



Cynthia Dailard  
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Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP  
cc:  
Subject: Executive Order Ideas



FILM0622.W

This e-mail lists ideas for Executive Orders relating to tobacco which we are pursuing. (The attached chart describes agency policy on filming privileges on federal property, mentioned below.) Any feedback on these ideas would be greatly appreciated.

- 1) Applying the FDA Rule to Federal Property -- An Executive Order could apply the FDA rule to Federal property, by directing agencies that contract with entities operating on Federal land to include provisions in their contracts requiring compliance with the FDA rule. HHS likes this idea, and we plan to ask Justice to draft language for an Executive Order. We would also need to run this idea by Interior, DOD and other agencies that regulate federal property.
- 2) Prohibiting Underage Smoking on Federal Property -- DOJ is determining whether there is statutory authority to issue an Executive Order making underage smoking on federal property illegal. There would be no penalty for violations, other than confiscating the tobacco product. Justice likes this approach, but HHS is concerned about the way it would play in the press (they think the press would make fun of the idea). HHS also does not like anything that appears to punish minors because they believe it is ineffective in deterring youth smoking.
- 3) Smoking and Filming Privileges on Federal Property
  - (a) Prohibiting the Filming of Movies on Federal Property that Promote Smoking -- As you know, Senator McConnell said on the Senate floor that he would offer an amendment to the McCain legislation which would require federal agencies to prohibit the filming of movies on federal property which "depict the use of tobacco or illegal drugs as healthy, desirable, or socially acceptable." He also said that the President could issue an Executive Order to this effect. McConnell does not target the portrayal of youth smoking, but smoking in general.

We met yesterday with the Justice Department and the various Federal agencies which allow filming on federal property (Departments of Defense, Transportation (Coast Guard), Interior (Park Service), and Agriculture (Forest Service)) to learn more about their policies

and procedures for granting filming rights, and to elicit their views on the McConnell amendment. As you can see from the attached chart, their policies and procedures vary a great deal. For example, while the Park Service is explicitly prohibited from examining content in granting filming rights (they only seek to protect park resources and visitors), the DOD and the Coast Guard look closely at content. While the process for granting filming rights is very centralized for some agencies, it is very decentralized for others (ie. operating on a park by park basis).

All of the agencies raised objections to the McConnell amendment. The Park Service said that McConnell would directly contradict their policy which prohibits them from examining content. A number of agencies expressed strong concern about this route being a slippery slope, that could result in prohibiting the portrayal of other behavior (gay relationships, etc.), down the road. The DOD asserted that if they started engaging in this type of censorship, production companies would go elsewhere and "they would be out of business." Of course, some of the agencies are concerned about the administrative burden involved with reviewing thousands of scripts in this kind of detail.

The Justice Department's initial reaction is that McConnell's amendment raises First Amendment constitutional concerns because it is not viewpoint neutral. (They also privately expressed concern that current agency practice in granting filming privileges could be potentially unconstitutional as well.) They are in the process of researching the issue. They also want to explore whether we could regulate this type of speech because it results from a form of government subsidy (under Rust v. Sullivan), although they think this may be a stretch. They plan to give us an answer to these questions by the end of the week. The Supreme Court is expected to decide a case on Thursday or Friday on the National Endowment for the Arts which could shed some light on these questions, particularly in terms of free speech and government subsidies.

(b) Prohibiting the Filming of Movies on Federal Property that Portray Illegal Smoking - We have also asked the Justice Department to explore other alternatives to the McConnell amendment that would be viewpoint neutral, such as narrowing McConnell to prohibit the portrayal of illegal youth smoking. We will let you know what they say as soon as we hear from them.

4) Requiring OSHA to Issue a Standard on Environmental Tobacco Smoke -- OSHA has been working on a standard for almost a decade which would regulate indoor air quality, including ETS, Legionnaire's disease, etc. The standard is still several years away from completion. The President could issue an Executive Order directing OSHA to issue the ETS standard separately. OSHA believes that it would take two years to issue the ETS standard -- less time than completing the indoor air quality standard. OSHA is writing a memo providing us with the pros and cons of this approach. (A BNA reporter called OSHA about this today, because ASH is pushing the idea. OSHA had no comment.)

**[INTERNAL WORKING DRAFT]**

**Filming for Entertainment Purposes on Federal Property --  
Agency Policy  
June 23, 1998**

<b>Agency</b>	<b>Is there a Written Policy?</b>	<b>Does Agency Issue Permits?</b>	<b>Does Agency Review Script?</b>	<b>Does Agency Oversee Filming?</b>
<b>Agriculture (Forest Service)</b>	Forest Service generally uses guidelines adopted by Southern California forest service. <sup>1</sup>	Yes. There is a fee schedule. Process for granting permits is decentralized.	Agency may request story boards in order to determine if activities are incompatible with Forest policy.	A Forest Service Officer may monitor filming to protect park resources and guard against fires.
<b>Interior (Park Service)</b>	Yes -- Draft guidelines. These are explicit that Park Service should not regulate content.	Yes. Process for granting permits is decentralized.	No.	No.
<b>GSA</b>	N/A. Rules of occupying agency apply for each property. Smoking is not allowed on GSA property.	N/A.	N/A.	N/A.
<b>Defense</b>	Yes.	No. DOD enters into license agreements with production company -- there is no fee. Process is very centralized.	Yes.	Yes. Project officer monitors compliance with script.

<p><b>Transportation (Coast Guard)</b></p>	<p>No. Bases its policy on DOD.</p>	<p>No. Coast Guard enters into licensing agreement with production company.</p>	<p>Yes.</p>	<p>Yes. A technical advisor ensures compliance with script.</p>
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MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

June 16, 1993

PBW —  
Be sure to tell  
her what you think.  
BR

MEMORANDUM FOR      CAROL RASCO

FROM:                      Paul Weinstein

SUBJECT:                  Regulatory Review and Planning  
                                 Executive Order

You may receive a phone call from either Leon Panetta or Alice Rivlin regarding the draft Executive Order on Regulatory Review. The purpose of the call will be to ask your opinion on the following: whether the Office of Regulatory Information and Regulatory Affairs (OIRA), should be granted authority to postpone the publishing of new regulations until a disagreement with OIRA and an agency is resolved, or to instead allow the agency to publish the regulation after a period of time (60 to 90 days in most cases), even if the conflict has not been resolved.

Obviously, Director Panetta and Deputy Director Rivlin will want you to back the first option, since it gives OIRA greater authority. Essentially, this comes down to an issue of who will insure that regulations are most consistent with the President's policies, OMB or the agencies.

I should note that neither option precludes the Vice President's regulatory review working group, of which you are a member, from resolving any disagreement between OIRA and a agency.

cc:      Bruce Reed  
         Kathi Way

FROM

STEPHEN C. WARNATH

Bruce -

Here is the memo revised to apply to the welfare reform group. As always, let me know if I can help with other projects on this subject. As you know, I have some experience in this area. I worked on AFDC, food stamps and other related cases at a legal aid clinic and I worked on these issues for <sup>former</sup> Congressman Aulin.

Steve

Steve -

Thanks! I'll spread the word about you at HHS. — BR

File:  
Executive  
Orders

FACT SHEET

Status of Presidential Directives to Cut Government Waste and Perks

On February 10, 1993, the President signed three Executive Orders reducing Federal advisory committees, administrative overhead and employment and three Presidential directives governing use of government aircraft and vehicles, first class travel, executive dining facilities and the costs associated with conferences.

OMB was instructed to consult with agencies and issue guidance where appropriate and necessary. Status to date:

Reduction of 100,000 Federal Positions:

A bulletin (OMB Bulletin #93-08) instructing agencies to reduce Federal employment was issued by the Director on March 4, 1993. These reductions are also included in the FY 1994 President's budget to be released on April 8, 1993. (TAB A)

Deficit Control and Productivity Improvement in the Administration of the Federal Government:

A bulletin (OMB Bulletin #93-09) instructing agencies to reduce administrative overhead was issued by the Director on March 4, 1993. Administrative overhead reductions have also been included in the President's FY 1994 budget which is scheduled to be released on April 8, 1993. (TAB B)

Termination and Limitation of Federal Advisory Committees:

A bulletin has been developed by OMB and shared in draft with departments and agencies for comment. A revised bulletin has been completed and is in clearance to be signed by the Director. (TAB C)

Use of Government vehicles, Restricted use of Government aircraft and first class travel, executive dining facilities, conferences:

A bulletin has been developed by OMB and shared with the departments and agencies for comment. A revised bulletin is in OMB for clearance to be signed by the Director. (TAB D)

A



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503  
March 4, 1993

OMB BULLETIN NO. 93-08

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Reduction of 100,000 Federal Positions

1. **Purpose.** This Bulletin provides instructions on implementing mandated reductions in federal civilian employment in fiscal years 1993, 1994, and 1995.

2. **Authority and Background.** Executive Order 12839, "Reduction of 100,000 Federal Positions," dated February 10, 1993 directed that:

- o each executive department or agency with over 100 employees shall eliminate not less than 4 percent of its civilian personnel positions (measured on an full-time equivalent (FTE) basis) over the next three fiscal years.
- o the positions shall be vacated through attrition or early out programs.
- o at least 10 percent of the reductions shall come from the Senior Executive Service, GS-15, and GS-14 levels or equivalent.
- o each department and agency shall achieve 25 percent of its total reductions by the end of FY 1993, 62.5 percent by the end of FY 1994, and 100 percent by the end of FY 1995.

These instructions are being issued pursuant to section 4 of Executive Order 12839 and to the authority provided to the Office of Management and Budget (OMB) under the Budget and Accounting Act, 1921, as amended.

3. **Procedures for Implementing Reduction.** The head of each Executive Branch department and agency shall take steps to limit hiring, or take other action as necessary, to meet the specified FTE reductions.

Agencies should note that the base from which the FTE reduction is calculated is the FY 1993 level consistent with enacted appropriations. This base is not equivalent to the FTE ceiling; it includes both ceiling and ceiling exempt components. Ceiling exempt FTE personnel as well as FTE personnel funded through an allocation to another department or agency are potentially subject to reduction at the agency head's discretion.

Each department and agency shall achieve a cumulative reduction of at least 1% in FY 1993, 2.5% in FY 1994, and 4% in FY 1995 from the FY 1993 base. Note that these reductions are for the department or agency as a whole. Uniform reductions do not need to be applied to each individual bureau, or other organizational unit within department/agency as long as the reduction targets for the total department/agency are achieved. Department/agency heads are encouraged to use their discretion in applying these reductions among components of the agency.

Compliance with this directive will be monitored by OMB using data gathered by the Office of Personnel Management (OPM) through the SF 113 reporting system and the Central Personnel Data File (CPDF) System.

At least 10 percent of the reductions shall come from the Senior Executive Service (SES), GS/GM-15 and GS/GM-14 levels, or equivalent levels (e.g. Senior Foreign Service, Administrative Law Judges, Senior Level). For the purpose of monitoring reductions at the SES, GS/GM-15, GS/GM-14, and equivalent levels, the number of full-time permanent positions at these levels on September 30, 1992 will be used. Additional reporting of FTE data for these levels will not be required.

The Executive Order and this bulletin do not authorize special early out programs or require any agency to conduct a reduction-in-force. Any use of early out programs must be in accordance with current law and applicable Office of Personnel Management regulations and guidelines.

4. **Exemptions.** The following are exempt from the personnel reduction:

- a. U.S. Postal Service.
- b. Executive Branch agencies whose 1993 base level of total FTE employment is less than or equal to 100. (Employment in such agencies shall not exceed the 1993 base level during the period covered by the Executive Order.)

5. **Appeals.** Additional exemptions may be granted in a very limited number of cases if a determination is made by the Director of OMB that such action is necessary to assure that essential services are provided and applicable provisions of law are carried out. When an agency head believes those circumstances warrant an exemption, an appeal must be made by letter, addressed to the Director of OMB and signed by the agency head. The need for additional personnel must be fully justified, including an explanation of why reallocation within the agency is not feasible.

6. 1994 and Subsequent Budgets. The personnel reductions will be reflected in the Administration's 1994 Budget, as well as future budgets. Agencies are instructed to revise the Budget Preparation System (BPS) data base consistent with the required personnel reductions. Each agency has the flexibility to allocate the reduction among accounts as long as the total FTE reduction targets are met. The reduced FTE levels for fiscal years 1993 and 1994 should be reflected in BPS data section Q.

7. Effective Dates. The instructions in this Bulletin are effective immediately and will remain in effect until further notice.

8. Inquiries. Questions regarding the instructions in the Bulletin should be addressed to the OMB representatives with primary responsibility for the agency's budget accounts.



Leon E. Panetta  
Director

B



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

March 4, 1993

OMB BULLETIN NO. 93-09

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Deficit Control and Productivity Improvement in the Administration of the Federal Government

1. **Purpose.** This Bulletin provides instructions on implementing reductions in administrative expenses contained in the FY 1994 Budget.
2. **Authority.** Executive Order 12837, "Deficit Control and Productivity Improvement in the Administration of the Federal Government", dated February 10, 1993, specified that:
  - o Executive branch agencies shall include a separate category for "administrative expenses" when submitting their budget request to the OMB.
  - o The Director of OMB shall resolve all questions regarding the definition of administrative expenses.
  - o Agencies shall submit budgets that reflect the following reductions from the amounts made available for FY 1993 adjusted for inflation: for FY 1994, no less than a three percent reduction; for FY 1995, no less than a six percent reduction; for FY 1996, no less than a nine percent reduction; and for FY 1997, no less than a fourteen percent reduction.
  - o To the extent that any agency fails to comply with these mandates, the Director of OMB is authorized to reduce that agency's budget request for administrative expenses to achieve the appropriate reductions.

These instructions are being issued pursuant to Executive Order 12837 and the Budget and Accounting Act of 1921, as amended.

3. **Background.** Executive branch agencies are required to reduce administrative expenses to assist in controlling the Federal deficit and improving the administrative productivity of the Federal Government.

To calculate the impact of the reduction across the government, OMB used the object classification data provided to support the January 1993 budgetary statement. The object class 20 (contractual services and supplies) series was used to create a base from which dollar reductions were determined.

The reductions were subtracted from the baseline for each agency for FYs 1994-1998 and reflected in the approved budget levels provided to each agency on February 18th.

4. **Implementing the Reduction.** Agencies are instructed to revise the budget data base consistent with the required reductions for administrative expenses. Each agency has the flexibility to allocate the reduction among accounts, functions, and object classes within that agency, subject to OMB review.

Administrative reductions may be taken from any object class, as appropriate. For example, if the agency saves money by not purchasing motor vehicles, the agency may take credit for the reduction even if such purchases are recorded in the object class 30 series.

Dollar savings in personnel compensation and benefits (object class 10 series) due to the FTE reductions may not be counted as administrative savings unless (1) the agency's total FTE level is reduced below the OMB-approved FTE level, consistent with the implementation of Executive Order 12839, and (2) the dollar savings are greater than the dollar savings from the personnel reduction dollar savings.

a. **OMB Report.** OMB will provide each agency with a report that affirms the total agency reduction for FYs 1994-1998 provided on February 18th and the base from which it was calculated. The reductions must be met. Neither the base nor the reductions for the agency as a whole can be changed.

b. **Allocation of Reductions.** Each agency shall distribute the reductions among the agency's budget accounts, provided that:

- o The agency meets its total reduction in budget authority and outlays and the account level detail is consistent with the President's report on "A Vision of Change for America"; and
- o The reduction is distributed in such a way as to provide the minimum administrative expenses necessary for the start-up of program initiatives by this Administration.

c. **OMB Review.** If an agency does not meet its total required reduction in budget authority or outlays, the Director of OMB shall reduce that agency's accounts to ensure that the total savings required from the agency are achieved.

Adjustments may also be made by OMB if the reductions do not provide the minimum administrative expenses necessary for the start-up of program initiatives by this Administration,

5. **Supporting Information.** The President's FY 1994 Budget will include a summary table that presents each agency's administrative expense base and the reduction amounts for FYs 1994-1998. Agencies should begin to take steps to ensure that administrative expenses can be tracked below the agency level, although such information will not be published until the FY 1995 Budget. OMB will provide further guidance after the FY 1994 Budget is transmitted, including reporting requirements for the FY 1995 Budget.

6. **Effective Date.** This Bulletin is effective immediately.

7. **Inquiries.** Inquiries should be addressed to the OMB representative with primary budget responsibility for the account.



Leon E. Panetta  
Director





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

**DRAFT**

OMB BULLETIN NO. 93-

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Termination of Federal Advisory Committees

1. Purpose. This Bulletin provides guidance and instructions to Executive departments and agencies to implement Executive Order No. 12838, dated February 10, 1993, entitled "Termination and Limitation of Federal Advisory Committees."
2. Authority. E.O. No. 12838; the Federal Advisory Committee Act of 1972 (FACA), as amended; the Budget and Accounting Act of 1921; the Budget and Accounting Procedures Act of 1950, as amended; and E.O. No. 12024.
3. Applicability. The provisions of this Bulletin apply to all departments and agencies in the Executive Branch. Independent regulatory commissions and agencies are requested to comply.
4. Background. Over 1,150 Federal advisory committees currently provide advice to 60 departments and agencies on a wide range of programs and issues. During fiscal year 1992, support of these groups required almost \$150 million in Federal expenditures, an increase of over ten percent from 1991.

The President in his February 10, 1993, Executive Order directed all agencies: (1) to reduce the number of advisory committees not required by statute by at least one-third before October 1, 1993; (2) to review all advisory committees required by statute; and (3) to refrain from establishing any new advisory committee unless it is required by statute or "compelling considerations necessitate creation of such a committee."

5. Definitions. For purposes of this Bulletin, definitions for "advisory committee," "agency," and other terms are the same as defined in 41 CFR 101-6.1003. In addition:

"Advisory committee required by statute" means an advisory committee subject to the FACA: (1) specifically identified by name, specific purpose or function in a statute, and (2) whose creation or termination is beyond an agency's legal discretion. "Advisory committee required by statute" does not mean a group established by general (non-specific) authorization language or committee report language. Where the statute requires an advisory committee as defined above, but allows for one or more committees, only one committee shall be considered to be "required by statute."

6. Agency responsibilities. Heads of Departments and agencies shall:

(a) Submit to my office, not later than May 10, 1993, a detailed assessment/justification or rationale for termination of each advisory committee (required and not required by statute) for which it is responsible in the format specified in the Attachment. Each agency head is responsible to the President to provide real reductions in response to Executive Order 12838 including the termination of one-third of their committees not required by statute. Mere reorganizations will not be considered to be reductions. However, Congressional terminations of advisory committees required by statute will be counted toward an agency's one third requirement for terminations in FY 1993.

(b) For any advisory committee that it proposes to establish or renew, submit a detailed justification including either (1) if required by statute, a copy of the relevant statutory language and sectional analyses; or (2) a narrative statement showing that establishment of the committee, if not required by statute, is compelled by considerations of national or economic security, health or safety, or similar national interest.

7. OMB responsibilities. The Office of Management and Budget will:

(a) Review agency reports prepared pursuant to Section 6 above, in accordance with the Executive Order, and promptly advise agencies of the results of its review.

(b) Consider any requests for new advisory committees in legislation or otherwise proposed by the agencies. Such approvals will be granted only sparingly.

(c) Ensure that relevant legislation is reviewed consistent with OMB Circular A-19. OMB will consider submitting an omnibus legislative proposal which would group together all proposed terminations of advisory committees required by statute.

8. GSA responsibilities. The General Services Administration shall (in addition to its responsibilities under the FACA and as an agency under Section 6 above):

(a) Prepare required justifications and recommendations specified in Section 6 (a) for each advisory committee subject to the FACA and not sponsored by another department or agency.

(b) Revise its committee management regulations consistent with E.O. 12838.

9. Information contact. Questions concerning any specific advisory committee should be directed to the appropriate OMB budget examiner. Questions about this Bulletin should be directed to OMB's General Management Division on 202-395-3657. Questions regarding GSA's role should be directed to GSA's Committee Management Secretariat on 202-632-1126.

10. Sunset date. This Bulletin expires on December 31, 1993.

Leon E. Panetta  
Director

Attachment

ATTACHMENT  
OMB BULLETIN NO. 93-

Department or Agency: COMMITTEE (full name as chartered)

Recommendation (only one): \_\_\_ Terminate \_\_\_ Merge \_\_\_ Continue

Committee statutory authority, cost, staffing and identification:

- (a) "Required by statute"?<sup>1</sup> Yes; specific authority:<sup>2</sup> \_\_\_\_\_ No \_\_\_\_\_
- (b) Committee cost<sup>3</sup> (FY 92 actual and FY 93 estimate) \$ \_\_\_\_\_
- (c) Federal staff support years<sup>4</sup> (FY 92 actual and FY 93 estimate) \_\_\_\_\_ (FTE)
- (d) Committee identification number<sup>5</sup> \_\_\_\_\_

Assessment: For each advisory committee subject to FACA, provide:

1. If the advisory committee is not required by statute, a detailed justification for continued existence, or a brief description in support of termination, or
2. If the advisory committee is required by statute, a detailed recommendation for submission to the Congress to continue or terminate the committee. Termination recommendations should include proposed legislative language, sectional analyses and rationale for termination.

Recommendations to continue committees, whether or not required by statute, should describe, in specific detail, why the committee is necessary for the delivery of essential services and compliance with law, and what alternatives, including the cost thereof, are available to the agency if the committee is terminated.

<sup>1</sup> As defined in paragraph 5, OMB Bulletin.

<sup>2</sup> Cite and attach relevant U.S. code (U.S.C. section) and sectional analyses.

<sup>3</sup> Attach a detailed breakout for FY 92 and 93, including personnel costs (federal members, non-federal members, staff, and non-member consultants), travel and per diem (broken-out as above), and other (rents, user charges, graphics, printing, mailing, etc) as identified in GSA form T-820-H. Also provide a list of subgroups (sub-committees, task forces, working or ad hoc groups) reporting to a parent committee.

<sup>4</sup> Express in full-time equivalent (FTE) years to the nearest tenth (e.g., 0.0).

<sup>5</sup> Use GSA Committee identification number. If none assigned, contact GSA's Committee Management Secretariat on 202-632-1126. Provide a copy of the completed forms to GSA.



**DRAFT**



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

**BULLETIN NO. 93-**

**TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS**

**SUBJECT: Fiscal Responsibility and Reducing Perquisites**

1. Purpose. This Bulletin provides guidance and instructions to agencies concerning implementation of the February 10, 1993 Presidential memoranda on "Use of Government Vehicles," "Restricted Use of Government Aircraft," and "Government Fiscal Responsibility and Reducing Perquisites."
2. Background. On February 10, 1993, the President signed three memoranda to Executive Departments instructing them to curtail use of government vehicles, government aircraft executive dining facilities and conferences. These memoranda instruct the Office of Management and Budget to issue any necessary directives and plans to implement the policies and to monitor compliance.
3. Coverage. This Bulletin applies to all Executive Departments and agencies.
4. Policy. As American taxpayers are being asked to make a contribution to reducing the deficit it is imperative that we not spend their hard-earned tax dollars in ways that appear to be improper. Specific policy guidance and definitions are attached to this bulletin covering the use of government vehicles and aircraft, executive dining facilities and conferences.
5. Action Requirements. It is the responsibility of every Department and agency to ensure compliance with the President's policies and attached guidance both in spirit and in fact.
6. Effective Date. The provisions of this Bulletin are effective upon issuance.
7. Information Contact: Inquiries should be directed to the person named in the attachments.

Leon E. Panetta  
Director

## Attachments

1. Use of Government Vehicles
2. Use of First Class Travel
3. Use of Government Aircraft
4. Executive Dining Facilities
5. Travel to Conferences

## Guidance on the Use of Government Vehicles

Policy: Executive Departments and agencies will reduce the number of executive motor vehicles by at least 50 percent by the end of fiscal year 1993.

Scope and Coverage: This guidance applies to all Executive Departments and agencies.

Definitions:

Executive Motor Vehicle means an owned or leased motor vehicle expressly designed for carrying passengers, which is used for the purpose of providing transportation for government officials and employees.

Actions:

- a. Heads of Executive Departments and agencies shall maintain and operate only the minimum number of executive vehicles necessary to meet the transportation needs of Government executives, including home-to-work transportation as authorized by statute and determined by the agency head to be necessary.
- b. At a minimum, each agency with two or more executive motor vehicles must reduce the number of such vehicles by 50 percent by the end of fiscal year 1993.
- c. Agencies are instructed to exercise a "common sense" approach in identifying executive motor vehicles and to discourage and/or disallow any attempt to avoid the intent of this policy such as by not counting vehicles used both to transport individuals and small packages or by excluding vehicles driven by persons not formally classified as drivers.

Exemptions:

- a. Vans and buses;
- b. vehicles driven exclusively by the person being transported;
- c. vehicles used principally for command and control purposes on military base installations;
- d. armored vehicles and vehicles acquired and used principally to ensure the personal safety or security of employees; and
- e. overseas vehicles, if the Chief of Mission can certify that public transportation is unsafe, unavailable or there are extenuating circumstances that require extensive use of motor vehicles for mission related functions.

Reporting:

- a. Heads of Executive Departments and agencies shall report to the Office of Management and Budget on their current inventories of executive motor vehicles within 30 days of the issuance of this guidance. A copy of this report shall be concurrently provided to the Administrator of the General Services Administration. A reporting format is specified at Exhibit 1A.
- b. Heads of Executive Departments and agencies shall notify the Office of Management and Budget when it is in compliance with this policy, and in no event later than September 30, 1993.
- c. Each Department and agency shall report to the Office of Management and Budget, the number of executive motor vehicles in its inventory no later than October 31, 1993. A copy of this report shall be concurrently provided to the Administrator of the General Services Administration.

Contact: Kimberly Newman, OMB, (202) 395-4936.

Attachment: Exhibit 1A.



## Use of First Class Travel

Policy: Government funds shall not be used to pay for first-class travel, unless no other commercial service is reasonably available, or such travel is necessary for reasons of disability or medical condition.

Scope and Coverage: This guidance applies to travel by all officers and employees of the Executive branch and others when they travel in support of agency programs at taxpayer expense, including agency programs funded from sources other than appropriations, e.g., fees or assessments, and invitational travel.

### Definitions:

First class travel means the highest class of service available on multiple class commercial transportation modes, including aircraft, ships, and trains. This does not include other premium, i.e., above coach, class service, such as business class on aircraft.

Reasonably available means able to meet the traveler's departure and/or arrival requirements within a 24 hour period, unless the traveler demonstrates that extraordinary circumstances require a shorter period to fulfill effectively the agency requirement.

### Actions:

- a. Agencies shall not authorize, pay for, or reimburse employees or others for the use of first class travel, except as provided below. Guidance on the use of other premium classes of travel; e.g., business class air transportation; continues to be covered by the Federal Travel Regulations issued by the General Services Administration, the Joint Federal Travel Regulation issued by the Per Diem, Travel, and Transportation Allowance Committee (Committee), and the Foreign Affairs Manual issued by the Secretary of State.
- b. The Committee, the Secretary of State, and the Administrator of General Services shall incorporate the applicable policies in this Bulletin into the travel regulations which they promulgate for uniformed service, foreign service, and civilian employees, respectively. The necessary changes to these regulations should be issued no later than 60 days from the date of this Bulletin.

- c. The Administrator of General Services shall issue guidance on agency reports on use of first class travel no later than 60 days from the date of this Bulletin.

Exceptions: Agencies may exempt travelers from the prohibition on use of first class travel under the following conditions:

- a. No other commercial service is reasonably available;
- b. The traveler is handicapped or otherwise physically impaired such that other accommodations cannot be used, and this condition is substantiated in writing by a competent medical authority; and
- c. Exceptional security circumstances require such travel, such as: (1) travel by couriers or control officers accompanying controlled pouches or packages and a lower premium class is not available, or (2) travel by agents in charge of protective details accompanying first class travelers.

Reporting: Agencies shall report to GSA, in accordance with the reporting instructions to be issued by GSA, on all instances of first class travel paid with government funds. The reports will include the name of each person for whom first class travel is paid, the purpose of the travel, the basis on which first class travel was justified, the cost of the first class travel, and the cost of the alternative coach level of service. The first of these reports will be due for the fiscal year ending September 30, 1993, and annually thereafter.

Contact. Jack Kelly, OMB, (202) 395-6106.

## Use of Government Aircraft

**Policy:** The taxpayers should pay no more than necessary to transport government officials. In general, government aircraft shall not be used for nongovernmental purposes. When travel is necessary for governmental purposes, government aircraft shall not be used if commercial airline or aircraft (including charter) service is reasonably available.

**Scope and Coverage:** This guidance applies to Executive Departments and agencies.

**Definitions:** For purposes of this guidance, definitions for "government aircraft," "full coach fare," "reasonably available," and "official travel" are the same as defined in OMB Circular A-126. In addition:

Aircraft configured for passenger use means fixed-wing aircraft equipped with seats capable of carrying four or more passengers, in addition to the pilot and other members of the aircraft flight crew, whether or not the seats are normally installed in the aircraft. This designation is made based on capability, not on use. In the case of the Department of Defense and the Coast Guard, this designation means fixed-wing "Operational Support Aircraft" (OSA).

Senior Executive Branch Officials mean civilian officials appointed by the President with the advice and consent of the Senate and civilian employees of the Executive Office of the President (EOP).

### Actions:

- a. Agencies may authorize the use of government aircraft by Executive Branch officials and employees only for travel to meet mission requirements or other travel for the conduct of agency business and then only when commercial airline or aircraft (including charter) service is not reasonably available, unless highly unusual circumstances present a clear and present danger, an emergency exists, use of government aircraft is more cost-effective than commercial air, or other compelling operational considerations make commercial transportation unacceptable. Such authorization shall be granted sparingly and shall be consistent with and documented in accordance with OMB Circular A-126.
- b. Agencies shall report all uses of government aircraft by Senior Executive Branch Officials, including for mission travel. In addition to information already reported, these

reports must include the amount of reimbursements collected for travel by Senior Executive Branch Officials.

- c. The Administrator of General Services shall modify the current guidance on agency reports on non-mission uses of government aircraft to incorporate the additional requirements in subparagraph b. above. The revised guidance should be issued no later than 60 days from the date of this Bulletin.
- d. The Administrator of General Services shall evaluate the reports on agencies' continuing need for aircraft configured for passenger use in the context of the aircraft inventory data and other information maintained by GSA and shall provide OMB the results of such evaluation.

Exceptions:

- a. The Secretary of State, Secretary of Defense, Attorney General, Director of the Federal Bureau of Investigation, and the Director of Central Intelligence may use government aircraft for travel other than (1) to meet mission requirements or (2) for the conduct of agency business, but only upon reimbursement at full coach fare and with authorization by the President or his designated representative on the grounds that a threat exists which could endanger lives or when continuous 24-hour secure communication is required.
- b. "Space available" travel shall continue to be authorized consistent with the provisions of OMB Circular A-126.

Reporting: Not later than 45 days from the issuance of this guidance, agencies shall report to OMB on their continuing need for aircraft configured for passenger use. These reports will be provided in the format and according to the instructions given in Exhibit 3A. Agencies shall provide GSA with a copy of their reports concurrent with providing them to OMB.

Contact. Jack Kelly, OMB, (202) 395-6106.

Attachments

Exhibit 3A  
Exhibit 3B

**Agency Report on the Continuing Need  
for Aircraft Configured for Passenger Use**

The February 10, 1993 Presidential memorandum on "Restricted Use of Government Aircraft" requires agencies to report to OMB on their continuing need for aircraft configured for passenger use. For purposes of meeting this requirement such aircraft have been defined to be "fixed-wing aircraft equipped with seats capable of carrying four or more passengers, in addition to the pilot and other members of the aircraft flight crew, whether or not the seats are normally installed in the aircraft." To meet this reporting requirement, agencies shall:

1. Submit a copy of the agency's 1992 FAMIS inventory list (or the 1991 list if 1992 is not available) annotated as follows:
  - a. Mark the list to indicate all changes in location and mission that have occurred since the list was published as well as the "Del. Dt." column for aircraft removed from the inventory. For aircraft removed from the inventory, note the type of disposal (e.g., transfer, sale, donation, etc.) and to whom title was transferred, in addition to the date deleted from the inventory.
  - b. Amend the FAMIS list to add any aircraft acquired since the FAMIS list was published or aircraft that are included in the agency's property records that were not reported to FAMIS. Such aircraft might include aircraft that are in a non-operational status, e.g., storage, and seized or forfeited aircraft that have been acquired subsequently for agency use. Do not list aircraft that are on loan to a state or local government or seized or forfeited aircraft which the agency has not acquired for use.
2. For each aircraft on the annotated FAMIS list that is configured for passenger use, mark "P" in the left margin next to the Aircraft Type.
3. For other aircraft, mark "NP" in the left margin next to the Aircraft Type.
4. List the Aircraft Type and FAA No. (i.e., "tail number") for each aircraft marked "P" on the FAMIS report on the separate "Report on Aircraft Configured for Passenger Use," the format for which is provided as Exhibit 3B, and provide the remaining information as follows:

- a. **Passenger Capacity, Designed and Normal** - indicate in the appropriate columns the number of passenger seats that the aircraft is designed or capable of holding (including seats that are designed to be moved in on an as needed basis) and the number of seats the aircraft carries normally.
  - b. **Annual Hours Flown** - indicate the number of hours the aircraft was flown in 1991, 1992, and thus far in 1993.
  - c. **1992 Operating Costs** - indicate the total operating costs for the aircraft in FY 1992. These costs should include the total of both the variable and fixed cost elements defined in OMB Circular A-126.
5. For each aircraft listed on the "Report on Aircraft Configured for Passenger Use," provide a paragraph justifying the use of the aircraft. Justifications are:
- (1) commercial aircraft or aircraft services are unable to meet the agency's needs; or
  - (2) the agency can operate its aircraft at lower cost than it can acquire the comparable service from commercial sources.
- Each of these justifications should be explained in sufficient detail and the agency should provide copies of any reports or other analyses that support them. If several aircraft are justified on the same grounds, they may be grouped together and justified in the same paragraph.
6. Submit the annotated FAMIS list, the "Report on Aircraft Configured for Passenger Use," and the justification paragraphs to OMB by April 12, 1993. Agencies shall provide GSA with a copy of their reports concurrent with providing them to OMB.



**Guidance on Executive Dining Facilities**

**Policy:** Executive dining facilities in the Executive Departments and agencies will not provide below-cost meals.

**Scope and Coverage:** This guidance applies to all Executive Departments and agencies.

**Definitions:**

**Executive Dining Facility** means any food preparation and/or consumption area to which access is restricted based on rank or position.

**Meal Cost** means the greater of (a) the full cost of food, food preparation, service, and equipment to operate an executive dining facility, or (b) the price charged for similar meals in a comparable commercial establishment.

**Actions:**

- a. Heads of Executive Departments and agencies shall review all dining facilities to ensure compliance with the policy listed above.
- b. Agency Heads shall consult with the Chief Financial Officers, Inspector Generals and other appropriate agency officials to assure that accounting practices and procedures are sufficient to permit periodic audits of compliance with this policy.

**Exemptions:** Dining facilities that operate using non-appropriated funds (e.g., military officer clubs) are exempt from this policy. Any use of a dining facility for representation purposes or deemed by the Head of the Department or agency as necessary for the successful completion of an agency's mission is exempt provided that the price charged for other than such representation purposes shall be not less than the meal costs in a comparable commercial establishment.

**Reporting:** Agencies should report, no later than sixty days after the issuance of this guidance, to OMB in the format specified in the following exhibit: (1) the number of dining facilities subject to this policy and (2) actions taken to ensure compliance with this guidance.

**Contact:** Steve Mertens, OMB, (202) 395-4935.

Attachment  
Exhibit 4A

DEPARTMENT OF \_\_\_\_\_

Report on Executive Dining Facilities

Agency/Bureau	Dining Facility Location	Status Open	Status Closed	Comments:
				If "Closed," estimate savings.
				If "Open," changes that have been made in the operations of the executive dining facility to comply with the President's policy and this guidance and estimated savings. The agency should also provide a statement showing that the facility is operating within the framework of this guidance (e.g., "We charge for meals on the following basis...").

4-2

Agency Contact: \_\_\_\_\_

Exhibit 4A

## Travel to Conferences

**Policy:** The public interest requires that agencies exercise strict fiscal responsibility when selecting conference sites. Accordingly, agencies shall select conference sites that minimize conference costs. When agency representatives attend conferences sponsored by others, the agency must keep its representation to a minimum consistent with serving the public's interest.

**Scope and Coverage:** This guidance applies to all Executive Departments and agencies that sponsor conferences or pay for travel to conferences. In addition to conference travel by agency employees, this guidance applies to conference travel paid for persons invited to travel in support of agency programs.

### Definitions:

Conferences mean meetings, retreats, training activities, and other gatherings which involve travel outside the attendees' permanent duty stations.

Conference costs mean all costs paid by the government for a conference, whether paid directly by agencies or reimbursed by agencies to travelers or others associated with the conference, e.g., speakers, contractors, etc. Such costs include, but are not limited to, travel to and from the conference, ground transportation, lodging, meals and incidental costs, meeting room and audiovisual costs, registration fees, speaker fees, other conference-related administrative fees, and the cost of employees' time spent at the conference and traveling to and from the conference.

### Actions:

- a. Agencies shall establish or revise existing procedures to select conference sites and make other conference arrangements to ensure that conference costs are kept to a minimum. Agencies shall document the alternatives considered and rationale used in selecting conference sites.
- b. Agencies shall establish or revise existing internal policies and procedures for determining the number and identity of persons to send to conferences sponsored by themselves or others. These procedures should, at a minimum, (1) limit agency attendance to the minimum determined by a senior official to be necessary for accomplishment of the agency's mission, and (2) consider travel expenses in selecting attendees.

- c. The Per Diem, Travel, and Transportation Allowance Committee (Committee), the Secretary of State, and the Administrator of General Services shall incorporate the applicable policies in this Bulletin into the travel regulations which they promulgate for uniformed service, foreign service, and civilian employees, respectively. The necessary changes to these regulations should be issued no later than 60 days from the date of this Bulletin.
- d. The Administrator of General Services shall develop programs to assist agencies in selecting conference locations which minimize travel costs and in obtaining the most favorable conference rates available.
- e. The Director of the Office of Personnel Management shall incorporate the applicable policies in this Bulletin into the training regulations promulgated by OPM no later than 60 days from the date of this Bulletin.

Reporting: Agencies are not required to submit reports on conferences they sponsor. However, agencies shall maintain sufficient documentation to demonstrate that they have complied with the requirements of this Bulletin in selecting conference locations and in determining the agency's attendance at conferences. Such documentation must be available for inspection by the agency Inspectors General and other interested parties.

Contact. Jack Kelly, OMB, (202) 395-6106.

ARNOLD & PORTER  
 Thurman Arnold Building  
 1200 New Hampshire Avenue, N.W.  
 Washington, D.C. 20036  
 Telephone: (202) 872-6700  
 Telex: 892733 ARFOPO WSH  
 TELEFAX: (202) 872-6720

## MULTI-ADDRESS TELEFAX TRANSMISSION SHEET

We Are Sending 7 Pages  
 (Including This Cover Sheet)

DATE: 1/31/93

TO:	Name/Company	Telefax Number	Voice Contact Number
1.	Vince Foster	456-6279	456-6611
2.	Cheryl Mills	456-1647	456-7900

FROM: Jerome J. Chapman

PRIVILEGED AND CONFIDENTIAL information intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us at the above address via the U.S. Mail.

MESSAGE: Cheryl: Please call me after you read this memo. If you agree with my recommendations, we probably should give a copy of the memo to Bruce Read and possibly someone in Stephanopoulos' office.

*Diane Lowe*  
*Rm 227*

[ ] If checked, please confirm receipt with operator at (202) 872-6898.

If any problems, contact operator at (202) 872-6898.

Return To: J. Chapman Client/Matter No. 94791.001  
 Room No. 501 Timekeeper No. 3131

DETERMINED TO BE AN  
ADMINISTRATIVE MARKING

12/5/95

12/5/95

January 31, 1993

~~PRIVILEGED AND CONFIDENTIAL~~

MEMORANDUM

TO: Vince Foster  
Cheryl Mills

FROM: Jerome Chapman *JC*

RE: Family and Medical Leave

For the reasons discussed below, I recommend that either (i) no action be taken to attempt to extend the Family and Medical Leave Act ("FMLA") to persons not covered by the statute or (ii) at most, the matter be referred to experts in federal personnel practices for study and recommended action.

I. Underlying Premise for Executive Order

The proposal for an Executive Order extending the provisions of FMLA to White House staff and political appointees not covered by the Act may have rested on a mistaken premise -- namely, that uncovered employees are thereby disadvantaged relative to those who are covered. On the contrary, according to Jim Woodruff in the OPM General Counsel's office, the persons excluded from FMLA do not need special relief because they are not subject to government leave or absence-from-work policies. Noncovered employees are on perpetual pay status regardless of their actual hours of work, because their work hours are dictated solely at the pleasure of the President. To illustrate:

1. Covered Employees -- If FMLA were not passed, a covered employee (e.g., a career GS-14) facing a family crisis would first have to use up all his or her annual leave and sick leave and then could be subject to discharge if he or she needed to stay away from work for a longer time.

2. Noncovered employees -- In the same situation, even without FMLA, a noncovered employee (e.g., the Chief of Staff) could stay away as long as the President is willing to accept, and will continue on uninterrupted pay status.

- 2 -

Stated most simply, FMLA covers all Executive Branch employees -- including lower-level White House employees -- who are subject to a federal leave system and would be put in jeopardy in an extended family or medical crisis. It does not cover employees -- including senior Presidential appointees -- who are not subject to a federal leave system.

## II. Background Facts

Title II of FMLA currently moving through Congress would entitle every Executive Branch "employee" to 12 weeks of unpaid leave in any 12-month period for specified family or medical reasons. The term "employee" does not include:

1. a Presidential appointee whose rate of basic pay exceeds the highest rate payable under the General Schedule (currently \$86,589);<sup>1</sup>
2. an individual employed on a temporary or intermittent basis; or
3. a person who has not yet completed 12 months of government service.

In practical terms, FMLA would not cover:

1. the approximately 700 Presidential appointees subject to Senate approval (PAS) paid under the Executive Schedule, 5 U.S.C. §§ 5312-16; and
2. at least those Presidential appointees in the EOP who are paid more than \$86,589.

My contact in the OPM General Counsel's office, Jim Woodruff, told me that Presidential appointees in the White House Office who could be legally paid more than \$86,589 but who are now actually being paid less,

---

<sup>1</sup> "Employee" also does not include "an officer in the executive branch . . . who is designated by the President . . ." I am advised by OPM that this is an obsolete provision that, as a practical matter, has no current applicability. Also excluded are employees of the District of Columbia or of Congress. There is no proposal that the President should act to cover D.C. or Congressional employees.

- 3 -

would be covered under FMLA. He also told me, however, that this coverage could be a moot point if the President exercises his authority to exclude the employee from any federal leave system. That authority arises under the statutes authorizing the President (and Vice-President)<sup>2</sup> to appoint and fix pay for White House employees "without regard to any other provision of law regarding the employment or compensation of persons in Government service." (3 U.S.C. §§ 105, 106, 107.) [Woodruff told me that Ray Kogut at OMB is the expert on which White House employees are and are not covered by a federal leave system. I will call Kogut on Monday.]

Regardless of where the line between covered and noncovered employees is drawn, the basic dichotomy is the same:

1. Some Executive Branch employees are subject to regular civil service work hours and leave policies. These employees are the ones who need special relief for family and medical crises, and therefore these are the ones who are covered by FMLA.

2. Other employees -- including the PAS's paid under the Executive Schedule and the senior Presidential appointees in the EOP -- are not subject to regular civil service work hours and leave policies. That is why they are not covered by FMLA.

### III. Decisions Required

In this section, I describe the decisions that are required and the options available. In the next section, I state my recommendations and the reasons for them.

1. Is any Presidential action necessary or desirable?

---

<sup>2</sup> By some quirk, FMLA only refers to Presidential appointees, and therefore does not exclude Vice-Presidential appointees paid at rates exceeding \$86,589. OPM believes high-paid Vice-Presidential appointees were intended to be excluded from FMLA, just like high-paid Presidential appointees, because they too are not subject to a federal leave system.

- 4 -

a. No action is needed. Noncovered employees can take as much time off as needed anyway, so long as the President agrees.

b. Some action is needed to assure noncovered employees in advance that they will be accorded family and medical leave coextensive with that accorded to lower level civil servants in FMLA.

c. Some action is desirable for symbolic purposes.

2. If action is deemed necessary or desirable, what form should it take?

a. Presidential statement at the time he signs FMLA that he intends to accord the same leave privileges to those of his appointees who are not covered by FMLA.

b. Presidential memorandum directing OPM and/or the White House Office of Administration to recommend to the President, by a date certain, procedures he could implement -- by Executive Order or further Presidential memorandum -- for extending FMLA leave provisions to some (White House and/or EOP) or all noncovered Executive Branch employees.

c. Executive Order or Presidential memorandum extending FMLA to some (White House and/or EOP) or all noncovered Executive Branch employees.

3. If action is taken, should the leave time be paid or unpaid?

a. Paid leave is what uncovered employees would get now, since they are on perpetual pay status regardless of hours worked.

b. Unpaid leave would parallel FMLA, but would raise three issues:

(i) I doubt that the President can lawfully reduce the pay of the approximately 700 employees whose salary is set by the Executive Schedule enacted by Congress. Unpaid leave for members of "independent agencies" would be particularly problematic.

(ii) The President can "fix the pay of employees in the White House Office" as he sees fit (3 U.S.C. § 105), but it may be unfair to require them to

- 5 -

take unpaid leave while Executive Schedule employees continue to be paid; and

(iii) If unpaid leave were required, provisions would have to be made (as in FMLA) for continuation of government health insurance paid for solely by the person on unpaid leave.

4. When would a Presidential appointee become eligible for FMLA-type leave?

a. Immediately; or

b. After serving for 12 months as an "employee", as under FMLA.

5. Finally, should there be any enforcement mechanism to protect an employee who is denied leave, and if so, what should it be?

IV. Recommendations

1. I believe there is a good argument for the view that no action is needed. The Executive Branch employees left out of FMLA are not disadvantaged relative to those who are covered. They are left out because -- since they are not otherwise required to "punch the clock" -- the unpaid leave provisions of FMLA are simply inapplicable.

2. If some action is believed desirable, I recommend that the issue be referred to the experts at OPM or the Administrative Office of the White House to craft an appropriate program for applying FMLA provisions to noncovered Executive Branch employees. I base this opinion on the following:

(i) If, paralleling FMLA, a Presidential appointee does not become eligible for special leave until after 12 months of service, there is no urgency to put a White House, EOP or senior appointee program in place right away.

(ii) As noted, during any time period before a special leave program is established, noncovered employees are fully protected. If the President agrees, they can take off as much time as they need, without losing any pay or benefits.

(iii) The question of precisely who is and who is not covered is complex. For example, Presidential

- 6 -

appointees in the White House who could be, but are currently not, paid more than \$86,589 may be covered by FMLA, but their coverage would be meaningless if the President exempts them from general civil service leave policies. The status of Vice-Presidential appointees also needs to be clarified. Finally, the President's ability to establish unpaid leave for Executive Schedule appointees who are not on a leave system and whose pay rate is set by statute -- and related fairness issues in mandating unpaid leave for White House employees -- need to be carefully considered.

[Note: I will push forward as quickly as I can with further discussions with OPM and the White House Office of Administration on these points, but I question whether these tricky questions should be addressed under stringent time pressures.]

# Clinton/Gore Presidential Transition Office

~~Intergovernmental Relations/Advisory Committees~~

1120 Vermont Avenue  
Washington, DC 20270

~~(202) 973-1420~~

973-1485

## FAX COVER SHEET

From Steve Warnath

To Bruce Reed

Organization \_\_\_\_\_

Number \_\_\_\_\_

Message Bruce - Here is the Family Leave  
material that you requested. I think that  
we need to redraft the executive order,  
but this will give you an idea of  
where things stand.

Thanks,

*Steve*

## I. EXECUTIVE ORDER DRAFT

### APPLICATION OF THE FAMILY AND MEDICAL LEAVE ACT TO WHITE HOUSE STAFF AND POLITICAL APPOINTEES

#### Executive Findings.

I, William J. Clinton, find that:

-- Workplace policies should ensure that working families are not forced to choose between the jobs they need and the families they love;

-- Helping employees balance their work and family responsibilities both increases productivity and strengthens families;

-- The federal government has often sought to serve as a model employer with respect to work-family policies and should expand on this tradition;

-- Employees should be ensured reasonable job security during times of family need, in particular, to care for a newborn or newly adopted child or sick family member;

-- The Family and Medical Leave Act, as proposed and passed by Congress, would ensure such job protection to private sector and local and state government employees, to federal civil service employees and congressional employees, but not to certain executive branch officers appointed or designated by the President; and

-- It is equally important to ensure job protection during times of family need to executive branch employees who would otherwise be exempted upon enactment of the federal statute.

By virtue of the authority vested in me as President by the Constitution and by 5 U.S.C. §§ 6301 and 7301 and in order to establish fair and consistent policies to enable individuals serving under Presidential appointments to balance their work and family responsibilities, it is hereby ordered as follows:

#### Section 1. Scope and Definitions.

This order applies to employees of the executive branch who are not covered by Title II of the Family and Medical Leave Act, when enacted, which legislation amends the leave provisions of chapter 63 of title 5, United States Code.

For purposes of this order, the term "eligible employee" means an individual who has been employed in the executive branch for at least 12 months on other than a temporary or intermittent basis

and who is not encompassed by the definition of employee in 5 U.S.C. section 5301(2).

Specifically, this order covers an officer as defined under 5 U.S.C. section 2104 in the executive branch who is (1) appointed by the President and whose rate of basic pay exceeds the highest rate payable under 3 U.S.C. 5332 or (2) designated by the President, except a postmaster, United States attorney, or United States marshal, or an officer in the legislative or judicial branch who is appointed by the President.

#### Section 2. Family and Medical Leave Provisions.

The rights and provisions established for civil service employees under the Family and Medical Leave Act, when enacted, shall apply with respect to an eligible employee.

Accordingly, an eligible employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

#### Section 3. Regulations.

The Office of Personnel Management shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this order.

#### Section 4. Effective Date.

This order shall take effect on the effective date of the provision of the Family and Medical Leave Act applicable to civil service employees.

## II. LEGAL AUTHORITY FOR THE ORDER

The legal authority for issuance of the Order is the President's general Constitutional executive powers and certain provisions of Title V. The strongest source of Title V authority is section 6301(2)(B)(x), (xi), and (xiii). These are the exemptions from annual and sick leave that apply to Presidential employees. Since Congress has not legislated the leave policies for these employees, the President retains the authority to set policy for them under Article II and 5 U.S.C. section 7301.

In addition, arguments can be made to ground the order in one or more of the following sections, but the connection is much less direct than to the annual and sick leave provisions.

5 U.S.C. 3301. Civil Service; generally. The President may--

- (1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;
- (2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and
- (3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

An argument can be made that family and medical leave enhances employee recruitment, productivity and retention.

5 U.S.C. 6101. Basic 40-hour workweek.

Because this does not apply to Presidential employees, an argument can be made that the President retains the authority to establish working hours, including those affected by family needs.

5 U.S.C. 7202, Marital Status, and 7203, Handicapping condition.

An argument can be made that family and medical leave help to ensure non-discrimination on the basis of marital status or handicapping condition.

5 U.S.C. 7301. Presidential Regulations. The President may prescribe regulations for the conduct of employees in the executive branch.

This was used for Executive Orders on drug-free workplace (12564, 1986) and financial reporting for officers and employees in the executive branch (12574, 1986).

## HISTORY OF EXECUTIVE ORDERS IN THE POLICY AREA

There have been numerous executive orders regarding federal employees, most of which implement matters under specific Presidential authority in Title V or other statutes. In recent years, these have included ethical conduct, adjustments in SES pay, productivity improvement, exclusions from federal labor-management programs, financial reporting, drug-free workplace, safety belt use, and reimbursement for federal employee relocation. The drug-free workplace order was particularly comprehensive.

Executive Order No. 12564, Drug-Free Federal Workplace, Sept. 15, 1986, 51 F.R. 32889. Cited sections 3301(2) and 7301 of Title V and section 290ee-I of Title 42. "Individuals serving under Presidential appointments" were exempted in this order. (NOTE: This order included drug testing, and presumably if the President had the authority to order drug testing of federal employees generally, then he also had authority to do so for presidential appointees.)

I have not located any executive orders that deal with the narrow issue of bringing presidential employees into line with other civil service employees. I suspect that the President has such authority and has exercised it regularly, but that he has used a method other than an executive order. One executive order that did deal with leave exempted certain "officers" from the statutory leave plan:

Executive Order No. 10540, June 29, 1954, 19 F.R. 3983, which related to the designation of certain officers as exempt from the Annual and Sick Leave Act of 1951 (revoked by section 2-201 of Ex. Ord. No. 12107, Implementation of Reform of Personnel Management System, Dec. 28, 1978, 44 F.R. 1055).

In Association for Women in Science v. Califano, 566 F.2d 339 (1977), it was held that Executive Order No. 11222 requiring special government employees to submit a conflict of interest statement had the force of law, in light of its basis in a statute providing for the President to prescribe regulations for the conduct of employees of the executive branch. The Executive Order prescribed standards of ethical conduct for government officers and employees and had as its statutory foundation 5 U.S.C. 7301: "The President may prescribe regulations for the conduct of employees in the executive branch."

### III. PURPOSE OF THE ORDER AND PRACTICAL CONSIDERATIONS

#### 1. Purpose of executive order

The purpose of this executive order is to apply the provisions of the Family and Medical Leave Act (FMLA), once enacted, to White House staff and political appointees who would otherwise be exempt from the provisions of the Act. This will demonstrate President Clinton's strong support for helping workers to balance their work and family responsibilities and will send a signal to the private sector that family leave is reasonable policy from an employer's point of view.

#### 2. Practical considerations

Congress passed S.5, the Family and Medical Leave Act (FMLA or the "Act") in 1992, only to see it vetoed. The Act will be reintroduced, and will cover all federal employees who are covered by the leave provisions of Title V of the United States Code. Thus, many White House staff and political appointees will be covered by the Act. However, under section 6301(2)(B) of Title V, leave provisions in current law do not apply to:

"(x) an officer in the executive branch or the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of this title; or

(xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal; or

(xiii) an officer in the legislative or judicial branch who is appointed by the President."

Apparently the Title V leave provisions also do not apply to appointees who are not "officers" and who are not in positions covered by the General Schedule or the Executive Schedule. (Exactly which positions are not covered by Title V in general or by section 6301 in particular should be clarified.)

Therefore, this order will apply the provisions of the Act to these exempted employees. The Act provides generally that all covered employees may take up to 12 weeks per year for the combined purposes of childbirth, adoption, foster care placement, or the serious health condition of the employee or the employee's child, spouse or parent. There are also provisions for continuation of health insurance during the leave period. The order should apply the specific terms of Title II of S.5, because

that title covers civil service employees and differs slightly from the S.5 Title I private sector provisions in order to conform with Title V of the Code. The effective date of the Act is six months after enactment.

One question to consider is whether the Presidential appointees will have any recourse in the event they are denied leave. S.5 provides enforcement for private sector employees through the Department of Labor, for civil service employees through the prohibited personnel practice mechanism, and for House and Senate employees through Congressional Committees (followed by judicial review for Senate employees). This Executive Order is drafted without mention of any enforcement mechanism.

Family and medical leave will have the same impact for Presidential staff as it will for other employees in high demand situations. Since Title V of the United States Code appears to already cover many White House employees and political appointees, the Family and Medical Leave Act will also cover them. This executive order will therefore extend coverage primarily to high level administration staff. It should be noted that the private sector title of S.5 contains an exemption for "key employees". This exemption has been criticized by many proponents of the legislation, but was very important to employers and certain members of Congress. Though the Executive Order should not include a key employee exemption, the need to temporarily replace important employees will arise and systems should be in place to deal with that eventuality.

Other administrative questions will arise as well, such as the relationship between this unpaid leave and any paid vacation or sick leave. For answers, it would make sense to track the policies for civil service employees as closely as possible.

# APPLICATION OF THE FAMILY AND MEDICAL LEAVE ACT TO WHITE HOUSE STAFF AND POLITICAL APPOINTEES

## PURPOSE OF PROPOSED EXECUTIVE ORDER

To apply the provisions of the Family and Medical Leave Act (FMLA), once enacted, to White House staff and political appointees.

## OVERVIEW OF POLICY CONSIDERATIONS

As currently drafted, the Family and Medical Leave Act would not apply to political appointees — the only government employees to receive guaranteed unpaid leave under the act are career civil servants. This EO would extend the provisions of the Family and Medical Leave Act to White House staff and political appointees. Note that this action could only be taken after passage of the act itself.

## SUMMARY OF EXECUTIVE ORDER

The Executive Order will apply the provisions of the Family and Medical Leave Act, once enacted, to White House staff and political appointees. Presently, under 5 U.S.C. sec. 6301(2), leave provisions in current law do not apply to: (x) an officer in the executive branch or the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of Title V; or (xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal; or (xiii) an officer in the legislative or judicial branch who is appointed by the President. These leave provisions also do not apply to appointees in the General Schedule or in position covered by the FMLA to these exemptions.

*This should be section 6301(2)(B) (x), (xi), (xiii)*

The FMLA provides for 12 weeks per year of leave for the birth, adoption, or placement of a child, or the serious illness of a spouse, child, or parent. These provisions apply during the leave period.

Employees may take up to 12 weeks of leave for the birth, adoption, foster care placement, or placement of the employee's child, spouse, or child with a health insurance during the leave period.

## LEGAL AUTHORITY

The legal authority of the Executive Order is derived from the President's general authority under Article II of the Constitution. The strongest source of Title V authority is section 6603(2)(x), (xi), and (xiii).

These are the exemptions from the FMLA. The President's general authority under Title V. The strongest source of Title V authority is section 6603(2)(x), (xi), and (xiii). These are the exemptions from

**THE WHITE HOUSE  
WASHINGTON, D.C.  
JANUARY \_\_, 1993**

**STATEMENT OF THE PRESIDENT**

Today I am taking two actions to restore a needed balance in America's workplace. I believe that these steps, by reducing unnecessary federal government intrusion into workplace relations, ultimately will promote the shared goals of American workers and management and strengthen the ability of this country's businesses and industry to compete in the world economy.

**Revocation Of Executive Order No. 12818**

First, I am revoking Executive Order No. 12818. This Order, issued on October 23, 1992 by President Bush, prohibits contractors that have entered into project agreements with unions from bidding on federal construction contracts. American taxpayers and the federal government are not well-served by this restriction. Such agreements establish labor standards for work early in the process. They reduce instances of cost overruns by permitting contract bidders to make more reliable cost estimates before bidding. They increase completion of projects in a timely manner by assuring a stable supply of skilled workers. And they promote safe working conditions. By revoking Executive Order No. 12818 today, such project agreements will again be allowed in federal construction contracts.

**Revocation Of Executive Order No. 12800**

Second, I am revoking Executive Order No. 12800, issued on April 13, 1992. This Order required unionized federal contractors to post a notice in the workplace that workers are not required to join or support a union and threatened sanctions against contractors who did not comply. The effect of this Order was distinctly antiunion as it did not require contractors to notify workers of any of their other rights protected by the National Labor Relations Act, such as the right to organize and bargain collectively. By revoking this Order, I today end the government's role in promoting this one-sided version of workplace rights.

### **Repeal Of Lifetime Ban Of PATCO Members**

There is a third executive action that I am taking today and that is to end the lifetime ban on reemployment of striking members of PATCO, imposed by President Reagan on December 9, 1991. Typically federal employees who strike illegally may not be reemployed by the federal government for three years. It has now been eleven years for these workers; the time has come to put this episode behind us. Fairness demands that these individuals be permitted to seek reemployment with the Federal Aviation Administration. I therefore am repealing President Reagan's directive and ordering the Office of Personnel Management to enforce the 3-year regulatory ban retroactive as of 1981. Since this three-year period is long since past, all PATCO workers are hereafter eligible for reemployment with Federal Aviation Administration.

January 26, 1993

Bruce,

Here is the Advisory Committee EO material. I am sorry it took me so long to forward it to you. I have been working on a draft "Statement Of The President" for the Labor EOs, which the Labor Department people asked us to draft this afternoon. I have also attached it for you to look at. Since I do not have labor expertise, it has been forwarded to the Labor Department to ensure that there are not any incorrect statements in it. I would be happy to incorporate any rewrites or suggestions that you have for it.

Thanks,  
Steve

Executive Orders.

# Clinton's executive orders still are packing a punch

Other presidents issued more, but many of his are sweeping

By Frank J. Murray  
THE WASHINGTON TIMES

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President Clinton is literally writing his legacy with his own pen by signing one controversial executive order after another.

Making good on a vow to pick up where Congress leaves off, Mr. Clinton has posted 301 formal executive orders and generated a

storm from opponents who say the orders push the limits of presidential power.

The president has used that extraordinary power to revamp civil service rules for workers with psychiatric disabilities, ban discrimination against homosexuals in ci-

vilian federal jobs, halt dealings with federal contractors who use products made by foreign child labor, declassify vast stacks of old files, change contracting practices to give Asian-Americans and Pacific Islanders a bidding edge, revise food labeling, restrict smok-

ing in government offices, revamp encryption export rules and intervene in a Philadelphia transit strike.

"Stroke of the pen, law of the land. Kind of cool," says former Clinton adviser Paul Begala, dismissing objections of critics who

despise the process as unconstitutional lawmaking, no matter which president uses it.

"With a stroke of the pen, he may have done irreparable harm to individual rights and liberties," says House Majority Leader Dick Armey, Texas Republican, who accepts two premises many resist —

that such orders do not require congressional approval, and that they have the force of law.

"President Clinton seems bent on using his powers until someone says stop," Mr. Armey said. "President Clinton is running roughshod over our Constitution."

To confuse matters, the process of issuing executive orders is spelled out by executive order. The absence of clear boundaries infuriates those who seek to rein in presidents from governing by fiat.

Other presidents have used executive orders to close banks in the Depression, intern Japanese-Americans during World War II, desegregate the armed forces, ban assassination of foreign leaders, build the Alaska Railroad, protect endangered species, intervene in labor strikes, allow affirmative action for racial and ethnic minorities and block foreign assets during a string of national emergencies almost unbroken since 1933.

Presidents have issued executive orders that exceeded the wishes of Congress since George Washington's 1793 "neutrality order" demanding that citizens stay out of foreign disputes. Such orders have been withdrawn under political pressure or derailed internally before they were signed, but only twice in history have federal courts directly overturned one, legal experts say.

They included Mr. Clinton's 1995 directive barring federal contractors from hiring striker replacements, which conflicted with existing law, and President Truman's 1952 order seizing steel mills in order to avoid a nationwide strike. The Supreme Court nullified the latter because the president acted during the Korean conflict under "emergency" war powers even though no war was declared.

"Unfortunately, the Supreme Court has essentially ruled over time that the executive orders have the force and effect of law. Well, they don't, but if nobody's there to challenge them they continue to carry the effect and force of law," argued Rep. Jack Metcalf, Washington Republican, leader of a brewing rebellion in the House for which he predicts only symbolic success.

Rep. Ron Paul, Texas Republican, went Mr. Metcalf one better and filed a bill seeking to designate executive orders only as advisory without the force of law, unless Congress approves. His proposed Separation of Powers Restoration Act would limit their effect except in cases of pardons, military orders or directives required by a specific federal law.

William J. Olson, a constitutional lawyer who formerly worked in the Justice Department Office of Legal Counsel — which along with Office of Management and Budget approves every executive order for legality — is preparing a research paper for the Cato Institute that charges Mr. Clinton with using executive orders as a substitute for legislative consideration by Congress.

"It is a deliberate plan to usurp legislative function, and unfortunately most of the time he has faced a Congress that could be described as supine," Mr. Olson said.

Current numbering, now at 13132, began on Oct. 20, 1862, when Abraham Lincoln signed No. 1, establishing a "provisional court" for Louisiana.

The oldest orders still on the books are Nos. 703 and 705, issued Oct. 23, 1907, by President Theo-

dore Roosevelt to protect endangered species. Mr. Roosevelt is credited — or blamed — for expanding the practice in number and scope.

"Congress has been asleep at the switch, at least since Teddy Roosevelt, and it is very difficult all these years later to transplant a backbone into Congress but essential that it be done," Mr. Olson said.

In practical terms, Mr. Olson points out, a confrontation now would require Congress to pass a bill blocking an order, then muster two-thirds majorities in both houses to overcome a presidential veto of that bill.

Some see irony in the fact that Mr. Clinton took heat during his first days on the job for an executive order he wouldn't sign. In 1993, under fire from Congress, he reneged on campaign promises to let homosexuals serve openly in military uniform.

He still generates controversy over executive orders, but now the core complaint is that Mr. Clinton, in effect, is not staying within his constitutional authority to "take care that the laws be faithfully executed."

"When you're running the government you want the agencies of government to act according to the law. Prudent management dictates that you inform people on how they can fulfill the laws," said James E. Kennedy, special adviser to the White House counsel, who argued that Mr. Clinton follows the same policy as every other president.

Mr. Kennedy minimized the impact of Mr. Clinton's Executive Order 13087, signed May 28, 1993, amending a 1969 equal opportunity order to add "sexual orientation," meaning homosexuality, to the list of factors on which federal hiring could not discriminate.

"Executive Order 13087 does

not reflect any new policy and creates no new law," Mr. Kennedy said. He did not explain why adding a category to a provision with the force of law didn't reflect new policy.

The potential for a president to leave his personal stamp on government is tempting. Mr. Clinton served notice last summer that he would use the orders to advance his agenda despite congressional gridlock.

Opponents of executive orders often are frustrated in attempts to galvanize public opinion against arcane language and euphemisms used in writing them, which do not always clearly indicate the author's goal.

Rep. Bob Barr, Georgia Republican, introduced two bills to block Executive Order 13107, on grounds that the Dec. 10, 1998, action implemented three agreements on human rights, torture and racial discrimination "that were never given the advice and consent of the Senate."

Mr. Barr's charge sparked a prairie fire on talk radio that still smolders. Even members of Congress with a deep interest in the issue do not all realize that the congressman withdrew his accusation on Feb. 4 in a written "extension of remarks."

"In clarification, these treaties did in fact pass the Senate by voice vote," Mr. Barr said. But he vowed to continue the fight on the theory that the Senate vote on the agreements may have been unconstitutional.

Similar reactions to 1970s news articles about the long-standing national emergencies led to a study by a select bipartisan Senate committee and a cure that proved only temporary.

"This vast range of powers, taken together, confers enough authority to rule the country without reference to normal constitu-

tional processes," the committee said in a 1978 report describing the impact of just four emergencies then in effect.

Congress terminated all four that year and started over by setting up a new system of annual renewals to preclude perpetual states of emergency. The gesture turned out to be hollow.

On Nov. 14, 1979, President Carter declared the next emergency during the Iran hostage crisis, and it is still in effect today. Executive orders renewing emergency declarations have become routine unnoticed paperwork.

Today, 13 such national emergencies are in effect. Two were originally declared by Mr. Carter, including the 1979 Iran emergency, and two by President Bush.

One Clinton emergency order continued export controls after a law on the subject expired in 1994. The rest permitted sanctions, economic controls or other powers relating to foreign policy crises involving Iran, Iraq, Libya, Afghanistan, Burma, Sudan, Yugoslavia, Angola and Cuba, Colombian drug-runners, terrorists threatening the "Middle East peace process," and proliferation of nuclear or chemical weapons.

The committee identified about 500 existing laws that take effect when a president declares an emergency by executive order. They include vast powers to seize property, commodities, fuel and minerals; organize and control the means of production, including compulsory job assignments for civilians; assign military forces

# Professor accuses China of 'cruelty'

Held U.S. colleague  
seriously ill, he says

MELBOURNE, Australia. (Agence France-Presse) — An Australian researcher returned home yesterday after being held by Chinese authorities for a week of "calculated and systematic cruelty."

Gabriel Lafitte, 50, a Tibetan expert, American Daja Meston, 29, and their Tibetan guide, Tsering Dorje, were detained while conducting research in a part of Qinghai province targeted for a World Bank aid project.

Mr. Lafitte, a professor at the University of Melbourne, said Mr. Meston is paralyzed and seriously ill in a Chinese hospital after he jumped from a building in an apparent attempt to escape detention.

Mr. Dorje, a Chinese national, had not been seen since his arrest a week ago.

China has claimed they were conducting illegal investigations into the project, which will relocate 60,000 Chinese to the remote northwestern province bordering Tibet.

After an emotional airport reunion with his wife, Helen, and his 10-year-old granddaughter, Mr. Lafitte appealed to Australian authorities to do all they could to secure the release of Mr. Meston and Mr. Dorje.

"It may be that I am the only survivor of a group of three," a tired and drawn looking Mr. Lafitte told reporters.

Sobbing members of the local Tibetan community lined up to wrap fine silk khatog — scarves of welcome — around his neck, hugging him as he arrived at Melbourne's airport.

He told reporters he had been denied sleep but had not been

physically abused during his week of captivity.

He described his detention as a time "of calculated and systematic cruelty" at the hands of the Chinese authorities.

Mr. Meston lay paralyzed in a hospital after apparently leaping from a window of the hotel where they were being held.

He said Mr. Dorje, their guide and translator, had not been seen since they were detained in their hotel in the small town of Xiang Ride, close to the project site.

They had innocently taken the

ward of the Chinese government that foreigners were "free to visit the project area," Mr. Lafitte said.

After being driven for 28 hours to the provincial capital of Qinghai, he had been detained in the luxury suite of a hotel.

He was subjected to "extreme mental cruelty" by his interrogators and confessed repeatedly to being an illegal visitor and doing illegal interviews in an effort to hasten his release.

"The Chinese are much too smart to use force against a Westerner," he said.

He showed reporters a tissue covered with red fingerprints, which he said were made with the red wax he was required to use to sign his confession with a finger-

print.

"They thought I was a spy. The biggest accusation against me was that I behaved like a journalist," he said.

A Foreign Ministry spokesman in Canberra said Mr. Lafitte had been released after vigorous pleas on his behalf by the Australian ambassador in Beijing.

U.S. consular officers and a doctor have seen Mr. Meston and say he is receiving adequate medical care.

Chinese officials reportedly told Australian Embassy officials that Mr. Lafitte had been cooperative during their investigations and had confessed, repented and apologized for his "illegal activities."

The Washington Times

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