Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. memo	To; Mr. President; RE: Minimum wage (1 page)	01/26/1998	P5	4018
002. memo	Gene Sperling to The President; RE: Minimum Wage (5 pages)	01/26/1998	P5	Dup
003. memo	Gene Sperling to The President; RE: Minimum Wage (5 pages)	01/26/1998	P5	4019
004. memo	Gene Sperling to The President; RE: Minimum Wage (5 pages)	01/26/1998	P5	Dup
005. memo	Gene Sperling to The President; RE: Minimum Wage (5 pages)	01/26/1998	P5	
006. memo	Gene Sperling to The President; RE: Minimum Wage (5 pages)	01/26/1998	P5	

COLLECTION:

Clinton Presidential Records
WHORM-Subject File-General
LA006
OA/Box Number: 23386

FOLDER TITLE:

250318SS

Debbie Bush
2006-0309-F
db2127

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

250318 SS

LA006

THE PRESIDENT HAS SEEN
1-27-98

THE WHITE HOUSE
WASHINGTON

January 26, 1998

MR. PRESIDENT:

Sen. Kennedy has proposed an increase in the minimum wage to \$7.25/hour by 2002 through .50¢ increases in 1998-2000, and then indexing it to inflation thereafter (about .30¢ increases in 2001-2002). In the attached memo, Gene Sperling seeks a decision from you on whether to seek an increase, and if so, to what level. *If you choose, you could include a specific proposal in the State of the Union, or, in the alternative, voice your general support for an increase and leave the specifics to be released separately.*

Gene lays out several options in the memo, which I recommend you read, and the pros and cons of each:

Option 1: adopt Kennedy *(no support among your advisors)*;
Option 1 variation: increase to \$6.15 through 50¢ hikes in 1998-99, then reevaluate indexing increases *(no support);*
Option 2: maintain real value without explicit indexing -- increase to \$6.15 by 2002 through .25¢ raises in 1999-2002 or .50¢ raises in 1999 and 2002 *(supported by economic team);*
Option 2A: increase to \$5.55 through .40¢ increase in 1999 and then revisit issue in 2000 *(supported by economic team, Rahm and Sylvia; Podesta is opposed and feels this won't attract Democratic support*; *he could live with 2, 2B or 3);*
Option 2B: increase to \$5.65 through single .50¢ increase in 1999 *(supported by Bruce Reed, Paul Begala)*;
Option 3: splits difference between Kennedy and economic team -- increase to \$6 by 2000 through a .35¢ increase in 1998 and two .25¢ increases in 1999-2000; or a .45¢ raise in 1999 and a .40¢ raise in 2000.
Option 4: wait and do not endorse any proposal now.

Copied
Sperling
Mathews
Bowles

Phil Caplan
Phil

10 Sey 2,20,94
RC

THE WHITE HOUSE

WASHINGTON

January 26, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING

SUBJECT: Minimum Wage

On August 20, 1996, you signed the Small Business Job Protection Act, which raised the minimum wage in two steps from $4.25 to $5.15 (from $4.25 to $4.75 on October 1, 1996, and from $4.75 to $5.15 on September 1, 1997). With these recent increases, the current minimum wage is, in real terms, about where it was in the mid-1980s. Senator Kennedy has therefore proposed a significant further increase in the minimum wage. His proposal is to increase the minimum wage to $7.25 per hour by 2002, through 50-cent increases in 1998, 1999, and 2000, and then 30-cent increases in 2001 and 2002. This proposal would return the real minimum wage to approximately its level in the late 1970's by 2002.

The economics of the minimum wage involve difficult tradeoffs. On the one hand, as Senator Kennedy emphasizes, raising the minimum wage helps to increase earnings at the lower end of the income distribution -- the part of the distribution that, until recently, suffered most from real income declines. Leading academics, such as Alan Krueger of Princeton, believe that the recent increases in the minimum wage have played a significant role in stemming the downward trend in wages for the lower skilled.

On the other hand, if the minimum wage were raised too much, it could cause disemployment among some of the most vulnerable participants in the labor market -- from African American males to teenagers and former welfare recipients. The difficulty, then, is deciding at what point the potential disemployment effects become significant enough to outweigh the beneficial distributional effects.

If we decide to support an increase, there are two additional issues you will need to consider: one, when to make the increase effective; and two, how many stages to increase the minimum wage. On the former, we may want to propose to make any increase effective in 1999 or 2000, not in 1998, to ensure that we give businesses a reasonable warning. On the latter issue, the Labor Department emphasizes that changing the minimum wage entails administrative and enforcement costs on the Department and on businesses. They would prefer fewer -- but larger -- step increases; in other words, they prefer one 30-cent increase to two 15-cent increases.

Options:

We have several options, as delineated below:

Option I. **Adopt Kennedy Minimum Wage Proposal:** Increase minimum wage to about $7.25 by 2002, through 50-cent increase in 1998, 1999, and 2000, and then indexing it to the rate of inflation thereafter (about 30-cent increases each year).

Pros:

- Returns minimum wage to real level of late 1970's.
- Provides substantial wage increase to low-wage workers.
- Would unify liberal-wing of the Democratic party.

Cons:

- Your entire economic team believes that this approach is too aggressive and are concerned that Senator Kennedy's proposal could prove damaging to the employment prospects of low-skilled workers, as well as to the general macroeconomic performance of the economy.
- Janet Yellen and Treasury would prefer to have more time to analyze the effects of the most recent increases before enacting increases that go well beyond the bounds of the evidence already accumulated.
- The increase in 1998 may be harshly criticized by business as not permitting enough advance warning. Moreover, important validators for your 1996/97 minimum wage increase -- such as Alan Krueger, David Card of Berkeley, and Larry Katz of Harvard -- would oppose this approach.
- Some may argue that an increase this large could lead employers to pass the higher minimum wage onto customers in the form of higher prices.

Variation of Option I: One variation of this option would be to limit Kennedy's proposal to the first two increases -- the 50-cent increases in 1998 and 1999 -- and then re-evaluate further increases based on the experience with those two increases. If we were to adopt this proposal, it is possible that Senator Kennedy would sign onto it. However, your economic team believes that even this option is too aggressive. Raising the minimum wage by $1 over the next two years could unnecessarily increase the risk of disemployment effects.

Option II. **Adopt Position to Split the Difference and Maintain Real Value of Minimum Wage, Without Explicit Indexation Proposal:** Increase minimum wage to $6.15 by 2002 (roughly halfway between the current level and Senator Kennedy's 2002 proposal, and slightly above the level that would maintain real value of minimum wage). The increases could take the form of a 25-cent increase in 1999, 2000, 2001, and 2002. Alternatively, we could propose a 50-cent raise in 1999 and another 50-cent raise in 2002.

Pros:

- Your entire economic team supports a moderate increase in the minimum wage in the range of this Option. Secretary Rubin, Secretary Herman, Gene Sperling, Janet Yellen, and Secretary Shalala agree that this Option would help millions of low-wage workers, while not creating a significant risk to the economy or the labor market prospects of low-skilled workers.

- Slightly improves real value of minimum wage over budget horizon. To keep the real value of the minimum wage at its current level, we would have to raise it to approximately $5.90 in 2002.

- Fulfills 1992 campaign promise to have the minimum wage "keep pace with inflation."

Cons:

- Democrats may complain that the increase is too small, and that this approach takes away the issue in 2000. This proposal would not return the real value of the minimum wage to its level of the 1970s. On the other hand, business may still complain that the increases are too soon.

- The economy could reverse its impressive performance over the past several years, and the increases in the outyears would then pose potential risks to low-skilled unemployment.

Variation A of Option II: A Single 40-Cent Increase in 1999. Proposing to raise the minimum wage to $6.15 per hour by 2002 is equivalent to increasing it by 20 cents per year. One alternative would be to propose a single 40-cent increase in 1999. This would be consistent with reaching $6.15 per hour by 2002, but would provide flexibility for macroeconomic conditions and would allow Democrats to reopen the minimum wage issue in 2000. This variation is supported by your economic advisers.

Variation B of Option II: A Single 50-Cent Increase in 1999. John Podesta is concerned that a single 40-cent increase is not enough to attract Democrats, such as Senator Kennedy. He believes we would be "a year late and a dime short." If you adopt a single increase, John argues that we should propose a 50-cent increase because it would be more likely to gain support from Democrats. However, your economic team believes that one 50-cent increase in 1999 would be large enough to risk potential disemployment effects.

Option III. **More Aggressive Minimum Wage Increase:** This option splits the difference between what your economic advisers are comfortable with and Senator Kennedy's proposal. It would increase the minimum wage to $6.00 by 2000. The increases could take the form of a 35-cent increase in 1998 and two 25-cent increases in 1999 and 2000. Alternatively, we could propose a 45-cent raise in 1999 and a 40-cent raise in 2000.

Pros:

- More likely to get support of liberal Democrats. And since it covers a different time frame than Kennedy's proposal (2000 vs. 2002), may not be viewed as competing proposal.
- Since this proposal would be more controversial, could create a more significant debate.
- Provides simple message: we believe minimum wage should be $6 per hour by the turn of the century.

Cons:

- Since this proposed increase is slightly larger in real terms than going to $6.15 by 2002, your economic team would be concerned that there could be disemployment effects.
- May lose support of moderate Democrats and Republicans, especially from Southern states. Moreover, important validators, such as Alan Krueger, Larry Katz, and David Card, would not support this large an increase.

Option IV. **Wait and See:** Do not endorse increase in minimum wage at this time. Argue that we support minimum wage, but too early to increase again because we need to learn from the facts of the recent hikes.

Pros:

- Provides more time to study effects of most recent increases.
- Could be presented as not taking a stance on Kennedy -- thus could allow Kennedy to push for his relatively large increase without an Administration proposal to distract attention.
- Allows issue to be raised during 2000 cycle if desired.

Cons:

- Allows the minimum wage to deteriorate in real terms over time.
- May be criticized by Democrats as not supporting an important objective.

Recommendations:

I discussed this issue at a meeting of the NEC principals on Thursday night. Your entire economic team could support a moderate increase in the minimum wage to maintain its real value. Therefore, your economic advisers recommend that you support an increase in the minimum wage to $6.15 by 2002.

You should know that your advisers considered explicitly indexing the minimum wage to the rate of inflation. However, we rejected this approach for a number of reasons: (1) it would be difficult for us to argue that we should index the minimum wage, when we were willing to veto the balanced budget over the indexation of capital gains; (2) if we indexed the minimum wage this year, many Democrats would argue that we locked it in at an historically low level; (3) the Labor Department would have difficultly administering annual minimum wage increases (as noted above); and (4) since the minimum wage would automatically rise each year, it would take away a good political issue for those who believe the minimum wage is an important tool to help low-income families.

_________ **Option I:** Approve Kennedy proposal to raise minimum wage to <u>$6.65 in 2000 and then index it to inflation</u>.

_________ **Option II:** Approve increase to <u>$6.15 by 2002</u>, to maintain real value of minimum wage and split the difference with Kennedy's proposal. (RECOMMENDED BY ECONOMIC TEAM)

_________ **Variation A of Option II:** Approve <u>40-cent increase in 1999</u>, maintaining real value of minimum wage, while allowing flexibility for macroeconomic conditions and the issue to be revisited in 2000. (RECOMMENDED BY ECONOMIC TEAM)

_________ **Variation B of Option II:** Approve <u>50-cent increase in 1999</u>, which would gain additional Democratic support, but would be outside the range that your economic team is comfortable with.

_________ **Option III:** Approve more aggressive increase to <u>$6.00 by 2000</u>.

_________ **Option IV:** Wait and see, do not take position at this point

_________ Discuss further

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. memo	To: Mr. President; RE: The Internet Tax Freedom Act (1 page)	02/17/1998	P5	4020
002. memo	Gene Sperling, et al. to The President; RE: Internet Tax Freedom Act (4 pages)	02/06/1998	P5	Dup 003
003. memo	Gene Sperling, et al. to The President; RE: Internet Tax Freedom Act (4 pages)	02/06/1998	P5	4021
004. memo	Gene Sperling, et al. to The President; RE: Internet Tax Freedom Act (4 pages)	01/26/1998	P5	4022

COLLECTION:

Clinton Presidential Records
WHORM-Subject File-General
FI010
OA/Box Number: 23314

FOLDER TITLE:

252349SS

Debbie Bush
2006-0309-F
db2126

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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252349 SL
FI010

THE PRESIDENT HAS SEEN
2-17-98

What's the answer
to the streamlining argument
that we'll never fully pay for
K Bear etc.
- BC

THE WHITE HOUSE
WASHINGTON
February 17, 1998

MR. PRESIDENT:

The attached memo from Gene Sperling, Mickey Ibarra and Larry Summers seeks your approval of a plan to take a more active posture on pending "electronic commerce" legislation -- without such support, the bill will likely die.

Background. The Internet Tax Freedom Act provides for a study process (including a Commission that you would appoint) to develop recommendations for permitting e-commerce to develop free of various state and local taxes. Last summer, Larry Summers testified in favor of the bill's goals and principles, but stopped short of endorsing it. The hi-tech industry strongly supports the bill and Big 7 state and local groups (NGA, Conf. of Mayors, et al) oppose it. Earlier this month, we proposed to the Big 7 that we work jointly on a bill to address their concerns; they declined hoping they can kill the bill but want to keep talking with us.

copied
Sperling
Ibarra
~~Summers~~
COS

Options. Two are presented, but there is no support among your advisors for the second. **Option A** recommends that the Administration actively support the bill while continuing to solicit state and local views. *Pros:* opportunity to take credit for an anti-tax initiative beneficial to e-commerce; good public policy for developing technology. *Cons*: Big 7 groups won't be happy, but will likely have to work with us as the bill progresses. In the end, only a veto will satisfy them. **Option B** is to continue supporting the goals of the bill without endorsing it, but this strategy could kill the bill at this point.

John Podesta and *Larry Stein* also support Option A.

___ Agree with Option A ___ Disagree ✓ Discuss

Phil Caplan Phil

THE WHITE HOUSE

WASHINGTON

February 6, 1998

What's the answer to the Sales tax problem one that was never fully fixed for LL ~~Bean~~ etc

BC

MEMORANDUM FOR THE PRESIDENT

From: Gene Sperling GBS
Director, National Economic Council

Mickey Ibarra MI
Director, Intergovernmental Affairs

Lawrence H. Summers
Deputy Secretary of the Treasury

Re: Internet Tax Freedom Act (Cox-Wyden Legislation)

ACTION FORCING EVENT

Congress is currently considering legislation (The Internet Tax Freedom Act, S. 442, H. 1054) introduced by Senator Ron Wyden (D- OR) and Congressman Chris Cox (R- CA) to impose a moratorium on new or discriminatory state taxation of the Internet. The legislation provides for a study process to develop policy recommendations and is aimed at permitting electronic commerce to develop free of distortionary taxes imposed by myriad jurisdictions. It is based on principles set forth in a Treasury policy paper, in the July 1, 1997 *Framework for Global Electronic Commerce* and in your Presidential Memorandum on electronic commerce and is consistent with the position we have taken in international discussions.

Industry, not surprisingly, strongly supports the bill. Earlier this year, seven CEOs belonging to the Computer Systems Policy Project, including Lou Gerstner of IBM, Lew Platt of Hewlett Packard and Lars Nyberg of NCR met with Secretary Rubin and Deputy Secretary Summers to urge full support.

State and local groups such as the National Governors' Association, the US Conference of Mayors, NACO, the National League of Cities as well as elected officials, however, strongly oppose the bill as usurping their ability to tax (though officials from high tech states such as Governors Wilson, Pataki and Cellucci support it.) Opponents have been slow to identify specific problems that might be fixed but cite lost sales tax revenues if on-line sales cut into store sales that would generate taxes. They are concerned that while consumers are liable for taxes on mail-order sales, those taxes are rarely collected. State and local groups have said that the legislation "will lead to Main Street stores and small businesses ... across America being forced to close due to the discriminatory impact of a sales tax levied only on retail stores, not their Internet competitors." In view of the federalism issue, last summer, Deputy Secretary Summers testified in favor of the bill's goals and principles but stopped short of endorsing it. Earlier this month, he proposed to the Big Seven state and local organizations that we work jointly on a bill that addresses their concerns. They declined the offer while suggesting that we continue to talk. The Big Seven rejected the offer because they believe that they can continue to delay or kill the legislation, and are not motivated to work with us until it is absolutely necessary.

On November 4, 1997, the Senate Commerce Committee reported out a bill. We understand that the Senate will wait for the House. Our active support is likely to help the bill and satisfy high tech proponents while withholding support would partially satisfy state and local groups. Your guidance is sought on whether to take a more active position in support of the bill and therefore take credit for its passage or continue to maintain a low profile. A strong announcement of support early this session would probably carry the most weight. IGA would prefer that we wait until mid-March, to avoid needlessly antagonizing the Big Seven groups, who will be having meetings in February and early March.

OPTIONS

A. Actively support the legislation while soliciting state and local views in order to address any flaws and legitimate concerns

This option will give us the opportunity to take credit for an anti-tax initiative that will be beneficial to the development of electronic commerce. From an economic point of view, preventing new taxes on a network that provides so many public benefits is good policy. The Senate version has been improved to where Treasury's Office of Tax Policy now feels we can support it, though some technical and substantive problems remain. This option will initially increase pressure from state and local opponents. However, as the legislation moves forward, opponents are likely to increasingly value our offer to use our offices to address their remaining concerns.

B. Continue current posture (support goals and principles without endorsing legislation)

This option while frustrating high tech proponents would initially do more to satisfy state and local concerns and might lead to the bill's failing to pass. However, if the bill passes in its current form, anything short of a veto will still upset state and local opponents. If we take a lower profile, we will also have less influence to improve the bill.

RECOMMENDATION: Your economic and political advisors (Treasury, Commerce, NEC, IGA, OMB, and Ira Magaziner) recommend Option A. They believe this legislation will foster electronic commerce which is emerging as an important engine of growth while preserving our ability to address the legitimate concerns of state and local governments. Withholding support may cause the legislation to fail, or if it passes anyway, subject us to strong pressure to veto a bill that we believe merits support.

__ Agreed __ Disagreed __ Let's Discuss

BACKGROUND AND ANALYSIS

The Internet Tax Freedom Act would permit states to continue to collect existing, non-discriminatory taxes but imposes a moratorium on new or discriminatory ones and calls for a study process. Both bills call for you to appoint a commission representing the states, industry and the Administration, which will then issue recommendations which you may submit to Congress. The current Senate version of the bill ends the moratorium in approximately five years on January 1, 2004, which we think is appropriate.

The Administration's Actions So Far

Treasury first set forth the principle of tax neutrality for the Internet at the international level in its paper, *Selected Tax Policy Implications of Global Electronic Commerce*, released in November 1996. That goal was adopted by the sponsors of this legislation.

Deputy Secretary of the Treasury Summers testified last summer in favor of the goals and principles of the legislation but, at that early stage, stopped short of endorsing it. In his testimony, he set forth three guiding principles: first, that commercial activities conducted by means of the Internet should not be subjected to new or discriminatory taxes; second, that the Internet should not become a tax haven; and third, that we should be highly sensitive to concerns about federalism. In short, we supported technology neutral, non-discriminatory, taxation of electronic commerce that preserved the state and local tax base. The goal of tax neutrality was then incorporated in the July 1, 1997 paper, *A Framework for Global Electronic Commerce* and included in your July 1, 1997 Presidential Memorandum on electronic commerce. We have adhered to this principle in international and domestic tax policy discussions.

Efforts to Address State and Local Concerns

With the exception of officials in high tech states such as Governors Pataki, Wilson and Cellucci, most state and local officials oppose the legislation on the grounds that it inappropriately restricts their right to tax. They are particularly concerned that rapid growth in electronic commerce will come at the expense of store sales and, if treated like mail order sales for tax purposes, will cut into sales tax revenues. In fact the bill is silent on whether neutrality means neutrality with store sales where merchants must collect "sales tax" or neutrality with mail order sales where consumers owe "use tax" but merchants are not required to collect them. Nor does it address the thorny issues of "nexus" or where the sale takes place for tax purposes.

As a practical matter, states will face the problem of how to collect tax on out-of-state Internet sales whether the bill passes or not. The bill, as written, neither worsens nor solves their problem. Attempting to solve it would probably mean addressing the complex issue of mail order taxation. Recently, a proposed deal between the Direct Marketing Association and several large states on the mail order issue fell apart after strong negative reaction from mail order customers.

Since legislation was introduced, Treasury officials have met with the Multi-state Tax Commission, the Big Seven group of state and local organizations representing elected officials, and others to address specific concerns. While state officials generally expressed more interest in killing the bill than in identifying specific problems with the language of the bill, Treasury did communicate specific suggestions we received, as well as our own concerns, to drafters who incorporated most of them in the Senate bill. In January, Deputy Secretary Summers made an offer to representatives of the Big Seven state and local organizations to work jointly on a bill addressing the states' larger remaining concerns. However, after some consideration, they turned this offer down, preferring to work with Congress directly.

One idea that opponents have often raised is to flip the burdens of the bill around to ban specific taxes during the moratorium rather than all taxes except those carved back in. This approach would require industry to identify taxes it opposes rather than requiring the states to identify taxes they wish to impose. However, Treasury believes that since states and municipalities best understand state and local tax issues, they are better positioned than industry to identify which taxes should be permitted. We have not stated a position publicly and we could refrain from expressing a view.

Other ideas opponents have raised include grandfathering all existing taxes and shortening the moratorium. The bill already grandfathers some taxes. Treasury's Office of Tax Policy believes that if the moratorium is significantly shortened, taxing authorities may choose to simply wait it out rather than actively engage in the study process. Moreover, shortening the moratorium may leave insufficient time for the study process to be effective.

Legislative History

The bill was held up for many months by Senator Ted Stevens (R- AK) over his desire, unrelated to the tax aspects of the bill, to require the FCC to revisit requiring Internet Service Providers to pay into the Universal Access Fund. On November 4, 1997, the Senate Commerce Committee reported out the bill by a strong vote of 14 to 5. A request by the Senate Finance Committee to review the bill sequentially is being considered by the Parliamentarian but a previous request was denied. The next action is likely to occur in the House where Chris Cox believes supporters can move the bill out of the Commerce and Judiciary committees.

In December 1997, Republican governors raised their concerns about the legislation to the Congressional leadership. This has led to a dialog between Governor Leavitt (R- UT), the governors' point person on this issue, and Congressman Cox on how to move forward. Cox is considering the states' proposal to redraft the bill to declare a moratorium on specific taxes rather than all taxes except permitted ones. Industry has so far resisted this approach. The Senate is likely to move the bill to the floor only after it is reported out in the House.

THE WHITE HOUSE

WASHINGTON

Draft January 26, 1998

MEMORANDUM TO THE PRESIDENT

From: Gene Sperling
Director, National Economic Council

Mickey Ibarra
Director, Intergovernmental Affairs

Lawrence H. Summers
Deputy Secretary of the Treasury

Re: Internet Tax Freedom Act (Cox-Wyden Legislation)

ACTION FORCING EVENT

Congress is currently considering legislation (The Internet Tax Freedom Act, S. 442, H. 1054) introduced by Senator Ron Wyden (D. Or) and Congressman Chris Cox (R. Ca) to impose a moratorium on new or discriminatory state taxation of the Internet. The legislation provides for a study process to develop policy recommendations and is aimed at permitting electronic commerce to develop free of distortionary taxes imposed by myriad jurisdictions. It is based on principles set forth in a Treasury policy paper, in the July 1, 1997 *Framework for Global Electronic Commerce* and in your Presidential Memorandum on electronic commerce and is consistent with the position we have taken in international discussions.

Industry, not surprisingly, strongly supports the bill. Earlier this month, seven CEOs belonging to the Computer Systems Policy Project, including Lou Gerstner of IBM, Lew Platt of Hewlett Packard and Lars Nyberg of NCR met with Secretary Rubin and Deputy Secretary Summers to urge full support.

State and local groups such as the National Governors' Association, the US Conference of Mayors, NACO, the National League of Cities as well as elected officials, however, strongly oppose the bill as usurping their ability to tax (though officials from high tech states such as Governors Wilson, Pataki and Cellucci support it.) Opponents have been slow to identify specific problems that might be fixed but cite lost sales tax revenues if on-line sales cut into store sales that would generate taxes (they are concerned because while consumers are liable for taxes on mail-order sales, it is not enforceable.) State and local groups have said that the legislation "will lead to Main Street stores and small businesses .... across America being forced to close due to the discriminatory impact of a sales tax levied only on retail stores, not their Internet competitors." In view of the federalism issue, last summer, Deputy Secretary Summers testified in favor of the bill's goals and principles but stopped short of endorsing it. Earlier this month, he proposed to the Big Seven state and local organizations that we work jointly on a bill that addresses their concerns. They declined the offer while suggesting that we continue to talk. The Big Seven rejected the offer because they believe that they can continue to delay or kill the legislation, and are not motivated to work with us until it is absolutely necessary.

On November 4, the Senate Commerce Committee reported out a bill. We understand that the Senate will wait for the House, which is expected to act soon. Our active support is likely to help the bill and satisfy high tech proponents while withholding support would partially satisfy state and local groups. Your guidance is sought on whether to take a more active position in support of the bill and therefore take credit for its passage or continue to maintain a low profile. A strong announcement of support soon after Congress returns would probably carry the most weight. IGA would prefer that we wait until mid-March, to avoid needlessly antagonizing the Big Seven groups, who will be having meetings in February and early March.

OPTIONS

A. Actively support the legislation while soliciting state and local views in order to address any flaws and legitimate concerns

This option will give us the opportunity to take credit for an anti-tax initiative that will be beneficial to the development of electronic commerce. From an economic point of view, preventing new taxes on a network that provides so many public benefits is good policy. The Senate version has been improved to where Treasury's Office of Tax Policy now feels we can support it, though some technical and substantive problems remain. This option will initially increase pressure from state and local opponents. However, as the legislation moves forward, opponents are likely to increasingly value our offer to use our offices to address any flaws.

B. Continue current posture (support goals and principles without endorsing legislation)

This option while frustrating high tech proponents would initially do more to satisfy state and local concerns and might lead to the bill's failing to pass. However, if the bill passes in its current form, anything short of a veto will still upset state and local opponents. If we take a lower profile, we will also have less influence to improve the bill.

RECOMMENDATION: Your economic and political advisors (Treasury, Commerce, NEC, IGA, OMB, and Ira Magaziner) recommend Option A. They believe this legislation will foster electronic commerce which is emerging as an important engine of growth while preserving our ability to address the legitimate concerns of state and local governments. Withholding support may cause the legislation to fail, or if it passes anyway, subject us to strong pressure to veto a bill that we believe merits support.

__ Agreed __ Disagreed __ Let's Discuss

BACKGROUND AND ANALYSIS

The Internet Tax Freedom Act would permit states to continue to collect existing, non-discriminatory taxes but imposes a moratorium on new or discriminatory ones and calls for a study process. Both bills call for you to appoint a commission representing the states, industry and the Administration, which will then issue recommendations which you may submit to Congress. The current Senate version of the bill ends the moratorium in approximately five years on January 1, 2004, which we think appropriate.

The Administration's Actions So Far

Treasury first set forth the principle of tax neutrality for the Internet at the international level in its paper, *Selected Tax Policy Implications of Global Electronic Commerce*, released in November 1996. That goal was adopted by the sponsors of this legislation.

Deputy Secretary of the Treasury Summers testified last summer in favor of the goals and principles of the legislation but, at that early stage, stopped short of endorsing it. In his testimony, he set forth three guiding principles: first, that commercial activities conducted by means of the Internet should not be subjected to new or discriminatory taxes; second, that the Internet should not become a tax haven; and third, that we should be highly sensitive to concerns about federalism. In short, we supported technology neutral, non-discriminatory, taxation of electronic commerce that preserved the state and local tax base. The goal of tax neutrality was then incorporated in the July 1, 1997 paper, *A Framework for Global Electronic Commerce* and included in your July 1, 1997 Presidential Memorandum on electronic commerce. Since then, we have adhered to this principle in international tax discussions.

Efforts to Address State and Local Concerns

With the exception of officials in high tech states such as Governors Pataki, Wilson and Cellucci, most state and local officials oppose the legislation on the grounds that it inappropriately restricts their right to tax. They are particularly concerned that rapid growth in electronic commerce will come at the expense of store sales and, if treated like mail order sales for tax purposes, will cut into sales tax revenues. In fact the bill is silent on whether neutrality means neutrality with store sales where merchants must collect "sales tax" or neutrality with mail order sales where consumers owe "use tax" but merchants are not required to collect them. Nor does it address the thorny issue of "nexus" or where the sale takes place for tax purposes.

As a practical matter, states will face the problem of how to collect tax on out-of-state Internet sales whether the bill passes or not. The bill, as written, neither worsens nor solves their problem. Attempting to solve it would probably mean addressing the complex issue of mail order taxation. A proposed deal between the Direct Marketing Association and several large states on the mail order issue fell apart.

Since legislation was introduced, Treasury officials have met with the Multi-state Tax Commission, the Big Seven group of state and local organizations, and others to address specific concerns. While state officials generally expressed more interest in killing the bill than in identifying specific problems with the language of the bill, Treasury did communicate specific suggestions we received, as well as our own concerns, to drafters who incorporated most of them in the Senate bill. In January, Deputy Secretary Summers made an offer to representatives of the Big Seven state and local organizations to work jointly on a bill addressing the states' larger remaining concerns. However, after some consideration, they turned this offer down, preferring to work with Congress separately.

One idea that opponents have often raised is to flip the burdens of the bill around to ban specific taxes during the moratorium rather than all taxes except those carved back in. This approach would require industry to identify taxes it opposes rather than requiring the states to identify taxes they wish to impose. However, Treasury believes that since states and municipalities best understand state and local tax issues, they are better positioned than industry to identify which taxes should be permitted. We have not stated a position publicly and we could refrain from expressing a view.

Other ideas opponents have raised include grandfathering all existing taxes and shortening the moratorium. The bill already grandfathers some taxes. Treasury's Office of Tax Policy believes that if the moratorium is significantly shortened, taxing authorities may choose to simply wait it out rather than actively engage in the study process. Moreover, shortening the moratorium may leave insufficient time for the study process to be effective.

Legislative History

The bill was held up for many months by Senator Ted Stevens (R, Ak) over his desire, unrelated to the tax aspects of the bill, to require the FCC to revisit requiring Internet Service Providers to pay into the Universal Access Fund. On November 4, the Senate Commerce Committee reported out the bill by a strong vote of 14 to 5. A request by the Senate Finance Committee to review the bill sequentially is being considered by the Parliamentarian but a previous request was denied. The next action is likely to occur in the House where Chris Cox believes supporters can move the bill out of the Commerce and Judiciary committees.

In December, Republican governors raised their concerns about the legislation to the Congressional leadership. This has led to a dialog between Governor Leavitt (R. Ut), the governors' point person on this issue, and Congressman Cox on how to move forward. Cox is considering the states' proposal to redraft the bill to declare a moratorium on specific taxes rather than all taxes except permitted ones. Industry has so far resisted this approach. The Senate is likely to move the bill to the floor only after it is reported out in the House.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phil Caplan, Sean Maloney to the President; RE: State of the Union/Social Security (1 page)	01/23/1998	P5 4038
002. memo	Gene Sperling to the President; RE: Social Security process (4 pages)	01/23/1998	P5 Dup
003. memo	Gene Sperling to the President; RE: Social Security process [partial] (4 pages)	01/23/1998	P5, b(6) 4039
004. memo	Gene Sperling to the President; RE: Social Security process (4 pages)	01/23/1998	P5
005. memo	Gene Sperling to the President; RE: Social Security process (4 pages)	01/23/1998	P5
006. memo	Gene Sperling to the President; RE: Social Security process (4 pages)	01/23/1998	P5 Dup
007. memo	Gene Sperling to the President; RE: Social Security process (4 pages)	01/23/1998	P5
008. memo	Gene Sperling to the President; RE: Social Security process (4 pages)	01/23/1998	P5
009. memo	Gene Sperling to the President; RE: Social Security process (4 pages)	01/23/1998	P5
010. memo	Gene Sperling to the President; RE: Social Security process (4 pages)	01/23/1998	P5
011. paper	RE: Social Security process (2 pages)	01/23/1998	P5

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2006-0309-F
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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
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- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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Stay w/ SS 1st message

THE WHITE HOUSE

WASHINGTON

January 23, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN
SEAN MALONEY

SUBJECT: State of the Union/Social Security

As you know, it has been proposed that your State of the Union speech contain a three-part Social Security message (*i.e.*, no surplus spending until we address Social Security; a national dialogue in 1998; and bi-partisan negotiations in 1999). The attached *Sperling* memo asks you to decide: (1) whether to organize a year-long, national dialogue and White House conference on Social Security; and (2) whether to name two, prominent bi-partisan co-chairs to lead the effort.

Yes

National Dialogue. All of your advisers recommend that you encourage your cabinet and all Americans to participate in Social Security forums and conferences planned for 1998; that you ask the AARP, the Concord Coalition, and perhaps the Pew Foundation, to host four regional, bi-partisan conferences, which you or the VP would attend; that you commit to holding a White House conference at the end of the year; and that you commence bi-partisan Social Security reform negotiations in January, 1999. Involving AARP/Concord lets you work with people we trust; offers a healthy distance between the dialogue and the White House; and provides some cover for both Democrats and moderate Republicans. However, the conferences would burden your schedule, and *Stephanie* is uncomfortable locking you into them and with planning a big White House event during the holidays.

Approve ✓ Disapprove ___ Discuss ___

Bi-Partisan Co-Chairs. *Erskine* and *Ron Klain* oppose bipartisan co-chairs; they think it's "redundant validation," might allow Republican extremists too much influence, and could undermine our efforts. They feel involving Concord and/or Pew is sufficient. *Gene* thinks co-chairs (*e.g.*, George Mitchell and Bob Dole/Warren Rudman) would boost the bi-partisan influence of the dialogue. *OMB* suggests Lloyd Bentsen; notes Sam Nunn might resent your choosing Rudman and not him.

Approve Co-Chairs ___ Disapprove Co-Chairs ___ Discuss ✓

No

Principles. Your advisers also raise the idea of including in your speech a recitation of Social Security "principles" (*e.g.*, strengthen/protect Social Security for the 21st Century; maintain universality/fairness; provide a benefit people can count on; help lift retirees/disabled/survivors out of poverty; preserve fiscal discipline). *Bruce Reed* and *Erskine* think you could stay general. *Gene* notes that principles add substance and would aid testimony and press inquiries, but might also upstage the surplus/bi-partisan dialogue announcements. They ask you to think about it.

THE WHITE HOUSE

WASHINGTON

January 23, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING

SUBJECT: Social Security process

As we have discussed in previous meetings and memos, your State of the Union address will include a three-part message on Social Security reform:

1. We should not spend any of the projected surpluses until we have addressed Social Security;

2. We must engage in a national dialogue during 1998, to explore and discuss the issues with bipartisan regional forums and a White House Conference in December 1998

3. You will call for bipartisan Social Security negotiations to begin in January 1999.

The purpose of this brief memorandum is to obtain your guidance on the second step -- the national dialogue -- as well as on one other remaining issue about our approach.

I. NATIONAL DIALOGUE DURING 1998

The challenge during your State of the Union address is to provide enough specificity to the national dialogue to make it credible, without committing the White House to excessive administrative burdens or substantive entanglements.

Proposal

Your advisers recommend that in your State of the Union address, your statement about the 1998 process would be something like:

1. I recognize and applaud the wide variety of forums and conferences planned across the country during 1998 on this important issue.

2. I call on every American to participate in one of these forums, or to host one yourself if none is planned in your local area.

3. I have asked the Concord Coalition and the AARP [along with the Pew Foundation], to host four bipartisan regional conferences. I pledge that either I or the Vice President will attend each of these conferences.

4. I have also asked my Cabinet over the coming year to participate actively in a wide variety of discussions across our nation on this issue.

5. And to wrap up our year-long dialogue, I will host a White House Conference in December, at which we will bring together a wide variety of views gleaned from the national discussion over the next year.

6. Finally, after the culmination of the national dialogue with the White House Conference in December, we will begin bipartisan negotiations over Social Security reform in January 1999.

Background

In our previous meetings on this issue, we had discussed the possibility of naming a few prominent Americans to lead a series of regional forums. In subsequent discussions, many of your advisers have become concerned that without the sponsorship of some outside institution, we would inevitably become ensnarled in choosing delegates, preparing or editing presentations on controversial issues, and other contentious activities. In particular, the concern is that without some outside structure, the discussions could either become stultified, or any of the topics discussed could carry some implicit Administration imprimatur -- and too politicized.

The Concord Coalition, the AARP, and the Pew Foundation are already planning to hold bipartisan forums across the nation in 1998. Your advisers therefore recommend that you highlight four bipartisan regional forums that would be organized and staffed by the Concord Coalition and the AARP (and potentially the Pew Foundation). The groups would be eager to do so. You would commit that either you or the Vice President would attend the four regional forums, which would lead up to the White House conference.

The benefits of this approach are that it relies on two people we trust (Martha Phillips and John Rother), that it provides cover for Democrats (through the AARP) as well as moderate Republicans (through the Concord Coalition, which includes Pete Peterson and Warren Rudman), and that it provides an acceptable amount of distance between the White House and the discussions to ensure that politics doesn't undermine the effort from the beginning. The principal cost of the approach is your time: it commits you to attending some of the conferences (you could attend two, and the Vice President could attend the other two). (In addition, we will be sponsoring the White House Summit on Retirement Security in July -- which will deal with non-Social Security retirement issues).

Your advisers also recommend that you should challenge the American people, by encouraging them to attend one of the many forums or conferences that are being organized to discuss this critical issue. You would be showing the way by attending some of the conferences yourself, as well as hosting the final one at the White House in December.

Recommendation

Your advisers recommend that you approve the basic approach outlined above (which will be wordsmithed to fit appropriately into the speech).

_______ Approve

_______ Disapprove

_______ Discuss

II. NAMING PROMINENT AMERICANS TO LEAD THE EFFORT

III. PRINCIPLES

Another issue that we have discussed is whether you should promulgate principles for Social Security reform in the State of the Union. On one hand, such principles provide more substance to the effort -- and allow Administration officials to field a wide variety of questions on the topic. On the other hand, principles could put the focus more on your substantive direction for Social Security instead of your surplus announcement and the bipartisan national dialogue message. Many of your advisors believe that even if you do not announce principles in the State of the Union, we will need to have them soon to assist in testimony or respond to the press. Bruce Reed and Erskine think that they could even be more general, though several of your other advisors think they are about the right level of specificity. All agree that the principles should rule out a radical privatization of Social Security but leave open the possibility of a small individual account within the structure that preserves the basic progressive and universal structure of Social Security.

The principles we have been considering include:

- Strengthen and protect Social Security for the 21st century;
- Maintain universality and fairness;
- Provide a benefit people can count on;
- Help to lift the retired, the disabled, and their survivors out of poverty;
- Preserve fiscal discipline.

updated version

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. memo	Phil Caplan, Sean Maloney to the President; RE: Childer's Health Insurance Program Waivers (2 pages)	02/12/1998	P5	4040
002. memo	Chris Jennings to the President; RE: Waivers and the Children's Health Insurance Program (6 pages)	01/21/1998	P5	4041

COLLECTION:
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2006-0309-F
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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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Jennings
COS

THE PRESIDENT HAS SEEN
2-23-98

THE WHITE HOUSE

WASHINGTON

February 12, 1998

Chris — [illegible] DPC/NEC [illegible]
BC

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN PW
SEAN MALONEY SM

SUBJECT: Children's Health Insurance Program Waivers

The attached memo from Chris Jennings seeks your guidance on whether to grant waivers under the two prongs of the new Children's Health Initiative Program (CHIP), and sets out possible options for doing so. As you know, CHIP allows states to expand coverage either through new non-Medicaid block grants, or by expanding their Medicaid programs. The non-Medicaid block grant option has fewer benefit requirements than does the Medicaid option. Even so, certain states that choose the non-Medicaid option are expected to request waivers of CHIP's requirements. Other states that choose the Medicaid option, will likely seek Medicaid/CHIP waivers. Still others will want to expand their existing Medicaid waivers, previously granted by the Administration, to encompass CHIP.

Two issues are presented. First, what sort of waivers, if any, should be granted to states under CHIP's new non-Medicaid block grant option. Second, what sort of waivers, if any, should be granted to states under CHIP's Medicaid option.

I. Non-Medicaid block grant waivers. *All of your advisers agree* that for non-Medicaid block grant programs, waiver decisions should be deferred for one year. The consensus among your advisers is that, because CHIP is a new program, states should have at least a year's worth of experience, followed by an evaluation, before waivers are granted.

Approve (recommended option) ✓ Disapprove ___ Discuss ___

II. Medicaid/CHIP Waivers. With respect to Medicaid/CHIP waiver requests, your advisers present three options:

Option 1 -- Defer new Medicaid/CHIP waivers until after one year's program evaluation; allow expansions of existing Medicaid waivers but require that they adhere to CHIP's non-Medicaid block grant requirements. *HHS* favors this option; it believes CHIP sets a benefits floor that we should not fall below and waiver negotiations could delay program implementation/coverage for 5 million uninsured kids. Democrats and children's health advocates would prefer this option; Governors would react strongly and negatively to it.

Option 2 -- Permit Medicaid/CHIP waivers (either existing or new) if states' programs are *generally* consistent with CHIP's non-Medicaid block grant requirements. *NEC and DPC* support this option. They believe it's a good balance, preserves CHIP's standards, and removes an important disincentive for states to use the Medicaid option. *NEC/DPC* would further allow states to drop modestly below certain CHIP requirements (*e.g.*, permitting cost sharing for those at 133% versus 150% of the poverty level). Base Democrats and advocates, who feel their support for CHIP's less-than-Medicaid requirements was conditioned on no new flexibility in Medicaid, will oppose this option. Governors would prefer it to Option 1, but will still seek greater flexibility.

Option 3 -- Permit new Medicaid/CHIP waivers if states' programs are *generally* consistent with CHIP's non-Medicaid block grant requirements (like Option 2 above); but permit states' existing Medicaid waivers to expand but without adhering to CHIP non-Medicaid black grant requirements. *OMB* and *Treasury* support this option. They think allowing approved waivers to encompass CHIP would help waiver-holding states avoid significant coordination problems. Such states may feel the Administration "reneged" if we don't permit them to extend approved waivers to CHIP. Base Democrats and children's advocates would strongly oppose this option; so too some Republicans, who would see it as an attempt to steer states into Medicaid. Governors would support it.

Option 1 (HHS) ___ (defer new waivers; allow existing if CHIP-consistent)

Option 2 (DPC/NEC) ✓ (allow new & existing if generally CHIP-consistent)

Option 3 (OMB/Treasury) ___ (allow new if CHIP-consistent; permit existing without changes)

Discuss ✓

- Under Options 2&3, permit modest cost sharing flexibility

Approve ✓ Disapprove ___ Discuss ___

THE WHITE HOUSE

WASHINGTON

January 21, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Chris Jennings CJ

SUBJECT: Waivers and the Children's Health Insurance Program

cc: Bruce Reed, Gene Sperling, Jack Lew, Josh Gotbaum, Elena Kagan

This memo seeks your guidance on how much, if any, additional flexibility should be given to states in the Children's Health Insurance Program (CHIP) through the use of §1115 waivers. Although waivers have been instrumental in modernizing and reforming welfare and Medicaid, questions have been raised about the feasibility and advisability of granting waivers for the new children's health care program so soon after its enactment.

Despite acknowledging the great amount of flexibility given to the states in the new CHIP grant program, the Governors asked — soon after the law's enactment — if additional flexibility would be given through waivers. HHS's interim response was that it would be difficult to review and evaluate the merits of waiver proposals until we had some experience with the implementation of the new law. Your advisors agreed that this was the appropriate, initial response, but we also underscored that this was not necessarily our final position.

The National Governors Association (NGA) immediately responded by formally requesting that we affirm states' ability to seek new CHIP grant program §1115 waivers. Since then, two other issues have been raised: (1) Will we approve new Medicaid §1115 waivers in the Medicaid option within CHIP, and (2) Will we allow states with current Medicaid §1115 waivers to expand those programs through CHIP (even though some have provisions below the CHIP minimums).

All of your advisors agree that the HHS Secretary does have the authority to grant waivers for CHIP, whether administered through a new non-Medicaid grant program or through Medicaid. They also generally agree that the CHIP waiver policy need not conform to existing waiver policy. However, they (HHS, OMB, Treasury, NEC/DPC) disagree on whether and under what circumstances HHS should approve waivers in CHIP.

Because HHS is holding state conferences this month on CHIP and the annual NGA conference is in February, it is important that we receive direction from you in short order on this issue. This memo, developed in collaboration with HHS and OMB, outlines these issues, provides policy options for your consideration, and summarizes where your advisors stand on these options.

BACKGROUND

Your Administration has given states unprecedented flexibility for their health care programs. Since 1993, we have granted 15 comprehensive Medicaid waivers that test approaches not allowed in Medicaid like experimenting with premiums and cost sharing for low-income populations, waiving benefits, and accelerating enrollment in managed care. States have also used waivers to expand coverage to millions of Americans. In addition, with the Administration's strong support, the Balanced Budget Act secured much greater administrative flexibility for the Medicaid program (e.g., eliminated the need for a waiver for a managed care program, repealed the Boren amendment, and reduced cost-based reimbursement requirements for community health centers). In so doing, we eliminated the need for many time-consuming waivers that we heretofore required from states.

The BBA also created CHIP, which has fewer Federal guidelines than any other health insurance program that the Government oversees. Unlike Medicaid, CHIP allows states that opt to expand through a new, non-Medicaid grant program to cap the number of children covered (i.e, no entitlement requirement); to limit programs to parts of the state; to not cover Medicaid's EPSDT (Early, Periodic, Screening, Detection and Treatment) benefit; and to charge beneficiaries long-sought-after (although limited) cost-sharing. Alternatively, states may expand using the enhanced Federal match through the now more flexible Medicaid program. However, states choosing this option must follow Medicaid rules (e.g., no benefits changes or cost sharing).

Although extremely flexible, CHIP includes standards for accountability, benefits, and cost sharing limits; these were secured by you and Congressional Democrats. Accountability provisions include limits on the type of state contribution (e.g., no provider taxes and donations) and provisions to prevent "crowd out" (substitution of the new coverage for existing coverage). For the new non-Medicaid grant program, we developed a benefit standard that simultaneously ensures that it is valuable but provides great flexibility to states in benefits design. Cost-sharing is allowed in the grant program but limited to moderate premium and copayment schedules for those below 150 percent of poverty and to 5 percent of family income for those above 150 percent. As under current law, states electing the Medicaid option must follow Medicaid rules for benefits (including EPSDT) and cost sharing (for children, none is allowed).

?

Despite the flexibility in CHIP, some states have indicated that they want §1115 waivers. There are three types of waivers that states are seeking. First, several states want to waive provisions for non-Medicaid, CHIP grant programs (e.g., California wants to impose greater cost sharing above the CHIP limits). Second, others want to waive Medicaid provisions within CHIP's Medicaid option since states choosing the Medicaid option must use all Medicaid rules (e.g., Missouri wants to waive the Medicaid requirement to cover non-emergency transportation). Third, most states that already have Medicaid §1115 waivers want to expand those programs to more children to receive CHIP's higher matching rate — even though some include provisions that are significantly below the new CHIP minimums (e.g., Arkansas has higher cost sharing requirements than allowed in CHIP). It is important to note that the provisions that states want most to waive are *the benefits and cost sharing minimums we worked to secure before signing off on the budget agreement.*

CONSENSUS RECOMMENDATION: DEFERRING NON-MEDICAID CHIP WAIVERS

Your advisors have achieved consensus on one of the major issues. For CHIP non-Medicaid grant programs, we believe the Administration should consider waiver applications only after a state has had at least a year's worth of experience, followed by an evaluation of its children's health insurance program. As we gain experience with the new CHIP grant program, we will have a better understanding of what types of CHIP demonstrations are appropriate and will develop guidelines at that point.

We believe that deferring approvals for waivers of the already extremely flexible CHIP is advisable because this enables us to see how the program you signed into law last summer will work. Granting waivers now would place great pressure on us to weaken the accountability and benefits standards that we secured in the Balanced Budget negotiations that base Democrats and advocates think are too modest anyway. Having said this, waiver policy for CHIP may well be advisable after we have had time to learn about the program's strengths and weaknesses.

If you agree, we will inform Governors of this policy in a response to their letter. While we believe that Governors will be disappointed with this position, they will likely appreciate that our policy is temporary and that we open up the prospect for waivers soon after they implement their children's health programs.

Decision

__✓__ Agree on deferring non-Medicaid grant program waivers until plans in place for one year

_____ Let's discuss

ISSUE: POLICY FOR MEDICAID WAIVERS

The other types of waivers, about which there is disagreement amongst your advisors, concern the Medicaid option within CHIP. We all agree that our Medicaid waiver policy should be modified to acknowledge the fact that the Congress did pass legislation that explicitly outlines new guidance on balancing the need for greater flexibility with the need for accountability. However, we differ on how our policy should be modified to reflect this policy change and, more specifically, the extent to which we would hold Medicaid waivers to the CHIP standard.

There are two questions. The first is whether we grant new waivers to states that expand CHIP coverage through Medicaid. States have indicated that they are interested in expanding coverage through the Medicaid option, but since the law allows no flexibility from Medicaid rules, they want waivers, particularly in the area of cost sharing. The second question is whether we allow states that already have Medicaid §1115 waivers to expand those programs, without change, to get the CHIP allotment and higher match. The following are the options proposed by your advisors.

OPTION 1 (HHS): Defer new Medicaid CHIP waivers (with minor exceptions) and allow expansions of existing Medicaid waivers if consistent with CHIP standards for non-Medicaid grant programs. HHS recommends that we apply the same policy for new Medicaid and non-Medicaid, grant program waivers. It would hold off on approving any new Medicaid waiver under CHIP until we have at least a year's experience plus an evaluation. (The only exception would be for waivers for small, incidental provisions that have little or no effect on most children — like Missouri's desire to waive the Medicaid requirement for non-emergency transportation.) For states that have waivers already, HHS would allow them access to the new enhanced matching dollars only if they met CHIP's non-Medicaid grant program standards.

Although HHS/OMB have, in years past, approved a number of Medicaid waivers that have less generous benefits than even the new CHIP grant program, HHS believes the new law set a floor that we should not fall below. They fear that once we open the door to waivers, we will have a difficult time maintaining these standards. In addition, they are concerned that waiver negotiations will delay implementation of new programs in a number of states. Rapid implementation is one critical component to covering our target 5 million uninsured children.

If you choose this option, the Democrats and children's health advocates will applaud our decision to respect the rules enacted in the widely praised new health insurance program for children. However, Governors — who are hoping that we will allow some type of Medicaid waivers — will surely react strongly and negatively to this policy.

OPTION 2 (NEC/DPC): Allow Medicaid CHIP waivers (new or old) if <u>generally</u> consistent with CHIP standards for non-Medicaid grant programs. This option would allow new waivers through the Medicaid option of CHIP <u>if</u> those waivers were consistent with the standards provided under the new CHIP grant model. In other words, states choosing the Medicaid CHIP option could waive Medicaid rules as long as the benefits, cost-sharing and other accountability provisions are in line with the CHIP grant program standards. Existing (old) Medicaid §1115 waiver programs could also receive the higher matching rate, but they too would have to meet CHIP standards; in a number of cases, this would mean they would have to strengthen some of their benefits/cost-sharing protections to access these additional dollars. Although a few states would have to reduce cost sharing requirements to comply with CHIP, we believe that the higher matching rate available under CHIP would be sufficient to offset these costs.

DPC/NEC believes that this option strikes an appropriate balance by maintaining the integrity of the CHIP program and the Balanced Budget Act and giving the new standards time to be tested. It also removes an important disincentive for states to use the Medicaid option in CHIP. Many states would prefer to use their already-in-place Medicaid programs because it is administratively simple. Moreover, having a seamless Medicaid program serving both poor and children of working parents has obvious advantages. However, allowing any new Medicaid waivers through CHIP will be criticized by our base Congressional Democrats, some Republicans, and advocates. They believe that their support for the flexibility in the non-Medicaid CHIP program was conditioned on no new flexibility in Medicaid. The Governors would like this approach better than the HHS option, but they could be counted on to say that it is still not flexible enough.

Within this option, NEC/DPC also recommends that the Secretary have the authority to approve Medicaid CHIP waivers that may be modestly below those standards provided for in the new CHIP grant program. While we strongly believe that the CHIP standards should be the guiding principle for Medicaid waivers, we also recognize that it is unwise and unrealistic to treat the new law's standards as "lines in the sand" that can never be crossed regardless of a waiver's merits. One good example is in the area of cost sharing.

In both previous Medicaid waivers and our internal policy positions, we have allowed limited cost sharing that exceeds the CHIP grant program standards. Such cost sharing can appropriately increase beneficiaries' cost sensitivity in using health services and decrease possible employer insurance dropping problems, since such a policy would more accurately mirror marketplace coverage. While we recommend providing this additional flexibility authority, we also believe that waivers of the CHIP grant standards for children not be granted below 133 percent of poverty -- the level your Administration advisors had previously concluded (during the balanced budget discussions) achieved the balance between appropriate and excessive cost-sharing.

While some might point out that it is inconsistent to allow flexibility below CHIP standards for Medicaid and not the grant option, we believe that the advantages of this approach far outweigh this criticism. First, the CHIP standards were designed for the grant program — not Medicaid. Second, Medicaid waivers are quite variable and have never been publicly held by Democrats and advocates to the same standards as legislated changes to public programs. And thirdly, as described above, having an additional incentive to administer the children's health program through Medicaid is desirable.

Giving HHS the authority to allow any cost sharing flexibility in Medicaid will likely anger base Congressional Democrats and some moderate Republicans. They will argue (as does HHS) that once we sanction higher cost sharing below 150 percent of poverty, decisions will be perceived as arbitrary, making it difficult to say no to states that demand even greater flexibility. We believe these are valid concerns and should be seriously considered. However, we are also well aware of states (such as Wisconsin) who will be requesting cost-sharing levels just under 150 percent (i.e., 143 percent of poverty) that we would find difficult to oppose on purely policy grounds.

OPTION 3 (OMB & TREASURY): Allow new CHIP Medicaid waivers if consistent with CHIP standards for non-Medicaid, grant programs, but allow existing Medicaid waivers to expand with no change. For states requesting *new* Medicaid waivers, OMB/Treasury agree with DPC/NEC option that the CHIP standards should guide approval of such waivers (also allowing for greater cost sharing for families no less than approximately 133 percent of poverty). This policy should be re-evaluated after states gain experience with their programs, at the same time the Administration is re-considering non-Medicaid, grant program waivers.

For states with waiver programs already approved (since the 1994 NGA waiver agreement), OMB and Treasury recommend that we recognize their history and different situation and not hold them to the CHIP standards. We anticipate that these 11 states will want to expand their current waiver programs under CHIP; OMB and Treasury think they should be permitted to do so with no changes. Although this option provides only a few more states with additional flexibility in cost-sharing or benefits under CHIP than the DPC/NEC option, it helps these states avoid significant coordination problems by sanctioning CHIP programs consistent with approved waiver programs. In addition, lower income children in these states might pay more in premiums than the higher income children newly eligible under CHIP. Waiver states will consider the Administration to have reneged if we don't permit them to carry their waivers to CHIP. This option excludes pre-NGA agreement waivers (e.g., Tennessee) since states have been held to a higher standard since then.

Allowing existing Medicaid waivers into CHIP unchanged will surely be noticed and strongly opposed by base Democrats and children's advocates. They believe that some of the waivers that we have approved to date, such as Tennessee and Arkansas, have gone too far by allowing states to impose "excessive" cost sharing on low-income beneficiaries and waive EPSDT. Ironically, this policy may also be criticized by some Congressional Republicans, who think that many of our CHIP implementation decisions are steering states toward the Medicaid option. It would, however, be the most acceptable option to the NGA and the relevant (existing waiver) states.

Decisions

Medicaid Waivers

______OPTION 1: Defer new Medicaid waivers in CHIP (with minor exceptions)
Allow existing waivers to expand through CHIP if consistent with CHIP standards for non-Medicaid, grant programs

______OPTION 2: Allow new & existing Medicaid waivers in CHIP if consistent with CHIP standards for non-Medicaid, grant programs

______OPTION 3: Allow new Medicaid waivers in CHIP if consistent with CHIP standards for non-Medicaid, grant programs
Allow existing waivers (post-NGA agreement) to expand through CHIP with no program changes even if they fall significantly below new CHIP grant standards

______Let's discuss

Cost Sharing Flexibility

______OPTION 1: Hold all Medicaid waivers to the cost sharing in CHIP for non-Medicaid, grant programs

______OPTION 2: Authorize the Secretary to approve, within limits, Medicaid waivers in CHIP with cost sharing below CHIP standards for non-Medicaid, grant programs

______Let's discuss

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5:27 pm

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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

January 7, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. McGINTY

SUBJECT: OFFSHORE OIL DRILLING MORATORIUM

[This memo is for informational purposes only. If you decide that you would like to pursue this issue further, we will need to engage in a policy process.]

This is in response to your request for information on the possibility of a permanent moratorium on new leases for offshore oil drilling off the coast of California. It sets out the current status of California offshore drilling, the legal authorities available to you, relevant policy considerations, and options for action.

Summary

Current moratoria preclude any new leasing off California until at least 2002. You have broad legal authority to withdraw areas from leasing. However, policy considerations and Administration policy to date would suggest that a permanent withdrawal should not be done without, at a minimum, a factual record from the Interior Department about the impacts of such a withdrawal. Another option, which also should await a factual record from the Interior Department, would be to extend the current moratoria for a fixed time period, but to stop short of a permanent withdrawal. You should be aware, however, that polling data from October 1996 is surprisingly negative on this action -- nationwide, 34% believe we should ban offshore drilling for environmental reasons, while 50% say we should permit offshore drilling to keep energy prices low and reduce our dependence on foreign oil. In California and Florida, roughly 53% support a permanent ban and 43% oppose. New Jersey was also polled, with only 31% supporting and 64% opposing.

Current Status

It is my understanding that Senator Boxer has proposed a permanent moratorium on new oil or gas leases off the California coast. The practical effect of this action would be to make permanent the current time limited moratorium on such leases, and reduce the risk that later Administrations will fail to continue the moratorium now in place. (Of course, later Administrations could revoke any withdrawal you put into effect, and Congress could always overturn such a withdrawal.)

The Administration's five year Outer Continental Shelf Leasing Program, issued pursuant to the Outer Continental Shelf Lands Act, precludes any new leases off the California coast through 2002.

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In addition, President Bush in 1990 withdrew the California Outer Continental Shelf from new leasing through 2000, and this moratorium has been included in Interior Appropriations bills ever since.

Prior to either of these actions, the Reagan Administration had entered into 83 leases off the shore of Southern California. Those leases are contractual obligations of the government that cannot be rescinded. Of these, 43 are producing leases and production has doubled over the last 5 years to approximately 200,000 barrels per day. The other 40 non-producing leases are the subject of an ongoing study involving the federal and state governments and the oil companies, to be completed in spring 1998. No production will begin until that study is completed, and all these leases expire in December 1998 unless production plans are submitted prior to September 1998.

Legal Authority

Section 12(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1341) provides that the President "... may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf." The provision clearly authorizes the President to withdraw areas not currently subject to a lease from leasing. There is no instructive legislative history on the provision.

The Interior Department's Solicitor's Office believes that, while the provision does not directly address revocation of a withdrawal, the language implicitly allows the President to revoke a withdrawal so issued. That office also notes that there is no specific procedure required by law for effectuating such a withdrawal, but that an Executive Order would be one appropriate means for doing so.

The authority has been invoked only twice -- in 1960 by Federal Register notice to establish the Key Largo Coral Reef Preserve; and in 1992 by a memorandum to the Secretary of Interior from President Bush confirming an earlier withdrawal pursuant to this authority, to remain in effect through 2000 "subject to revocation should the President determine the scheduling of a lease sale to be required in the interest of national security."

Policy Considerations

The Administration's general policy with respect to development of the nation's oil and gas resources has been that decisions with respect to leasing and moratoria should be based on sound science and environmental protection. Within those constraints the Administration has supported production of its energy resources. Decisions with respect to leasing have been made on an area-by-area basis through the use of Interior's five year leasing plans, and have been done in an open process involving the affected parties with a concerted effort at consensus building.

Making permanent the existing five year moratorium in California without additional process or impact analysis by the Interior Department would be a departure from Administration policy. In addition, it would set a precedent that could be problematic for two reasons. First, it could increase pressure on the Administration from opponents of offshore drilling in other states to take Presidential action without the normal scientific/public process. (For example, large natural gas deposits in the

Norfleck Trench off the Gulf coast of Florida are estimated to contain enough natural gas to provide for Florida's needs for the next 40 years, and the issue of production of that gas is expected to be controversial). Second, this action could serve as precedent for later Administrations to revoke existing withdrawals without factual or scientific analysis to the detriment of the environment.

Should you wish to pursue a moratorium but mitigate potential conflicts with current Administration policy, there are at least two variations on Senator Boxer's proposal to consider. First, any executive action to withdraw lands from leasing could (and in my view should) be preceded by a direction to the Secretary of Interior to provide an analysis of the impact on oil production and the environment of an extension of, or a permanent, moratorium. It seems most practical to request information on both a time limited extension of the present moratorium as well as a permanent moratorium. Any moratorium proposal or request to the Secretary should include a proviso such as that used by President Bush that the moratorium could be revoked if the President believed it to be a threat to the national security.

Such a report from Interior would provide a factual record on which to base your decision (albeit one that stops short of the public process typically used by Interior). Interior believes that such an analysis could be done very quickly upon request, easily within 30 days. However, Interior has expressed concerns in the past about the consistency of permanent moratoria on drilling with our national security interests, and does believe that the public process it has used to make these determinations during this Administration has significant value. Thus, it is not clear that Interior's analysis would result in a blanket endorsement of moratorium extensions.