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To: Barbara Woolley

From: Margaret D. Garikes
Division of Federal Affairs

Phone: 202-789-7409

Fax: 202-789-4581

cc:

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News Release

FOR IMMEDIATE RELEASE July 31, 1997

For further information, contact: Brenda L. Craine
202-789-7447

AMA CALLS TOBACCO DEAL "A LANDMARK EFFORT" BUT MODIFICATIONS MUST BE MADE

The American Medical Association today announced support for a "comprehensive legislative solution" to reduce underage tobacco use based on the proposed tobacco settlement agreement -- if Congress adopts critical improvements.

The AMA released a 45-page report, which calls for strengthening the agreement, especially two "essential" provisions that would "achieve real, permanent, major public health benefits." The AMA recommendations would strengthen the FDA's jurisdiction over tobacco products -- so that the FDA is given the same authority over tobacco products that it has over other drugs and devices, and increase the penalty paid to the tobacco industry from $80 million to as much as $423 million for each percentage of underage use above the targets for underage smoking (based on the lifetime social costs of tobacco use).

Richard F. Corlin, MD, speaker of the AMA's House of Delegates, called the agreement a "landmark effort," which contains many otherwise unachievable benefits. The AMA outlined nine advantages to addressing the tobacco problem through an improved version of the proposed settlement, rather than continuing litigation and piece-meal legislation, including the fact that the settlement would generate between $4.5 and $7.5 billion per year in funding for public health programs, would confirm FDA jurisdiction and implement unprecedented youth access and advertising restrictions immediately, and would established an ambitious set of targets for reducing underage smoking.

1101 Vermont Avenue, NW
Washington, DC 20005
202 789-7400

"The danger is that once the tobacco industry gets the relief it seeks, there is no incentive for them to cooperate further," Dr. Corlin said. "In other words, we have to get it right the first time."

The AMA will now turn its attention to gaining public health support and legislative approval for a re-vamped settlement proposal that is modified according to task force recommendations, while offering medicine's input to the Clinton administration as it continues to evaluate the initial settlement proposal.

"We will lobby vigorously for the adoption of these changes as part of any comprehensive legislation passed by Congress and signed by President Clinton," said Randolph Smoak, M.D., AMA Vice Chair. "The AMA's commitment is to help organize a broad-based public health coalition that will engage leaders in Congress and the White House on behalf of America's young people who, for too long, have been seduced by cigarette-makers."

The Task Force report calls for several additional changes in the agreement, including certain " strongly recommended" modifications:

- increasing the price of cigarettes by $1.00 per pack as opposed to the proposed $0.62 per pack;
- allowing the FDA to progressively tighten the Look Back program after ten years with the goal of reducing underage tobacco use to incidental levels;
- clarifying the preemptive effect of federal youth access restrictions so that states and local governments may impose civil sanctions on tobacco retailers beyond the federal minimum;
- expanding the restrictions to tombstone-only advertising for all publications.
- assuring that the Look Back program for reducing underage use of smokeless tobacco is identical to targets for reducing underage smoking.

# # #

PROPOSED TOBACCO SETTLEMENT AGREEMENT

EXECUTIVE SUMMARY AND STATEMENT OF
THE AMERICAN MEDICAL ASSOCIATION BOARD OF TRUSTEES

The proposed tobacco litigation settlement represents a landmark effort to overcome the scourge of underage smoking and to achieve substantial and permanent reductions in tobacco use. At the same time, it effectively eliminates the most significant threats of civil liability to the tobacco industry. With these threats eliminated, the tobacco industry will have little incentive to return to the bargaining table. It is essential, therefore, that the settlement produce real, permanent, and major public health benefits. To determine the extent to which it does, the American Medical Association (AMA) commissioned a Task Force, which included members of the AMA Board of Trustees, its House of Delegates, independent physician experts in tobacco control and experienced legal and economic public policy consultants, to undertake a comprehensive analysis of the proposed tobacco litigation settlement from a public health perspective. The Task Force report is attached hereto. The Board of Trustees of the AMA endorses the report and recommendations of the Task Force in their entirety.

The AMA believes that the proposed settlement offers a promising basis for delivering on the required public health benefits. The settlement also has a number of advantages relative to continued litigation and piecemeal legislative reform. For example, the settlement provides funding for public health initiatives and enforcement, and it puts a new regulatory regime in place immediately. On the other hand, critical improvements must be made if the proposed settlement is to produce the desired results.

In particular, two changes are essential. First, the FDA must be given the same authority over tobacco products that it has over other "drugs" and "devices" under the Food, Drug and Cosmetic Act. The only exception should be the 12-year moratorium on any FDA action implementing a prohibition of traditional tobacco products or the elimination of nicotine from tobacco products. The settlement negotiators evidently agreed to this moratorium in order to provide the tobacco industry some predictability about future FDA regulation. But achieving predictability does not require burdening FDA regulation with ill-advised substantive and procedural hurdles that have not public health rationale.

To effectuate this change, the following revisions to the legislation implementing the proposed settlement, or their equivalent, should be adopted:

- There should be a constructional principle indicating that FDA has full authority over all tobacco products and nicotine delivery devices unless a specific exception is expressly set forth in the legislation.

- The settlement should be clarified by eliminating any language that suggests that FDA authority to regulate tobacco products is limited in ways other than the 12-year moratorium.

- FDA should be permitted to use the same procedures, and its decisions should be subject to the same standard of review, that generally apply under the Food, Drug and Cosmetic Act.

- The definition of "tobacco product" should be clarified to include pipe tobacco, cigars, and any other tobacco product.

Second, the Look Back surcharge program designed to create a financial incentive for tobacco companies to reduce underage smoking must be given real teeth. It must provide reasonable assurance that each tobacco company achieves the targets for reduction in underage tobacco use that are set forth in the proposed settlement. If the tobacco industry is to be relieved of any significant civil liability and if FDA jurisdiction is to be subject to a 12-year moratorium for elimination of nicotine, then it is essential that a program of financial incentives be put in place that will guarantee significant reductions in underage smoking.

To effectuate this change, the following revisions to the legislation implementing the proposed settlement, or their equivalent, should be adopted:

- The Look Back surcharge payments should not be subject to the automatic pass through and should not be tax deductible

- The Look Back surcharge payments should be assessed against each individual company based on reductions in underage use achieved by that company. They should not be assessed on the basis of collective industry responsibility.

- The Look Back surcharge payments should be based on the discounted present value of the lifetime social costs of tobacco use, not restitution of profits. We estimate that the penalty should be increased to a level of $400 to $450 million for each percentage of underage use above the target on an industry wide basis (in contrast to $80 million in the proposed settlement).

- The $2 billion cap on annual surcharge payments should be eliminated. Any cap should be based on a multiple of company profits from underage use or on total company profits in the domestic market.

- Tobacco companies that exceed the targets should be given a financial credit. There should be no abatement for compliance with regulations and corporate good faith.

Beyond these essential changes, the AMA strongly recommends the following additional modifications to the proposed settlement.

- The price of cigarettes should be targeted to rise by about $1.00 per pack, as opposed to the $0.62 per pack projected under the proposed settlement. This can be accomplished by an increase in the cigarette excise tax, by upward adjustments in the Annual Payments, or by modifications in the tax treatment of existing Annual Payments.

- The FDA should have authority progressively to tighten the targets of the Look Back program after the ten-year period addressed by the proposed settlement, with a goal of reducing underage tobacco use to incidental levels.

- The preemptive effect of federal youth access restrictions should be narrowed and clarified so that states and local governments may impose civil sanctions on tobacco retailers beyond the federal minimum.

- The preemptive effect of federal advertising restrictions should be narrowed and clarified so that states and local governments may regulate local advertising and marketing and may impose counter-advertising requirements on tobacco companies.

- The restriction on advertising to tombstone-only format should be extended to all publications.

- A federal agency (such as HHS) should be given overall responsibility for disbursement of the Public Health component of the annual Payments, including oversight of grant recipients and authority to make adjustments in allocations in future years.

- The provisions regarding nonsigning companies should be modified so as to avoid erecting unnecessary barriers to new entry.

- The Look Back program should have targets for reduction of underage use of smokeless tobacco identical to the targets for reduction in underage smoking.

Throughout its report, the Task Force recommends a number of additional clarifications or refinements.

If the changes that the Task Force has identified or equivalent changes are adopted by the Administration and Congress, the proposed settlement would be an historic event if the life-or-death struggle to reduce tobacco use to a minimum. Accordingly, the Board of Trustees of the AMA has committed the resources of the AMA to press for the inclusion of these changes in any legislation adopted by Congress.

ANALYSIS, REPORT, AND RECOMMENDATIONS OF THE AMERICAN MEDICAL ASSOCIATION TASK FORCE ON THE PROPOSED TOBACCO SETTLEMENT AGREEMENT

July 31, 1997

ANALYSIS, REPORT, AND RECOMMENDATIONS OF THE AMERICAN MEDICAL ASSOCIATION TASK FORCE ON THE PROPOSED TOBACCO SETTLEMENT AGREEMENT

George W. Anstadt, M.D., Chair

Michael J. Achinger, M.D.

Michael W. Bigelow, M.D.

David L. Callender, M.D.

Ronald M. Davis, M.D.

Patrick B. Harr, M.D.

J. Edward Hill, M.D.

David R. Holley, M.D.

Ronald H. Levine, M.D.

D. Robert McCaffree, M.D.

John Slade, M.D.

Randolph D. Smoak, M.D.

Staff:

Kirk B. Johnson
Thomas Houston, M.D.
Michael L. Ile
Richard Deem

Consultants:

SIDLEY & AUSTIN
Newton N. Minow
Jack R. Bierig
Michael W. Davis
Thomas W. Merrill
Larry J. Nyhan

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ANALYSIS, REPORT, AND RECOMMENDATIONS OF THE AMERICAN MEDICAL ASSOCIATION TASK FORCE ON THE PROPOSED TOBACCO SETTLEMENT AGREEMENT

Introduction

The proposed tobacco litigation settlement represents an historic opportunity. Structured properly, the settlement could provide a powerful and effective tool for overcoming the scourge of underage smoking and for achieving substantial and permanent reductions in tobacco use. The settlement would also permit these goals to be pursued immediately, without the uncertainty and delay of further litigation.

Yet the proposed settlement is also fraught with peril. It gives the tobacco industry what it most desperately wants: relief from the threat of significant civil liability. It is the threat of such liability, more than anything else, that has brought the industry to the bargaining table. Once that threat is removed, the industry will have little incentive to cooperate further. Thus, it is essential that the settlement produce real, permanent, and major public health benefits.

The Task Force has undertaken a comprehensive analysis of the proposed settlement. We believe the negotiators have produced a framework that provides a promising basis for delivering on the required public health benefits. On the other hand, a number of critical improvements must be made if the settlement is to produce the desired results.

In particular, the Task Force believes that two changes are essential:

- The Food and Drug Administration (FDA) must be given express authority to regulate tobacco products in the same manner, using the same procedures, as would generally apply to drugs and devices, with one exception: FDA would be subject to a 12 year moratorium against implementing action that would ban the sale of traditional tobacco products or require the elimination of nicotine from such products.

- The Look Back surcharge program, designed to provide financial incentives to tobacco companies to achieve stated targets in the reduction of underage smoking, should be given real teeth. As structured in the proposed settlement, this program would be ineffectual. We propose realistic sanctions that assure that the targets for underage smoking reduction set by the negotiators will actually be met.

An ideal legislative package for regulating tobacco products would contain all of the provisions set forth in previous AMA policy statements and many of the elements advocated in

the Koop-Kessler Advisory Committee Report.[1] Such a package might include full, immediate, and complete authority for FDA to regulate all tobacco products and their ingredients; a complete prohibition on tobacco advertising and promotion; a substantial increase in excise taxes to raise the price of tobacco products; and complete disclosure of all confidential tobacco company documents dealing with the composition of health and safety issues related to tobacco products and marketing efforts.

The proposed settlement falls short of the ideal on these and many other issues. Such, however, is the nature of settlements. The AMA remains committed to achieving all the positions set forth in its existing policy statements. Nevertheless, the fact that the proposed settlement is less than ideal does not necessarily mean that a comprehensive settlement should be rejected from a public health perspective.

There are a number of advantages to addressing the tobacco problem by a comprehensive settlement rather than by continuing litigation and piece-meal legislation. These advantages include the following:

- The settlement would generate between $4.5 billion and $7.5 billion per year in funding for public health programs, including FDA enforcement initiatives. This is far more money than would be appropriated by Congress in conjunction with stand alone legislation or continuation of FDA's current regulatory efforts.

- Because the substantial Annual Payments required by the settlement (rising to $15 billion per year after year four) must be passed through to consumers, the settlement operates like a de facto sales tax increase for cigarettes and smokeless tobacco. It is possible, but highly uncertain, that an explicit sales or excise tax increase of the same magnitude could be enacted in the near future.

- The major tobacco companies would enter consent decrees in which they would promise to abide by restrictions on advertising and other constraints even if the parallel provisions in the legislation were declared unconstitutional. This provides additional assurance that the agreement's advertising controls can be put in place and remain effective.

- The funding generated by the settlement can be disbursed to the states by the federal government, thereby providing a secure constitutional foundation for federal standards for state retail licensing statutes and other desirable measures that might exceed the authority of the federal government to impose on the states directly.

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[1] Final Report of the Advisory Committee on Tobacco Policy and Public Health, Co-Chairs: C. Everett Koop, M.D., Sc.D. and David A. Kessler, M.D. (July 1997).

- A system of financial incentives on tobacco companies is put in place to reduce underage smoking. Imposing a similar system on companies without their consent would be difficult to achieve politically.

- The settlement provides for the establishment of a national tobacco document depository open to the public containing many previously non-public or confidential documents from the files of the tobacco industry. Although tobacco companies can still invoke common law privileges with respect to these documents, stand alone legislation requiring the creation of such a depository would encounter stiff resistance and legal challenges from the companies.

- The settlement provides for the enactment of The Smoke-Free Environment Act of 1993, which adopts tough minimal federal standards for second hand tobacco smoke in all public buildings. It is doubtful that this legislation would otherwise be adopted in this form in the foreseeable future. Although OSHA could promulgate similar rules for worksites under its current authority, to date it has not done so and any such action would be delayed by judicial challenges.

- Resolving tobacco litigation by settlement permits both sides to save litigation costs. These savings can be devoted, in part, to activities with direct public health benefits.

- Perhaps most importantly, settlement allows a new regulatory regime for tobacco products to be put into place immediately. Continuing down the current path of litigation plus efforts to regulate under FDA's and other agencies' existing authority would result in a tobacco control policy that is uncertain, uneven, and burdened by protracted delays.

Taken together, the advantages of settlement suggest that some compromise relative to the ideal package of legislative reforms is justifiable. This does not mean, of course, that the particular compromises contained in the proposed settlement are acceptable.

In this document, the Task Force has endeavored to assess the public health implications of the proposed settlement, suggest clarifications that appear to be within the overall expectations of the negotiators, and recommend certain modifications that we regard as essential if tobacco use -- particularly use by minors -- is to be meaningfully curtailed. We have approached this task as physicians whose primary concern is to promote, preserve, and protect their patients' health. We hope that our analysis will be of assistance to the Administration, the Congress, and members of the public.

There thus remains a possibility that the courts will ultimately decide that FDA lacks any authority, or has only limited authority, to regulate tobacco products under current law.

The settlement eliminates this legal uncertainty and expressly confers jurisdiction on the FDA to regulate tobacco products and ingredients, tobacco product manufacturing, marketing, and access to tobacco products.

- Moreover, the adoption of legislation expressly conferring authority on FDA to regulate tobacco would lend legitimacy to the agency's efforts.

- With a new legislative mandate, FDA will be more likely to receive support from the general public for its efforts aggressively to regulate tobacco products.

Of course, Congress has the power to adopt legislation confirming FDA jurisdiction to regulate tobacco products without the settlement. Realistically, however, the chances of such legislation being adopted are greater if presented as part of a settlement that has the support of the tobacco industry.

(2) The Scope of FDA Jurisdiction.

In addition to confirming FDA's jurisdiction to regulate the sale and promotion of tobacco products, the settlement expressly directs FDA to regulate in ways that go significantly beyond that contemplated in the FDA's 1996 regulations, "Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents."[3] For example:

- The FDA would be authorized to promulgate rules governing the testing, reporting, and disclosure of tobacco smoke constituents about which the FDA believes the public should be informed in order to protect public health.

- Manufacturers would be required to provide FDA with a list of all ingredients, substances, and compounds which are added to their tobacco products and, within five years after enactment of the Act, to conduct safety assessments on such additives.

- Manufacturers would be required to notify FDA of any technology that they develop or acquire that reduces the risk from tobacco products and, for a reasonable fee, to license this technology to companies that are subject to the same restrictions. Additionally, FDA would have the authority to mandate the introduction of less hazardous tobacco products that are technologically feasible.

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[3] 61 Federal Register 44396 (August 28, 1996).

(a) Except as Expressly Stated, FDA's Authority Over Tobacco Products Should Be No Different From Its General Authority Over Drugs and Devices.

The general approach to FDA authority in the proposed settlement appears to be one of "enumerated powers." The settlement lists and describes a number of categories of FDA authority over tobacco products, including advertising and marketing, youth access, reduced risk products, performance standards, manufacturing oversight, access to company information, and non-tobacco ingredients.

- There is a danger that such an approach will lead to the inference that if a specific power is not granted to FDA, it is by implication denied.

- For example, if FDA is not specifically given authority to regulate flavoring ingredients, can FDA regulate flavorings that have strong appeal to youths (such as cherry flavoring in smokeless tobacco) under its authority to regulate non-tobacco ingredients shown to be "harmful"?

- Similarly, FDA may want to acquire information about, or require companies to perform safety assessments concerning, ingredients contained in substances derived from tobacco, as well as ingredients added to tobacco. It is not clear that the settlement as drafted would permit this (I.F.).

A better approach would be to grant FDA full authority over tobacco products as "drugs" and "devices" under the Food, Drug and Cosmetic Act, subject to express exceptions.

- The burden should be on the tobacco companies to spell out with specificity the ways in which FDA authority to regulate tobacco products as drugs or devices will be limited.

- The burden should not be on government regulators and the public health community to imagine every conceivable issue that might arise in the future, and to devise specific statutory language conferring authority on FDA to tackle the problem.

Any legislation implementing the settlement should therefore include a constructional principle stating that, except as otherwise expressly indicated, FDA has all power and authority to regulate all tobacco products as drugs and devices under the Food, Drug and Cosmetics Act.

respect to any substance for which there is a strong public demand. The legislation should clarify that demand for contraband is one factor to be considered by FDA as matter of protecting the public health, but is not an absolute precondition to any regulation.

- A footnote in the proposed settlement (I.E.5.B.n.2.) could give rise to a negative inference that FDA's authority to modify tobacco products during the 12-year moratorium does not extend to ordering reductions in nicotine content on the ground that nicotine is addictive (as opposed to finding that it has direct adverse health effects). Any such inference should be disclaimed. Rather, it should be made clear that FDA may order modifications in nicotine content (short of a total elimination) during the moratorium for any reasons that it deems necessary to promote the public health.

Equally troubling are a number of procedural barriers to the regulation of tobacco products that do not generally apply to FDA regulation of drugs and devices.

- FDA rules requiring either the modification or the fundamental alteration of tobacco products are subject to highly cumbersome formal rulemaking proceedings -- as opposed to the informal rulemaking ordinarily used in FDA regulations pursuant to §701(a) of the Act. Informal rulemaking procedures should apply.

- FDA rules requiring either the modification or the fundamental alteration of tobacco products are subject to unusually stringent standards of judicial review. With respect to any action to modify tobacco products, FDA must sustain its findings by "substantial evidence" (as opposed to the usual and somewhat more lenient "arbitrary and capricious" standard). With respect to any action to require fundamental alterations in tobacco products, FDA must sustain its findings by a "preponderance of the evidence" (the standard a plaintiff must satisfy in an ordinary civil trial). The "arbitrary and capricious" standard of review should govern.

- Reviewing courts are instructed to defer to FDA's findings only to the extent that they fall within the agency's "field of expertise." The FDA is not ordinarily required to demonstrate that any particular finding is within its expertise. No demonstration of particular FDA expertise should be required.

- The proposed settlement says that any performance standard requiring a modification of existing tobacco products "shall be subject to the current procedures of the Regulatory Reform Act of 1996 to provide time and a process for Congress to intervene should it so choose" (I.E.5.A.). This appears to be a reference to Section 251 of the Small Business Regulatory Enforcement Fairness

II. Advertising and Marketing Restrictions.

The proposed settlement includes restrictions on marketing and advertising that extend beyond the FDA's 1996 regulation.

- FDA's 1996 rules restrict tobacco advertising to FDA approved media; restrict advertising to black text on white background in publications likely to reach minors; ban tobacco billboards within 1000 feet of schools and playgrounds; require tobacco products and advertisements to include the label "nicotine delivery device;" ban the use of promotional merchandise; ban offers of gifts; and ban sponsorship of concerts and sporting events.

- The proposed settlement would incorporate requirements at least this restrictive in the legislation.

- In addition, the settlement would ban all use of human images and cartoon characters in any advertising; ban all billboard advertising; prohibit tobacco advertising on the Internet; ban indirect payments to movies and music videos to glamorize smoking; require new and more emphatic warning labels ("WARNING: Smoking can kill you", etc.); and require that warning labels comprise 25% of front panels of packages.

(1) First Amendment Issues.

One issue raised by these advertising restrictions is whether they will survive judicial challenge based on the First Amendment.

- We believe that the courts would ultimately uphold the FDA's 1996 advertising regulations, given the record compiled by FDA showing a compelling public health rationale for reducing underage smoking, and the fact that FDA's regulations are limited to media likely to be seen by minors.

- Because the provisions of the proposed settlement go beyond the FDA regulations, they would likely encounter a more vigorous First Amendment challenge.

- We do not suggest that these provisions cannot be defended with equal vigor, nor do we believe that they would be struck down. But the probability of sustaining them would be somewhat lower than is the case with respect to the FDA regulations.

- In order to maximize the chances that all advertising restrictions will be upheld, any legislation resulting from the proposed settlement should include express

- Such image advertising serves no purpose other than to make tobacco products more attractive and hence to stimulate demand for their use.

- To the extent that image advertising affects overall levels of smoking, it represents a serious public health concern, whether the target of the advertising is adults or adolescents.

- Also, of course, some image advertising in publications primarily read by adults will also reach adolescents and children.

- Perhaps most importantly, the presence of image advertising in publications helps to reinforce a social attitude that smoking is acceptable. This attitude helps to perpetuate smoking by adults and increases its allure for teens.

Therefore, the Task Force recommends that the tombstone-only restriction on tobacco product advertising be extended to all publications, including those that have a predominantly adult audience.

(3) **Advertising Restrictions As A Five Year Trial Period.**

The AMA House of Delegates has previously adopted a resolution advocating the complete prohibition of tobacco product advertising.[4] We do not regard the proposed settlement as inconsistent with this resolution, or as precluding its eventual realization.

- The proposed settlement provides that the advertising restrictions it imposes "shall be allowed to operate" for five years. Thereafter, "the FDA would be authorized to review and revise the rules under applicable Agency procedures" (I.introduction.).

- It appears, therefore, that FDA is free to revisit the advertising restrictions after 5 years and, if it deems it appropriate, to adopt tougher restrictions, such as a complete ban on tobacco advertising.

On this understanding, we believe that allowing the restrictions of the proposed settlement to take effect for a five year trial period -- especially if supplemented by requiring tombstone advertising in all print media -- is an acceptable first step in dealing with tobacco advertising.

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[4] AMA Policy No. 500.980, AMA Policy Compendium (1997 ed.).

- FDA's 1996 rules adopt a national minimum age for purchase of 18; require retailers to verify age by photographic ID; prohibit vending machines in places frequented by persons under 18; and ban sampling of tobacco products.

- The proposed settlement would incorporate requirements at least this restrictive in legislation.

- In addition, the settlement would require that all sales of tobacco take place through face-to-face transactions (no vending machines).

- Another important new provision regarding access is a national licensing scheme for retail tobacco product sellers.

- Finally, the proposed settlement includes a number of provisions designed to encourage greater state efforts to enforce laws regarding sales of tobacco products to minors.

In general the licensing and state enforcement provisions appear to represent a substantial advance beyond the program adopted by FDA in August 1996.

The access provisions should be drafted to avoid the constitutional problems that led the Supreme Court recently to invalidate portions of the Brady Bill.[5]

- With proper drafting, it would appear that virtually all of the access regulations can be implemented as conditions attached to federal grants given to states.

- Further consideration should therefore be given to the mechanics of the flow of funds from the tobacco companies to the states, in order to assure that the grants to the states properly qualify as "federal funds" and thus that the conditions imposed on receipt of those funds satisfy constitutional requirements.

In addition, the enforcement provisions of the access regulations should be strengthened. The civil sanctions set forth in Appendix II, in particular, provide for very modest civil fines and suspension periods for selling tobacco products to minors. A retailer's license is to be permanently revoked only "for the tenth offense within any two year period."

- These wholly inadequate civil sanctions can aptly be described as "ten strikes and you're out."

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[5] Printz v. United States, 65 U.S.L.W. 4731 (June 27,1997).

discourage initial use, reduce smoking by current smokers, and increase the rate at which such smokers quit.

- The effect of price on consumption is especially pronounced for underage smokers, who have less disposable income and are less likely to be already addicted.

- Each price increase of 10% is expected to lead to a decline of 4% in the number of cigarettes sold in the short run, and a 10% decline in the number of new smokers.

The proposed settlement contains a program for increasing the price of tobacco products, although it is not separately described as such. Three provisions in the proposed settlement work together to create this program.

- The proposed settlement states: "In order to promote maximum reduction in youth smoking, the statute would provide for the Annual Payments to be reflected in the prices manufacturers charge for tobacco products" (VI.B.7.). We refer to this provision as the "automatic pass through."

- Appendix IV states: "In order to achieve the goals of this Agreement and the Act relating to tobacco use by children and adolescents, the tobacco product manufacturers may, notwithstanding the provisions of the Sherman Act, the Clayton Act, or any other federal or state antitrust law, act unilaterally, or may jointly confer, coordinate or act in concert, for this limited purpose. Manufacturers must obtain prior approval from the Department of Justice of any plan or process for taking action pursuant to this section; however, no approval shall be required of specific actions taken in accordance with an approved plan" (App. IV.C.2.).

- The final piece of the picture is provided by the annual Volume Adjustment provision. If in any given year the volume of domestic sales exceeds the level of 1996 domestic sales, the annual payment for that year is increased in proportion to the increase over 1996 sales. On the other hand, if there is a decrease in volume sales over the 1996 base year, manufacturers are entitled to a proportionate reduction of the annual payment obligation (provided, however, that sales to non-adults are excluded for purposes of calculating a decrease in volumes).

Taken together, these three provisions indicate that the Annual Payments obligation will move up and down in relation to sales volume, and that the tobacco companies will meet

companies, relying upon the exemption from the antitrust laws, would collectively set prices in excess of that which is necessary to pass through Annual Payments or preserve net income, ostensibly for the purpose of further discouraging consumption. Given the oligopolistic structure of the industry and the relative inelasticity of demand for cigarettes, this approach could significantly enhance the profitability associated with domestic sales, although it probably would also pose the most significant deterrent to consumption.

It is unclear whether the profit maximization approach is within the contemplation of the parties to the proposed settlement.

- To avoid the serious inequities that the profit maximization approach would create, the statutory language should be drafted to make clear that the antitrust exemption will not permit the tobacco companies to act in concert in order to achieve profit maximization.

- Whether legislatively to impose the constant cost or the constant income interpretation is a more difficult issue.

- From a public health perspective, the constant income interpretation would have one desirable consequence: It would raise tobacco prices even higher than they would rise under the constant cost interpretation, resulting in further reduction in consumption and lower rates of initiation.

- However, these benefits would come at the expense of completely insulating tobacco company shareholder value from the direct and indirect costs associated with the settlement.

- We take no position on this issue, other than to note that adoption of the constant income interpretation would provide an additional justification for modifying the Look Back surcharge (discussed below) in ways that would impose powerful economic incentives on tobacco companies.

(2) Tax Deductibility.

Another important variable is tax treatment. The proposed settlement provides that Annual Payments and Look Back surcharges are to be deemed ordinary and necessary business expenses in the year incurred and hence will be fully tax deductible (VI.D.).

As a general matter, we believe that the payment obligations imposed by the proposed settlement should treated for tax purposes the way analogous obligations are treated under the law. Under this standard, the proper tax treatment of the Annual Payments is debatable.

Significant additional benefits would be realized by even higher price increases. Congress should therefore take additional steps, either as part of legislation implementing the settlement or in independent legislation, to push retail tobacco prices to even higher levels.

- Exactly how high prices should be set in the short run entails a weighing of competing factors.

- Economists have estimated that price would have to rise to slightly more than $4.00 per pack before the revenue losses associated with declining sales would overtake the increase in profits due to higher prices.[11]

At a minimum, an immediate price increase in the magnitude of $1.00 per pack should be considered.

- Such an increase would generate measurable additional benefits beyond the $0.62 per pack increase that would result from the proposed settlement.

- We estimate that a $1.00 per pack increase would translate into a 15% reduction in overall consumption, and a 33% reduction in adolescent consumption.

There are at least three ways to achieve an additional price increase to the level of approximately $1.00 per pack.

- One would be to increase the federal excise tax on cigarettes. The Kennedy-Hatch Child Health Insurance and Lower Deficit Act that nearly passed the Senate earlier this year called for a $0.43 increase in the cigarette excise tax. Adopting such a provision in conjunction with legislation implementing the proposed settlement would generate a price increase approximately in the $1.00 per pack range.

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[10] (...continued)
National Bureau of Economic Research Working Paper No. 3222 (Cambridge, MA: National Bureau of Economic Research, March 1993); T.E. Keeler, T. Hu, P.G. Barnett, and W.G. Manning, "Taxation, Regulation, and Addiction: A Demand Function for Cigarettes Based on Timeseries Evidence," 118 Journal of Health Economics 12 (1993).

[11] Jeffrey E. Harris, "American Cigarette Manufacturers' Ability to Pay Damages: Overview and Rough Calculation," 5 Tobacco Control 292-294 (1997).

among manufacturers in accordance with their overall market share. The $80 million figure is said to represent the present value of the profit the industry would earn over the life of 1% of underage smokers.

- Total annual surcharge liability is, however, capped at $2 billion.

- In addition, individual tobacco companies may apply to FDA for an "abatement" of up to 75% of their share of the surcharge, upon a showing that they have acted in good faith and in full compliance with all requirements of the act.

- The surcharge "will be reduced to prevent double counting of persons whose smoking had already resulted in the imposition of a surcharge in previous years."

- Although the proposed settlement is not explicit about this, it appears to be contemplated that surcharge payments, like other Annual Payments, would be subject to the automatic pass through.

- The surcharge, like the Annual Payments, is fully tax deductible (VI.D.).

The proposed Look Back surcharge contains a number of unacceptable features. Cumulatively, these defects mean that tobacco manufacturers will have very little incentive under the program to reduce underage smoking. Indeed, it is conceivable that the program in its proposed form could create an incentive for tobacco companies to increase their share of the underage market. Six different features of the Look Back surcharge must be changed if this program is to perform an effective role in the overall settlement. Moreover, FDA must play a role in establishing and implementing a Look Back surcharge program.

(1) Automatic Pass Through and Tax Deductibility of the Surcharge.

If the Look Back surcharge is to function as an incentive for manufacturers (as opposed to smokers), it must not be subject to the automatic pass through. If surcharge payments are simply passed through to consumers, then the surcharge will constitute nothing more than an additional increment in Annual Payments liability that shows up as a small increase in consumer prices (estimated to be approximately $0.08 per pack of cigarettes if manufacturers are subject to the full $2 billion annual surcharge). This would have some (very modest) additional effect in depressing consumption of tobacco products. But the dollar-for-dollar shift in liability from manufacturers to consumers would eliminate any incentive for manufacturers to change their behavior.

(2) **Collective Responsibility for the Surcharge.**

The Look Back surcharge in the proposed settlement is based on a principle of collective responsibility. The annual penalty is calculated on the basis of the collective performance of the industry each year in reducing underage smoking, with the penalty then apportioned among companies according to their share of the total market (adult as well as minors).

This collective responsibility feature establishes a "tragedy of the commons" in which each company, perversely, would have an incentive to increase rather than decrease its share of the underage market. The problem, in a nutshell, is that each company would capture the added profits from increasing its share of the underage market, but the penalties for this behavior would be spread among all companies in the industry.

A simple numerical example illustrates the problem.

- Assume that the tobacco market is served by two companies, Company A and Company B, and that each initially has 50% of both the total and the underage market.

- Assume further that in a certain year Company A adopts a marketing campaign to increase its share of the underage market. It succeeds in capturing an additional 2% of that market, which under the assumptions of the proposed settlement means an additional profit having a discounted present value of $160 million.

- Meanwhile, Company B adjusts its marketing strategy so as to reduce underage consumption of its products. It succeeds in achieving a reduction equal to 2% of the underage market. This translates into a loss having a discounted present value of $160 million.

- Assume further that the industry misses its target for reducing underage smoking in this year by 1%. This translates into a collective Look Back surcharge of $80 million.

- The financial consequences to the two companies are set forth in Table 2. Company A, the bad corporate citizen, gets an additional profit of $160 million offset by a penalty of $41.6 million, for a net gain of $118.4 million. Company B, the good corporate citizen, experiences a loss in profit of $160 million augmented by a penalty of $38.4 million for a total loss of the $198.4 million.

- Once underage use by brand is determined, it should be easy to calculate underage use by manufacturing company.

(3) Use of Profits Rather Than Social Costs.

The proposed Look Back surcharge is based on a principle of restitution of profits earned by tobacco companies in selling to the underage market. A more appropriate measure would be based on a principle of internalization of the social costs associated with use of tobacco products.

Requiring tobacco companies to disgorge the profits they earn in introducing minors to tobacco products leaves them at best indifferent to whether or not youth smoking occurs. If the incentives are to work, tobacco companies should be forced to internalize the social costs associated with underage smoking. Only by forcing the tobacco companies to bear the social costs of underage smoking will they have the proper incentive to take all measures which would be socially justified to reduce these costs -- including redesigning their products to increase quit rates or to lower the lifetime health risks associated with using their products.

Social costs also provide a better measure than purely external costs.

- If this were an incentive program to reduce adult smoking, then perhaps an argument could be made that adult smokers are responsible for the costs that they and their families bear. The fact that tobacco products are highly addictive, however, makes it difficult to assume that even adults who start smoking have accurately calculated either the lifetime costs that they and their families will bear, or the "benefits" they derive from smoking.

- The Look Back program is not addressed to adult smoking, however. Rather, it is designed to create an incentive for companies to prevent smoking by adolescents, some of whom are 10 years old or younger.

- Given the immaturity and the limited experience of this cohort, it makes little sense to assume that adolescents have accurately accounted for the long-term consequences of this highly addictive product.

We recommend that the social costs of underage smoking be determined by FDA using the "cost of illness" methodology developed by Dr. Dorothy Rice and utilized by the CDC.[17]

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[17] D.P. Rice, Estimating the Cost of Illness, Health Economic Series, no. 6, DHEW Publication No. (PHS) 947-6 (Rockville, MD: Department of Health, Education, and Welfare, (continued...)

Following this approach, we estimate that the present value of the lifetime social cost of underage smoking would be within a range from $400 to $450 million for each percentage point by which the industry misses its target.[19]

- This figure is much larger than the expected profits figure, for the simple reason that the social costs of smoking are so staggering in their magnitude.

- This figure thus underscores the great urgency, from a public health perspective, in achieving rapid and permanent reductions in the incidence of underage smoking. Adoption of social costs as the measure of the Look Back surcharge would harness the energy of the industry to achieve those reductions.

As an alternative to the social cost measure, Congress could also consider adopting a measure of the Look Back surcharge based on the lesser of social costs or a multiple of profits.

- For example, the surcharge could be based on the lesser of (i) the lifetime social cost per percentage point above the target, (ii) three times the lifetime profit per percentage point above the target, or (iii) the company's net profit from domestic tobacco sales for the year.

- Although a mixed rule lacks the conceptual clarity of the pure social cost measure, it nevertheless would also provide a strong incentive for tobacco companies to achieve the targets for underage smoking reduction.

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[19] Following the cost of illness methodology, the CDC has estimated that the medical costs attributable to smoking in 1993 were $50 billion and that the lost wages associated with premature morbidity and mortality totaled $47.2 billion in 1990. Adjusting these figures for wage and medical inflation, the total cost of smoking in 1996 would equal about $115 billion or $4.72 per pack of cigarettes. According to the data used in the settlement to calculate the average profit per underage smoker, an adolescent smoker can be expected to consume 23,129 packs over the course of his or her lifetime. This translates into a lifetime social cost of $109,169 per adolescent smoker. However, this figure must be discounted, since the medical and productivity costs associated with smoking illness tend to occur later in life. If we assume that, on average, these costs are incurred 50 years after initiation, and discount at 4 percent after inflation, then the present value of the social costs of smoking are $15,361 per adolescent smoker. Applying this to the penalty mechanism in the Look Back provisions would increase the penalty per percentage point of underage smoking above target from $80 million to $423 million.

settlement. However, each is something each tobacco company can do on its own initiative in order to reduce teen tobacco use of its products.

- The abatement provision in the proposed settlement, in contrast, creates an incentive for companies to foster the appearance of "corporate compliance" and to make elaborate presentations to regulators about corporate good faith. We believe that corporate compliance programs can be valuable, but would urge that any incentive system be based on real results, not rhetoric.

In lieu of an abatement based on compliance with regulations and good faith, we recommend that provision be made for a system of monetary credits for companies that exceed the stated targets for reductions in underage smoking.

Such a system of monetary credits, like the surcharge, should be based on costs -- in this case the costs to the tobacco manufacturing company of exceeding the legislated targets.

- That cost is the foregone profit that the tobacco company would earn by attracting additional underage smokers to its products. This figure is stated to have a present value of $80 million for the industry per percentage point of the underaged market served. (The actual number for each company should be determined by FDA through rulemaking.)

- Thus, while the penalty for failing to reach the target should be based on the costs to society (estimated to the $400 to $450 million per percentage point for the industry), the credit for exceeding the target should be based on the costs to the company (estimated to be $80 million per percentage point for the industry).

A system of credits should also be designed in such a way as to minimize any reduction in Annual Payments.

- Thus, we believe that any credits earned by tobacco companies should be offset first against surcharge payments that have been made by other companies.

- Only if total credits for any year exceed total surcharge payments should credits result in a reduction in Annual Payment obligations.[20]

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[20] Another way to avoid having credits reduce Annual Payments would be to establish the Look Back program as a system of transferable allocations. Each year, each tobacco company could be assigned an allocation based on its baseline share of the underage market and the targeted reduction in underage use for that year. Companies that exceed this target would have extra allocation units left over, which could then be transferred to companies that fall short of

(continued...)

- To the extent that the lifetime social costs of using smokeless tobacco differ from the lifetime social costs of smoking, the surcharge payments for smokeless tobacco companies would be adjusted accordingly.

(7) The Role of the FDA.

In general we believe it is unwise for legislation adopting the Look Back surcharge to specify in great detail the methods of surveying for underage use.

- For example, it seems unwise to lock in by legislation the University of Michigan "Monitoring the Future" survey methodology. Better survey methods may be developed in the future that render this obsolete.

- Similarly, it seems inappropriate to specify whether youth smoking and reductions should be measured by daily smoking or monthly smoking. There are too many complications here to resolve by legislation. Moreover, a consensus that one method is better than another or that yet a third method is preferable may emerge over time.

- Furthermore, we believe that questions about whether targets should be expressed as percentages of the youth market or in terms of absolute number of underaged smokers should be left to agency determination.

- We agree with the proposed settlement that double counting of underage youths should be avoided. Again, however, this is the kind of technical problem that is best left to FDA resolution through rulemaking.

Rather than legislate the details of methodology, the legislation should resolve the major principles that would govern the Look Back program, and should leave the details to implementation of FDA through rulemaking. The major principles should be:

- There should be no automatic pass through of the surcharges in tobacco prices.

- The surcharge should not be tax deductible.

- The surcharge should be based on the discounted total lifetime social costs of underage smoking.

- The surcharge should not be subject to any cap, except perhaps for a cap equal to multiple percentage points of profit or each company's total net profits from domestic tobacco operations for the year.

the President and the Congress." This description suggests that the allocation of funds is open to adjustment.

We recommend four modifications in the allocation of funding under the proposed settlement.

- Funds should be allocated to a program to provide transitional relief to tobacco farmers who experience financial dislocation because of declining markets for tobacco leaf. One possibility would be a public program to purchase tobacco farmland or tobacco crop allotments from farmers who wish to exit the tobacco market.

- As discussed more fully below, funds should be allocated to international organizations devoted to achieving reductions in tobacco consumption worldwide.

- Funds should be allocated to support smoking cessation programs in health care settings. Studies suggest that intervention in the form of counseling by knowledgeable professionals may be cost-effective in assisting smokers to quit.[22]

- Funds should be allocated to support comprehensive school health education from pre-kindergarten to grade 12 in all U.S. school districts, designed in part to emphasize the dangers and the addictive potential of tobacco use.

More important than the initial allocation of funds, however, is the need to develop a governance mechanism for overseeing the expenditure of monies and to make changes in the allocation of funding over time.

- Ideally, of course, the funds would be allocated where they would do the most good.

- A thoughtful allocation requires a mechanism for selecting appropriate grant recipients, evaluating their performance, auditing the expenditure of monies, and so forth.

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[22] See Agency for Health Care Policy and Research, Smoking Cessation, Clinical Practice Guideline No. 18, U.S. Dept. of Health and Human Services AH CPR Pub. No. 96-0692 (April 1996); K. Fiscella and P. Franks, "Cost-Effectiveness of Transdermal Nicotine Patch as an Adjunct to Physicians' Smoking Cessation Counseling," 275 JAMA 1247-1251 (1996).

- In the past, tobacco companies have been highly successful in defending against individual plaintiff suits. A major factor was their ability to concentrate heavy legal firepower defending these suits, often wearing down plaintiffs before trial. When the rare case went to trial, tobacco companies were able to persuade the jury that the individual plaintiff knew about the health risks of smoking and voluntarily accepted the risks of smoking. Until very recently, tobacco companies prevailed in each and every one of these trials.

- What forced the companies to the bargaining table was the emergence in recent years of class actions and attorney general suits. Class actions, in particular, focused attention on what the tobacco companies knew about their products, rather than on what individual smokers knew about the dangers of the products they chose to use.

- The proposed settlement, by requiring that all future suits be individual suits, allows the tobacco companies to return to a proven, successful litigation strategy.

The ban on class actions or other types of joinder is reinforced by the proposed settlement's limits on individual recoveries.

- A plaintiff's attorney will ordinarily take on a personal injury or products liability case only if it presents the prospect of a significant financial recovery.

- The proposed settlement eliminates punitive damages (for pre-settlement conduct), which would be a source of a large recovery in an individual suit.

- In addition, recovery is capped at $1 million per plaintiff if the annual industry cap (equal to 33% of the Base Amount) is exceeded.

- It appears that the proposed settlement extinguishes causes of action based on wrongful addiction or dependence.

- Finally, the proposed settlement preserves unchanged "applicable case law" under the Federal Cigarette Labeling and Advertising Act. This proviso presumably includes the Supreme Court's Cipollone decision,[23] which held that most causes of action based on failure to warn are preempted.

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[23] Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992).

this sort -- foregone opportunities -- are considered less troubling than deprivation of existing assets.

- In addition, some persons may question whether tobacco plaintiffs are entitled to compensation, given the widespread knowledge that smoking is dangerous.

From a public health perspective, we believe the consequence that deserves greater weight is the de facto elimination of any deterrent effect from civil liability. This will erase a powerful incentive for the tobacco companies to desist from socially harmful practices.

- If tobacco companies were to continue to face the threat of significant legal liability, it is difficult to predict their response. That would depend in part on which legal theories (if any) led to recoveries.

- Some of the responses might include more elaborate and emphatic warnings; changes in marketing; changes in products; withdrawing products from the market; raising prices (to cover liability costs); and withdrawing from the market altogether. In other words, the responses might parallel, and conceivably could go beyond, what is required by some of the regulations contained in the proposed settlement.

- In general, fear of civil liability is probably a more powerful stimulus to change in corporate behavior than is regulation. But it is also a highly uncertain stimulus with effects that are very difficult to predict in advance. Further, change through litigation could take years.

- We believe that the dramatic curtailment of the deterrent effect of civil liability for tobacco companies should be counted a major disadvantage of the proposed settlement.

There is another consequence of the effective elimination of the most significant threats of civil liability: It probably eliminates any further incentive on the part of the tobacco companies to cooperate in forging a public regulatory, research, and education program to solve the smoking problem.

- The primary reason the tobacco companies are at the bargaining table is that they apparently have become convinced that they face potentially catastrophic civil liability.

- In particular, it was the emergence of apparently viable class actions and the attorney general suits that made the difference. Suddenly the tobacco companies had to consider the possibility that they could follow the asbestos industry and the silicone breast implant industry into bankruptcy.

- Finally, the proposed settlement opens up distributors and retailers who handle nonsigning companies to potential civil liability (distributors and retailers who handle signing company products are given full immunity from suits).

The provisions directed at nonsigning companies function as barriers to entry that lock in the current major manufacturing companies as a permanent oligopoly. For two reasons, this is undesirable from a public health perspective.

- One is that nonsigning companies may challenge these barriers on constitutional grounds, or possibly on the ground that they violate international trade agreements (such as GATT or NAFTA). The barriers thus increase the risk of legal challenges and potential invalidation of a key provision of the proposed settlement.

- Moreover, new entry could be desirable insofar as the new entrants seek to market products that have reduced health risks or that provide an effective substitute for the use of tobacco products.

Accordingly, the provisions dealing with nonsigning companies should be structured in such a way as to produce "a level playing field" between signing and nonsigning companies.

- Specifically, the provision establishing an escrow requirement should be amended to require posting of funds equal to 100% of the signing company Annual Payments, not 150%.

- Further, distributors and retailers who deal in the products of nonsigning manufacturing companies should be relieved of liability, as in the case of signing companies.

(2) **Enforcement Of Consent Decrees.**

As discussed above in connection with the advertising restrictions, the proposed settlement contemplates that many of its provisions will be incorporated both in legislation and in consent decrees.

- This is important because the consent decree provisions might survive if the legislation is struck down.

- Also, consent decrees have certain enforcement advantages -- a party can return to the court that entered the decree and get an injunction preventing the enjoined party from violating the decree, or an order holding a violating party in contempt.

concerns can be addressed within the framework of the settlement. In other respects they are best approached through other initiatives.

Steps that can be taken within the framework of the settlement include:

- Allocation of funds from the Public Health Trust or other appropriate sections of the settlement to the World Health Organization (WHO), to be dedicated to the development, adoption, and enforcement of the WHO Framework Tobacco Control Convention, surveillance systems to monitor international morbidity and mortality, and other tobacco control initiatives.

- Allocation of funds from the settlement for federal agency use in international tobacco control efforts.

Other initiatives apart from the settlement by the federal government might include:

- An Executive Order to all appropriate federal agencies to promote actively the adoption of U.S. domestic tobacco control standards as minimum policies throughout the world. Tools for achieving this objective would include export initiatives, Aid for International Development programs, and other communications and information programs. An international summit of health ministers should be convened in 1998 to discuss tobacco control issues, with a follow-up meeting at the World Conference on Tobacco and Health in the year 2000.

- An Executive Order forbidding the U.S. Trade Representative, the Department of Commerce, U.S. embassies, or other government agencies from interfering in any efforts by foreign national governments to curb tobacco use.

- An Executive Order making all U.S. government facilities, worldwide, smoke free.

- Imposition of penalties on U.S. companies that participate in or support international tobacco smuggling, including reintroduction to the U.S. of cigarettes made for export.

The American Medical Association will support the above initiatives in international tobacco use prevention and control, and will work for their implementation with the international medical and public health community, including the World Medical Association.

initiatives, and to federal agencies for use in international tobacco control efforts; (c) providing funds to support tobacco cessation programs in health care settings; and (d) providing funds for mandated comprehensive school health education focusing in part on the dangers of tobacco use.

- Distribution of funds to states should be conditioned on each state, including states that have not sued the tobacco companies, entering into a consent decree embodying the provisions of the settlement.

- The federal government should become a party to the consent decrees, with full enforcement power.

- The legislation implementing the settlement should include a strong severability clause.

If the changes that we have advocated or equivalent changes are adopted by Congress, the Task Force believes that the proposed settlement would be a major turning point in the life-or-death struggle to reduce tobacco use. The American Medical Association pledges to devote its resources toward securing the adoption of these changes. The AMA also stands ready to work in any constructive capacity with the parties to the settlement, members of Congress, and the Administration in order to realize what could be a landmark achievement.

EXHIBIT A

Tobacco Settlement: Payments and Distributions During First Ten Years (Figures in Billions)

	Enactment	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Base Amount		6.000	7.000	8.000	10.000	10.000	12.500	12.500	12.500	15.000	15.000	108.500
Public Health Component		2.500	2.500	3.500	4.000	5.000	2.500	2.500	2.500	0.000	0.000	25.000
Total Payments	10.00	8.500	9.500	11.500	14.000	15.000	15.000	15.000	15.000	15.000	15.000	143.500
Proposed Uses												
HHS Tobacco Reduction Program		0.125	0.125	0.125	0.225	0.225	0.225	0.225	0.225	0.225	0.225	1.950
FDA Costs & Grants		0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	3.000
State & Local Tobacco Control Efforts		0.075	0.075	0.100	0.125	0.125	0.125	0.125	0.125	0.125	0.125	1.125
Tobacco Research		0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	1.000
Lost Sponsorship Compensation		0.000	0.075	0.075	0.075	0.075	0.075	0.075	0.075	0.075	0.075	0.675
Public Education Anti-Tobacco Campaign		0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500	5.000
Tobacco Use Cessation Program		1.000	1.000	1.000	1.000	1.500	1.500	1.500	1.500	1.500	1.500	13.000
Public Health Trust Fund		2.500	2.500	3.500	4.000	5.000	2.500	2.500	2.500	0.000	0.000	25.000
Settlement/Litigation Credit		1.584	1.848	2.112	2.640	2.640	3.300	3.300	3.300	3.960	3.960	28.644
Total Proposed Expenditures		6.184	6.523	7.812	8.965	10.465	8.625	8.625	8.625	6.785	6.785	79.394
Unallocated Payments	10.000	2.316	2.977	3.688	5.036	4.535	6.375	6.375	6.375	8.215	8.215	64.106

- In the past, tobacco companies have been highly successful in defending against individual plaintiff suits. A major factor was their ability to concentrate heavy legal firepower defending these suits, often wearing down plaintiffs before trial. When the rare case went to trial, tobacco companies were able to persuade the jury that the individual plaintiff knew about the health risks of smoking and voluntarily accepted the risks of smoking. Until very recently, tobacco companies prevailed in each and every one of these trials.

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