entertaining a cap increase) or entertain an increase to the visa cap. The consensus decision was to align the Administration with Kennedy (not to endorse) given his bill promotes a short-term cap increase and a long-term training solution. The Administration

will use the bill as a starting point for negotiating an acceptable package.

Employment-Based Immigration: H-2A Meeting. DPC/NEC held a meeting to discuss H-2A administrative reforms in light of pending guestworker legislation. The H-2A program admits immigrants temporarily to perform agricultural work. USDA, DOL, OMB, and WH OPL staff attended the meeting. Approximately two years ago, DPC convened a similar group that developed and reached agreement on needed reforms to the H-2A program. Unfortunately, the group broke down and the reforms were never implemented. This meeting confirmed those agreements and placed H-2A reform back in an active status. DPC/NEC will convene further meetings to prioritize and implement the reform proposals.

Fair Pay Meetings. NEC/DPC held two meetings to discuss Administration options for the VPs announcements on Equal Pay Day (April 3rd). The first meeting, attended by EEOC, DOL, Treasury, DOC, DOJ, CEA, WH Womens Office, and OMB, focused on a NEC/DPC draft options memo which outlined various legislative and administrative proposals. Two issues were discussed at length: capped vs. uncapped damages for violations under the Equal Pay Act (EPA) (provision in Senator Daschles Paycheck Fairness Act - - S71), and collection of wage data for enforcement and informational purposes. Agencies were not in agreement on these issues.

After receiving official agency positions, NEC/DPC convened an internal EXOP meeting to discuss the options memo. The second meeting, attended by the Office of SLOTUS, WH Womens Office, CEA, and OMB, again centered on the damage provisions of the EPA and the collection of wage data. Agreement was reached on:

- *supporting uncapped compensatory and punitive damages for violations under the EPA;
- *evaluating the options for addressing problems with the current racial/gender data collected by EEOC;
- *endorsing a modified version of Sen. Daschles bill (dropping the specific provision on collection of wage data); and,
- *announcing administrative actions along side Daschles bill on Equal Pay Day.

*

March 21, 1997

MEMORANDUM FOR CHIEFS OF STAFF

FROM: RONDA JACKSON

SUBJECT: 8:30 CONFERENCE CALL

1. If there are any Schedule C or appropriate career staff who are interested in working at AmeriCorps to help prepare for the Presidents Summit for Americas Future scheduled for April 27-29 in Philadelphia, please fax those names and phone numbers to Bibb Hubbard by the close of business today at 456.6704. Please call Bibb with questions at 456.2572.
2. The next Inter-Agency working group meeting will be held on Tuesday, March 25 from 11:30-12:30 p.m. in room 476 of the OEOB. Reports regarding this matter are due to Elena Kagan at the DPC at 456.1647 on Monday, March 24. If you have any questions, please call Anne McGuire at 456.2572 or Elena at 456.5584.
3. There will be a Chiefs of Staff breakfast on Tuesday, March 25 at 8:30 a.m. in the White House mess.
4. There will be an amplification call on Monday, March 24 at 11:00 a.m. The code for the call is 4590. Reports are due at 2:00 p.m. that afternoon. Please make sure that there is specific mention of how your agency's D.C. event went and what coverage it received.
5. There will be an Inter-Agency meeting for the Presidents Summit on Americas Future next Tuesday, March 25 at 11:00 a.m. Please make sure that you have a representative at the meeting.
6. There will be a conference call at 2:00 p.m. today for agency staff that are working on the implementation of the Government Performance Review Act (GPRA). The conference call number is 456.6766 and the code is 6666. If you have any questions, please contact William Halter at 395.3842.

*

March 14, 1997

MEMORANDUM FOR CHIEFS OF STAFF

FROM: RONDA JACKSON

SUBJECT: 8:30 CONFERENCE CALL

1. As discussed at the COS breakfast, Agency plans on the Gleaning Initiative and points of contact for your agency on this initiative were due on, Tuesday, March 12 to Steve Silverman by 5:00 p.m. If you have not yet turned in your plans, please do so as soon as possible to Ronda Jackson via Lotus notes or fax at 456.6704. We are still missing DOD, FEMA, and Education.

2. The name of the contact person in your agency who will be coordinating the Presidents Welfare-to-Work Initiative was due yesterday. Please send via Lotus notes or fax to Ronda at 456.6704. We are still missing DOD, USDA, DOT and USTR.

3. Any programs or initiatives on Early Learning that your agency is planning are due March 24 at 9:00 a.m. to Pauline Abernathy via fax at 456.2878. Please send the name of the contact person in your agency who will be participating in the Inter-Agency Task Force on the Early Childhood Learning Conference to Elena Kagan as soon as possible. If you have any questions, please call Elena at 456.5584 or Anne McGuire at 456.2572.

4. Please send to us a list of any major announcements, executive actions, reports, significant regulations or grants that would tie into the Administrations major themes for Presidential announcements between now and the end of April. We need these as soon as possible. Please send via Lotus Notes to Ronda or fax at 456.6704.

5. Weekly reports were due yesterday. Please make sure your reports are in on time. We are still missing HUD.

6. Blue badges for Cabinet members Richardson, Daley, Alvarez, Slater, Cohen and Cuomo are ready. It was reported yesterday that staff could pick them up. This is not so. You must make an appointment with Chuck Easley at 395.6206 to have your Cabinet member come to take a picture and pick up their ID.

April 15, 1998

MEMORANDUM TO THE GANG OF FOUR

FROM:ANN LEWIS

SUBJECT:RELIGIOUS PRESS

James Dunn is a good friend of the President who has written a number of supportive letters. In his last letter he suggested that the President meet with a small group of religious writers -- this is the follow-up.

FF

April 15, 1998

MEMORANDUM TO BRUCE REED

ELENA KAGAN

MELANNE VERVEER

FROM:ANN LEWIS

SUBJECT:CWLA

In the enclosed letter David Liederman, head of the Child Welfare League of America, makes the following requests: that the White House develop a commission to study child and youth deaths and that we fly a childrens memorial flag over the White House on April 24.

I expressed to David my own negative reaction to the establishment of a commission; that I thought a better response to Jonesboro and other such tragedies was action -- but that I would check with the people who know about the policy. Regarding the flag, he says that a number of Governors will be doing this and suggests it is a way to remember the children and their families.

FF

April 15, 1998

MEMORANDUM TO PAM CICETTI

FROM: ANN LEWIS

Sister Charlotte Kerr is a good friend of Senator Barbara Mikulski and of mine. When I saw her last week at a reception for Barbara she asked me to pass this along to Mrs. Clinton.

February 26, 1997

MEMORANDUM FOR ELENA KAGAN
DEPUTY ASSISTANT TO THE PRESIDENT
FOR DOMESTIC POLICY

FROM: CHRISTOPHER RUHM

SUBJECT: CEA Efforts to Support Our Nations Youngest Children

Recently, considerable attention has been paid to the high payoffs from investments in children during the period before birth and the first 3 years of life. As part of the Federal Governments efforts to enhance the earliest years of life, the CEA is in the process of writing a "white paper" summarizing much of the available research examining the economic returns to a variety of investments in young children. The analysis will focus on benefit-cost analyses of existing investments, where these are available. Where reliable benefit-cost analyses have not been undertaken, we will summarize information on those economic aspects of the programs which can be obtained from existing demonstration projects, assessment efforts, and data analyses. This effort will expand on a paper the CEA released in 1995 that evaluated programs for children of all ages.

The CEA analysis will focus on five important inputs into the well-being of the very young: nutrition of the mother and child, medical care and environmental factors, time with adults, early education, and the direct and indirect effects of low incomes. After discussing the ways in which each of these factors affect our youngest children, we will examine the consequences of specific programs such as food stamps, WIC, Medicaid, housing programs, environmental policies, the Family and Medical Leave Act, Head Start, and direct income support (TANF/AFDC, Child Care Tax Credit, EITC, and Child Support).

00*MEMORANDUM

TO: ELENA KAGAN

FROM: TOM FREEDMAN, MARY SMITH, TANYA MARTIN

RE: FEDERAL ENFORCEMENT OF CIVIL RIGHTS

DATE: OCTOBER 5, 1997

I. SUMMARY

In your August 22, 1997 meeting with federal civil rights agencies, you asked each agency to provide a memorandum describing its structure and legal authority, fiscal status, current initiatives and potential improvements that might be pursued as a part of the Race Initiative. Summarized below are the memoranda received from EEOC, Education, HHS, Justice, SBA, and the US Commission on Civil Rights. With few exceptions, the agencies do not discuss potential improvements, but focus solely on on-going initiatives. The following agencies have not submitted the requested memoranda: HUD, Interior, USDA and Labor. We are contacting those agencies to ask them to submit memoranda.

This memorandum also includes a revised proposed timeline for handling this issue with all of the participating agencies. However, we recommend focusing our initial efforts on the EEOC and U.S. Commission for Civil Rights given their broad responsibility for civil rights enforcement and the recent attention paid to backlog and productivity issues within those agencies.

Below are summaries of the key points in the agencies memoranda.

II. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The EEOC was created in 1964 to investigate employment discrimination charges relating to race, color, religion, sex, or national origin. Since that time, the EEOC has also become responsible for administering laws prohibiting discrimination on the basis of age, gender, and disability. As a result of its reinvented administrative enforcement program, the EEOC managed to trim its claim backlog by 30%-- to 79,448 charges from an all-time high of 111,345 -- by the end of fiscal year 1996. As of the third quarter of 1997, the EEOC was continuing to resolve charges at a faster pace than they were being filed. The agency also tracks the amount of monetary benefits obtained for discrimination victims -- which totaled over \$100 million for fiscal year 1997.

The number of FTEs has fallen from a high of 3,390 in 1980 to 2,680 today. This decline has occurred at the same time that enforcement obligations have substantially expanded to cover ADA and sexual harassment claims. Charges under the ADA, enacted in 1990, account for one quarter of the EEOCs caseload. Overall, the number of filings have increased from 62,135 in FY 1990 to a projected 80,00 in FY 1997. The EEOC has requested a budget of \$246 million for FY 1998, an increase of \$6 million (2.65%) over the current level.

III. U.S. COMMISSION ON CIVIL RIGHTS (USCCR)

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to investigate complaints, study and collect information, appraise federal laws and policies, serve as a national clearinghouse, submit reports and findings to the President and issue public service announcements. USCCR recently released a study, Funding Federal Civil Rights Enforcement, that found a gross disparity between agency resources and agency substantive responsibility, and urged action to increase resources to provide full and effective enforcement of anti-discrimination laws.

The workforce of the USCCR has decreased from over three hundred employees in the early 1980s to its current level of under one hundred. In its FY 1998 budget, the Commission requested an increase of \$1.3 million -- but anticipates that, for the third consecutive year, it will be funded at \$8.7 million. Note: In July 1997, GAO reported that USCCR lacks basic management and financial controls: key documents are lost or nonexistent; accurate cost data on programs or project is unavailable; and reports take so long to complete that published data is often outdated or inaccurate.

IV. JUSTICE -- CIVIL RIGHTS DIVISION (CRD)

The mission of the Civil Rights Division (CRD) of the Department of Justice is to serve as the chief civil rights enforcement agency of the federal government. Unless otherwise specified by law, the conduct of government litigation is reserved to the Department of Justice. CRD enforces a broad range of civil and criminal statutes and presidential executive orders and has certain coordination and public education responsibilities. CRDs general goals focus on police and official criminal misconduct; hate crimes; voting rights; employment, housing, credit and education discrimination; rights of the institutionalized; anti-discrimination in public services, programs and activities; and immigration-related unfair employment practices.

The Divisions FY 1997 budget is \$62 million -- that funds a staff of 560 persons, including 250 attorneys. For the past three years, funding for CRD has remained flat. For FY 1998, CRD has requested a budget of \$67.4 million, an increase of 8% over the FY 1997 level, to enhance prosecution of hate crimes and police misconduct, as well as for enforcement of the Americans with Disabilities Act. In order to maintain optimal vigorous enforcement, the Division estimates that a budgetary increase of approximately 20% would be required.

V. EDUCATION -- OFFICE FOR CIVIL RIGHTS (ED-OCR)

ED-OCR enforces civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability and age among recipients of Federal education funds. ED-OCR enforces civil rights enforcement for programs and services provided by schools of medicine, dentistry, nursing and other health-related schools remains with HHS. The majority of ED-OCR employees (primarily attorneys and investigators) are organized into four enforcement divisions made up of 12 regional offices that are responsible for resolving complaints and conducting compliance reviews. Unlike complaints, compliance reviews target resources on compliance problems that appear particularly acute or national in scope -- e.g., tracking or targeting minority/disabled students away from honors/advanced classes.

ED-OCR has reached the limit of efficiencies and improvement to be gained from organizational and procedural reforms, and may well be losing ground as staff losses take its toll. While ED-OCR loses staff -- its most vital resource, as civil right enforcement relies in large

measure on human presence and investigation -- its workload continues to grow. The number of FTEs has decreased from 820 to 724. At that same time the caseload has grown from 3,384 complaints filed and 32 compliance review initiated to 4,828 complaints filed and 146 compliance review initiated. For 1998, ED-OCR has requested a budget of \$61.5 million, an increase of \$6.5 million over 1997.

ED-OCRs recommendations for improved civil rights enforcement include presidential directives to evaluate nondiscrimination assurances by federal contractors; enforcement coordination on designated administration priorities, designing a cross-cutting decision-making process, sharing best practices and case targeting criteria, and improved public outreach -- such as a guide to federal civil rights agencies and a toll-free referral number.

VI. HEALTH & HUMAN SERVICES -- OFFICE FOR CIVIL RIGHTS (HHS-OCR)

HHS-OCR ensures that people have access to, and the opportunity to participate in and receive services from, all HHS programs without facing unlawful discrimination. Approximately 230,000 group and institutional providers are subject to the nondiscrimination laws HHS-OCR enforces. Major compliance actions and initiatives include: implementation of adoption non-discrimination requirements; reviews of minorities access to hospital inpatient and emergency room services (Title VI); racial and health status discrimination in the health care industry; the effect of managed care on access to services for minorities and individuals with disabilities; discrimination against persons with HIV/AIDS; ensuring that welfare reform programs are implemented in a non-discriminatory manner; and access to services for limited English proficient individuals.

The FY 1998 budget request for HHS-OCR is \$20.5 million, a \$1 million (5%) increase over the FY 1997 budget authority of \$19.5 million. This \$1 million increase will be used to help implement initiatives that address discriminatory issues involving immigration, inter-ethnic adoption, managed care, Medicaid waivers, nursing home care, home health care and welfare reform.

VII. U.S. SMALL BUSINESS ADMINISTRATION (SBA)

Historically, the Department of Justice permitted SBA to interpret the guaranty on SBA loans as financial assistance covered by Title VI. However, officials at Justice recently made a preliminary determination that exempts most SBA recipients from Title VI jurisdiction because Title V explicitly excludes "guarantees" in its definition of federal financial assistance. With the exception of three programs e.g., SBA-funded lending partners, all of SBAs financial assistance is rendered through guaranty programs.

SBAs civil rights office receives 30-40 external complaints annually, There is no backlog of pending cases. Complaints are transferred, when possible. Other agencies with larger enforcement mechanisms can process cases more cost-effectively. Also, SBAs only sanction is to withdraw its financial or guaranty assistance, it cannot provide any direct relief or remedy to the claimant. Once SBA assistance is withdrawn (or repaid), SBA loses jurisdiction over the matter. Those cases that are retained are investigated, and voluntary compliance negotiated, if possible, where discrimination has been found.

SBA has drafted a proposed "EO Guide for Small Businesses" to cover a variety of civil rights requirements. SBA suggests making the guide available to small businesses that are

not SBA recipients -- but would require funding to print sufficient copies.

VIII. PROPOSED FOLLOW-UP

*Follow-up contacts with agencies that submitted memoranda to request any specific ideas for improvements; contact agencies that have not yet submitted memoranda.

*Follow-Up Meetings -- October:

1. Agencies -- discuss preliminary recommendations for improvements

2. Backlog/Productivity Issues --- in-depth meetings to request/suggest further proposals to remedy on-going problems in specific agencies e.g., EEOC and USCCR.

3. Outreach -- meet with groups monitoring civil rights enforcement for suggestions of possible improvements, such as:

*Citizens Commission on Civil Rights

*ACLU

*American Council on Education

*NAACP

*National Urban League

*National Council of La Raza

*National Asian-Pacific American Legal Consortium

*Urban Institute

4. Coordination Issues -- possible separate discussion with Justice on coordination of civil rights effort across the government.

*Feedback to agencies on improvement proposals in mid-late October.

*Progress meetings on implementation of improvement proposals/ideas in Oct-Dec.

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN

FROM: TOM FREEDMAN, MARY L. SMITH

RE: TELEPHONE CRAMMING

DATE: MAY 5, 1998

SUMMARY

"Cramming" is the practice of billing local telephone customers for products or services they did not order.

I. BACKGROUND

*In April, Chairman Kennard told a congressional hearing that "cramming," the practice of billing local telephone customers for products or services they did not order, is likely to become the next big consumer issue in telecommunications. Unlike "slammers," who switch a consumers long-distance service without permission, "crammers" often arent even offering phone service, but their charges appear on phone bills anyway.

*By registering as telephone "common carriers," crammers can skirt most oversight by the Federal Trade Commission. Oversight then must be provided by the FCC, which deregulated billing and collection services by local phone companies in the 1980s and is being accused by lawmakers of lax enforcement of slamming and cramming.

*One consumer was charged after his 12-year-old daughter called a toll-free astrology line. Apparently, the company asked her to state her name, recorded it, and used it as "evidence" that the family ordered a voice mail service.

II. RECENT ACTIONS

*On April 23, the Senate Governmental Affairs Permanent Subcommittee on Investigations held a hearing on "slamming" -- the practice of witching a telephone customers long-distance service without the customers consent.

*At the Senate hearing, Senator Dick Durbin cited a new quarterly report from the National Fraud Information Center which found that "cramming" and "slamming" were the number one and number two sources of complaints, respectively, to the Center. The Center is a project of the National Consumers League (NCL). Slamming was the top consumer complaint to the Illinois attorney generals office in 1995, and the second most common complaint in 1996 and 1997.

*Senators Collins (R-ME) and Durbin (D-IL) have introduced a bill that would make intentional, repeated slamming a criminal offense. The bill allows the FCC to restrict practices companies may use to sign up unsuspecting customers for their services. The legislation also allow slamming victims to bypass a slammer and pay phone charges to their original carrier at that carriers rate. In addition, the bill increases civil penalties for slamming, imposes criminal penalties for the first time and requires all

telecommunications carriers to provide a summary of the number of subscriber slamming complaints against the carrier.

*In April, the General Accounting Office (GAO) issued a report that concluded: "We have found nothing in FCC practices that would effectively curtail unscrupulous individuals from entering the telecommunications industry."

*In April, the FCC filed its first cramming complaint against three Los Angeles-based companies and their officers under a recent statute that protects consumers from the 900-number pay-per-call industry.

*In March, the Illinois attorney general filed suit against eight alleged crammers.

*On April 27, FCC Chairman William Kennard announced that he was working with the industry to develop a voluntary code of best practices aimed at eliminating "cramming."

III.ACTIONS IN THE STATES

*Illinois is considering legislation to give consumers added protection against telephone "slamming" or "cramming." The bill bans the use of sweepstakes boxes as a way to switch or add phone service. It also mandates that consumers and businesses be notified within six days after a new phone service has been added or whether the service has been switched. There would also be a toll-free number which consumers could call to cancel or switch service.

November 7, 1997

Health Division
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Route to: Josh Gotbaum

Through: Barry Clendenin
Richard Turman

Subject: Proposed Changes to Civil Rights
Crosscut for Directors Review

From: Melany Nakagiri ACTION:
Decision
Signature
Comment
As requested Information X

Phone: 202/395-4925
Fax: 202/395-3910
Room: NEOB #7025 Needed By:
Date: / /
Time: : am/pm

Copies to:
HD Chron , HPS Chron

Post this Document on HD Intranet?

Per our conversation earlier this afternoon, attached is the route slip and comments we are submitting to Susan Carr (the coordinator of the Directors Review Civil Rights Crosscut) suggesting that we move HHS Office for Civil Rights from the Overview and Presidential Initiatives Section (funding decisions) into the Other Enforcement Agencies Section of the paper (informational only). Susan will check with Michael Deich to see if he concurs with our decision.

As we mentioned earlier, Elena Kagan at DPC has been meeting with key civil rights enforcement agencies, including HHS, to ask what additional resources they would require to improve their enforcement activities. We have attached a memo from HHS Office for Civil Rights in response to Elenas inquiry. Elena may seek additional resources for the key civil rights enforcement agencies as a Presidential Initiative bid and may want to include additional resources for HHS Office for Civil Rights.

Attachments

September 8, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: JIM DORSKIND

SUBJECT: WARD CONNERLY CORRESPONDENCE

The attached draft, which replies to two letters from Mr. Connerly, has been cleared by Sylvia Mathews, after seeking comment from, among others, Ann Lewis, Maria Echaveste, Elena Kagan, Cheryl Mills, and Minyon Moore.

Sylvia thought it best not to engage Mr. Connerly directly, but rather to let the Advisory Board address the merits of his concerns. Accordingly, the letter thanks Mr. Connerly for sharing his concerns and suggests that the Board will give them careful consideration.

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines

FROM: Sally Katzen

SUBJECT: Heads-up on HCFAs CLIA User Fee Final Rule

We are about to conclude review of a Health Care Financing Administration (HCFA) final rule that revises, for the first time since 1992, fees that laboratories pay for certification under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (for example, the fees for smaller labs, including physician office labs, will increase \$50 to \$300 per lab, and for larger labs the fees will increase \$1,000 to almost \$7,000 per lab). Although this is a final rule, there will be a 60-day public comment period following publication, and the rule will not go into effect until January 1, 1998, after all the comments are received and any necessary changes made. The new fees are necessary to prevent CLIA program funding deficits that would otherwise reach \$37 million by FY 2000. In addition, the revised fee schedule will result in more equitable funding of the program by requiring the larger labs, which perform more complex and a greater number of tests, to pay a larger percentage of the administrative costs.

While the new fees will come as no surprise to the laboratories, they will not be popular, particularly among the smaller labs. On the other hand, we have an Administration policy of promoting user fees, where appropriate, and the CLIA certification process provides value added to the industry and the public by improving the reliability and accuracy of testing. Please call if you have any questions.

cc: Maria Echaveste
Rahm Emanuel
Thurgood Marshall, Jr.
John Hilley
Ann Lewis
Sylvia Mathews
Bruce Reed
Chris Jennings
Elena Kagan
Victoria Radd
Barry Toiv
Michael Waldman
Josh Gotbaum
Larry Haas

00*MEMORANDUM FOR ELENA KAGAN AND SALLY KATZEN

FROM: JULIE FERNANDES AND CECILIA ROUSE

SUBJECT: ASSESSMENT OF H-2A "IDEAS INVENTORY"

DATE: September 11, 1998

Attached is our assessment of the positions of USDA and DOL regarding the proposals put forth in DOLs "ideas inventory." The shaded boxes indicate important proposals for which there is agency disagreement and thus should be discussed at today's meeting. We have also attached a list of the current program requirements that includes definitions of the most important terms.

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. Therefore, the total compensation offered by the H-2A program becomes the effective total compensation ceiling for U.S. workers. 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.

USDA's 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 existing 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.

As you read through the following list of proposals, you will notice that in many areas (e.g., wages, housing, transportation) 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.

PP 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. 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.

FF 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

This is current law.

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 AEW that USDA likes.
Another way to undercut the AEW that Labor hates.

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

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 AEW is consistent with their desire to keep or strengthen the AEW.

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

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 AEW 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 AEW. The conflict with USDA would be over how high to set the percentile.

Apply AEW 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 AEW 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 would consider shifting some maintenance or modest utilities fees to the worker.

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, b/c unnecessary under the current law (which allows for worker to pay for damage in some circumstances).

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. However, they may be open to the argument that this could result in strongly adverse impacts on local communities (migrant workers sleeping in parks, etc.)

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.

This option is really no different from the current system, except that the method of payment is a voucher, rather than directly paid for by the grower. Thus, to the extent that USDA does not like the current system (b/c the cost associated with providing housing is very high), they would not like this.

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? Labor would still like some kind of requirement that the employer provide for housing where it 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.