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001. memo	Bruce Reed and Chris Jennings to the President re: legislation (2 pages)	06/22/1998	P5
002. memo	Bruce Reed et al to the President re: Reforms that Prepare Medicare for the Retirement of the Baby Boom Generation (9 pages)	12/13/1997	P5
003. memo	Bruce Reed et al to the President re: Reforms that Prepare Medicare for the Retirement of the Baby Boom Generation (9 pages)	12/13/1997	P5
004. paper	re: overview of proposals (13 pages)	n.d.	P5

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Copy to
Reed/EL
Jennings
Padesta

THE PRESIDENT
10-19-99

39 OCT 19 1999

THE WHITE HOUSE
WASHINGTON

October 18, 1999

ACTION MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Chris Jennings

SUBJECT: Assisted Suicide Legislation

Call letter to send letter
but I'm basically on
on that Ban - if pain
relief not sufficient -
4 no offensive burden
to keep on life support when all
hope gone
BC

On Wednesday, the House is tentatively scheduled to vote on H.R. 2260, the Pain Relief Promotion Act of 1999. As you will recall, this legislation, sponsored by Congressman Hyde, modifies the Controlled Substances Act (CSA) to create criminal penalties for the use of a controlled substance in physician assisted suicides. It also takes new steps to protect the appropriate provision of palliative care, a significant modification to the previous version of this legislation.

While the Department of Justice strongly supports the palliative care provisions of the bill, it has strong concerns about the federalism issues it raises and the penalty structure it creates. They would like to forward the attached letter of opposition to the House Judiciary Committee outlining these concerns. This letter does not include a veto threat. We recommend that the letter be sent, but that the White House refrain from public comment on the legislation.

BACKGROUND

Representative Hyde introduced the H.R. 2260 this summer. It is the second generation of the legislation known as the Lethal Drug Abuse Prevention Act of 1998 (LDAP). As you will recall, you and virtually every respected consumer and health care provider group, including the AMA, opposed LDAP because of the fear that the legislation would inhibit pain relief for the terminally ill. The provisions of most concern to provider and consumer groups included the establishment of broad prosecutorial authority for law enforcement officials, allowing the investigation of health care providers that were suspected of planning to use or of having used a controlled substance to assist in a suicide, and the absence of a proactive statement protecting the provision of appropriate palliative care.

H.R. 2260 would make physician-assisted suicide using controlled substances subject to administrative, civil, and criminal sanctions, and effectively ban the practice in all 50 states. However, Representative Hyde has modified the old version of this legislation to incorporate an explicit statement that using a controlled substance to alleviate pain and discomfort is a legitimate medical purpose, even if the use of the controlled substance increases the likelihood of death. It also narrows prosecutorial authority to suspected cases of the use of a controlled substance in an assisted suicide, and requires local, state, and Federal law enforcement personnel to receive information on palliative care in continuing education programs. Because

of these modifications, the bill is now supported by many of the groups who previously opposed it, including the AMA, the National Hospice Association, and the National Academy of Pain Management.

Notwithstanding the modifications to the bill, a number of provider organizations, including the American Nurses Association and the American Academy of Family Physicians, still oppose this legislation because they feel that H.R. 2260 will place the Department of Justice in the position of regulating the practice of medicine, which is traditionally the purview of the states. In addition, since this legislation would effectively nullify the Oregon Death With Dignity Act, Governor Kitzhaber and Senator Wyden view this legislation as an unnecessary intrusion into state policy making and oppose its passage.

The Justice Department is very supportive of the new provisions protecting appropriate palliative care. However, because H.R. 2260 effectively blocks all state policy-making on the issue of physician assisted suicide, the Attorney General shares the federalism concerns of the Oregon delegation. In addition, she believes that the legislation establishes criminal and administrative sanctions that will be burdensome and difficult to implement and enforce.

RECOMMENDATION

The Department of Justice wants to ensure that their concerns are not construed as opposition to the legislation's intent. The Attorney General, like you, strongly opposes physician assisted suicide, but believes the legislation's approach can be improved. Although she has no interest in engaging in a protracted dispute with Senator Nickles (who has introduced a similar bill in the Senate) and Congressman Hyde, she feels strongly that her Department should formally voice their concerns to the Congress, with the hope of an opportunity to address some of them, particularly the criminal and administrative penalty provisions, in conference.

We would recommend that the Department of Justice be permitted to forward this letter. Having said this, and given the cross-currents of opinion on this issue and on this bill, we believe that there should not be a strong White House public statement on the legislation until and unless it has been submitted to you for signature.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Henry Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 2260, the "Pain Relief Promotion Act of 1999."

H.R. 2260 makes two changes to federal drug law as it relates to the use of controlled substances by terminally ill patients. First, the bill clarifies that controlled substances may be used to alleviate pain in the course of providing palliative care to terminally ill patients. The bill also funds research and education on the appropriate use of controlled substances for this purpose. The Department strongly supports these provisions of H.R. 2260.

Second, H.R. 2260 states that the use of controlled substances to assist a terminally ill person in committing suicide is not authorized by federal law. The Department opposes physician-assisted suicide, but is concerned about the propriety of a federal law that would unquestionably make physician-assisted suicide a federal crime with harsh mandatory penalties. Imposing such penalties would also effectively block State policy making on this issue at a time when, as the Supreme Court recently noted in Washington v. Glucksberg, 117 S. Ct. 2258, 2275 (1997), the States are still "engaged in an earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide."

Palliative Care

Section 101 of H.R. 2260 amends section 303 of the CSA, 21 U.S.C. § 823, to specify that the use of controlled substances to "alleviat[e] pain or discomfort in the usual course of professional practice" is a "legitimate medical purpose" under the Controlled Substances Act, 21 U.S.C. § 841, "even if the use of such a substance may increase the risk of death." Because a physician who acts with a "legitimate medical purpose" is acting

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October 18, 1999 (4:33PM)

in compliance with the Act,¹ H.R. 2260 creates a "safe harbor" against administrative and criminal sanctions when controlled substances are used for palliative care. Sections 102, 201 and 202 amend the CSA and the Public Health Service Act (42 U.S.C. § 299) to authorize the Attorney General, the Administrator of the Agency for Health Care Policy and Research, and the Secretary of the Health and Human Services Department to conduct research on palliative care, to collect and distribute guidelines for the administration of palliative care, and to award grants, cooperative agreements, and contracts to health schools and other institutions to provide education and training on palliative care.

The Department fully supports these measures. H.R. 2260 would eliminate any ambiguity about the legality of using controlled substances to alleviate the pain and suffering of the terminally ill by reducing any perceived threat of administrative and criminal sanctions in this context. The Department accordingly supports those portions of H.R. 2260 addressing palliative care.

Physician Assisted Suicide

H.R. 2260 would amend section 303 (21 U.S.C. 823) of the Controlled Substances Act (CSA) to provide that "[n]othing in this section authorizes intentionally dispensing, distributing, or administering a controlled substance for the purpose of causing death or assisting another person in causing death." By withdrawing authorization under the CSA, H.R. 2260 would make it a federal crime for a physician to dispense a controlled substance to aid a suicide.² A physician who prescribes the controlled substances most commonly used to aid a suicide would, because he necessarily intends death to result, face a 20-year mandatory minimum sentence in federal prison (as well as civil and administrative sanctions under the Act).³

¹ See, e.g., 21 C.F.R. § 1306.04(a) (authorizing prescriptions only for "legitimate medical purposes").

² The criminal provisions of the CSA are triggered by the absence of proper authorization. See 21 U.S.C. § 841(a) ("Except as authorized by this subchapter, it shall be unlawful . . .") (emphasis added).

³ See 21 U.S.C. § 841(b)(1)(C) (setting 20 year mandatory minimum sentence when death results from the distribution of a Schedule II substance); 21 C.F.R. § 1308.12(a)-(c) (defining Schedule II substances). Schedule III drugs, which are sometimes used, do not carry any mandatory minimum sentence. See 21 U.S.C. § 841(b)(1)(D).

The Administration strongly opposes the practice of physician-assisted suicide and would not support the practice as a matter of federal policy. H.R. 2260 side-steps the federal policy question, however, and operates instead by blocking state policy making on an issue that many, including the Supreme Court, think is appropriately left to the States to decide as each chooses.⁴

Moreover, H.R. 2260 would affirmatively interfere with state policy making in a particularly heavy handed way by using 20-year mandatory prison sentences (as well as civil and administrative sanctions) to effectively preclude states from adopting any policy that would authorize physician-assisted suicide, even if that authorization contains carefully drafted provisions designed to protect the terminally ill.

For these reasons, H.R. 2260 is particularly intrusive to state policy making and the Department accordingly opposes this portion of the bill.⁵ The Department would, however, be willing to work with the Committee in formulating a legislative or regulatory solution that obviates the concerns identified in this letter.⁶

⁴ Glucksburg, 117 S. Ct. 2258, 2274 (noting that debate over physician-assisted suicide is underway in the States, "as it should in a democratic society"); id. at 2303 (O'Connor, J., concurring) (endorsing majority's result, which left "the . . . challenging task of drafting appropriate procedures for safeguarding . . . liberty interests . . . to the 'laboratory' of the States"); id. at 2293 (Souter, J., concurring) (emphasizing that, in light of current state experimentation, "[t]he Court should stay its hand to allow reasonable legislative consideration [of this difficult issue]").

⁵ This approach to physician-assisted is consistent with the Department's approach to "medical marijuana." The legality of the latter turns on factual, not ethical, questions. That is, the scheduling of controlled substances is based on scientific testing to determine, among other things, whether they have any "currently accepted medical use for treatment in the United States," a "high potential for abuse," and "a lack of accepted safety for use . . . under medical supervision." 21 U.S.C. § 812(b)(1) and Schedule I(c)(10). As a result, the CSA appropriately creates a uniform national system of drug scheduling. Where an issue turns solely on ethics, not science, it is reasonable to allow individual states to reach their own conclusions, rather than impose a uniform national standard through implied preemption of state medical standards.

⁶ Any solution should also be careful not to make state-authorized assisted suicides more painful, as H.R. 2260 appears

Thank you for this opportunity to present our views. The Office of Management and Budget has advised us that from the standpoint of the Administration, there is no objection to the submission of this letter. Please do not hesitate to call upon us if we may be of further assistance.

Sincerely,

Robert Raben
Assistant Attorney General

cc: Honorable John Conyers, Jr.
Ranking Minority Member

to do. H.R. 2260's prohibitions would only reach controlled substances, which are most often used as sedatives and not as the actual agents of death. As a result, H.R. 2260 might well result in physician-assisted suicides that do not use sedatives and pain-controlling substances that are accordingly more painful.

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-4-

October 18, 1999 (4:33PM)

99 JUL 2 PM 6:27

THE WHITE HOUSE
WASHINGTON

July 2, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Paul Weinstein Jr.
Domestic Policy Council

CC: Gene Sperling
Bruce Reed
Larry Stein
Ron Klain

Copied
Weinstein
Sperling
Reed
Stein
Klain
Podesta

SUBJECT: Representative Kanjorski and Better America Bonds (BABs)

During your New Markets trip next week, Representative Kanjorski may seek your support for two controversial changes to your Better America Bonds proposal. First, he will ask that we alter the selection criteria to limit BABs to those areas that are economically distressed. Such a limitation would defeat one of the main purposes of BABs, to promote regional cooperation between suburban, urban, and rural communities. In addition, such a change would cost us the support of a number of Members in suburban and rural areas, including possibly the chief sponsor in the Senate, Max Baucus. We are also concerned that some in the environmental community would react negatively to limiting the number of applicants based on economic conditions. To relieve some of his concerns, you could tell the Congressman that approximately one-third of the BABs would be used to cleanup "brownfields" which tend to be located in distressed communities. We have asked EPA to make sure that there are potential "brownfield" sites in the Congressman's district and that they consider the unique characteristics of these sites when developing program guidelines.

Second, Representative Kanjorski will ask that we provide private entities with the authority to issue Better America Bonds along with local, state, and tribal governments. Treasury opposes this change because of the significant potential for fraud with regards to the bonds and the misuse of the open spaces they are designed to preserve. In addition, state and local governments might also oppose such a proposal because it would drain resources from their efforts to preserve open spaces.

THE PRESIDENT HAS SEEN

5-21-99

THE WHITE HOUSE

WASHINGTON

copied
Reed
Podesta

'99 MAY 21 PM 1:08

May 21, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

Your Grambling State University commencement address this Sunday focuses on the need to empower parents with greater tools to balance their responsibilities to their jobs and their families. You will release a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as defined under the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

The DPC also has led a policy process to examine non-legislative options for action to enable states on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, in part responding to UI trust fund surpluses, four states – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their state legislatures that would do this. Three of the four states, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured by Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow states this flexibility; business groups have weighed in strongly against opening up UI for this purpose.

Taking a non-legislative step to advance paid leave for American workers would be a way to enable more workers to spend time with their families during important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no state immediately elected to use its UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that states should consider creative ways to provide paid leave benefits.

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all states, would

be significant. It is not deficit neutral in the short term since taxes will not match benefit spending which is estimated to begin at \$2 billion annually, but will likely be deficit neutral in the long term (10-20 years). Second, the breadth of purposes covered by the FMLA raises concerns. The majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this category of leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers might abandon their sick leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers pay into the system based on their workers' use of it), the cost of this new policy should be borne as broadly as possible to guard against possible employer discrimination against women of child-bearing age.

Your advisors have come to a consensus recommendation that would enable you to advance the policy of paid leave, while mitigating the potential for unintended negative consequences. You would direct the Department of Labor (1) to issue regulations and (2) develop model legislation that together would guide the states to confine the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous categories) and that would ensure that these new benefits are not "experience rated." Limiting these new benefits primarily to leave following birth and adoption would alleviate concerns about expanding the uses of the UI system while responding to the area of greatest need. The 1996 FMLA report found that maternity-disability leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid.

Ideally, DOL's regulation would be able to limit states to using UI only for parental leave (and, perhaps, other analogous categories). The DOL Solicitor's Office is still reviewing whether it has the legal authority to impose these limits; there is a question whether it can distinguish between parental leave and other FMLA categories. If the Department cannot do so, we would rely on model legislation to guide states toward this relatively modest expansion. This course has some risk; states, after all, could choose to ignore our direction and guidance. We are relatively confident, however, that few states would elect to impose far greater burdens on their own UI systems than we would recommend in our model legislation.

This general approach would allow you to send a very clear signal about moving forward on unpaid leave for new parents, while also making clear that you will not countenance other, less appropriate uses of UI benefits. The action, however, will not be uncontroversial. Business groups and Republican allies on the Hill may object even to this limited expansion of the UI system and attempt to halt the regulatory process through appropriations riders.

All of the offices involved in this process – the DPC, NEC, OMB, DOL, the Department of Treasury, CEA, and First Lady's Office – agree that the recommendation presented in this memorandum is an innovative and responsible approach to addressing this issue.



 PROCEED

 HOLD OFF AT THIS TIME

 LET'S DISCUSS

293024

MUG
CASA

'99 FEB 6 PM 7:40

THE WHITE HOUSE
WASHINGTON

February 4, 1999

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed, Chris Jennings, Elena Kagan, Dan Marcus (Counsel's Office)

SUBJECT: Grijalva v. Shalala

John Podesta held a meeting last night with staff from the DPC, Counsel's office, OLA, OVP, OMB, and HHS to discuss whether the Solicitor General and HHS should petition the Supreme Court for a writ of certiorari in Grijalva v. Shalala. The cert petition, which is due on Wednesday, would seek to vacate a decision (1) holding that Medicare HMOs are "state actors" and, as such, required to provide enrollees with constitutional due process and (2) requiring the Secretary of HHS to ensure that all Medicare HMOs comply with specific notice and hearing requirements when seeking to deny or reduce medical benefits.

You previously noted (on a copy of a New York Times article attached to this memo) that this is a "tricky issue," and your comment, if anything, understates the difficulty and political sensitivity of the decision. HHS objects to the administrative burdens that the district court's injunction imposes and worries that these onerous requirements -- as well as the fear of being subject to other constitutional standards -- will drive some HMOs from the Medicare program. Many Congressional Democrats and health advocates, however, believe that contesting the ruling below will undermine our effort to enact patients' rights legislation and perhaps threaten federal enforcement of Medicaid requirements.

Background

In Grijalva, a nationwide class of individuals enrolled in Medicare HMOs alleged that the HMOs were failing to provide the notice and appeal rights guaranteed by the Due Process Clause of the Constitution. The district court (Judge Alfredo Marquez) agreed that Medicare HMOs were state actors and, as such, required to provide constitutional due process; he also found that the notice and appeal procedures then in existence failed to meet constitutional requirements. The judge issued an injunction specifying precise notice, hearing, and appeal procedures, including a requirement that review of an HMO's decision to deny, terminate, or reduce services take place prior to implementing that decision. The injunction also commanded the Secretary to terminate contracts with any Medicare HMO failing to comply with these requirements. The District Court stayed this injunction pending completion of the appeals process, so the injunction has not yet gone into effect.

While the Secretary's appeal of the District Court's decision was pending, Congress (in the Balanced Budget Act) overhauled the Medicare HMO program and the Secretary issued a new set of regulations governing Medicare HMOs. Although the new statutory and regulatory scheme provided Medicare enrollees with far greater protections than the original scheme, a panel of the Ninth Circuit upheld the District Court's decision. The Ninth Circuit panel agreed with the District Court that Medicare HMOs were state actors, required to provide constitutional due process, and that the procedural rules in effect at the time of the District Court's decision failed to meet constitutional standards. The panel declined to consider whether the new procedural rules met constitutional requirements and thus rendered the injunction unnecessary, noting that the Secretary could petition the District Court for a ruling on this issue. Concerned about the basic state action issue, the Secretary chose instead to seek a rehearing en banc (which the full Ninth Circuit denied) and now seeks a writ of certiorari.

The Solicitor General's draft cert petition (which we can give you if you want it) notes first that the principal legal issue in Grijalva (whether Medicare HMOs are state actors) is very similar to an issue now before the Court in American Mutual Insurance Co. v. Sullivan (whether workers' compensation insurers are state actors); hence, the SG says, the Court should hold the petition in Grijalva pending the Court's decision in Sullivan. Although this point could be made very simply, the SG's draft uses it as a launching pad to argue the merits of the state action issue; the petition argues for almost 10 pages that Medicare HMOs are not state actors. The SG apparently believes that this extended discussion is desirable to ensure that the Supreme Court appreciates the importance of this case (and therefore holds the petition for Sullivan) and to influence the Court's writing of the Sullivan opinion (so that the decision there effectively forces the district court to lift the injunction).

The draft petition argues next that the new statutory and regulatory scheme governing Medicare HMOs -- which, as noted, provides greater protections than the original regulatory scheme, although some lesser protections than the injunction -- effectively moots the legal challenge adjudicated by the lower courts in this case. The SG thus asks that after holding the petition for Sullivan, the Court vacate the judgment below and remand the case for consideration of any challenge to the new statute and regulations in light of the Sullivan decision.

Discussion and Options

HHS believes that the District Court's injunction imposes a burdensome set of notice and hearing requirements, inconsistent with the Department's current policies and unnecessary to protect Medicare enrollees. HHS notes especially the obligation on health plans under the injunction to give extensive notice to enrollees of changes in service and to continue providing services during the appeals process (effectively forcing HMOs to eat the

cost of these services even if the HMO's initial decision was proper). HHS believes that these additional notice and hearing requirements will increase costs to Medicare HMOs and perhaps drive some out of the Medicare program; in addition, HHS worries that Medicare HMOs will incur other additional costs in the future if they continue to be viewed as state actors. Finally, HHS notes that the injunction imposes considerable administrative burdens on the Department itself, because the district court ordered it to monitor Medicare HMOs' compliance with the injunction and to terminate the contracts of non-complying HMOs.

But this position -- and these arguments -- place the Administration in an awkward position when it comes to pushing Congress to enact a Patients' Bill of Rights. Although the patient protections at issue are different, the Department is making the same kind of arguments against the injunction that private health plans routinely make against the Bill of Rights: that the added protections are excessively burdensome and would raise medical costs without improving the quality of patient care. Of course, the requirements in the one case were imposed by a court, whereas in the other they would be imposed by Congress. But this difference is unlikely to make much of a difference to our critics. In insisting on Supreme Court review of the judgment below, we would be giving credence to the health plans' view of regulation, while making ourselves vulnerable to the charge of hypocrisy.

Perhaps more important, many advocates and some Hill Democrats are worried that our arguments on state action will undermine the Medicaid entitlement. If Medicare HMOs are not state actors, then Medicaid HMOs probably are not either. Although it is possible to make distinctions between the Medicare and Medicaid programs with respect to state action, even HHS admits that these distinctions are strained and may not be convincing. What is more, the enforcement of Medicaid guarantees depends on whether participants in the system (such as HMOs) are state actors in a way that the enforcement of Medicare guarantees does not. Whereas the Medicare statute has built-in enforcement mechanisms that are unaffected by the state action issue, the Medicaid statute has no such mechanisms: federal enforcement relies largely on Section 1983 suits, which can only be brought against state actors. We fought hard, in the Medicaid block grant debate of 1995, to maintain this right of action for Medicaid violations, and we should be reluctant to start down a road that could make it less effective.

We are now considering three options. The first option is to file the cert petition drafted by the SG's office. The second option is to file a stripped-down version of the cert petition, simply making the point that Grijalva and Sullivan are related and asking the Supreme Court to hold the former for the latter. Because this kind of petition would not explicitly argue that Medicare HMOs are private actors or that the district court erred in issuing its injunction, it would inflame advocates less and insulate us somewhat from the charge of hypocrisy. As noted above, however, it might also be less effective in getting the Court to dispose of both this case and Sullivan in the way that stands the best chance of overturning the injunction. The third option is to decline to file any cert petition and instead return to the district court to argue that it should lift (or modify) its injunction in light of the

new statute and regulation. Under this approach, we would say nothing now about the state action issue -- although if the Supreme Court later decides Sullivan in a way that is relevant, we could ask the District Court to reconsider its injunction in light of the decision. This approach best protects our position on the Patients' Bill of Rights and poses the least threat to the Medicaid entitlement, but it is probably the least effective way of helping HHS to escape from the district court's injunction.

Secretary Shalala favors the first option, but she recognizes that this is a difficult decision. We are almost sure that Shalala would prefer the second option to the third, although she has not yet considered this issue. The Solicitor General believes that the first option best protects the government's broad interest in entering into contracts with private parties, but our sense is that the SG is largely taking its direction in this case from HHS. We have not yet discussed with the SG whether he would prefer the second or third options and cannot guess how he would come out on this issue. The DPC and Counsel's Office believe strongly that we should not choose the first option. All of us think that either the second or third options would be acceptable, with Bruce and Dan leaning slightly to the second and Chris and Elena slightly to the third. We expect that John will talk to you about this matter after you have had a chance to read this memo.

Rulings on Medicare Rights Split White House

By ROBERT PEAR

WASHINGTON, Jan. 21 — A bitter dispute has broken out within the Clinton Administration over the legal rights of Medicare beneficiaries, with some officials trying to limit those rights even as President Clinton urges Congress to establish new protections for millions of other patients with private health insurance.

At issue are Federal court rulings that upheld the rights of six million Medicare beneficiaries in health maintenance organizations.

A Federal district judge in Tucson, Ariz., and the United States Court of Appeals for the Ninth Circuit, in San Francisco, said such patients have a constitutional right to receive written notices and hearings on any denial of medical services, because the H.M.O.'s were acting on behalf of the Government.

Medicare officials are urging Donna E. Shalala, the Secretary of Health and Human Services, to appeal the decision to the Supreme Court. But other Administration officials, who work on legislative affairs and domestic policy, strenuously oppose any appeal, saying the Administration will look ridiculous and will outrage consumer groups and Democrats in Congress.

The arguments are set forth in confidential memorandums that provide a rare insight into the legal and political considerations that shape the Government's decisions on litigation before the High Court. They seem to parallel the arguments made for and against a "patient's bill of rights" like the one proposed by Mr. Clinton.

Medicare officials argue that the lower-court orders intrude on their ability to set Medicare policy, and go much further than necessary to protect elderly patients. "The appeals process required by the district court could impose significant administrative and financial burdens on health plans," raising costs by \$4.70 a person per month, or a total of \$343 million a year, said a memorandum by Medicare officials.

Under the lower-court orders, H.M.O.'s must provide a written notice whenever a service requested by a patient or a doctor is denied, or a course of treatment is reduced or terminated.

"Under this standard, beneficiaries could be inundated with written notices whenever a perceived reduction occurs," the Medicare officials said. "Such a situation would be confusing and even stressful to beneficiaries."

In short, Medicare officials do not like being second-guessed by the courts, and they resent judicial supervision just as much as H.M.O. executives resent regulation.

But a memorandum written by other officials of the Department of Health and Human Services emphasizes the political risks of an appeal

administration succeeds in its effort to overturn the court decisions won by Medicare beneficiaries, it could undermine the rights of poor people in Medicaid, who have increasingly been required to get their care through H.M.O.'s.

Moreover, these officials said, "health plans may be exaggerating the financial and administrative burdens" imposed by the lower-court orders.

The case, a nationwide class action, was filed in 1993 by elderly people who said they had been denied medically necessary services. The plaintiffs won a ruling from the Federal District Court in Tucson in October 1996. Dr. Shalala appealed, saying the judge, Alfredo C. Marquez, had usurped her authority.

Last August the appellate court in San Francisco rejected the Administration's argument. Judge Charles E. Wiggins, a former Republican Congressman from California, said Medicare beneficiaries are entitled to due process because the H.M.O. decisions amount to "Government action."

H.M.O.'s are private corporations, but when they deny services to Medicare beneficiaries they are acting on behalf of the Government, the court said.

The Administration has issued rules for Medicare H.M.O.'s, but the order by Judge Marquez provides greater protection to beneficiaries. The judge's order sets tighter deadlines for H.M.O.'s to rule on appeals, and it guarantees that patients can receive urgently needed services while they pursue appeals.

Vicki Gottlieb, a lawyer at the National Senior Citizens Law Center, said the court order also "goes much further than current Federal rules in requiring H.M.O.'s to explain what additional evidence you need to support your claim, and how to get that evidence."

A report on the case by Government lawyers says "the worst possible scenario" is that Dr. Shalala will appeal to the Supreme Court and the Justices will decline to accept the case for review.

Lower courts would probably view such action as "a judgment by the Supreme Court that our arguments were unpersuasive," the report said.

A rare insight into the considerations that shape decisions on litigation.

to the Supreme Court.

"The department's position could be seen as inconsistent with the Administration's stated policy of expanding consumer protections for health plan enrollees," it says. "As a result, a petition could weaken the department's and the Administration's ability to pass legislation that creates additional protections, such as in the patient's bill of rights."

Nancy-Ann Min DeParle, the administrator of the Health Care Financing Administration, which runs Medicare, came down against the lower-court decisions. She told Dr. Shalala that the Administration "should seek relief from the Supreme Court," even though Ms. DeParle acknowledged that there were legal and political risks in this approach.

By contrast, other Administration officials said the rights of Medicare H.M.O. patients should meet constitutional standards for "due process of law" because the stakes were so high: if an H.M.O. denies coverage of a service, the patient may suffer irreparable harm or die.

Further, these officials said in confidential memorandums, if the Ad-

The New York Times

FRIDAY, JANUARY 22, 1999

Nancy DeParle

THE WHITE HOUSE

WASHINGTON

November 9, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Charles F.C. Ruff
Bruce Reed
Elena Kagan
Robert Weiner

RE: Anderson v. Roe

This memorandum describes the issues presented by Anderson v. Roe, which is in the briefing stage before the Supreme Court. The case involves the question whether, during the first year new residents live in California, the State can limit their welfare benefits to the level available in the state of their prior residence. Relying on the Supreme Court's decision in Shapiro v. Thompson, 394 U.S. 618 (1969), the Court of Appeals for the Ninth Circuit upheld a preliminary injunction against the California law because it interfered with the constitutional right to freedom of travel. Thirteen states have similar limitations, including Florida, Illinois, New Jersey, New York, Pennsylvania and Wisconsin.

The Court in Shapiro struck down Connecticut, Pennsylvania and District of Columbia statutes that limited or denied welfare benefits to new residents for up to a year. Acknowledging the State's interest in the fiscal integrity of its programs, the Court held that "the purpose of inhibiting migration by needy persons in the State is constitutionally impermissible," and that "a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally." 394 U.S. at 631. The Constitution, in the Court's view, requires that "all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement." Id. The State has to demonstrate a compelling interest to justify any impairment of this right. Id. at 636. The Supreme Court has repeatedly reaffirmed the right to travel, but last addressed the issue in 1986.

Based on these precedents, at least nine state and federal courts have invalidated welfare residency requirements. It is a fair assumption that the Supreme Court took this case to reconsider the constitutional right to travel. The Court granted review of this issue once before, in 1995, but found that the case was not ripe because California did not have a federal waiver necessary to implement its provision. Anderson v. Green, 513 U.S. 557 (1995). Since then, Congress passed PRWORA, which resolves the ripeness problem and allows a state

"to apply to a family the rules (including benefit amounts) of the program funded under this part of another State if the family has moved to the State

from the other State and has resided in the State for less than 12 months.”

The United States is not a party to the case, and the PRWORA provision -- given that it is merely permissive -- is not under direct challenge. However, if the Supreme Court were to strike down California’s statute under a standard of strict scrutiny, it could essentially nullify the federal law.

The Solicitor General is considering whether to file a brief in this case and, if so, what position to take. In light of the federal statute and the peril to the constitutional right to travel, there are significant federal interests at stake. The Supreme Court has not invited our participation, but would think it unusual for the United States not to file a brief. The last time this issue was before the Court, in Anderson v. Green in 1995, the U.S. did not participate. Although that was before enactment of the federal statute, there is no imperative that we file. If we do not file, no one else may offer the Court a moderate option that could preserve the right to travel.

The policies behind the federal statute are reasonable. Granted, in individual cases it may be unfair to limit a family migrating from Mississippi to Mississippi’s level of benefits -- even if they did not receive benefits there -- while they have to sustain California’s much higher cost of living. But in the aggregate, if welfare recipients can flock to the states with the highest benefits, there could be a “race to the bottom,” as high benefit states seek to minimize disparities in benefit levels to avoid becoming welfare meccas. Moreover, we sought in PRWORA to give states more latitude to experiment with welfare solutions.

In addition to defending the federal statute, then, we believe our primary goal ought to be the preservation of Shapiro. The constitutional right to travel is important, and we generally should seek to safeguard the civil liberties of our citizens. Moreover, we have placed great emphasis on stare decisis in other contexts, from abortion to affirmative action. There are strong policy reasons not to undermine that doctrine. The Solicitor General believes that the best way to preserve Shapiro is to defend the statute and distinguish this case from the Shapiro line of precedent.

The Solicitor General therefore intends to file a brief tomorrow arguing that the federal provision quoted above is a reasonable measure designed to further the welfare reforms of 1996, to ensure that the state variations in welfare benefits encouraged under PRWORA do not create artificial incentives to travel, and to avoid state reductions in benefits given the fixed block grants states receive. Although no state may in its parochial interest seek to “fence out” poor people, the national legislature, when dealing with the right to travel -- a right of national citizenship -- can authorize states to effectuate a federal purpose. Because of the Congressional authorization here, and because California does not deny benefits as in Shapiro, instead adopting a “choice of law” approach for setting benefit levels, this case is distinguishable from Shapiro. The California statute thus need not satisfy strict scrutiny. But minimum rationality is too lax a standard to review impositions on the fundamental right to travel. Accordingly, the SG will urge intermediate scrutiny of California’s law, a standard that would require California to show that its statute bears a substantial relationship to the goals articulated by Congress. In other words,

California would have to demonstrate that the statute is narrowly tailored.

California probably cannot meet that burden, although other states could well do so. California's statute is overbroad. Its limitation on benefits was enacted before PRWORA and is not limited only to those who received welfare in their state of prior residence, or who were eligible to receive welfare, or who traveled for the purpose of obtaining higher benefits. While the SG will argue that California should have the right to make further showings on remand, given the balance of hardships between current recipients of benefits and the state's policy, as well as the likelihood of success, he will contend that the preliminary injunction should stand.

We believe that this approach fulfills the SG's obligation to defend the federal statute, provides the Justices a way to preserve Shapiro, and fairly reflects the balance of policy concerns at stake.

THE WHITE HOUSE

WASHINGTON

August 25, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Chris Jennings

SUBJECT: New Department of Labor Regulations

You are tentatively scheduled to use this week's radio address to announce the release of a new Department of Labor (DOL) regulation that will require all self-insured health plans, which cover over 50 million Americans, to provide a standard internal appeals process for enrollees. This action builds on the series of initiatives Federal agencies have taken in response to your Executive Memorandum instructing all Federal health plans to come into compliance with the Quality Commission's Patients' Bill of Rights. Because DOL can do no more than require an appeals process, your announcement underscores the need for Congress to pass a strong, enforceable Patients' Bill of Rights.

Background on Executive Action on Patients' Bill of Rights

Over the past few months, you have made a number of announcements to bring Federal health plans, which serve 85 million Americans, into compliance with the Patients' Bill of Rights. In June, the Department of Health and Human Services released new regulations to bring Medicare into compliance, and it will implement similar regulations for Medicaid in late September or October. In July, you announced that the Department of Veterans' Affairs had established a new, rapid external appeals process for its 3 million beneficiaries. In August, you announced that the Department of Defense had directed all military health plans, which serve 8 million Americans, to come into compliance with the Patients' Bill of Rights. At your Kentucky rally, you announced a new regulation prohibiting "gag" clauses in plans participating in the Federal Employees Health Benefits Program (FEHBP), which serves 9 million federal employees and their dependents. The Office of Personnel Management will take other steps to bring FEHBP into virtual compliance by late September.

Department of Labor Internal Appeals Regulations

The Department of Labor has certain limited authority to regulate self-insured plans. Firms with these plans, which generally have over 100 employees, have elected to self-insure to avoid state regulations and premiums and to have more flexibility to design health plans for their employees. The Department of Labor has extremely limited authority to bring these health plans into compliance with the Patients' Bill of Rights. The Department cannot require self-insured plans to provide most of the consumer protections outlined in the Patients' Bill of Rights, such as

access to specialists, emergency care protections, or an external appeals mechanism. But because DOL has authority under ERISA to regulate how plans evaluate claims, it can require all health plans to provide an internal appeals process to all served employees.

The regulation DOL would issue under this authority would: (1) require plans to notify enrollees of their appeal rights under the plan; (2) drastically reduce the time plans have to respond to non-emergency appeals (from 90 days to 15 days), and require plans to respond to emergency appeals within 72 hours; (3) give enrollees greater access to documents used in reviewing their claims; and (4) require the plan to provide a full appeals process before terminating or reducing benefits for an enrollee in urgent circumstances.

Consumer groups believe this regulation is long overdue and will give it strong support. The business community also will be generally supportive of the regulation, although for a bad reason: they will hope that the regulation bolsters their claim that federal patients' rights legislation is not needed. For this reason, in announcing this regulation, we must clearly articulate the limitations of our authority in this area and reiterate our call for strong, enforceable federal legislation.

Conclusion

Release of this regulation will underscore two important points. First, it will show that you are committed to taking all the action within your authority to bring federal health plans into compliance with the Patients' Bill of Rights. Second, by virtue of the regulation's inescapable limitations, it will highlight the need for federal legislation to ensure that all Americans have needed health care protections.

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001. memo	Bruce Reed and Chris Jennings to the President re: legislation (2 pages)	06/22/1998	P5
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RR. Document will be reviewed upon request.

June 24, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed, Elena Kagan
Gene Sperling, Sally Katzen

SUBJECT: Summer Announcements and Events

Listed below are ideas for announcements and events that you could do this summer. We have noted which of our offices has primary responsibility for each idea.

Health (DPC/NEC as noted below)

Release New Executive Order Authorizing OPM to Terminate FEHBP Insurance Plans That Are Out of Compliance with Kennedy-Kassebaum Law. This policy would strengthen enforcement of the Kennedy-Kassebaum law by allowing the Federal Employees' Health Benefits Plan (FEHBP) to take action against any insurer that discriminates against sicker patients -- including by terminating the insurance plan. Although we have not seen many reports of discrimination recently, advocates would characterize this action as reducing the likelihood of future abuses. We would announce the policy at an event including men and women who have suffered from these kinds of insurance practices. (DPC)

Release New HHS Report on Long-Term Care and Announce Policy Initiative(s). A new report from HHS shows that millions of American families care for chronically ill elderly relatives and friends, and that this care places a significant strain on families. The President could announce an initiative to encourage private long-term care insurance by offering it through the FEHBP and/or counseling Medicare beneficiaries to consider private insurance. In addition, if we are willing to consider proposals with budgetary effects, we could announce a new respite care tax credit, which we are in the preliminary stages of reviewing. (DPC/NEC)

Approve the 25th State Children's Health Insurance Program. As of today, HHS has approved the CHIP plans of 20 states, which should cover about 2.5 million children when fully implemented; we expect to reach the half-way mark by approving the 25th CHIP plan early next month. We could use this occasion to release another progress report and hold an event featuring families already helped by the program and a bipartisan group of governors. (DPC)

Enhance Welfare-to-Work Commitment by Giving States Option to Maintain Health Insurance for Working Adults. We may be able to issue a new HHS regulation that would allow more states to provide Medicaid coverage to more low-income two-parent families. (Current federal law, applicable in all states without pre-welfare law waivers on this subject,

limits Medicaid to only those two-parent families in which the parents work less than 100 hours per month.) States believe that this regulation would enhance welfare-to-work efforts and encourage two-parent families. The regulation, however, has large cost implications (about \$800 million over five years), and we are currently discussing with OMB whether an offset for such a regulation is needed. (DPC)

Announce Policies for People with Disabilities. We have been working on administrative and legislative policies to enable people with disabilities to (1) reside in their communities, rather than institutions, and (2) return to work activities. For example, we are working on a legislative proposal to provide personal care assistance services to enable people with disabilities to return to work. We also are exploring ways to develop and spread new technologies that enable people with disabilities to live and work more easily. These proposals generally will have budget implications; we are currently working with OMB on finding appropriate offsets. We could announce these actions on July 26, the anniversary of the Americans with Disabilities Act. (DPC/NEC)

Announce Outreach Effort for Low-Income Medicare Beneficiaries. A new report, to be released by Families USA in early July, will show that about 3.9 million eligible Medicare beneficiaries -- nearly half of all eligible beneficiaries -- do not get premium assistance. We could release an executive directive to HCFA, SSA, and the Administration on Aging to implement new outreach and enrollment initiatives. (At the very least, such an action would inoculate us against the Families USA report, which is likely to receive a great deal of attention). (NEC)

Education (DPC/NEC as noted below)

Announce New Legislation, With Offsets, to Reduce Class Size. Senator Murray intends to introduce legislation with as many as 20 co-sponsors to implement your class size initiative. DPC and OMB are working with Murray's staff on potential offsets that she could use in making this announcement. We think you could participate in the announcement of this legislation (as you previously expressed interest in doing) without binding yourself to using the offsets for this (and only this) purpose. (DPC)

Announce New Bilingual Education Plan. You could transmit legislation to reform the federal bilingual program, including by requiring school districts to establish a goal of moving all Limited English Proficient (LEP) students into regular English language classes within three years. We are sending you a separate memo on the pros and cons of taking this action. Irrespective of whether you decide to transmit such legislation, you could take other actions to assist LEP students -- for example (1) propose ways to strengthen teaching for LEP students (e.g., by recruitment and training initiatives); (2) issue a directive to the Secretary of Education to report on best practices of teaching English to LEP students, as well as to conduct or support further research in this area; (3) support community-based initiatives that supplement school programs for LEP students; and (4) propose ways of strengthening foreign language education

for English-speaking students. Some of these proposals would have budgetary implications, but we do not yet have good cost estimates. (DPC)

Announce First Grants of Comprehensive School Reform (Obey/Porter) Program. The Education Department will soon be ready to announce grants under the new Comprehensive School Reform program. These grants will support proven school reforms in hundreds of schools. You or the Vice President could make this announcement. (DPC)

Launch the Education Department's Summer Reading Initiative. Seventy partnerships across the country will launch summer reading programs aimed at young children next month. You could help to kick off these programs, while calling on Congress again to enact America Reads (if it has not yet done so). (DPC)

Announce Grant to DC Training Alliance. You could announce a Labor Department pilot program that would give a \$1.2 million planning grant (the "metro-tech grant") to the DC, MD, and VA job-training systems to train workers to meet the demand in this area's high-tech industry. The pilot program will fund 100 workers. We expect the pilot to lead to a demonstration project serving 3,000 people at a cost of \$17 million. We can announce this grant anytime the near future. (NEC)

Participate in School Construction and Smaller Class Size Day. You, the Vice President, Mrs. Clinton, and Mrs. Gore all could participate in a back-to-school day that would focus on school construction and smaller class sizes. In advance of this day, you would ask parents, volunteers, Members of Congress, and community leaders to join together to help rebuild, renovate, and modernize local public schools. The event would provide a terrific visual and give Democrats in Congress a chance to highlight this important issue in the fall. (NEC)

Report on Success of School-to-Work Program. We expect a major study to be released soon on School-to-Work, one of the signature programs of your first year in office. If it is positive, we might use the release of this study to highlight the program, call for the business community's continued participation in it, and attack right-wing opposition. We are not sure of the timing of this report. One problem with this event is that our current budget scales back the school-to-work program (from \$400 million to \$250 million). (NEC)

Crime and Drugs (DPC)

Announce Support for Child Access Prevention Legislation, Issue Child-Proof Gun Challenge, and Issue Regulation on New Gun Signs. You could (1) support child access prevention legislation (both Sen. Durbin and Rep. McCarthy have bills) that would hold adults liable if they give children easy access to guns; (2) challenge industry to get a child-proof gun (i.e., a gun that can be shot only by authorized adults) on the market by the year 2000; and/or (3) announce a Treasury Department regulation (responding to a directive you signed a few months ago) requiring gun dealers to post signs warning gun purchasers about their responsibility to keep

guns away from children.

Report on Youth Crime Gun Interdiction Initiative and Press for Congress to Fund Our Budget Request. The second anniversary of your gun tracing initiative falls in July, and we may have a report by then on the continued success of this program. (If not, the report will be ready later in the summer.) Our budget asked for \$28 million to expand this initiative, which the House appropriations subcommittee fully funded last week. An event could keep up the pressure for full funding of this initiative. We could combine the event with the actions on youth access to guns described above.

Announce Federal Drug Strike Force for Chicago and Support for Chicago's Anti-Gang Ordinance. DOJ is prepared to announce that it will dedicate some 300 federal agents and 20 prosecutors to form a drug strike force in Chicago. We have promised Mayor Daley that we will make this announcement soon. At the same time, we could comment on the brief we just filed in the Supreme Court supporting Chicago's anti-gang ordinance.

Announce New Demonstration Project to Fund Faith-Based Anti-Crime Programs. DOJ is now considering whether and how to put together a demonstration project to fund faith-based anti-crime programs, such as the one profiled recently in a Newsweek cover story. We will have to work through some constitutional concerns, but we could be ready to go on this new effort by mid-summer. Some of your advisors, however, have reservations about such a religiously-oriented grant program.

Announce New COPS Grants. We will have several opportunities this summer to announce new cop grants, including grants targeted to combating methamphetamine use and extensions of prior grants (*i.e.*, a fourth year of funding) in small cities. We should try to time such an announcement to coincide with new crime statistics.

COPS in Schools. By the end of the summer, the Departments of Justice and Education should be ready to (1) offer recommendations to you for getting more police to work with schools (in response to your directive last week); (2) release COPS grants to provide additional law enforcement assistance in schools; (3) hold a conference on how law enforcement officers can help to keep schools safe; and (4) issue a report on the success of the Safe and Drug Free Schools Program.. We could try to package these announcements in a single event.

Release Early Warning Guide for Schools; Follow Up With Annual Report on School Safety. In compliance with your recent directive, the Departments of Justice and Education are scheduled to complete by the end of summer a guide for schools on how to identify and respond to early warning signs of troubled youth. We could combine release of this report with a White House meeting with officials of the cities that recently have suffered school shootings. A month or so later, in early October, the Justice Department will be ready to release the annual report on school safety that you ordered in the wake of the Paducah shooting. This document will compile all data on school crime, discuss successful strategies to reduce school violence, and include a

checklist for parents on school safety. You could use the release of this report as an opportunity to address hundreds of schools by satellite on school violence issues.

Launch Nationwide Phase of Our Anti-Drug Media Campaign. You are currently scheduled to announce the national roll-out of the \$195 million media campaign in July. ONDCP will buy a "roadblock" on network TV that night, unveil new ads, and host local events in scores of participating cities.

Release Drug Court Grants. You could announce the latest drug court grants from DOJ and highlight the success of this program, as you previously have indicated some interest in doing. (As you know, a recent study showed some very good results.) You could combine the release of these grants with the launch of the anti-drug media campaign discussed just above, or alternatively combine it with the release of new DUF/ADAM (Drug Use Forecasting/Arrestee Drug Abuse Monitoring) data, which will almost certainly show that most arrestees in our major cities test positive for drugs, and that more resources are needed to test, treat, and sanction these offenders.

Release Results of Household Survey. The Household Survey -- one of two major drug surveys on teen drug use -- should be out by August. Last year's survey was the first to indicate a dip in teenage drug use, and this year's is likely to show the same. The Survey also will contain new data on youth tobacco use.

Release Stalking Report and Associated Policies. DOJ is preparing a report showing that about eight million women in this country report having been stalked. We are working with DOJ on policy recommendations to go with this report, but have not yet determined their exact content.

Tobacco (DPC)

Bring Medicare Suits Against Tobacco Companies? We and the Counsel's Office will advise you within the next couple of weeks on whether the federal government should bring suit against the tobacco companies for losses to the Medicare program caused by tobacco-related disease. If you choose to go ahead with these suits, you can direct the Attorney General to prepare the suit for filing. (There is little chance that the suit will actually be ready to file this summer.)

Prevent Filmmakers from Using Federal Facilities for Films that Contain Youth Smoking. We are exploring whether agencies that oversee federal facilities (e.g., DOD, the Forest Service) can require, as a condition of granting a permit to film a movie on those facilities, that the movie not show (or perhaps, not glamorize) youth smoking or drug use. Your advisors are very split on this idea -- some love it, some hate it -- and we are continuing to explore it.

Release Report on Effects of Price Increases on Youth Smoking. We are ready to release a Treasury Department report showing how price increases can dramatically reduce youth

smoking. This report should be useful to show the absurdity of the House Republicans' "no-money" approach to this problem. When they release that bill, we will have Treasury (or commission an independent expert) to do a report on the likely effects of the bill on youth smoking.

Release Results of Household Survey. As discussed above.

Welfare-to-Work (DPC/NEC as noted below)

Release Report Showing the Increase in the Proportion of Welfare Recipients Going to Work. Following on the GAO report last week, HHS is scheduled to report to Congress on the increase in work among welfare recipients. The report should have some new data, although it also will collate previously released figures. Sometime this summer, HHS also will receive information from the states on whether they are meeting the welfare law's work participation rates. This information should generate a fair bit of interest, but it is not yet clear whether the news will be good. (DPC)

Endorse Individual Development Account Bill. You have indicated interest in doing an event to endorse and highlight the Coats-Harkin IDA legislation. This bill would establish a four-year, \$100 million demonstration program under which state, local, and nonprofit entities would match money deposited into IDAs by low-income families. One event idea is for you to go to a community development bank and help a welfare recipient open a bank account; we could use such an event to push for CDFI funding at the same time. Another, simpler idea is to do a Rose Garden event with the sponsors of the bill and welfare recipients. (DPC/NEC)

Food Safety (DPC)

Call for Congress to Fund Our Food Safety Initiative and Pass Legislation Giving FDA and USDA More Enforcement Authority. The relevant House and Senate subcommittees allocated almost no funds to our food safety initiative; at the same time, our proposals to give USDA additional recall authority and give FDA additional authority over imported foods are languishing. You could do an event with members of Congress and food safety advocates urging Congress to act on these measures. (Summer is the time when people think most about these issues.) We must ensure, however, that such an event is consistent with our overall strategy on the Agriculture Appropriations bill.

Veterans (DPC)

Announce Coordinated Effort to Assist Homeless Veterans. We have been working with the Veterans' Administration on a plan to help the 250,000 homeless veterans in this country. The plan would involve outreach efforts, substance abuse treatment, and mental health care, in addition to housing assistance. The annual cost would be about \$30 million. Assuming we believe we can find this amount of money in next year's budget, you could direct the VA now to

come back to you with a plan on how to address this issue.

Rural Issues (DPC/NEC)

Deliver Speech on Rural Issues. DPC, NEC, and USDA have prepared a rural agenda for a speech sometime this summer. The agenda includes: (1) the use of new technologies, such as distance learning and telemedicine, to benefit rural areas; (2) the enforcement of antitrust laws in agricultural-related industries; (3) the expansion of programs that help farmers manage risk; (4) the promotion of free trade; (5) the expansion of agricultural cooperatives; and (6) the renewal of the ethanol subsidy. We also could announce all or part of this agenda through a radio press conference in which you, the Vice President, and Secretary Glickman could participate.

Financial Services (DPC/NEC)

Announce Consumer Credit and Financial Services Bill of Rights. DPC and NEC are developing an initiative -- including both administrative actions and a legislative proposal -- aimed at educating consumers about the use of credit and bank services, improving the information consumers receive, and targeting predatory practices. This initiative is still at an early stage of development, but we probably will be ready by near the end of the summer.

Pensions (NEC)

Announce Pension Proposals. Your advisors have reached consensus on two pension proposals (in addition to the proposals announced in January). The joint and two-thirds/three-quarters survivor annuity proposal would increase benefits for some surviving spouses of pension plan participants, while the other proposal, initially advanced by Rep. Price (D-NC), would allow workers to count FMLA time toward pension vesting requirements. This would ensure that those (relatively few) workers close to the 1,000-hour minimum requirement for vesting do not lose a year of vesting because of time taken off under FMLA. This can be billed as a women's pension item.

Housing (NEC)

Announce HUD-NAR "One America" Agreement. HUD and the National Association of Realtors (NAR) have reached a final agreement on the "One America Broker" program. Under the program, NAR will sponsor training for real estate professionals on how to better serve minority and immigrant home buyers. The training will address adherence to Fair Housing Act principles, as well as ways to expand the housing choices available to minorities and other underserved groups. Realtors who complete the course and commit to serving these groups would be able to use the "One America" logo in advertising and promotional materials, which could help them to attract additional clients. To be certified, realtors must be free of any Fair Housing Act violations. The agreement could be announced/highlighted by you or the Vice President at an event with a minority or immigrant new home buyer who previously experienced

discrimination and (possibly) a realtor with an outstanding record serving underserved groups.

International Economics (NEC)

Announce Trade Adjustment Assistance Package. We could do an event on helping everyone benefit from a global economy. This event could have four different components, focused on both worker and community adjustment:

- You could announce the consolidation and reform of the Trade Adjustment Assistance (TAA) program and the NAFTA-TAA program. This would more than fulfill your promise to strengthen the TAA/NAFTA-TAA programs during the fast track debate.
- A possible Executive Order establishing a coordinating committee on community adjustment issues. This could be modeled after the Executive Order on defense adjustment programs.
- You could call on Congress to pass your EDA budget and NADBank budget, so that we can effectively deal with communities that have severe and sudden economic distress.
- Memorandum of Understanding between NADBank and EDA so that they work better together. This is important to Rep. Torres and the Hispanic Caucus. NADBank/CAIP and EDA have done a lot of work together, but it could be an important symbolic message to the Hispanic Caucus for the relationship between the two to be formalized.

Announce New Sanctions Policy. You could announce the release of a Presidential Decision Directive on Sanctions which would establish a joint NEC/NSC interagency sanctions review group to monitor and coordinate broad United States government sanctions policy. The group would ensure that prior to sanctions being implemented the Administration would conduct a cost/benefit analysis. The group could also review existing sanctions in place to determine whether they are still serving an important purpose in fulfilling our policy objectives. The time could be ripe for such an announcement because of the keen awareness on the Hill and elsewhere about the proliferation of new sanctions regimes and their cost to the U.S. economy. An interagency process has been working on such a directive; work could be finalized in time for an announcement. Because the Glenn Amendment has crystallized opinion about the problems with unilateral sanctions, this can and should be done sooner rather than later (*i.e.*, over the next couple of weeks).

Give Major International Trade Speech. You could articulate U.S. trade objectives for the year leading up to the 1999 WTO Ministerial Conference, which we are hosting. You could also announce the selection of the city for such an announcement. Over 20 cities have expressed interest; the conference will bring international attention and over 10,000 attendees from foreign government, business, press and NGOs. The policy initiative would be a refinement of the goals outlined at the May 1998 WTO Anniversary in Geneva.

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THE WHITE HOUSE

WASHINGTON

June 14, 1998

68 JUN 14 1998

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING
BRUCE REED

SUBJECT: Individual Development Accounts

On Wednesday, the Senate Labor subcommittee will mark-up the Human Services reauthorization bill. Besides Head Start and LIHEAP reauthorization, the Committee is planning to include a demonstration of Individual Development Accounts. Given your record, we believe that you should get out in front on this issue and we should either endorse the proposal (with some modifications) or propose our own IDA demonstration.

For many years, you have strongly supported Individual Development Accounts (IDAs) as a means to build assets among lower-income Americans, help move people from welfare to work, expand homeownership opportunity, increase access to post-secondary education, and help people start their own businesses. Indeed, nearly six years ago -- in September 1992 -- you announced your support for IDAs, saying that they "would encourage poor Americans to set money aside in special savings accounts that they can use for a home, their education, their training or starting a small business." To that end, your 1994 Welfare Reform proposal included an IDA proposal and the 1996 Welfare Reform law allowed States to use welfare funds to establish IDAs.

However, the Federal government has yet to provide direct funding to create IDAs. This memo lays out three potential options for the Administration: (1) endorse the Coats-Harkin IDA demonstration bill; (2) put forward our own Coats-Harkin-like IDA proposal with a higher price tag; or (3) propose a narrower IDA demonstration for just homeownership.

Coats-Harkin IDA Demonstration Bill:

Senator Coats and Senator Harkin are the lead sponsors of a bill which would establish a four-year, \$100 million IDA demonstration under which State and local agencies and/or non-profits would be funded to operate IDA programs. The demonstration would be open to households that are either eligible for welfare (TANF) or have an income level below the EITC phase-out point and a net worth below \$10,000. For each dollar deposited into the IDA by a low-income family, the administering agency would provide a match of not less than 1:1 and not more than 8:1. Individuals could make qualified withdrawals from the IDA for only three purposes: (1) purchase of a first home, (2) post-secondary educational expenses, or (3) starting a new business. The Coats-Harkin bill gives a preference to entities that are able to attract pledges of substantial non-Federal, especially private sector, funding to serve as a match for the Federal dollars. And to determine whether this demonstration works, the bill requires that there be a rigorous evaluation of the program.

You should know that the Coats-Harkin bill has the support of a bipartisan group of Senators, including Abraham, Lugar, Collins, Moseley-Braun and Wellstone. On the House side, the lead sponsors of the companion bill are Tony Hall and Kasich. While there are no real substantive problems with the bill, there need to be some clarifications and technical corrections.

Options:

The following options would be coupled with two other measures to promote IDAs in the private sector and at the state and local level: first, we would ask the banking regulators to clarify that banks and thrifts can receive Community Reinvestment Act credit for IDA programs; and second, a letter would be sent from HUD clarifying that HOME and CDBG funds can be used to establish IDA programs. In addition, because of the need for an offset to pay for any of the following options, we are investigating whether we could place the IDA program within the Treasury Department instead of at HHS (as the Coats-Harkin bill does) and direct the Community Development Financial Institutions (CDFI) fund to set-aside funds from its existing budget request for FY99 to pay for its operations.

Option 1: Endorse Coats-Harkin bill

Pros:

- Could help approximately 50,000 lower-income Americans build assets, which is an important means to get out of the cycle of dependency.
- While the national homeownership rate is nearly 66 percent, the rate among lower-income and disadvantaged Americans is below 50 percent. IDAs would help expand homeownership opportunities to this group of people. IDAs would also help increase access to college and help low-income families start their own businesses.
- Provides another tool to move people from welfare to work.
- Enactment of Federal IDA legislation would complete the community empowerment agenda you laid out in your 1992 campaign.
- Would dovetail well with other housing proposals: Low-Income Housing Tax Credit expansion will help develop more rental housing units; Welfare-to-Work Housing Vouchers will help move welfare recipients into privately owned rental housing; and IDAs will help these families save to become homeowners.
- Of all the options being considered, most likely to be enacted this year.

Cons:

- The Coats-Harkin bill comes with a price tag of \$25 million per year. One option to pay for our endorsement could be to place its operation within the CDFI Fund and direct the Fund to set-aside \$25 million within its FY99 budget request.

- Some believe that Republicans would expand IDA bill to include K-12 private school education, reopening the same issues raised by Coverdell amendment, but in a less favorable context (IDAs help lower-income Americans, while IRAs disproportionately benefit those with higher incomes).
- This initiative would help only a small percentage of low-income persons who need help accumulating wealth.
- An IDA demonstration may be vulnerable to fraud, especially allowing withdrawals for small business activities.
- Endorsing Coats-Harkin means you will not have put forward your own IDA proposal (even though Coats-Harkin is based largely on the one included in our 1994 welfare proposal).

Option 2: Put Forward Our Own IDA Demonstration with a Higher Price Tag

Another option would be to put forward our own IDA demonstration proposal (with a higher price tag), while acknowledging the proposal from Senators Coats and Harkin. OMB believes that the largest our own IDA demonstration program could be -- within your FY99 budget -- is \$30 million per year (or \$150 million over five years). This option would allow us to make the small substantive and technical changes to the Coats-Harkin proposal without having to negotiate with their staffs.

Pros:

- Same as option 1, but you would have ownership of the proposal.

Cons:

- Same as option 1, but the price tag for this option would be higher and would require a larger offset.
- Could upset Harkin and Coats that we are proposing a similar IDA demonstration without endorsing their proposal.

Option 3: Propose More Narrow IDA Demonstration for Only Homeownership

Another alternative would be to propose a narrow IDA demonstration which would be focused solely on homeownership -- the only qualified withdrawal would be for the purchase of a first home.

Pros:

- Focuses message on homeownership and focus attention on the importance of saving for homeownership.
- Allays concerns of education community that IDAs would be used as vehicle for Coverdell.
- Costs less than other two options.

Cons:

- Some may question why we did not propose allowing post-secondary education as a qualified withdrawal from IDAs, given your strong record on expanding access to college. We would get the same criticism for not allowing withdrawals for starting a new small business.

Recommendations:

NEC, DPC, OMB, White House Legislative Affairs, OVP, Treasury, HUD, CEA, SBA, and HHS recommend that you support the Coats-Harkin bill with some modifications. There is unanimous agreement that endorsing Coats-Harkin would be consistent with your goals of helping move people from welfare to work, provide educational opportunities, help people buy their own homes, and help people start their own businesses. If you decide to endorse Coats-Harkin, we will work with their staffs to ensure that the bill is modified to address the specific concerns of your advisors; for example, we want the bill to include a stronger evaluation component so that we have rigorous evidence on whether this initiative works or not.

Education is concerned that endorsing an IDA demonstration now may provide the Republicans an opportunity to open up the accounts to K-12 private school education. You should know that Senator Harkin has indicated that he will not support the IDA demonstration if the Republicans try to attach a Coverdell-like amendment. Your advisors believe that we should work with Senator Harkin to obtain a similar pledge from Senator Coats before we endorse the bill. In the end, we believe that Senator Coats will provide us this guarantee because he is retiring and wants to pass the IDA bill.

- ☒ Endorse Coats-Harkin Bill (RECOMMENDED)
- ☐ Put Forward Your Own, Bigger IDA Demonstration Proposal
- ☐ Propose Narrow IDA Demonstration Program Targeted To Homeownership
- ☐ Discuss Further

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THE WHITE HOUSE
WASHINGTON

ONE ATTORNEY HAS SEEN
6-16-98

June 12, 1998

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed
Charles F.C. Ruff

SUBJECT: Hyde Amendment Application to Medicare and Abortion Coverage
Requirements for Catholic Provider Sponsored Organizations

As you know, some women of child-bearing age qualify for Medicare because they receive Social Security Disability Insurance (SSDI). Senator Nickles has asked HHS whether the Hyde Amendment's restrictions on government funding of abortion apply to the Medicare program. He also has asked whether health plans that refuse, on religious grounds, to provide abortion services can still become Provider Sponsored Organizations (PSOs) eligible for Medicare payments.

We believe that we must respond quickly to Senator Nickles to have any chance of avoiding another legislative confrontation over abortion policy. This memo provides background information and policy options for your consideration.

Background

Earlier this year, the Catholic Health Association (CHA) contacted HHS and the White House about a ruling by a HCFA regional office that a Catholic-run PSO could participate in Medicare only if it agreed to cover qualified abortions for women with disabilities. The CHA vehemently objected to this ruling and asked if we could intervene administratively. At the same time, the CHA contacted Senator Nickles' office. The CHA discussed with Nickles both whether the Hyde Amendment applies to Medicare and whether Catholic PSOs can decline to provide all abortions (even those permitted under Hyde) because of their religious objections. The Senator, clearly sensing another abortion wedge issue, wrote to Donna Shalala to obtain the Department's formal position on both of these issues.

Medicare and Abortion coverage. Five million non-elderly disabled Americans -- including two million women -- receive Medicare coverage by virtue of their SSDI eligibility. The Medicare program currently covers about 500 abortions each year, while denying claims in another 100-200 cases. These figures are consistent with those from the Reagan and Bush Administrations.

In 1991, HCFA issued a reimbursement directive stating that Medicare would cover abortion services only in cases where the life of the mother was endangered. (Prior to this

time, there was no clear guidance on the subject.) This directive, which comported with the then-existing Hyde Amendment, is actually more restrictive than the current Hyde amendment, because it fails to cover abortions arising from rape and incest. The directive, however, has not been modified, and remains the only policy guidance on abortion coverage under the Medicare program.

Although we believe that most Medicare carrier medical directors have largely complied with this directive, some may have covered other kinds of abortions -- e.g., abortions arising from rape or incest, abortions involving deformed fetuses, or other medically necessary abortions. In particular, carriers may have decided to cover some very difficult cases involving the one-third of women on Medicare disability who have some serious mental impairment (about 700,000 women). Such individual coverage decisions may help explain why no one on the pro-choice side of the abortion debate has ever complained about our coverage policy.

Legislative and Political Environment. The Nickles' letter has started yet another controversial abortion debate. The CHA is working with Senator Nickles and others on drafting legislation to make clear that Hyde applies to Medicare, as well as to exempt organizations with ethical or religious objections from any abortion coverage requirements. (CHA and Nickles have gotten the impression from HHS that Hyde does not apply to Medicare and that the religious convictions of Catholic PSOs cannot be fully accommodated.) Absent administrative action, there is no doubt that we will see this issue raised on some appropriations bill. At the same time, the womens' groups have become aware of this issue and are urging the Administration to adopt a generous Medicare abortion coverage policy.

In the next few months, the Administration will have to deal with several other controversial abortion issues. Most notably, the Republicans will bring up the partial-birth abortion legislation sometime prior to the November elections. In addition, Republicans in both the House and Senate will attempt to pass a bill, which most in the Administration strongly oppose, to prohibit transferring a minor across state lines to bypass parental consent requirements. Finally, we can expect the usual abortion riders to appear on appropriations bills.

Options

All of your advisors (HHS, OMB, and DPC) agree that we should offer the CHA a new administrative option that allows Catholic health plans to participate in Medicare without covering any abortions, so long as they accept a slightly reduced capitated payment. We do not know whether CHA will accept this offer, but we think it may do so, particularly if the offer is combined with CHA's preferred outcome on the Hyde issue.

The outstanding question is whether Hyde applies to Medicare. We all agree that we should inform Nickles that current Medicare policy, as set out in the 1991 directive, is to

cover only abortions necessary to protect the life of the mother. We also all agree that because this “life of the mother” standard is more restrictive than the current Hyde amendment, we should modify the directive to cover at least abortions arising from rape and incest. We have not reached consensus, however, on whether we also should cover any other abortions (i.e., abortions that Hyde generally prevents the federal government from funding). We see two viable options:

Option 1: Rule that the current Hyde Amendment (allowing funding where the life of the woman is in danger or in cases of rape and incest) applies to Medicare. Under this option, we would take the position that since some Hyde-covered appropriated funds are deposited into the Medicare Trust Fund, all Medicare expenditures must abide by the Hyde restrictions. We then would update our Medicare coverage policy to reflect the current, comparatively expansive Hyde Amendment. DPC and OMB support this option.

Pros:

- This option is most likely to avoid a legislative showdown on abortion funding that we are unlikely to win.
- This option is consistent with our current position on Medicaid funding, and will cover more abortions than the current policy allows.
- This option will enhance our ability to reach an agreement with the CHA on the PSO abortion coverage issue.

Cons:

- This option may expose us to criticism about non-coverage of extremely sympathetic cases involving vulnerable and disabled women.
- This option will anger womens’ groups, which would prefer us to provide Medicare coverage of the widest possible range of abortions, even if doing so would provoke the Republicans to enact contrary legislation.

Option 2: Rule that Medicare can cover abortions necessary to protect the health of the woman (in addition to abortions allowed by Hyde). Under this option, we would segregate appropriated funds from non-appropriated funds (payroll taxes, premiums, etc.) in the Medicare Trust Fund and use the non-appropriated (and hence unrestricted) funds to pay for the health-related abortions. HHS supports this option.

Pros:

- This option will ensure that all abortions necessary to protect a woman’s health are

covered, and will allow us to avoid criticism arising from non-coverage of highly sympathetic cases involving vulnerable and disabled women.

- This option will assuage the womens' groups by providing for Medicare coverage of a larger class of abortions.

Cons:

- This option will virtually guarantee a legislative battle with Nickles and his allies on the appropriateness of using public funds to pay for abortions. We should expect to lose this battle and to have to veto a bill over government funding of abortion.
- This option diverges from this Administration's past practice on government funding of abortions.
- This option might well undermine our ability to reach agreement with the CHA on the PSO abortion coverage issue.

Recommendations

As noted, DPC (Bruce, Chris, and Elena) and OMB support Option 1, because (1) it is most consistent with this Administration's prior practice on government funding of abortions and (2) it stands the best chance of avoiding a high-profile legislative battle -- on both the Hyde and PSO issues -- that we are unlikely to win. HHS supports Option (2) because of the special vulnerability of the population seeking abortion services under the Medicare program. Counsel's Office takes no position as between the two options.

THE WHITE HOUSE

WASHINGTON

June 16, 1998

THE PRESIDENT HAS SEEN
6-16-98

MEMORANDUM FROM THE PRESIDENT

FROM: SEAN MALONEY *PM*

SUBJECT: Medicare Coverage of Abortions

*Copied
Reed
Ruff
COG*

The attached Reed/Ruff memo asks you to decide whether the Hyde Amendment's abortion-funding prohibitions should apply to Medicare.

Background. Medicare covers about 500 abortions/year; about the same as during the Reagan/Bush Administrations. (Some 2 million non-elderly women qualify for Medicare through SSDI.) In 1991, HCFA issued a reimbursement directive, tracking the Hyde Amendment, which stated that Medicare would cover abortions only where the mother's life was endangered. Congress later expanded the Hyde exception to encompass rape/incest, but the HCFA directive did not change, leaving it more restrictive than Hyde. Some Medicare carrier medical directors, however, may be covering abortions in cases of rape, incest, deformed fetuses, or mentally impaired mothers. This may explain why pro-choice groups have never complained about the HCFA directive. Recently, the Catholic Health Association (CHA) complained to us and to Senator Nickles about a HCFA regional-office ruling that a Catholic-run Provider Sponsored Organization (PSO) could participate in Medicare only if it agreed to cover qualified abortions for disabled women. Senator Nickles then wrote Secretary Shalala asking whether the Hyde Amendment applies to Medicare, and whether religion-based health plans that do not offer abortion services can qualify as PSOs under Medicare.

Options/Views. All of your advisers agree (i) that we should offer the CHA a new administrative option that lets Catholic plans participate in Medicare without covering abortions; and (ii) that we should broaden the 1991 HCFA directive to track Hyde and permit funding in cases of rape/incest. *HHS* disagrees with the rest of your advisers, however, over whether Medicare might also cover other types of abortions. Two options are presented:

Option 1: Rule that Hyde applies to Medicare -- say all Medicare expenditures must abide by the Hyde restrictions because some Hyde-covered appropriated funds are deposited into the Medicare Trust Fund; would avoid a showdown with Congress; covers more abortions than the current HCFA directive; helps a possible agreement with Catholic plans. *DPC, OMB, Podesta, Sylvia, Maria, and Audrey Haynes support Option 1; Sylvia expresses some concern about angering women's groups when Nickles may do little more than reaffirm Hyde's applicability.*

Option 2: Rule that Medicare can cover abortions necessary to protect a woman's health -- could segregate appropriated funds (covered by Hyde) from non-appropriated funds (e.g., payroll taxes, premiums) in the Medicare Trust Fund; could use non-appropriated funds to cover health-related abortions; would permit abortion coverage for vulnerable and disabled women; would please women's groups; *HHS supports this option.*

Approve Option 1 ☒Approve Option 2 ☐Discuss ☐

THE PRESIDENT HAS SEEN
6-16-98

THE WHITE HOUSE

WASHINGTON

June 16, 1998

✓
MR. PRESIDENT:

The attached Sperling/Reed memo asks you to endorse, with some changes, the Coats-Harkin Individual Development Accounts (IDAs) legislation, which would establish a 4-year, \$100M demonstration program under which State, local and nonprofit entities would operate IDA programs.

Under the demonstration, low-income households would qualify to open IDAs with a match from the administering agency of at least 1:1 and no more than 8:1. Individuals could make withdrawals from their accounts for (i) a first-home purchase; (ii) post-secondary education expenses; or (iii) starting a new business. The bill gives a preference to administering entities that attract substantial private or non-Federal matching funds. The bill enjoys bi-partisan support.

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Emanuel
Sperling
Reed
COS

Gene/Bruce present three Options, but no one supports Option 2, which would have you put forward an IDA proposal with a higher price tag, or Option 3, which would have you propose a narrower IDA demonstration limited to home buying. All of your advisers (*NEC, DPC, OMB, Podesta, Stein, VP, Treasury, HUD, CEA, SBA, HHS*) support Option 1, which is to endorse Coats-Harkin with some modifications. There is some risk the GOP will attempt to expand the IDAs to include K-12 private school (a type of Coverdell Amendment), but Harkin has vowed to oppose any such efforts. Your advisers are seeking a similar pledge from Coats.

Option 1 (recommended) ✓ Option 2 ___ Option 3 ___ Discuss ___

Sean Maloney



THE WHITE HOUSE

WASHINGTON

May 11, 1998

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed
Charles Ruff

SUBJECT: Assisted Suicide Legislation

The Justice Department has determined that the Drug Enforcement Administration (DEA) has no authority under the Controlled Substances Act (CSA) to take adverse action against physicians who assist patients in ending their lives by prescribing controlled substances pursuant to Oregon's "Death with Dignity Act." The Department conducted its legal analysis in response to letters sent by Senator Hatch and Congressman Hyde urging the Department, through DEA, to invoke the CSA against physicians who assist in patient suicide under the Oregon law.

The Justice Department has completed draft letters to Congressman Hyde and Senator Hatch explaining its legal conclusions. The letters will not be forwarded to Congress until we have developed a roll-out strategy, including a position on federal legislation prohibiting physician-assisted suicide.

As you will recall, the Catholic Health Association (CHA) has informed us that Hatch and Hyde are prepared to introduce legislation amending the CSA in the event the Attorney General concludes that the CSA does not authorize the DEA to pursue physicians who assist patients in committing suicide. They may even introduce this legislation before receiving the Department of Justice's opinion letter. In assessing the possible options for responding to Hatch's and Hyde's likely initiative, we held meetings within the White House and with the Departments of Justice and Health and Human Services (including the FDA).

Justice believes that the Administration should not support the Hatch/Hyde proposal. Justice thinks that DEA's approach to enforcing the narcotics laws is inconsistent with the kind of sensitivity that would be needed in pursuing doctors who are assisting terminally ill patients to commit suicide. Justice is also concerned with the resource drain on the DEA if that agency were tasked with enforcement duty. Justice also worries that this new task would damage DEA's relationship with the medical profession, on which it often relies in pursuing narcotics law violations.

The Justice Department also cites principles of federalism in support of its position against a legislative change. The federal government has deferred to the states as the primary regulators of the medical profession. Especially on such a hotly contested issue as assisted suicide, Justice believes there is good reason to continue this tradition of deference to local

decisionmaking.

HHS/FDA concurs with Justice's position, stressing especially the historic deference given to states in regulating the medical profession. HHS/FDA also worries that a new federal law authorizing the federal government to take adverse action against doctors who assist their patients to commit suicide would exacerbate the problem of physicians' underprescribing pain medications for terminally ill patients.

Your longstanding opposition to the practice of assisted suicide is not necessarily inconsistent with the agencies' positions. You could argue that assisted suicide is wrong, but that it is not a matter that should be handled by federal narcotics agents. Or more broadly, you could argue that it is not a matter to be dealt with by the federal government at all, but instead should be left to state and local decisionmaking. Nor is last year's "Assisted Suicide Funding Restriction Act" inconsistent with a refusal to support a legislative change. The Funding Restriction Act bans the use of federal funds to pay for or promote assisted suicide. Nothing in the Act authorizes the federal government to take adverse action against a private physician for assisting in a suicide in a non-federal facility.

We detail below four options for responding to the expected Hyde/Hatch initiative. These options are: (1) support the Hyde/Hatch legislation; (2) oppose the Hyde/Hatch DEA approach, but suggest openness to alternatives and work with Hatch and Hyde to develop a better bill; (3) engage in a "Kick the Can" strategy, suggesting openness to alternatives, but attempting to ensure that no congressional action is taken; and (4) oppose the Hyde/Hatch legislation outright.

1. **Endorse Hyde/Hatch Legislative Alternative.** After the Justice Department's legal interpretation is released, we could endorse the expected introduction of the Hatch/Hyde legislation authorizing the DEA to pursue criminal actions against physicians prescribing medications for assisted suicides.

Pros

- Appears consistent with your longstanding opposition to assisted suicide.
- Avoids inevitable conflict with the Congress, where the Hatch/Hyde legislation is likely to be popular.

Cons

- Conflicts with historic practice of allowing states to regulate the medical profession, and does so with regard to a hotly contested and emotional issue on which local decisionmaking may be particularly appropriate.

- Places authority to act against doctors in an agency ill-equipped to perform this function, in a way that could interfere with the agency's primary mission.
 - Ignores danger, noted by many physicians' groups and even the Catholic Health Association, that a federal law of this kind will lead doctors to under-medicate terminally ill patients for fear of federal prosecution.
2. **Oppose Hatch/Hyde legislation, but suggest openness to alternatives.** Under this option, you would welcome the intent of the Hatch/Hyde bill, based on your longstanding opposition to assisted suicide, but raise concerns about using federal drug agents and resources to address this issue. You would advise Republicans of ways to implement the intent of their legislation in a more workable fashion, perhaps suggesting alternative enforcement agencies (such as FDA) or alternative enforcement mechanisms (such as reducing Federal support for Medicaid for states permitting assisted suicide). You would try seriously to find common ground with the Republicans on a workable legislative alternative to DEA enforcement.

Pros

- Appears consistent with your longstanding opposition to assisted suicide and shows that you are seriously concerned about this issue.
- Takes an approach that recognizes the problems with using DEA resources and agents to address this issue.

Cons

- Assumes that we can develop a workable alternative approach, when we may not be able to do so. For example, direct regulation of doctors through HHS/FDA also raises serious issues, and enforcement mechanisms directed toward states, such as reduction of Medicaid dollars, would raise widespread protests of federal micro-management and intrusion.
 - Raises expectations that a legislative solution can be achieved, when it may be virtually impossible to reach consensus.
3. **"Kick the Can" Strategy.** Under this option, you would also express openness to addressing this issue through federal legislation, but rather than trying to reach agreement, you would attempt to forestall legislative action. You would try to delay long enough to allow the medical groups, states, and others to communicate that federal approaches in this area are ill-advised. These objections could make Congress conclude that it does not have time to draft thoughtful legislation this year.

Pros

- Allows you to reiterate your strong position against assisted suicide, while preventing problematic federal legislation.
- Provides sufficient time to air the many issues surrounding assisted suicide legislation, perhaps even educating physicians and the public about the problem of undermedicating terminally ill patients

Cons

- May make us look indecisive and weak.
- May be viewed with skepticism on the Hill and make us vulnerable to the charge that we are trying to have it both ways.

4. **Oppose Hatch/Hyde legislation outright.** Under this option, you would tell the Hill that, although you believe that assisted suicide is immoral, you cannot support legislation that intrudes on state responsibility over this issue and diverts limited law enforcement resources for this purpose.

Pros

- Takes a strong position consistent with agency views on the undesirability of federal legislation in this area: respects federalism principles; protects law enforcement priorities; and prevents further undermedication of patients due to physicians' fear of criminal prosecution.

Cons

- May appear inconsistent with your longstanding opposition to assisted suicide.
- Risks major confrontation with the Congress, which almost certainly will pass federal legislation over your objection.

The Departments of Justice and Health and Human Services support Option 4 and strongly oppose Option 1. Of the middle options, they would prefer Option 3 to Option 2. The Counsel's office agrees with the agencies: Chuck believes both that the DEA should not regulate medical practice and that federal legislation in this area conflicts with federalism principles. The DPC agrees that federal legislation in this area makes little sense, but believes that the "Kick the Can" strategy may be the best way to prevent it; the DPC therefore recommends Option 3.

THE WHITE HOUSE
WASHINGTON

April 19, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Needle Exchange

You should try to make a final decision on needle exchange today. If you decide to go forward with the "demonstration" option, Shalala would like to announce it tomorrow to ward off a press conference AIDS groups have called for tomorrow morning to demand her resignation. If you decide to certify the science but rule out federal funds, we should announce that soon to stop Republican attacks over the issue.

Under the demonstration proposal, HHS would certify that needle exchange programs reduce HIV transmission without increasing drug use, and allow federal prevention funds to be used for those programs in up to 8 communities hardest hit by drug-related HIV. Communities that ranked among the highest in the overall rate or number of drug-related HIV cases or drug-related HIV cases among women of childbearing age would be eligible, but only 8 would be permitted to use federal funds. Over the next year, CDC would evaluate these 8 communities to determine whether their programs were working and whether they were making an effective link to drug treatment before deciding whether to expand the number of eligible communities.

A program would also have to 1) be legal in that state and community; 2) make referrals to drug treatment; 3) comply with hazardous waste disposal standards; 4) replace syringes on a one-for-one basis; and 5) agree to research and evaluation. HHS estimates that only about 27 communities have the capacity to meet these requirements.

You still have the option to certify the science but rule out the use of federal funds on the grounds that this should be a local decision, not a national political debate. Contrary to her earlier statement to Erskine, Shalala opposes this option, as would the AIDS community. (We do not know how much the AIDS and scientific communities will criticize the demonstration option.)

Several Republican members of Congress and the RNC have already issued statements attacking the Administration over needle exchange. They will almost certainly attach a ban on federal funds to the supplemental bill, to tobacco legislation, and to the Labor/HHS appropriations bill in the fall. The AIDS community would want you to veto legislation over this issue, but we have always refused to do so in the past. 1

Whatever you decide, we will inform Shalala and McCaffrey, and roll out the decision to key members and groups.

THE WHITE HOUSE
WASHINGTON

March 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
GENE SPERLING

SUBJECT: Auto Choice

Overview:

This memorandum addresses the "Auto Choice" legislation introduced last April by a bipartisan coalition of Members of Congress. Over the last several months, an NEC-DPC inter-agency working group has spent considerable time analyzing the Auto Choice proposal and reviewing other auto-insurance reform options. It is the strong view of the working group that the benefits of the Auto Choice proposal do not justify the costs.

Although proponents of Auto Choice claim that it will reduce insurance premiums by approximately \$250 per year for the average driver, the working group found little evidence that this proposal or any other no-fault insurance plan will lead to lower rates. In the three states that currently mandate insurance companies to offer drivers choice between no-fault and pre-existing insurance plans (New Jersey, Kentucky, and Pennsylvania), there was no evidence that insurance rates fell when choice was implemented. In addition, our analysis suggests that under Auto Choice, bad drivers will benefit more than good drivers.

Background:

"No-fault" insurance plans allow policyholders to recover financial losses from their own insurance companies, regardless of fault, while restricting their right to sue.

Under current state no-fault laws, motorists may sue for damages beyond what their insurance company pays (i.e., economic damages above the policy limit and non-economic damages such as pain and suffering) only if the case meets certain conditions. These conditions, known as a "threshold," relate to the severity of injury. They may be expressed in verbal terms (a descriptive or verbal threshold) or in dollar amounts of medical bills (a monetary threshold). Some laws also include the days of disability incurred as a result of the accident. The academic evidence shows that verbal thresholds can lower insurance premiums, but that monetary thresholds can actually lead to higher premiums because people have an incentive to exaggerate their medical bills so that they can sue for additional damages.

Proposals:

The working group has considered two options. The first is the Auto Choice legislation introduced by Senators McConnell and Moynihan and Representative Armev. Under this proposal, drivers in states that accept the new federal legislation have a choice between the existing system in their state and a no-fault plan called 'personal protection insurance' (PPI). A driver who chooses the PPI option gets first-party coverage for economic damages (mostly medical and lost wages), without regard to fault. The driver can sue or be sued for economic damages above policy limits, but cannot sue or be sued for non-economic damages ('pain and suffering') except in cases involving drug or alcohol abuse. A driver who opts to stay in the state's current tort system must purchase tort maintenance coverage (TMC) to cover accidents with PPI drivers.

Because of some of the problems associated with the Auto Choice proposal, CEA developed an alternative proposal, which achieves the same ends -- lower premiums -- but at less cost. This proposal would require insurance companies to offer premiums on a per-mile basis for those drivers who opted for no-fault coverage. Per-mile premiums would be charged based on an estimate of miles, with a rebate or surcharge issued every year after an odometer reading. Odometers could be read at regular inspections or by firms under contract with insurance companies. Insurance companies would compete in their per-mile premium, subject to current regulations; premiums would vary with region, driving record, type of car, and safety features, much as premiums vary now.

Analysis:

There are a number of problems with these proposals. Perhaps most important, neither of the proposals guarantees that insurance companies will pass on savings to consumers. There is little evidence that over the long-term consumers saved money in states that have implemented no-fault systems compared to the period when no-fault was not mandated. In addition, it is not clear why the Federal government should enter into a field that traditionally has been the responsibility of state governments and in which state innovation is thriving. Such involvement might also appear to conflict with our long-standing skepticism of other federal tort reform efforts.

The McConnell-Armev Auto Choice legislation has additional adverse consequences. The PPI plan initially will attract more bad drivers than good ones, because they will no longer have to be covered for non-economic damages. As bad drivers enter the PPI system, the premiums of safe drivers maintaining their current coverage will increase because of the need to cover losses incurred as a result of other drivers' fault. Then, as the premiums of drivers in the non-PPI system rise, more and more people will switch to PPI, thus further raising premiums for those left in the system -- the very safest drivers. The end result is the progressive penalization of safe driving -- and perhaps, in the end, the virtual collapse of the non-PPI option.

In addition, CEA is concerned that even if Auto Choice legislation were to succeed in driving down rates, it would have an unintended consequence: by increasing the number of miles driven, the legislation would lead to more accidents, highway deaths, congestion, and environmental degradation. To address this problem, CEA developed the per-mile premium option. We believe, however, that we could not sustain support for their proposal. While the average premium for drivers would decrease under CEA's proposal, opponents would counter that we are "taxing" each mile that middle-income families drive. They would also argue that monitoring miles driven is an example of "big government" intrusion into people's lives. CEA agrees that the current political environment does not allow us to propose per-mile premiums. They would like us, however, to work to facilitate the voluntary adoption of per-mile premiums by states, insurance companies, and individuals.

Although Auto Choice has wide bipartisan support -- from Senator McConnell to Senator Moynihan and from Grover Norquist to Mike Dukakis -- consumer groups, auto safety groups, environmentalists, and attorneys representing automobile accident victims will oppose this legislation.

Recommendation:

There is unanimous agreement among the NEC-DPC interagency working group -- including the Office of White House Counsel, the Office of the Vice President, CEA, OMB, Transportation, and Treasury -- that you should oppose the McConnell-Army Auto Choice bill.

Assuming you agree, the remaining issue is when to announce your position. If we announce our opposition now, we may encourage supporters to bring the legislation up so as to define their disagreement with us. By contrast, if we remain quiet, the legislation may die on its own. We therefore believe that it would be best to hold off any statement on the bill for now. If Auto Choice comes to the floor, you could oppose it in a speech or we could issue a Statement of Administration Policy.

Decision:

- _____ Oppose Auto Choice, But Do Not Announce Position Unless And Until Bill Comes To Floor (RECOMMENDED)
- _____ Oppose Auto Choice, But Announce Position Now
- _____ Discuss Further

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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002. memo	Bruce Reed et al to the President re: Reforms that Prepare Medicare for the Retirement of the Baby Boom Generation (9 pages)	12/13/1997	P5
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Clinton Presidential Records
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THE PRESIDENT HAS SEEN

12-30-97

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THE WHITE HOUSE
WASHINGTON

December 15, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Gene Sperling
Elena Kagan

Copied
Reed
Sperling
Kagan
Waldman
Bowles

SUBJECT: New Initiatives on Discretionary Side of Budget

As you know, OMB is trying to find an additional \$6 billion for discretionary spending. Assuming this money becomes available, the DPC and NEC recommend that you fund the new initiatives listed below -- in the amounts listed below -- in your FY 1999 budget. OMB has signed off on these recommendations. Some of the departments, however, may appeal for increases in base programs that would cut into the amount of money available for new initiatives.

We already have given you detailed memos on most of these initiatives. If you approve the initiatives, you can announce any or all of them in the State of the Union.

Because so many of the new initiatives involve education, we are attaching an appendix to this memo that shows recommended funding levels for the Department of Education's major base programs. In reviewing the education spending, you should note that the Department has just reestimated Pell Grant costs in a way that will free up additional monies. We had thought we would need a \$434 million increase in the Pell Grant Program to raise the maximum award from \$3,000 to \$3,100. The new estimates show we can finance these policies with between \$150 million and \$220 million less. We are currently considering whether to keep these funds in the Pell Grant Program to support a larger increase in the maximum award and make other policy changes, or alternatively to invest them in the After-School and Head Start components of the child care initiative.

Education

1. Education Opportunity Zones (\$225 million): This initiative will provide funding to about 25 high-poverty urban and rural school districts for agreeing to adopt a "Chicago-type" school reform agenda that includes ending social promotions, removing bad teachers, reconstituting failing schools, and adopting district-wide choice.

2. College-School Partnerships (\$150 million): This initiative, which builds on Eugene Lang's model of helping disadvantaged youth, will provide funding for college-school partnerships designed to provide mentoring, tutoring, and other support services to students in high-poverty schools, starting in the sixth grade and continuing through high school. The six-year funding

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path will provide help to nearly 2 million students. The proposal also will include Chaka Fattah's idea of early notification to disadvantaged 6th graders telling them of their Pell Grant and loan eligibility.

3. Campaign on Access to Higher Education (\$20 million): This initiative will fund an intensive publicity campaign on the affordability of higher education. The goal of the campaign will be to make every family aware that higher education is now universally accessible -- and that it is the key to higher earnings.

4. Teacher Recruitment and Preparation (\$67 million): This initiative, which you previewed last July at the NAACP Conference, will provide scholarships to nearly 35,000 new teachers over five years for committing to work in high-poverty urban and rural schools. It also will upgrade the quality of teacher preparation programs serving these communities.

5. Technology Teacher Training (Approx. \$230 million): This initiative will dedicate 30 percent (about \$150 million) of the Technology Literacy Challenge Fund (which is being increased from \$425 to \$500 million) to ensure that at least one teacher in every school receives intensive training in the use of technology for education, so that those "master teachers" can train their colleagues. An additional \$80 million will begin an effort to train every *new* teacher in the latest technology.

6. Hispanic Education Action Plan -- (\$195 million or more): This initiative will increase funding for a number of existing programs to improve education for Hispanic Americans and other limited English proficient (LEP) children and adults. It would double our investment in training teachers to address the needs of LEP children; boost the Migrant Education Program by 16 percent; increase the TRIO college preparation program by 10 percent; and create a 5-year, **?** \$100 million effort to disseminate best practices in ESL training for adults. We would accompany these program increases with administrative actions to help Hispanic students complete high school and succeed in college.

7. Distance Learning -- (\$50 million?): We are still in the process of developing a new initiative, related to Governor Romer's Western Governors University, to promote the use of technology to give people "anytime, anywhere" access to learning opportunities.

Child Care

How many We recommend placing most of the child care initiative -- in particular, the proposed increase in the Child Care and Development Block Grant and the establishment of a new Early Learning Fund -- on the mandatory side of the budget. The smaller pieces of the initiative that we propose placing on the discretionary side are the following:

1. After-School Program Expansion (\$100-200 million): This program expansion will increase funding of the 21st Century Community Learning Center Program (now funded at \$40

million) for before- and after-school programs for school-age children at public schools.

Depending on the exact funding level chosen, this investment will create new programs in 1,500-4,000 schools with slots for between 75,000 and 200,000 children; at the same time, it will

enable still more students to participate in other school-site activities.

2. Standards Enforcement Fund (\$100 million): This new fund will support state efforts to improve licensing and accreditation of providers, and to enforce health and safety standards -- particularly through unannounced inspections of child care settings. The fund also will enable states to issue report cards, for use by consumers, on the quality of the facilities inspected.

3. Provider Training (\$51-60 million): A new Child Care Provider Scholarship Fund, which you proposed at the Child Care Conference to fund at \$50 million annually, will support 50,000 scholarships each year to child care workers working toward a child care credential. The students will commit to remaining in the field for one year for each year of assistance received, and will earn increased compensation or bonuses when they receive their credential. An additional \$1-10 million will allow the Department of Labor to expand its Child Care Apprenticeship Training Program, which funds providers combining work toward a degree with on-the-job practice.

4. Research and Evaluation Fund (\$10-30 million): This new fund will establish a National Center on Child Care Statistics, and provide grants for research projects and state and local child care hotlines and consumer education activities.

5. Head Start and Early Head Start Expansion (\$284-334 million): This level of increased investment in the overall Head Start budget should permit doubling the set-aside for Early Head Start over five years without reducing the resources available for children 3-5. The doubled set-aside would enable more than 50,000 additional children to receive Early Head Start services in 2003.

Welfare, Housing, Urban

1. Welfare-to-Work Housing Vouchers (\$283 million): This initiative will provide 50,000 new housing vouchers to help welfare recipients in public housing who need to move in order to find employment. HUD will distribute these vouchers on a competitive basis to public housing authorities working with local TANF agencies and/or grantees of the new \$3 billion welfare-to-work program. (A separate proposal, for which no new funding is needed, would allow families in public or assisted housing to use vouchers to buy a home; HUD expects this proposal to assist some 25,000 people become homeowners over two years, though OMB believes this figure to be exaggerated.)

2. Housing Portability/Choice (\$20 million): In addition to the new welfare-to-work housing vouchers discussed above, our proposed package on housing portability and choice expands Regional Opportunity Counseling sites and takes administrative actions to eliminate obstacles to

portability in the Section 8 housing program.

3. "Play-by-the-Rules" Homeownership Proposal (\$30 million): This initiative will assist families that always pay their rent on time to become homeowners. The Neighborhood Reinvestment Corporation will provide downpayment assistance, interest rate buydowns, or rehabilitation loans to approximately 10,000 families.

4. Homeownership Opportunity Fund (\$11 million): This initiative will provide funds for HUD to develop a loan guarantee program to allow state and local governments to leverage current HOME funds with private-sector investments to fund large-scale, affordable housing developments in distressed communities.

5. Community Empowerment Fund (\$300-400 million): This initiative establishes a public/private fund ("Eddie Mac"), which will invest in inner-city businesses and create a secondary market for economic development loans (like Fannie Mae).

6. Homeless Assistance (\$250-325 million): This level of increased investment includes \$177 million to help 32,000 homeless people receive Section 8 vouchers.

Labor and Workforce

1. Child Labor (\$89 million): This initiative is anchored by a \$30 million commitment -- up from \$3 million -- to the International Program on the Elimination of Child Labor (IPEC). The initiative also will include funding to improve Customs Service enforcement of U.S. law banning the import of goods made with forced or bonded child labor (\$3 million) and to double the Department of Labor's enforcement of child labor laws in the agricultural sector (\$4 million). Finally, the initiative will provide additional funding to the Migrant Education Program so it can reach 50,000 more migrant children (\$50 million). We are developing non-budget items to fill out the package.

2. Community Adjustment (\$50 million): This initiative will fund the creation of the Office of Community and Economic Adjustment (OCEA), which we proposed as part of the Fast Track debate. As you know, this office will be modeled after the Defense Department's Office of Economic Adjustment -- the Administration's first point of contact with communities experiencing a military base closure or defense plant closing. We expect the Office to help 35-40 communities in its first year of operation. The initiative also will fund a variety of other efforts to assist communities that face sudden and severe economic dislocation.

3. Out of School Youth Opportunity Program (\$250 million): Congress advance appropriated \$250 million for this program last year contingent on the passage of authorization legislation. The program will fund competitive grants for efforts to increase employment among out-of-school youth between the ages of 16 and 24.

Health

1. 21st Century Trust Fund (Approx. \$1 billion): This initiative will provide substantial additional funding to NIH (\$750 million) and NSF (\$250 million), ramping up substantially over time, for research activities -- particularly on the treatment and cure of diseases. We will provide you with a separate memo on this initiative in the next day or two. Funding for this initiative will come from comprehensive tobacco legislation.

2. AIDS Programs Expansion (\$165 million): A funding increase for the Ryan White Program of almost 15 percent will go principally toward ADAP, to ensure that new and effective treatments of AIDS reach those who need them. Some of the funds will support education and prevention programs operated by states, cities, and community health centers, as well as by the CDC.

3. Racial Disparities in Health Care (\$80 million): This initiative will address racial disparities in six areas of health care: infant mortality, breast and cervical cancer, heart disease and stroke, diabetes, AIDS, and immunization. The proposal includes additional funding (\$50 million) to established public health programs to adapt and apply their prevention and education strategies to eliminate racial disparities. It also includes funding (\$30 million) for up to thirty local pilot projects to test innovative approaches to reach this goal.

Environment

(Katie McGinty proposed and has further information about these initiatives)

1. Climate Change (\$400 million): To support our broader climate change initiative (including tax incentives), this funding will go to a number of departments in accord with PCAST's recommendations.

2. Second Generation Clean Water (\$450 million, including some on mandatory side): This initiative will assist in restoring 1000 watersheds that are too polluted for fishing or swimming. Funding will go to five agencies to support a variety of activities designed to address polluted runoff and implement comprehensive watershed management strategies.

Crime

1. Community Prosecutors (\$50 million): This initiative will provide grants to prosecutors for innovative, community-based prosecution efforts, such as Eric Holder adopted in the District of Columbia. A full 80 percent of the grants will go to pay the salaries and training costs associated with hiring or reassigning prosecutors to work directly with community residents.

Race

A number of the above proposals -- e.g., education opportunity zones, university-school

partnerships, housing vouchers -- can be presented as part of the race initiative, because they target predominantly minority areas or provide disproportionate benefits to members of minority groups. Other proposals described above -- the Hispanic dropout plan and the race and health initiative -- have obvious and explicit race connections. In addition:

1. Civil Rights Enforcement (\$72 million): This initiative will fund reforms to the EEOC and the civil rights offices at DOJ, HUD, HHS, Education, and DOL. Most important, additional funding of \$37 million will allow the EEOC to expand its mediation program (allowing more than 70 percent of all complainants to choose mediation by the year 2000), increase the average speed of resolving complaints (from over nine months to six) and reduce the EEOC's current backlog (from 64,000 cases to 28,000). The initiative also will fund a dramatic expansion of HUD's civil rights enforcement office (in the 30th anniversary year of the Fair Housing Act) and improve coordination among the government's civil rights offices. We are preparing a number of non-budgetary administrative actions, especially involving fair housing and lending, to accompany our budget proposals in this area.

Appendix -- Education Budget

The recommended funding level for all of the Department of Education's discretionary programs (including new initiatives) is \$30.9 billion, an increase of \$1.4 billion (4 percent above FY 1998). In addition to providing for the new initiatives described above, this recommended budget maintains or increases funding for the Department's major base programs, while reducing certain lower priority spending.

Major Base Programs

Education testing: \$16 million. The full amount needed to maintain progress on test development.

Pell Grants: \$7,779 million. A \$289 million increase would maintain higher independent student eligibility and raise the maximum award from \$3,000 to \$3,100. The additional \$150 million previously thought necessary to effect these policies would increase the maximum award by another \$50; alternatively, as noted earlier, we could use these funds to increase our investments in the After-School and Head Start components of the child care initiative.

America Reads, \$260 million. We did not get our America Reads bill in FY 1998. We did obtain increases for tutoring in the Corporation for National and Community Service. Congress did, however, "advance appropriate" \$210 million for FY 1999 for Education, contingent upon enactment of new law. The increase to \$260 million reflects our original first year plan.

Title I, Education for the Disadvantaged, Grants to LEAs: \$ 7,725 million. A \$350 million (4.5 percent) increase over FY 1998 to serve an additional 400,000 children in poor communities. Secretary Riley requested a \$492 million increase.

Goals 2000: \$510 million. A \$10 million increase over FY 1998, to maintain momentum in the States for school reform.

Comprehensive School Reform: \$175 million. A \$30 million increase over FY 1998 for demonstrations of school reform models.

Adult Education: \$394 million. A \$33 million (9 percent) increase over FY 1998 for basic education and English language training for the disadvantaged, immigrants, and welfare recipients. This increase is part of Hispanic Education Action Plan discussed above.

Special Education: \$4,811 million. Same as the FY 1998 level, which was increased by \$775 million over FY 1997. States can spend the increase over 2 years. Secretary Riley has expressed concern about the lack of an FY 1999 increase. We are convinced that no increase will satisfy the advocates, and would prefer to negotiate this level in Congress, rather than use up scarce funds in your budget now.

College Work-Study, \$915 million. An \$85 million increase over FY 1998, make progress toward your goal of 1 million Work-Study positions by FY 2000. Given the reduction in Perkins loans (noted below), this increase keeps the campus-based aid programs at level funding from FY 1998.

Reductions in the Base

A number of programs have been reduced to make room for initiatives and major base programs, including: Impact Aid (-\$92 million), the Education Block Grant (-\$350 million), and Perkins Loans (-\$85 million). Each of these has a vocal constituency. We believe we can make the case that our funding of initiatives and base programs are all higher priority than these programs.

HEALTH INVESTMENT OPTIONS IN THE BUDGET

MEDICARE

USES

Pre-65 Initiative Options: \$1 - 2 billion

Clinical Cancer Trial Care: \$1.7 billion

Medicare Improvements: \$0.2 - 3 billion
[e.g., Mammography coinsurance,
annual physical]

Private Long-Term Care Options: \$0.1 - 4 billion

SOURCES

Anti-Fraud: \$1.5 - 2 billion

Income-Related Premium: \$6 - 19 billion

COVERAGE

USES

State Incentives to Enroll
Medicaid-Eligible Children: \$2 billion

Workers' Transitions Options: \$2 - 5 billion

Voluntary Purchasing Coops: \$0.1 billion

SOURCES

[Cost Allocation, Reserve or Tobacco?]

NOTE: All scoring is preliminary and subject to change.

THE PRESIDENT HAS SEEN
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MANDATORY EXPENDITURES

(Five-Year Costs)

CHILD CARE **\$6.0-\$12.0 Billion**

- Child Care Block Grant = 66%-75%
- Early Learning Fund = 25%-33%

CLASS SIZE **\$6.0-\$9.0 Billion****FOOD STAMPS** **\$2.0-\$3.5 Billion****HEALTH CARE**

- Medicare Pre-65 Initiative **\$2.0 Billion**
- Medicare -- Clinical **\$2.0 Billion**
- Long-Term Demonstration **\$0.5 Billion**
- Children's Outreach **\$1.0-\$2.0 Billion**

COLLEGE AID **\$1.3-\$1.7 Billion****SCHOOL CONSTRUCTION** **\$5.0 Billion****EMPOWERMENT ZONES (Rural or Urban)** **\$0.562 Billion****FAST TRACK/TAA** **\$0.697 Billion****AG-ENVIRONMENTAL (Crop Insurance,
Environmental Conservation, Forest Service)** **\$0.720 Billion****MISCELLANEOUS** **\$0.462 Billion**

- Veterans
- Transportation
- District of Columbia
- Social Security Administration

TOTAL: \$28.6-\$40.5 Billion**TOTAL (w/ School Construction As Tax Cut): \$23.6-\$35.5 Billion**

12-30-97

SOURCES OF FUNDING FOR NEW INITIATIVES
(preliminary estimates, dollars in billions)

	<u>FY 1999</u>	<u>5 years</u>
Mandatories:		
Veterans tobacco (INCREASE to the deficit).....	0	6.4
Cost allocation.....	0.5	2.9
Education reform.....	0.9	3.6
State bank fees.....	0.1	0.5
Child support enforcement.....	0.06	0.3
Agriculture.....	0.3	1.6
Subtotal.....	1.9	15.3
Limited Use Mandatories:		
Directed State use of tobacco settlement.....	2.3	14.9
TOTAL, MANDATORIES.....	4.2	30.2
Medicare:		
Medicare error reduction/modest policy changes.....	0.2	2
Medicare income-related premiums.....	2	12
Subtotal.....	2.2	14.0
Revenues:		
Options from the FY 1998 budget.....	2.8	19.9

THE WHITE HOUSE
WASHINGTON

December 13, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
GENE SPERLING
CHRIS JENNINGS

SUBJECT: Health Insurance Coverage Initiatives

Throughout your Administration, you have worked to enact legislation to expand access to affordable health insurance. The Balanced Budget Act included an unprecedented \$24 billion investment for state-based children's health insurance programs. This historic initiative will clearly reduce the number of uninsured. However, there are other deserving populations whom we could target in our step-by-step reforms. These include the pre-65 year olds (referenced in the Medicare memo), workers between jobs, and workers in small businesses. In addition, we are working on possible proposals to expand Medicaid coverage to people with AIDS and disabilities through pilot programs. The policy development of these proposals is still underway, so we have not included them here.

Taken together, these initiatives total around \$10 billion over 5 years. This amount is less than half of the health investments enacted as part of the Balanced Budget Act and less than 4 percent of the premium assistance proposed in the Health Security Act. Having said this, none of your advisors believe the Medicare and Medicaid savings left after last year's deficit reduction effort are sufficient to fund these initiatives. There may be \$0.5 to 1 billion over 5 years in Medicaid savings, but those savings will be difficult to achieve and there may be other claims on them (e.g., child care, benefits to immigrants). Another possible source of funds is the tobacco settlement, given the natural link between tobacco and health care.

Yes
Your advisors uniformly agree that we need to take all actions possible to achieve if not exceed your goal of increasing insurance coverage for 5 million children. A series of proposals are described in this memo to help accomplish that goal. There is less agreement on whether we should address a new group of uninsured people in this budget. The Department of Labor strongly supports the workers-between-jobs demonstration; of all health initiatives in the budget, it is their highest priority. OMB also supports that demonstration if sufficient funds are available. HHS believes that this proposal has merit, but is skeptical that it will attract any more support than it has in the past three years.

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A. CHILDREN'S HEALTH OUTREACH

The Children's Health Insurance Program (CHIP) provides funds for coverage of millions of working families' uninsured children, a population that previously had trouble affording coverage. It also builds upon the Medicaid program, which covers nearly 20 million children. But important work remains to be done. In particular, we need to work with states to enroll the millions of uninsured children in these programs.

Medicaid eligible children are especially at risk of remaining uninsured. Over three million uninsured children are eligible for Medicaid. Educating families about their options and enrolling them in Medicaid has always been a problem, but it has recently become even more challenging. The number of children covered by Medicaid leveled off in 1995 and, according to the Census, dropped by 6 percent in 1996. While some of this decline may be due to the lower number of children in poverty, another part may result from families' misunderstanding of their children's continued eligibility for Medicaid in the wake of welfare reform.

Options to Increase Outreach for Medicaid and the Children's Health Insurance Program

When will we pay for this? 12/24/97

To address the need for children's health outreach, we propose a series of policy options. Together, these initiatives could cost \$1 to 2 billion over five years (or more depending on policy choices about the enhanced match). Preliminary discussions with NGA and some children's advocates suggest they strongly support these efforts. In addition, the Administration is developing partnerships to encourage a complementary range of private outreach activities.

gone

Enhanced match for outreach. One option for improving state outreach is to provide an enhanced match to enroll children who are eligible for but not previously enrolled in Medicaid. At the end of each year, if a state can document that it has increased its enrollment over its baseline, it would receive an increased matching amount per newly covered child (possibly through administrative payments). This policy rewards states only if they succeed in outreach, rather than matching activities that may or may not work. Depending on the amount of the incentive and the administrative design, this option could cost to \$0.5 to 1 billion over five years.

gone

Moving outreach to schools and child care sites. We could build upon the "presumptive eligibility" provision in the Balanced Budget Act to make it easier to enroll children in Medicaid and CHIP. The BBA option allows limited sites (e.g., hospitals) to give low-income children temporary Medicaid coverage on the spot while they are formally enrolled in CHIP or Medicaid. This proposal would broaden these sites to include schools, appropriate child care sites, and Head Start sites, at the state's option. HCFA actuaries preliminarily estimate that this proposal would cost \$400 million over 5 years. Also, under the BBA, states that use presumptive eligibility must pay for its costs out of the CHIP allotment, reducing the amount available for other coverage. States have advised us that this requirement discourages them from taking advantage of the presumptive eligibility provision. HCFA actuaries preliminarily estimate that dropping this requirement would cost \$25 million over 5 years.

12-29-97

Accessing 90 percent matching funds for outreach. A third way to increase funding for children's health outreach is to increase states' flexibility in using a special Medicaid fund set aside in TANF for outreach for children losing welfare. This \$500 million fund is currently allocated to states with a 90 percent matching rate for outreach activities to certain children. We could expand its use to all children, not just welfare children. HCFA actuaries preliminarily estimate that this policy would cost \$100 million over 5 years. NGA supports this change.

Simplifying enrollment. A simple, accessible enrollment process could encourage more families to enroll their children in Medicaid or CHIP. To help create such a process, we propose several actions, all of which are inexpensive. First, we could streamline the application process by simplifying Medicaid eligibility and by encouraging the use of simple, mail-in applications. HCFA has already developed a model single application form for both Medicaid and CHIP. We could condition some of the financial incentives described above on using a single or simple application. Second, we are reviewing the feasibility and cost of a nationwide 1-800 number that will link families with their state or local offices. Such a number could be placed in public service announcements, on the bottom of school lunch program applications, and on children's goods like diaper packages.

Discussion

There is unanimous support across agencies for focusing on children's health outreach. HHS, Treasury and CEA believe that such outreach should be the Administration's first priority. NEC/DPC and OMB believe that aggressive outreach will be needed to meet or exceed the Administration's goal of covering 5 million uninsured children. Although OMB is supportive, it points out that because some children may be impossible to reach and some states may not use these options, we are unlikely to enroll all 3 million children. NEC, also supportive, raises the concern that spending on an outreach initiative may be a communications challenge so soon after the enactment of the \$24 billion base children's health program. However, policy experts, Governors, and children's advocates alike will endorse this initiative.

One great challenge is the difficulty of finding savings from Medicaid to offset the costs of this initiative. With this in mind, your advisors are considering the tobacco settlement as a financing source. Specifically, we are exploring the advisability of allowing states to retain the Federal share of the tobacco funds if they dedicate those funds to high-priority Administration initiatives like child care, education, and health care. Governor Chiles would support such an approach if we dedicate the funds to children's health care, not just outreach.

12-29-97

B. WORKERS BETWEEN JOBS INITIATIVE

Families who lose health insurance while they are between jobs are a small but important group of uninsured Americans. These people pay for health insurance for most of their lives, but go through brief periods without coverage when they are temporarily unemployed. If they experience a catastrophic illness during this transition, the benefit of their years' worth of premium payments is lost. In addition, they could lose protection under the provisions of the Kassebaum-Kennedy legislation once they regain coverage.

Policy Options

There are two options. The first is that we include the same proposal that we have carried in our last two budgets. All states would receive grants to provide temporary premium assistance to eligible low-income families. States would use this money to partially subsidize families' premium payments for up to 6 months. This program costs \$10 billion over four years, or about \$2.5 billion per year. The same program could be scaled back by sunseting it in two or three years or possibly reducing the subsidy amount. It would still probably cost at least \$1 billion per year to have a nationwide program with enough funding per states to address this problem.

A second option is to propose the same policy but in a limited number of states. To test how best to address this population's needs, we would select states using a range of approaches like a COBRA-based subsidy, Medicaid, or covering the parents of children covered by CHIP. Since it is a grant program, we could make this program as large or small as we want. To give a sense of the options, last year's \$10 billion proposal over four years covered about 3.3 million people with incomes below 240 percent of poverty. If we assume the same set of policy parameters, a demonstration of \$1 billion over 5 years would cover about 230,000 people; a demonstration of \$2.5 billion would cover about 600,000; and a demonstration of about \$3.5 billion would cover about 800,000 people. OMB has suggested that we could limit the costs by only offering assistance to people below poverty. However, NEC/DPC are concerned about that this shifts the target away from the middle-class families we originally intended to help.

Discussion

On policy grounds, all of the agencies support this policy. It has been in our last two budgets because of its merits. Health coverage for workers changing jobs could also be important to a worker security theme in the State of the Union. This policy remains Labor's first priority because it targets a particularly vulnerable group and addresses the worker insecurity issues that played such a large role in the debate over Fast Track. OMB and CEA would support this initiative if there are sufficient funds. HHS believes that this policy is no more viable this year than it has been in the past; HHS would also object to using Medicare and Medicaid savings to fund this proposal. DPC/NEC are concerned about dropping this policy altogether and support a demonstration that is large enough to be viewed as improving coverage. If resources are limited, however, we would prefer the children's outreach initiative to this proposal.

C. VOLUNTARY PURCHASING COOPERATIVES

12-29-97

Workers in small firms are most likely to be uninsured. Over a quarter of workers in firms with fewer than 10 employees lack health insurance — almost twice the nationwide average. While 88 percent of workers in firms with 250 or more workers are offered health insurance, only 41 percent of workers in firms with less than 10 workers are offered coverage. This disparity reflects the poor functioning of the small group health insurance market. Studies have shown that administrative costs are higher and that small businesses pay more for the same benefits as larger firms.

Grants to States

Given the disadvantages faced by small firms, the question is: are there policies that can make insurance more affordable for small businesses and their employees? In the last two budgets, we have included a policy to provide seed money for states to establish voluntary purchasing cooperatives. These cooperatives would allow small employers to pool their purchasing power to try to negotiate better rates for their employees. This year, we propose both the original policy and a variation: a competitive grant approach so that a more limited number of states could receive a smaller, but more targeted, pool of funds. The total costs would be \$50 to \$100 million over 5 years.

Discussion

All agencies remain supportive of this policy and believe it should be included in this year's budget. In the past, we have failed to enact this proposal because Congressman Fawell has pushed an alternative approach more attractive to small businesses. Fawell's proposal would help small businesses to self-insure and in so doing escape all state regulation. Governors and consumer groups have consistently opposed the Fawell approach, fearing that it would leave the small group market with only the most risky and expensive groups, as low-risk groups move into the self-insured, non-regulated market. Our recent conversations with Fawell suggest that he may be open to compromise this year in a way that he has not been in the past.

Good - 110 like
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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003. memo	Bruce Reed et al to the President re: Reforms that Prepare Medicare for the Retirement of the Baby Boom Generation (9 pages)	12/13/1997	P5
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Cathy Mays
OA/Box Number: 18517

FOLDER TITLE:

Correspondence and Memos for the President [Binder] [6]

2011-0005-S
rc641

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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THE WHITE HOUSE
WASHINGTON

December 8, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
CHRIS JENNINGS

SUBJECT: New AIDS Initiative

We have developed a \$115 million initiative for your FY 1999 budget to improve AIDS treatment and prevention programs. This increase would go to expand programs that are critical to preventing and treating this epidemic, including the AIDS Assistance Drugs Program (ADAP), which extends life-saving new treatment therapies to low-income and underserved populations.

Background on AIDS Funding

Since you came into office, AIDS programs that focus on treatment and prevention have improved dramatically. Medicaid, which provides coverage for half of all people with AIDS, now covers protease inhibitors. Funding for the Ryan White Program has increased by 200 percent since FY1993, funding for research at NIH has increased by 50 percent since that year, and funding for the ADAP program has increased 450 percent since 1996.

The AIDS community, however, has expressed disappointment with the Administration's recent efforts in this area. AIDS groups criticized the Administration for failing to propose major increases in discretionary spending in FY1998, which allowed Congress to outspend us in this area. And in just the last few weeks, the AIDS community reacted negatively to HCFA's conclusion that budget neutrality requirements prohibit establishing a Medicaid demonstration to provide early treatment to relatively healthy HIV-infected individuals. There is no doubt that the AIDS community will be examining the Administration's FY 1999 budget submission very closely.

Proposal

The AIDS office is recommending, and we agree, that you propose an \$115 million increase in your FY 1999 budget for AIDS treatment and prevention. (OMB is currently recommending \$100 million). All of this spending would go to existing discretionary programs that emphasize prevention and treatment. We would recommend that the majority of this increase go to the ADAP program, because new and effective treatments of this disease are currently not reaching many who need them. We also would recommend modest increases to CDC prevention education programs, as well as a range of programs providing funds to states,

cities, and community health centers.

Although the \$115 million that we are suggesting falls far short of the \$400 million the AIDS advocates are pushing, it is a significant investment that will improve AIDS treatment and prevention and soften criticism from the community.

Finally, in the wake of HCFA's decision on the Medicaid demonstration program discussed above, Nancy-Ann Min DeParle is looking into the possibility of a legislative proposal (which of course need not be budget neutral) for a model pilot project to expand eligibility to Medicaid for people with HIV earlier in the progression of their disease. As of this writing, we have significant questions about whether such a proposal is feasible and whether it could be done in time for the budget process. At the request of the Vice President, however, we are reviewing all options in this area closely.

THE WHITE HOUSE

WASHINGTON

December 11, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: Child Care Initiative

As you recall, you announced at the White House Conference on Child Care that you would unveil a child care initiative in your State of the Union Address and FY 1999 budget proposal. The Conference made clear that child care is one of the most pressing issues facing America's working families today. It focused particular attention on the problems families face with the cost of child care, the quality of care (especially for infants and toddlers), and the availability of care (especially for school-age children). The recommendations presented in this memorandum address these concerns.

This memorandum outlines a recommended package of proposals and reflects a policy development process led by the Domestic Policy Council with significant input from the First Lady and her staff, NEC, OMB, OVP, CEA, IGA, and various federal agencies, including the Departments of HHS, Treasury, and Education. Many of your advisors see your child care proposal as the next significant initiative in your on-going commitment to working families. As you know, the First Lady has been particularly supportive of strong investment in this area.

The memorandum outlines both tax and general revenue expenditure options. On the tax side, we recommend an increase in the Child and Dependent Tax Credit, which assists low- and middle-income working families with child care costs. On the spending side, we recommend a package centered around: a significant investment in direct child care subsidies, which help low-income working families afford child care; a series of targeted investments to promote early learning opportunities and improve the safety and quality of child care; and an expansion of good after-school programs.

THE WHITE HOUSE

WASHINGTON

December 10, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: Child Care Initiative

As you recall, you announced at the White House Conference on Child Care that you would unveil a child care initiative in your State of the Union Address and FY 1999 budget proposal. The Conference made clear that child care is one of the most pressing issues facing America's working families today. It focused particular attention on the problems families face with the cost of child care, the quality of care (especially for infants and toddlers), and the availability of care (especially for school-age children). The recommendations presented in this memorandum address these concerns.

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004. paper	re: overview of proposals (13 pages)	n.d.	P5
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RR. Document will be reviewed upon request.

THE WHITE HOUSE
WASHINGTON

December 9, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
TOM FREEDMAN

SUBJECT: Civil Rights Enforcement Initiative

We have developed a civil rights enforcement initiative that places a new emphasis on prevention and non-litigation remedies for discrimination while also strengthening civil rights agencies' ability to bring enforcement actions for violations of anti-discrimination law. The plan promotes prevention by providing increased resources for compliance reviews and technical assistance, and offers an alternative to expensive litigation by funding a dramatic expansion of alternate dispute resolution (ADR) mechanisms. The plan also sets specific performance goals for the EEOC to speed its processing of complaints and reduce its backlog, and provides for greater coordination across federal civil rights agencies and offices. The package of improvements totals approximately \$100 million, including a 16.5% increase above the enacted FY 1998 budget for EEOC and a roughly 50% increase for the relevant HUD office.

I. Strategies that Promote Prevention and Avoid Litigation

A. Resolving Problems Without Lengthy Court Fights

The plan calls for the dramatic expansion of Alternative Dispute Resolution (ADR) programs across all relevant agencies. The largest initial investment is a \$40 million expansion over three years of the EEOC's mediation program. The EEOC currently sends only a small number of cases to mediation. The increased funding will allow upwards of 70% of all complainants to choose mediation, rather than the lengthy process of investigation and litigation. (The remainder will not have this option, either because their cases are seen as the most serious enforcement priorities or because their cases are wholly devoid of merit.) We expect about half of all complainants to choose the mediation option. In addition to the EEOC program, pilot mediation programs will be introduced at HHS and Labor.

B. Spotlighting the Problem and Encouraging Compliance

The initiative includes a fund to improve surveillance, technical outreach, and compliance efforts by civil rights offices. The focus on compliance is reflected in increased support for DOL's Office of Federal Contract Compliance, which ensures that businesses under contract to the federal government implement E.O. 11246 and comply with anti-discrimination law. This \$18 million reform will allow the office to increase tenfold the number of compliance reviews it

conducts through the introduction of a tiered review system. In addition, the initiative provides \$10 million to HUD to conduct a program using paired testers, which is designed to raise awareness of the extent of housing discrimination through the public release of audit results and some focused enforcement action. This initiative also will enable the EEOC to improve compliance through videos for employers and a public service campaign.

II. Making Enforcement Work

A. Resources to Eliminate Backlogs

One of the most common criticisms of federal civil rights enforcement relates to the length of time the EEOC takes to hear and decide cases. This plan uses improvements in technology, mediation, and the addition of over 100 investigators to lower the average time spent resolving private-sector complaints to under 6 months (from the current 9.4 months) and to reduce the inventory from 64,000 cases to 28,000 by the year 2000. The plan also includes two new initiatives at HHS to reduce backlogs by expanding the use of case management techniques and giving state and local civil rights agencies an additional role in enforcement activities.

B. Coordinating and Streamlining Federal Policies

Federal civil rights offices only rarely consult or coordinate with each other. This initiative will institute a standing inter-agency working group to address issues of common interest, including development of strategy, implementation of performance outcome measures, and sharing of training initiatives and data collection.

We also recommend that you begin the process of implementing EEOC's proposal to strengthen its authority to eradicate discrimination from federal agencies, provided White House and Department of Justice attorneys approve the measures. Currently, parties who complain of discriminatory treatment by an agency can request a hearing from an Administrative Judge (AJ) who is an impartial EEOC employee. Agencies, however, can then issue a final agency decision (FAD) rejecting the AJ's decision altogether. Statistics show that agencies modify decisions adverse to them nearly two-thirds of the time, while modifying decisions favorable to them only about 1% of the time. The EEOC proposal would eliminate the FAD process where there has been an AJ hearing, and permit both the complaining party and agencies to appeal the AJ's decision to the EEOC.

C. Modernizing Civil Rights Enforcement

Many civil rights agencies have not received sufficient increases in resources to make use of technology and improve their efficiency. For instance, unlike most of the federal government, EEOC offices lack the ability to communicate with each other using e-mail. The plan includes a \$15 million technology initiative for EEOC, HHS, Labor, and Education to provide for communication via electronic mail; eliminate redundant data entry procedures; permit the

sharing of information and enhanced research capabilities for investigators and attorneys; allow for the filing of forms and complaints over the Internet; and provide for the sharing of civil rights data bases.

III. Status of Proposals

DPC developed this plan after consultation with representatives of leading civil rights organizations, heads of federal civil rights offices, and other White House offices. OMB has recommended a package of \$57 million for this initiative, which will fund some of the measures described here. OMB is currently reviewing other agency proposals, including the \$40 million expansion of ADR at EEOC and the \$18 million proposal by DOL-OFCCP to expand its compliance program.

THE WHITE HOUSE
WASHINGTON

December 16, 1997

MEMORANDUM TO THE PRESIDENT

THROUGH: Sylvia Matthews

FROM: Bruce Reed
Diana Fortuna

SUBJECT: SSA Report on Implementation of Children's SSI Cutoffs

The Social Security Administration intends to release a report this Thursday on its implementation of the new definition of childhood disability for SSI. This report follows Commissioner Ken Apfel's promise, at his confirmation hearing in September, of a "top to bottom" review of SSA's process for redetermining the eligibility of children.

As you know, the welfare law tightened the definition of childhood disability for SSI, and required the Social Security Administration to redetermine the eligibility of approximately 288,000 children, out of about one million children now on the rolls. These reevaluations have led to almost 140,000 terminations to date. (At the time the welfare law was enacted, CBO estimated that 180,000 children would lose SSI; when SSA announced its interpretation of the law, it projected that 135,000 children would become ineligible.) Advocates charge that SSA has done a poor job on these reevaluations, causing eligible children to be dropped from the rolls.

The report concludes that SSA did a generally good job of redetermining eligibility for these children. The report, however, identifies three areas of concern and announces actions to address them.

First, SSA will review the cases of all children "coded" as mentally retarded who were cut from the rolls and have not appealed. This action addresses SSA's finding that some of these children may have been terminated incorrectly. Second, SSA will review a portion of every state's unappealed terminations, choosing the kinds of cases most needing review in each state and focusing heavily on states that SSA has found to have a relatively high error rate. This review will allow SSA to give special attention to states with the highest error rates, without singling them out as "bad actors." Third, SSA will offer all 70,000 families who did not appeal its termination decisions a new opportunity to do so. These actions, and the problems they address, are further described in an appendix attached to this memo.

In all, SSA will review the cases of 48,000 children dropped from the program. (Another 70,000 have appealed.) As a result of these actions, SSA now projects that approximately 100,000 children ultimately will lose SSI benefits.

With the report, SSA also plans to release case studies of a random sample of 151 children who have lost benefits. This document is intended to explain to the public what kinds of children are no longer eligible. Most of the children have mental disabilities other than mental retardation, including learning disabilities and attention deficit disorder. Over a third have improved since they were first found eligible. The majority are teenagers; only a handful are age six or younger.

Advocates will probably have a mixed reaction to the report -- generally pleased about the actions, but still arguing that SSA's regulation interpreting the statute is needlessly strict. The report does not address the latter issue. The Republican leadership in Congress has been extremely supportive of SSA's implementation of the law to date, but probably will criticize this report on the ground that it bends over backwards to restore benefits.

SSA Report on Childhood Disability Process

SSA's report examined three areas of concern raised by advocacy groups:

I. Mental Retardation

Advocates' Charge: Too many children with mental retardation were cut from the rolls.

SSA Finding: Of the 136,000 children terminated to date, 42,000 were "coded" as mentally retarded (MR). However, most of these children do not actually have MR, because until recently SSA's systems did not have all the necessary codes. Instead, most of these children have other mental disorders, such as learning disabilities or "borderline intellectual functioning" (which falls short of full-fledged MR). Some unknown subset of the 42,000 do have MR, but either their impairments are not severe enough to qualify them for SSI, or they were denied incorrectly.

Even with these terminations, approximately 350,000 children coded as MR will remain on the rolls, out of the total of one million children on SSI.

SSA Action: SSA will review all cases terminated that were coded as MR, to ensure that all those decisions were made properly.

II. State Variations in Cutoffs

Advocates' Charge: Errors in cutoffs appear likely, since termination rates varied widely by state, from 32% in Nevada to 82% in Mississippi. Also, SSA may not have acquired all documentation, such as school records, needed to judge a child's disability. Finally, some states were disqualifying too many families for failure to cooperate without making adequate efforts to reach them.

SSA Findings: SSA data show that on average 93% of termination decisions were both accurate and complete (i.e., they included all required documentation). This exceeds SSA's required level of overall state performance for SSI, which is 90.6%. However, 10 states had accuracy/completion rates below 90%. Another 9 states had accuracy/completion rates below the national average. (SSA's experience is that about one-third of the errors identified in these measures will ultimately prove to be accurate decisions that simply lacked documentation.) SSA found that many inaccurate decisions stem from an overly strict interpretation of the new rules for children who exhibit maladaptive behavior.

Claims that SSA did not acquire all needed documentation were determined to be largely unfounded. However, SSA found wide state variations in the percentage of children cut off because their families did not cooperate with the redetermination. In a study of such cessations, SSA found that 68% of the cases did not include documentation that all required efforts to contact the family had been made.

SSA also performed a regression analysis to determine whether wide state-to-state variations in overall termination rates should be expected because of legitimate factors, such as the child's age and impairment and whether the child was initially added to the rolls based on the less strict criteria eliminated by the welfare law. SSA found that these factors would lead you to expect the cutoff rate to vary from 40% in Idaho to 78% in Mississippi. While this regression analysis does not fully explain the actual state-by-state variance, it does convince SSA that most of the variance among states is due not to errors, but to characteristics of the children.

SSA Action: SSA will review a portion of the decisions in all states, focusing more on states with lower accuracy rates. All cases terminated as a result of failure to cooperate will be reviewed. SSA will also provide more training on maladaptive behavior.

III. Appeal Rights

Advocates' Charge: Too few families are appealing because SSA's notice to families was confusing, and workers discouraged appeals. Also, SSA discouraged families from requesting that benefits be continued during the appeal, and didn't do enough to publicize free legal services.

SSA Finding: SSA found that its workers did not discourage appeals, although this may have occurred in isolated instances. At the same time, a survey conducted by SSA confirms that many families did not understand their appeal rights.

SSA Action: All 70,000 families of children who were terminated and did not appeal will be given a new opportunity to do so. In addition, all families of children who appealed but did not request continuation of benefits during the appeal will also be given a new opportunity to make that request. SSA will also publicize the availability of free legal services for families.

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THE WHITE HOUSE
WASHINGTON

November 25, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
GENE SPERLING
ELENA KAGAN

SUBJECT: State of the Union Ideas

As you requested, this memorandum provides a brief description of new ideas we are seriously considering for the State of the Union. Most of these ideas involve increased spending, and you will have to make choices among them as you consider the FY 99 budget. Options relating to social security and tax reform are not included in this memo.

Education

1. **Class size / 100,000 teachers:** We are working with the Vice President's office and others on an ambitious initiative to reduce class sizes in the early grades by providing money to hire up to 100,000 new teachers, perhaps paid for by reducing the federal work force by another 100,000 positions. We estimate that 100,000 new teachers in grades 1-3 would reduce average class size from roughly 21 to roughly 18. The initiative would have three main elements: 1) grants to help states or communities hire new teachers (as in the COPS program, these grants would be time-limited (3-4 years) and the federal share would be 50-75%); 2) funds for teacher training, with a special emphasis on reading; and 3) provisions to ensure accountability, such as requiring testing of new teachers and/or ensuring the removal of bad teachers from the classroom. A serious proposal along these lines would cost \$5-10 billion over five years, depending on the size of the federal match and the target date for reaching 100,000. We also would need to accompany the proposal with a school construction initiative (see below).

2. **Education Opportunity Zones:** As we outlined in an earlier memo on policy proposals for the race initiative, we are working with the Education Department on a plan that would reward 10-15 poor inner city and rural school districts for agreeing to adopt a school reform agenda that includes: ending social promotions, removing bad teachers, reconstituting failing schools, and adopting district-wide choice and/or public school vouchers. Our goal is to give school districts incentives to hold students, teachers, and schools accountable, in essentially the way Chicago has done. In our working proposal, each urban grant would be worth \$10-25 million and each rural grant would be worth up to \$2 million, for a total request in FY99 of \$320 million.

3. **National Public School Choice Law:** We are exploring the possibility of proposing

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legislation to require that states and communities allow public school choice as a condition of receiving federal education funding. Together with a strong endorsement of bipartisan charter school legislation (bound to pass next year), this measure will show that we firmly support choice and competition. We are also looking into the concept of a parents' right-to-know law that would require states and communities to make key information on school performance available, so that parents can make informed choices.

4. University-School Partnerships: As we also outlined in our earlier memo on the race initiative, we are working on a grant program to promote strong partnerships between colleges and high-poverty middle and high schools, with the goal of enabling more youth to go on to college. This initiative would encourage colleges to adopt the Eugene Lang model for helping disadvantaged youngsters. Colleges would encourage students to take demanding courses, while providing academic enrichment and intensive mentoring, tutoring, and other support services. The students would receive special certificates for participating in the program, somewhat along the lines of Chaka Fatah's proposal. The Department of Education has requested \$200 million for FY 99 for this initiative.

5. Campaign on Access to Higher Education: We are preparing to conduct an intensive publicity campaign on the affordability of higher education. The goal of the campaign would be to make every family aware that higher education is now universally accessible, as well as to reiterate that higher education is the key to higher earnings.

6. School Construction: We will need to re-propose a school construction initiative this year. We are currently considering the appropriate size and duration of this initiative, as well as the possibility of structuring this initiative as a tax credit.

7. Teacher Training for Technology: We are currently weighing several options on training teachers to use educational technology. These include (1) expanding various innovation grants to ensure that within four years, all new teachers will be ready to use educational technology, or (2) using the Technology Literacy Challenge Fund to train and certify at least one "master teacher" in every school, who can then train other teachers in the use of educational technology.

8. Hispanic Education Dropout Plan: We have developed a plan to improve educational opportunities for Hispanic Americans (or limited English proficient students generally), with the goal of decreasing the current disparity in dropout rates. The draft plan includes a number of administrative actions, as well as targeted investments of roughly \$100 million to programs for migrant, adult, and bilingual education.

9. "Learning on Demand": We are developing an initiative, related to some of Governor Romer's ideas, to encourage the use of technology (e.g., the internet, CD-ROM, interactive TV) for lifelong learning. The initiative will begin the process of giving all Americans "anytime, anywhere" access to affordable and high-quality learning opportunities. The initiative is still in the developmental stage, and at this time we recommend only a small investment.

Child Care

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1. Affordability: We are developing a proposal that will help working families afford child care by (1) increasing funding for federal child care subsidies through the Child Care and Development Block Grant, and (2) changing the Child and Dependent Care Tax Credit by raising the percentage of child care expenses for which taxpayers of certain income levels may take a credit. On the subsidy side, every additional \$100 million in the block grant will pay child care costs for at least 35,000 more children with incomes below 200 percent of poverty. On the tax side, we are considering raising the maximum credit rate to 50 percent for taxpayers with adjusted gross income (AGI) of less than \$30,000 (from a current high of 30 percent for taxpayers with AGI of less than \$10,000), and adjusting the income slide accordingly.

2. Safety and Quality: We are also considering targeted investments to improve the safety and quality of care. Our current proposal adds funding to the scholarship program for child care providers that you announced at the child care conference (which was very well received); provides resources for states to improve their enforcement of health and safety standards; and funds efforts to educate parents on quality child care.

3. Early Childhood Learning and Afterschool Programs: Our current proposal also expands early learning opportunities by increasing investment in Early Head Start and creating a new 0-5 Early Education Fund. The new fund will provide grants for innovative early learning programs for both working and stay-at-home parents. We are also considering ways of expanding and streamlining afterschool programs.

4. Helping Parents Stay Home: To support parents who wish to stay at home with their children, we are working on ways to expand the FMLA -- to six months instead of 12 weeks and to smaller-sized employers. We are also looking at a variety of ways to provide financial assistance, whether through a modified version of the Child and Dependent Care Tax Credit or through paid family leave administered under the unemployment insurance system. The cost of these financial proposals, however, may be prohibitive.

Health

YGS

1. Consumer Protection Legislation: We should reiterate our support for three pieces of health care consumer protection legislation: (1) the Quality Commission's Consumer Bill of Rights, which has strong public and elite support and arguably is more moderate than a bill in the House that already has attracted over 85 Republicans; (2) our genetic anti-discrimination legislation, which has attracted bipartisan support on both sides of the Hill as a way to protect Americans

from the misuse of new advances in genetics; and (3) privacy protection legislation, which would establish strong federal standards to ensure the confidentiality of medical records. Although these consumer protections would benefit the entire population, women's health advocates are especially supportive of them, because the Consumer Bill of Rights would ensure direct access to OB/GYNs and our genetic anti-discrimination legislation would protect women who undergo new tests for the breast cancer gene.

2. Medicare Reform and Program Improvements: To build on the Medicare reforms in the balanced budget agreement, we are considering two reform initiatives: additional anti-fraud initiatives (perhaps providing \$2-3 billion in savings over five years) and an income related premium (providing another \$7-8 billion in savings assuming it kicks in at an income around \$50,000). We are also considering a number of Medicare improvements to which we could apply the above savings: (1) a Medicare (or COBRA) buy-in for pre-65 year olds (or some targeted subset of this age group), the cost of which would depend on whether we decide to subsidize this benefit; (2) Medicare coverage of cancer clinical trials, which could substantially increase investment in the treatment and cure of cancer, including prostate cancer; and (3) a new mechanism to provide Medicare beneficiaries with information about private long-term care insurance that meets appropriate standards.

3. Doubling the NIH Research Budget with Proceeds from Tobacco Legislation: We (along with the Republicans) are considering a proposal to double the NIH budget, which would cost about \$20 billion over five years. Such an investment could lead to breakthroughs in research that would greatly improve our ability to prevent and treat diseases like diabetes and cancer -- and substantially lessen the costs associated with these diseases. Because the discretionary caps are so tight, the only realistic way to pay for such an initiative is through dedicated savings from the tobacco agreement. This link between tobacco legislation and health research should resonate strongly with the public.

4. Other Coverage Options -- Children's Health, Workers In-Between Jobs, Voluntary Purchasing Cooperatives: We are working on a public/private outreach effort to ensure that every child eligible for health insurance under Medicaid or our new program actually gets covered. The public side of this effort could include proposals to: give bonuses for enrolling more children in Medicaid; expand the kinds of places where children can enroll; and simplify eligibility processes. In addition, we are considering whether to propose a demonstration of our old policy to provide coverage to workers who are in-between jobs. Finally, we are continuing to pursue proposals relating to voluntary purchasing cooperatives, as a way to help small business gain access to and afford health insurance coverage.

5. Racial Disparities in Health Care: We are working on a proposal to address racial disparities in six carefully selected areas of health care: infant mortality, breast and cervical cancer, heart disease and stroke, diabetes, AIDS, and immunization. This proposal will include nationwide actions to reduce these disparities, as well as focused pilot projects in thirty communities (say, a project on diabetes on an Indian reservation or a project on AIDS in an inner

city). The stated aim of the proposal will be to eliminate racial disparities in these six areas by 2010.

Crime

and community country too keep prosecution very to prove

1. Community Prosecutors: We are working on a proposal, costing up to \$100 million, to provide grants to prosecutors for innovative, community-based prosecution efforts. A number of jurisdictions already have embraced such efforts; for example, community prosecution is an essential component of Boston's juvenile crime strategy. These jurisdictions have found that a "problem-oriented" (rather than incident-based) approach to prosecuting, using a wide variety of enforcement methods and attending to the concerns of victims and witnesses, can pay real dividends. A grant program could spread these innovative programs across the country.

2. Juvenile Crime Initiative: Although we got funds for much of our youth violence strategy in last year's appropriations bills, we should continue to press for the passage of juvenile crime legislation -- especially for a juvenile Brady provision, which will stop violent juveniles from owning guns as adults. We also should challenge the four cities leading the nation in juvenile crime (New York, Los Angeles, Chicago, and Detroit) to replicate Boston's successful strategy and target resources to these cities to help them meet this challenge.

Welfare/Housing

Good

1. Welfare-to-Work Housing Vouchers: We are working with OMB and HUD on a proposal for 50,000 new housing vouchers to help welfare recipients in public housing who need to move in order to find employment. We would distribute these vouchers on a competitive basis to public housing authorities working with local TANF agencies and/or grantees of the new \$3 billion welfare-to-work program. We are working on a number of proposals to increase housing mobility (see below), and linking this issue to welfare reform may increase the chance of attracting congressional support. At the same time, we should reiterate our support for welfare-to-work transportation funds as part of NEXTEA.

Housing

1. Housing Portability/Choice: In addition to the new welfare-to-work housing vouchers discussed above, a package on housing portability and choice could include: increasing the number of Regional Opportunity Counseling (ROC) sites; encouraging the use of exception rents (rents up to 120 percent of the "fair market rent") as a tool for opening up more expensive suburban housing markets; and eliminating obstacles to portability of Section 8 vouchers.

2. Fair Lending/Fair Housing: This proposal could include: an examination of the impact of credit scoring and risk-based pricing on the availability of credit/capital to lower-income and minority individuals; issuance of guidance by banking regulators on certain key credit scoring issues and, possibly, on risk-based pricing; a Presidential call to the FDIC and the Federal

Reserve to obtain more data on reasons for home mortgage loan denials (OCC and OTS already collect such information); and collection of race and income data as part of the Equal Credit Opportunity Act/CRA small business and small farm lending reporting requirement.

3. Downpayment Reduction: We are working on a proposal to increase homeownership by reducing the barriers to buying a new home. Many low- and moderate-income families find a downpayment the largest hurdle to buying a new home; this initiative would lower this cost and help more families become homeowners. In 1992, Congress authorized the National Homeownership Trust, but never appropriated any money. We are investigating whether we should request money for this program or whether it is better policy to expand the existing HOME program (which serves a similar purpose).

Labor/Workforce

1. Child Labor: We are working on a comprehensive Child Labor Action Plan, anchored by a \$100 million commitment to the International Program on the Elimination of Child Labor (IPEC) -- a voluntary program of the International Labour Organization which is dedicated to the elimination of child labor. The funds, which would be managed by the Department of Labor in accordance with criteria we would develop, would go to programs attacking the most intolerable forms of child labor. The initiative also might include a stepped up Customs program to enforce U.S. law banning the import of goods made with forced or bonded child labor; increased support for the Migrant Education Program to support elementary and secondary education to the hardest-to-serve migrant children; and a call for prominent organizations, such as the Boy Scouts and Girls Scouts, to adopt a "No Sweat" code for uniforms and an accompanying label.

2. Pensions: We have developed an expanded pension coverage initiative that focuses on a simplified defined benefit plan for small businesses, based on the SAFE plan proposed by the American Society of Pension Actuaries (ASPA). We are also looking at a payroll deduction IRA proposal, a three-year vesting requirement for employer matching contributions in 401(k) plans, a women's pension initiative, and a pension right-to-know proposal.

3. Community Adjustment: As part of the Fast Track debate, we proposed the creation of the Office of Community and Economic Adjustment (OCEA). As you know, this office will be modeled after the Defense Department's Office of Economic Adjustment (OEA) -- the Administration's first point of contact with communities experiencing a military base closure or defense plant closing. The OCEA would coordinate the Administration's response to regions impacted by a major plant closing or trade, by working with Labor, Commerce, SBA, HUD, Treasury, and other government entities. This group would provide planning grants and expertise to help communities develop comprehensive economic adjustment strategies. Since this program will be part of the Economic Development Administration (EDA), we are investigating whether we could initiate this proposal by executive memorandum, while awaiting Congressional appropriations.

you - v. important to do before
bringing up fast track
again

Climate Change

1. **Tax Incentive and R&D Package:** You already have committed to a \$5 billion package over five years for tax incentives and R&D to promote low-carbon technologies. The Treasury Department is working on a possible package of tax incentives to be included in the FY 1999 budget, and DOE has a proposal on the expenditure side. We are working to develop final options.

Race

A number of the above proposals -- e.g., education opportunity zones, university-school partnerships, housing vouchers -- can be presented as part of the race initiative, because they target predominantly minority areas or provide disproportionate benefits to members of minority groups. Other proposals described above -- the Hispanic dropout plan and the race and health initiative -- have obvious and explicit race connections. In addition:

1. **Civil Rights Enforcement Initiative:** We are working on a coordinated package of reforms for the EEOC and the civil rights offices at DOJ, HUD, HHS, Education, and DOL. Among other things, this proposal would expand dramatically the EEOC's mediation program, substantially increasing the average speed of resolving complaints and reducing the EEOC's current backlog. Similarly, the proposal would promote the increased use of non-adversarial techniques by the agencies' civil rights offices. The proposal also would provide a mechanism for better coordination among the various civil rights offices.

Worth doing
Roughly big to present

THE WHITE HOUSE
WASHINGTON

December 6, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING AND BRUCE REED

RE: Policy Initiatives for the FY 1999 Budget

At the end of next week, we will be having a budget meeting with you in which you will begin making an assessment on how to spend limited resources on both existing programs and new initiatives. Our staffs have been working hard to complete their inter-agency processes on these new initiatives so that you could have a better understanding of them when we enter the budget process. It is important to note because of tight constraints, we are not asking you to make budgetary choices at this time, but rather to understand each of the initiatives so that you are in the best position possible to make such choices when Frank Raines presents you with the overall budget presentation.

Attached are many of these initiatives, including all of the education proposals. Over the next few days we will forward you several others and Katie McGinty will also be sending you a memo on new environmental policies.

cc: The Vice President
Erskine Bowles
Frank Raines

TABLE OF CONTENTS

- (1)** Class-Size Reduction Initiative
- (2)** University-School Partnerships
- (3)** Hispanic Education
- (4)** School Construction
- (5)** Teacher Training in Technology
- (6)** Learning on Demand
- (7)** Education Opportunity Zones
- (8)** Community Prosecutors
- (9)** Expanding the Low-Income Housing Tax Credit (LIHTC)
- (10)** Welfare-to-Work Housing Vouchers

THE WHITE HOUSE
WASHINGTON

December 6, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
MIKE COHEN

SUBJECT: Class-Size Reduction Initiative

We are proposing for consideration in the FY 1999 Budget a \$9.2 billion, 5-year initiative to improve early reading by reducing class size in grades 1 and 2 to a maximum of 18 (the current *average* is 22.5), and by taking the steps necessary to ensure that all teachers in those grades have the knowledge and skills necessary to teach reading effectively in small classes.

Reducing class size has long been an important goal for parents and teachers throughout the country. Although research on the impact of lower class size has produced some conflicting findings, two major well-controlled experiments undertaken in the 1980s in Tennessee and Indiana showed that reducing class size in the early grades to between 15 and 18 students has a significant effect on student achievement. All students benefit from smaller classes, but the effects are largest for the most disadvantaged -- low-income and minority students in inner cities.

A number of states are now launching their own class-size reduction initiatives. (Class size is also a lynchpin of Tony Blair's education agenda.) The proposed class-size initiative, structured as a partnership between the federal government and state and local governments, would help spread this effort across the nation. It also would provide a concrete way to demonstrate your commitment to help all students meet challenging national standards.

Class-size initiatives raise significant issues, especially involving teacher quality. For example, California's new initiative to reduce class size to 20 in the primary grades has exacerbated the shortage of fully qualified teachers and resulted in increased hiring of noncertified teachers, especially in urban areas. It also has increased the need for professional development for existing teachers, so that they can take full advantage of small classes. Finally, the initiative has placed added pressure on already overcrowded facilities.

The significant reductions in class size occurring in California, however, have had clear benefits. In the first year of implementation, most teachers report that smaller classes enable them to pay greater attention to individual students, to assign and help students with more challenging work, to communicate more often with parents, and to have less disruptive classes. Many parents echo these reports, and support for public schools appears to be on the rise throughout the state. And many schools and districts are finding ways of meeting the challenges of teacher quality and facilities. They have implemented effective training programs for both

new and experienced teachers. And they have purchased portable classrooms or changed their use of existing facilities to make room for smaller classes.

The proposal described below is designed to help states and districts take advantage of the opportunities afforded by reductions in class size and to respond effectively to the challenges. We assume it will be coupled with a robust school construction proposal.

Purpose

The purpose of this initiative is to reduce class size and provide quality teachers in the early grades, so that all students learn to read independently and well by the end of the 3rd grade. Specifically, this initiative will help states and local communities hire an additional 89,000 teachers over 5 years in order to reduce class size in grades 1 and 2 to a maximum of 18. (The nationwide *average* is now 22.5.) At the same time, it will help states and school districts recruit and prepare new teachers and upgrade the skills of existing teachers in the early grades so that they have the skills necessary to teach reading effectively in small classes.

Funding Stream

The initiative would provide states and local communities with \$9.2 billion over 5 years. Funding in the first year (\$615 million in FY99) would cover the costs of hiring an additional 17,800 teachers, and funding in succeeding years would cover a similar number. The Department of Education would distribute funds to states on a formula basis, taking into account the number of additional teachers each state would need to reach the class size target, as well as poverty and teacher salaries within the state. We are also exploring ways to provide funds directly to the largest urban areas, as we did in last year's school construction initiative. In addition to paying for additional teachers, funds from this program would go towards measures to improve teacher quality, such as improved training for people entering the teaching profession, enhanced professional development opportunities for existing teachers, and new incentives for qualified teachers to teach in underserved areas. The federal government would cover 80% of the costs, with state and local communities providing matching funds for the rest.

State and Local Plans

The Department would require states to work with local school districts to develop a statewide plan for class size reduction. The plan would include a timetable for phasing in class size reduction, strategies for ensuring that every classroom has a qualified teacher and that every school has appropriate facilities, and a plan for financing the state and local share of the costs. The Department would encourage states and school districts to consider first how to make better use of *existing* staff and resources to reduce class size, such as by reassigning certified but non-teaching staff to classroom positions.

States and districts would have considerable flexibility in designing these plans. They

could carry over federal funds from one year to the next, enabling jurisdictions to invest in preparing and training teachers at the front end of the process and scale up class-size reductions in later years. In cases where the lack of facilities or qualified teachers make it counter-productive to meet the class-size reduction target, jurisdictions could propose alternative approaches -- e.g., Reading Recovery or Success for All -- to provide intensive high-quality reading instruction in the early grades.

Quality Teachers

State and local plans would be required to address teacher quality in a number of ways. States and local districts would have to show that (1) they will work with institutions of higher education and others to recruit and adequately prepare teachers; (2) they will hire new teachers without increasing the percentage of uncertified teachers already in the classroom; (3) they will use tests and other certification requirements to ensure that new teachers have the appropriate knowledge and skills; and (4) they will ensure that new teachers get high-quality, sustained professional development. We are also considering a requirement that states and districts demonstrate that they have effective ways of identifying low-performing teachers, giving them help and, if necessary, quickly and fairly removing them from the classroom.

States and school districts would use funds from this initiative, as well as state and local funds and funds from other federal programs, including Title 1, America Reads, the Eisenhower Professional Development program, and Chapter 2, to fund the teacher quality component of the initiative. To assist state and local efforts, the Department of Education would launch a major effort to disseminate information about best practices and proven approaches to improving teacher quality and reading achievement.

Facilities

This initiative will place added burdens on existing facilities, and some school districts will have difficulty finding adequate space for smaller classes. It is therefore important for the Administration to propose a school construction initiative along with this proposal and press the Congress to enact it. In addition, as indicated above, this initiative will allow schools that cannot reduce class size to use federal funds for other proven approaches to teaching young children to read.

Accountability for Results

Under this initiative, local school districts will have to evaluate the impact of their class-size reductions on reading achievement and make midcourse corrections as needed. If a district cannot show significant gains in reading achievement after 3-4 years, it would not receive continued funding under this initiative. This provision will ensure that school districts have a strong incentive to make the most effective use of all of their resources and to use proven practices to improve the quality of teaching. In addition, the Education Department will conduct

a national evaluation of this initiative to identify implementation problems and to learn about the most effective practices.

Budget Options

If the cost of this proposal needs to be scaled back, we can reduce the overall cost by aiming to reduce class size to an *average* of 18 with a ceiling of 20, or by reducing the federal share of the initiative to 70%. Alternatively, we could phase in the program over a longer period, such as 7 years. The chart below shows the total 5-year cost of these options.

	80% Federal Share	70% Federal Share
Class size ceiling of 18	\$9.2 Billion	\$8.0 Billion
Class size average of 18, ceiling of 20	\$7.7 Billion	\$6.7 Billion
Class size average of 18, ceiling of 20; 7 year ramp-up	\$5.5 Billion (for first 5 years)	\$4.75 Billion (for first 5 years)

THE WHITE HOUSE
WASHINGTON

December 6, 1997

MEMORANDUM FOR THE PRESIDENT

**FROM: GENE SPERLING
BOB SHIREMAN**

SUBJECT: College-School Early Intervention Initiative

In preparation for the budget decisions that will need to be made in the next few weeks, this memorandum is intended to provide you with a status report on the development of a possible college-school early intervention initiative, and an opportunity for you to provide direction to our continuing efforts. In order to move forward on the budget, there are three issues that need to be settled: (1) the basic parameters of the early intervention programs, (2) the issue of early notification (the "guarantee" of aid), and, of course, (3) funding.

With the approach described in this memo, you would be able to announce a new program that would, with an initial investment of up to \$300 million --subject to the budget process:

- Provide families at high-poverty middle schools (and possibly others as well) with an official notification of the \$20,000 or more that is already available for their children to go to college; and,
- Through colleges and other partners, provide intensive, long-term early intervention and support services to 200,000 to 400,000 new children each year (at 1500-3500 high-poverty schools), depending on funding.

Background

As you remember, this initiative began with your interest in the "21st Century Scholars Act" by Rep. Chaka Fattah. This legislation, which continues to garner significant support, including some Republicans, would guarantee sixth graders at high-poverty schools a maximum Pell Grant when they got to college; send a notice to them annually from the Secretary of Education reminding them of the availability of aid; and make them automatically eligible for the counseling, academic support, and other services provided by TRIO programs (such as Upward Bound) in high school and college.

Working with OMB and Education, we analyzed the specifics of the Fattah approach and found a number of problems: higher-than-expected costs and inefficiencies; inequities and perverse incentives; and the difficult issue of a new entitlement. Most important, the research on early intervention programs indicated that in order for them to be successful, it is *critical* that mentoring, counseling and tutoring be provided to students. Simply making them eligible for TRIO is not enough. As you know, Rep. Fattah is aware of these concerns and is flexible on the design of a program.

We felt strongly that the Administration needed a strong early intervention initiative that goes well beyond a notification about financial aid. Research demonstrates that programs that start early and are sustained for a number of years are effective. For example, in the rigorously-evaluated Quantum Opportunities Program, 42 percent of the participants attended college, compared to 16 percent in the control group. To have a significant impact on college enrollment of disadvantaged youth, it is clear that we need a full-fledged early intervention program.

Our idea is to center this effort on colleges reaching out to children at high poverty schools. College involvement is critical for a number of reasons. First, this approach creates an ethic of responsibility: it reminds colleges that they are responsible for helping to build a pool of disadvantaged youth -- disproportionately minorities -- who are well-prepared for college. Second, if college is to be the goal that sixth graders see, they need to have some connection to the institution. Third, colleges can ease student fears about college costs, and perhaps even offer guarantees or financial aid and admittance if students meet certain milestones. Fourth, colleges are best able to tell students -- and the schools they attend -- what types of courses and skills they need to succeed. Indeed, an ancillary benefit of this approach should be higher standards.¹ And finally, a stable, long-term institution needs to be there to ensure the quality and staying power of a program like this one.

In October, principals discussed options (DPC, OMB, Education, PIR, COS, and OLA were represented). At that meeting, there was strong support for the concept of Federal aid to partnerships between colleges and needy schools, to provide sixth graders with mentoring and other support that would be sustained through high school graduation. There was also strong support for getting early information to families about the availability of Federal financial aid for college.

Since the principals meeting, we have accelerated our consultations and research. I have spoken with more than 200 college presidents, both individually and in groups, and the response has been quite positive. Many of them have provided examples of their own efforts to tap into K-12 schools to recruit and offer help early. Education is reviewing all of the research literature,

¹In fact, in response to our consultations on this issue, we already have a proposal from colleges in the California State University system for an early intervention program that would focus on math as the gateway to college.

and with my staff has carried out an effort to identify model programs with the characteristics that we discussed at the principals meeting. Both Mike Smith and I have spoken with Eugene Lang, founder of the "I Have a Dream" program, and he agrees that we are on the right track. Lang is coming in to meet with me in mid-December. Even though he is best known for his promise of aid to Harlem sixth graders, he feels strongly that the early and sustained *support services* are the most important determinant of a successful program (and he agrees with the need for college involvement).

It is important that while pursuing this effort, we do not give the impression that we are denigrating two types of young people: those who do not go to college, but who prepare well for productive jobs without college; or those who only need one or two more years of post-secondary education or skill training to be successful in the workplace. Your School-to-Work initiative values equally a variety of pathways to success. We will ensure that the program design helps all children know they can go to college if they work hard and succeed through high school, without implying that they may be failures if they choose postsecondary education other than college.

Basic Parameters of the College-School Partnerships

Some of the colleges with whom we have consulted want the program to be very flexible, to incorporate a wide variety of program models. But we have pressed that while we support flexibility, there needs to be a vision -- some common elements that give the proposal an identity that will propel it to success both legislatively and, ultimately, programmatically. We recommend the following core components:

Start Early and Stay with Kids through High School. Students should begin in the program *not later than* the seventh grade. The program must continue to provide services through high school graduation (or at least for six years). (There will be some attrition due to dropping out of school or of the program, moving out, or participating in another program.) Programs should not pre-judge some kids as not having college "potential." Instead, we should encourage programs that involve whole classes or cohorts of students.

College as a Goal. The programs must make sure that every child in the class/cohort comes to believe that college is within grasp if he or she works hard, and that it is affordable with Federal aid. The message will also make it clear that the same kind of rigorous academic preparation is needed for careers that do not require college. Special consideration would be given to partnerships that guarantee enrollment in a college for participating students who reach particular milestones, and/or for programs that guarantee additional financial aid to cover the full costs of the college.

An Intensive Element. Programs must provide intensive assistance to students at least during some part of the program. For example, this may be a residential summer component at a college.

Community Involvement. Community organizations and businesses should be tapped to offer mentors, guarantees of additional financial aid in exchange for student performance, exposure to careers, and other support.

Full-Time Coordinator. To make the program a success requires the full commitment of the school district and the middle and high schools into which the college mentors will reach. It is critical that full-time coordinators serve as the "glue" between the colleges and the schools, ensuring that colleges come through on their commitments, and schools link their own counseling and guidance program and other services -- including Title I and systemic reform efforts -- to the college program on an on-going basis.

Family Involvement. It is also critical that families learn both about the college financial aid that is available, the courses that the child needs to increase the likelihood of success in college and career, and the resources that are available to help (tutoring, mentoring, etc.).

Note on relationship to TRIO programs. Some colleges already have Federal TRIO grants with some of the above characteristics, and/or they have other similar programs. The largest Federal investment, Upward Bound, provides counseling and intensive academic support to *selected* disadvantaged *high school* students who show aptitude for college. The Talent Search program provides a one-shot program of early information about college to middle school students. Those programs do not come close to addressing all of the need, so there would not normally be a problem with them duplicating some part of this new program. Applicants for the college-school partnership funds would have to describe how their existing early intervention programs would be coordinated with the new program. It is expected that some partnerships would apply for the new grants to extend and expand their programs, so that Upward Bound, for example, could essentially create a grade 4-10 feeder program, and Talent Search could add a more intensive component with follow-up during the high school years. Others might simply focus on high-poverty schools where the students are not being served by any current program.

Maintaining the separate TRIO programs with similar purposes could be an ineffective use of funds, if the new design turns out to work better for poor children. However, the politics of attempting to reform or integrate TRIO into the new design legislatively (as noted, we hope it will happen locally), argue against making the effort. We will design the evaluation of the new program to address comparisons to TRIO (and other models).

Early Notification/Guarantee

At the October principals meeting, there was concern that Fattah's idea of early notification guarantees not translate into any new entitlement to aid: first, it creates budget complications, both politically and practically; second, it creates the impression that the current programs are not secure -- contrary to the "universal access" message that we are sending in the wake of victories on HOPE and Pell.

Our feeling is that we do not need to go so far that we create a new entitlement. We can achieve Fattah's goal by providing children and their families with *early, official notification* of their eligibility for college financial aid. Because of the combination of student loans, Pell Grants, and HOPE Scholarships, virtually everyone is already eligible for at least \$20,000 of aid for four years of college. We can make a firm statement about eligibility without creating the budget complications. (As with Federal pensions and some military benefits, the actual amounts would depend on the continuation of the programs.)

This would be part of the larger information campaign on access to higher education, which I will get you a memo on in the coming week. While the focus would be on getting the notifications to families at the highest-poverty schools, we would not need to be that restrictive and could reach a larger number than the Fattah legislation proposes. Our expectation is that we can provide a minimum level of information to every family on a regular recurring basis, and that we will find ways to make special efforts to tailor the message for poor families with children of all ages.

As already noted, we would encourage partnerships to supplement Federal aid with additional financial assistance and/or guaranteed admission to a particular college if the student takes the right classes and works hard.

Funding

The costs of successful programs range significantly, from a few hundred dollars per participant to several thousand. The ability of a college and other partners to put up some of its own resources also varies. It was clear from my discussions with the presidents of Yale and Columbia that they mainly wanted to be associated with a national effort and would put a lot of their own (substantial) resources to the effort. On the other hand, in some parts of the country it would be important to be able to have a significant Federal contribution, at least at the start. Our work continues on these design questions.

For the purposes of estimating potential impacts, we have assumed an average \$1,000 per participant cost in the first three years, and \$800 for the remaining three. New cohorts of children are added each year, but there is a declining (national average) Federal match, with the local programs expected to take over after the sixth year (again, our work continues on these design questions). With those assumptions, a \$300 million Federal investment in FY 1999 would allow us to serve 375,000 seventh graders (at about 3300 high-poverty schools). That is more than seven times as many as are now served by Upward Bound. The amount would need to ramp up somewhat as new cohorts of students are added. The initial, FY 1999 funding amount could be reduced either by reducing the size of the proposal, and/or by phasing in the number of partnerships funded.

Add at least \$30 million. The TRIO programs have a strong, organized constituency. We are working with the association on this proposal, and so far they are supportive. But they are concerned that our interest in this new proposal may weaken our resolve as far as increases for the TRIO programs. Therefore, it is critical that an increase of at least \$30 million be included in the Budget for TRIO if we move forward with the school-college mentoring partnerships. Doing so will help get the proposal through Congress. *An increase of \$53 million for TRIO is suggested in my memo to you on Hispanic education.*

Legislative strategy. We are currently assuming that this would be a new, competitive direct grant program from the Department of Education, probably part of our proposal for reauthorization of the Higher Education Act. If funded on the discretionary side, it would benefit us in the appropriations process to use an existing authority, and there are a couple we could choose from. We are also exploring the possibility of funding the program on the mandatory side, which could have some strategic advantages.

Some of the Committee leadership on the Hill are expected to pursue a state-based model, making use of a program authorized in 1992 called the National Early Intervention and State Scholarship Program. It is funded at \$3.2 million now and funds some useful models. Education opposes using this authority, however, because it would be more difficult to maintain a high-quality, highly targeted effort within a state formula grant program.

Next Steps

If you are comfortable with the general approach, then we will continue to draft the descriptions that will need to be included in the Budget, if funding is to be included. We will then continue to vet the idea, and will begin to develop a roll-out strategy.

Views and Recommendations

Secretary Riley strongly supports this initiative as a logical next step in our efforts to assure access to higher education for all Americans.

Sperling considers this to be as important as any education initiative this year, because (1) given the strong interest of colleges in the effort, we can have a considerable national mobilization, (2) it targets the age group that is most neglected in Federal education policy, and (3) it helps with the long-term needs relating to affirmative action. Reed and Kagan support the proposal for similar reasons.

Judy Winston considers this proposal to be fully consistent with the President's Initiative on Race, which includes a focus on *action* designed to bridge racial divides. She is exploring the possibility of including a representative of an effective early intervention program in the program for the December 17 Advisory Board meeting.

THE WHITE HOUSE
WASHINGTON

December 6, 1997

MEMORANDUM FOR THE PRESIDENT

**FROM: GENE SPERLING
BOB SHIREMAN**

SUBJECT: Hispanic Education Investments and Actions

This memorandum provides you with background on our efforts to improve educational opportunities for Hispanic Americans, and a possible further investment strategy for the FY 1999 Budget. Once budget decisions are made, we will have a comprehensive package of research-based recommendations, new investments, and administrative actions ready for an announcement. The announcement would include:

- a report on the Hispanic dropout problem by researchers named by Secretary Riley two years ago (in response to a request by Sen. Bingaman). The report includes research-based advice for schools, families, and all levels of government;
- new investments (proposed in this memo) in programs that address the needs of Hispanic and LEP children;
- a list of administrative and other actions -- including a Conference on Staying in School -- that Education, Labor and HHS are taking to improve Federal programs so that they better serve the Hispanic (and LEP) community; and,
- the Secretary of Education's plan to ensure that the major education programs and our agenda of research, standards and testing, teacher training, and outreach address the needs of Hispanic and LEP children.

Section I of this memo describes the consultations that have taken place and the legislative and appropriations actions that we have already taken. Section II is a reminder of some of the planned or possible FY 1999 investments that are generally important for minorities, but are not explicitly part of the Hispanic plan. **Section III lays out a possible investment strategy for Hispanics and LEP children and families for the FY 1999 Budget.** Section IV describes the other actions that agencies would announce as part of the Hispanic Action Plan.

Section V presents the views of your advisors.

I. Background

In response to your request, the NEC, DPC, OMB, Department of Education, as well as Maria Echaveste, Mickey Ibarra, and Janet Murguia set out to determine what we could do to address the Hispanic dropout rate and to generally improve the educational opportunities of Hispanic Americans. We aimed to:

- Improve then-pending Administration initiatives and reauthorization proposals so that they provide a greater benefit to Latinos (for example, adjusting funding formulas that do not adequately take into consideration growth areas).
- Identify Appropriation items in the FY98 Budget that have a disproportionate impact on the Latino population, so that we would be sure to take that into consideration in the continuing budget process.
- Identify and carry out additional administrative and legislative proposals that could be aimed at increasing Hispanic educational opportunities.

As a foundation for our efforts, we were able to use a report and recommendations released last year by the President's Advisory Commission on Educational Excellence for Hispanic Americans. We met with constituency groups, and held a series of meetings with Hispanic Caucus members and staff, where officials from Education, Labor, HHS, and USDA discussed their programs and some of the concerns and recommendations that have been raised. Most recently, we have been able to review the not-yet-released report of the Hispanic Dropout Project, by a group of researchers named by Secretary Riley at the suggestion of Senator Bingaman. We have also reviewed legislation proposed by Congressman Hinojosa and Senator Bingaman.

It is important to note that the consultative effort brought tangible results. As a result of these efforts:

- We insisted that our 35% increase for Bilingual and Immigrant Education be an explicit part of the Bipartisan Balanced Budget Agreement, a very exclusive list (only 13 items government-wide).
- The \$199 million in Bilingual Education includes \$25 million for training teachers to help limited English proficient (LEP) kids, a proposal that Republican appropriators fought last year. (Thank Delia for working with the appropriators this year to assure their support).
- We took another look at our America Reads legislation and added provisions to make doubly sure that States would have to make a particular effort to serve LEP

children.

- Our proposal for Adult Education reauthorization -- a program that provides adult ESL -- includes a new formula that targets states with large numbers of LEP adults. (Unfortunately, no one in Congress is pushing the formula).
- We proposed and received an 11% increase in the FY 1998 appropriation for Hispanic-Serving Institutions (HSIs).
- In a reversal from our position to eliminate the program a few years ago, we proposed and received a small increase for HEP-CAMP (migrant college support services and early intervention program).
- Other selected FY 1998 Appropriations that provide disproportionate benefits for Hispanics include:

--Job Corps -- an effective program in which 70% of the participants are minorities -- got \$92 million increase (to \$1.246 billion). 30 Job Corps Centers teach ESL.

--Youth Opportunity Areas: \$250 million to the highest poverty areas to help out-of-school youth (age 16-24) become employable. (Currently six cities are funded. In NYC, 67% of those served are Hispanic; in Houston, 65%; in Los Angeles, 50%.)

--\$1.4 billion increase in Pell Grants for low-income college students.

--Obey's Comprehensive School Reform provides funds that will go to schools that need to be transformed -- first in line should be those with high dropout rates.

II. Generic Issues

It is important that our overall campaign for high standards and accountability remains to be seen as an important part of the answer for all children, *particularly* those who are at risk. For the announcement of the Hispanic Action Plan, Education has developed a document that describes how the key education programs work for Hispanic and LEP children.

There are also other new initiatives that have already been announced or are being considered that are oriented toward needs that have been identified in our work on Hispanic Education, including:

- **Teacher Training and Recruitment.** Your five-year, \$350 million teacher training and recruitment proposal is aimed at improving teacher preparation particularly for harder-to-serve populations, and recruiting more minority teachers.

- **Education Opportunity Zones.** This new investment is aimed at spurring and rewarding effective reform efforts in school districts that tend to be predominantly minorities.
- **College-School Early Intervention Partnerships.** This is a proven response to the dropout problem: it takes children at high-poverty schools by the seventh grade, delivers a firm message about college opportunity, and then provides them with support through to high school graduation. We consider this a major initiative that should be announced in a broader context, but (depending on what is announced first) we can describe it as part of the dropout initiative.

III. Decision: Added Investments

For FY 1999, we recommend that you consider increasing funding in some key programs that are important to Latinos. This package addresses five of the six highest-priority items identified by the Hispanic Education Coalition (HEC). In a forthcoming letter, the Congressional Hispanic Caucus (CHC) is expected to ask for increases in the same six items listed below, although at higher levels.

Investment (in millions):	FY 1998	Increase	FY 1999
Bilingual Education - Teacher Training	\$25	\$25	\$50
TRIO College Preparation Programs	\$530	\$53	\$560
Hispanic-Serving Institutions [non-add; already approved]	\$12	[\$16]	\$28
Adult Education - Model ESL Programs	n/a	\$20	\$20
Migrant Education Program	\$305	\$50	\$365
Migrant Education: HEP and CAMP	\$9.7	\$5.3	\$15
TOTAL:		\$153.3	

Secretary Riley and the HEC also cite Title I as an appropriate area for investment. While people tend to think of it as a program for African Americans, *Title I now serves more Hispanics than Blacks*. If you decide to provide an increase to Title I, we might want to consider including it in the Hispanic Action plan as a way of changing perceptions about who is served by programs for disadvantaged populations.

1. Bilingual Education - Teacher Training. This program provides current teachers with the skills they need to address the English language deficiencies of their students. (Despite the name, it does not require a bilingual program). By doubling the FY 1998 investment and sustaining that level over five years, we could **train 20,000 teachers**. The need in this area is huge -- California alone has a reported shortfall of 20,000. The \$25 million compares to a \$56 million request expected from the CHC.

2. TRIO College Preparation Programs. A recent evaluation of the Upward Bound program (support for promising disadvantaged kids to go to college) showed dramatically positive results for Hispanics. This is an opportunity to showcase this success. We will also be making changes to the TRIO statute to encourage more funding to areas that are under-served, such as the Hispanic community. Even though we may be proposing an *earlier* mentoring program, it is important that we propose an increase in TRIO so that the very strong TRIO constituency does not see the new program as a threat. The \$53 million would be a 10 percent increase. *The separate memo on the College-School Early Intervention initiative suggests at least a \$30 million increase in TRIO.* The CHC is expected to ask for an increase of \$70 million for TRIO, mostly in Upward Bound.

3. Hispanic-Serving Institutions. These funds go to strengthen colleges where at least 25 percent of the student body is Hispanic and a large portion are needy. The program is funded at \$12 million in FY 1998. As a result of work on the Higher Education Act reauthorization and discussions with Rep. Hinojosa (chairman of the education task force of the CHC), we have sent a letter to Hinojosa promising an increase of \$16 million. CHC members and the HEC have been very pleased with the \$16 million proposed increase; nonetheless, the CHC is expected to ask for the authorized level, an increase of \$33 million

4. Adult Education - Model ESL Programs. The largest single source of English-as-a-Second-Language funding comes from the Adult Education program (which also promotes adult literacy and GED attainment). There are a plethora of approaches, and huge demand for these programs. But there is little information about what types of programs are most effective for different populations. This five-year \$100 million investment would go toward improving the ESL programs that we now fund through identification and dissemination of proven and promising practices. It could also be used to provide more training for adult ESL instructors, and/or to expand the use of the televised ESL series "Crossroads Cafe," if the evaluations of that program are as positive as expected. The CHC is interested in increasing adult ESL, but was unsure what level or method of increase to seek.

5. Migrant Education Program. Because of their mobility, migrant children -- more than 80 percent of whom are Hispanic -- often do not "belong" to any one school system or even one State. That is why the Federal role in this area is critical. Funded at \$305 million in FY 1998, MEP is a State formula program that supports an extremely wide range of interventions specifically tailored to the needs of the local population it serves. Services range from the identification and recruitment of kids into schools, to all kinds of school-based interventions, to after school programs and summer sessions.

The 1994 reauthorization (of the Elementary and Secondary Education Act) focused MEP on the most mobile families, and resulted in more services are now being provided in the summer and between school sessions. Despite a narrowing of eligibility rules, the number of participating children has been increasing since the reauthorization, in part because of partnerships between MEP and several major agribusiness partners. These partnerships have led to improved service and coordination by local providers (education, health, public safety,

library).

Increased funding would help to address the growing population of children who are being referred to the program, and to continue to provide a richer array of supplemental educational services. *A \$50 million investment is proposed in a separate memorandum describing options for addressing Child Labor issues.* The CHC is expected to ask for a \$70 million increase.

IV. Administrative Actions and Program Improvements

Based on our review of the Advisory Commission recommendations, other reports, and our meetings with the constituency groups and the Caucus, the agencies have signed off on a number of changes to, or enhancements in, current programs to better serve the Hispanic population. These are *not* a part of any budget decisions that need to be made.

Dropout Prevention:

- **Comprehensive School Reform.** The FY 1998 Appropriations bill included a new \$150 million program to transform failing schools using proven models. The Secretary of Education will identify model school reform approaches that address the needs of LEP children and dropout prevention. States and school districts will use these funds to turn around low-performing schools, many of which enroll high concentrations of Hispanic students and have high dropout rates.
- **Conference on Staying in School .** An option under consideration would involve the President and the Administration in a conference to share solutions to the dropout problem (Hispanics and others). The conference -- which may or may not be sponsored by the White House -- would highlight lessons from successful efforts to reduce dropout rates and to provide youth with alternatives to traditional high schools. Clearly this will need to be weighed against other scheduling requests and proposals for education conferences.
- **Clearinghouse on Successful Models for Dropout Prevention.** The Education Department, through its various research centers (and other clearinghouses), has a great deal of resources relating to dropout prevention. This would provide school and community leaders with "one-stop shopping" for ideas and information on best practices for keeping kids in school.

General:

- **Public Service Announcements.** Univision has agreed to produce a series of Spanish-language public service announcements on education, such as encouraging parents to read to their children at an early age, and telling families about college financial aid. The spots will be developed in cooperation with the Department of Education, and will refer

viewers to the Department's toll-free line.

- **Toll-Free Number.** The Department of Education will establish a toll-free number that is answered in Spanish (or change the current number to prompt non-English speaking callers earlier), to ensure that there are no barriers to parents who want to find out how to better help their children succeed in school. The Department will explore how best to provide assistance in other languages as well.
- **Information Dissemination.** The Education Department will expand the number of publications that are translated into other languages, so that LEP parents have better access to information that will help their children learn. Working with the White House Initiative on Educational Excellence for Hispanic Americans, the publications will be more widely distributed in the Hispanic community.
- **Model High Schools:** Working with the National Council of La Raza and ASPIRA, the Education Department's New American High Schools Initiative will focus attention on schools that better prepare all students for college and careers. Four of the ten schools initially selected have a Hispanic population of 20 percent or more. In addition, the Department has awarded a two-year contract to improve student preparation at six urban high schools and to serve as models for other high schools. Three of the six have substantial Hispanic student participation.

Early Childhood and Parental Involvement

- **Early Head Start:** FY 1998 Appropriations nearly double the size of the Early Head Start program. Grants are awarded through a competitive process. The Department of Health and Human Services will ensure that the Hispanic community and Hispanic organizations, as well as other communities and organizations, are fully informed about these opportunities. The Department anticipates that about a quarter of the children served by the new programs will be Hispanic.
- **Head Start:** The Bipartisan Balanced Budget includes continued expansion of the program, toward the goal of serving one million children by 2002. The Department of Health and Human Services will implement an outreach plan to ensure that programs are reaching the Hispanic community. As a part of that effort, the Department will identify and disseminate a "best practices" guide for serving limited-English proficient (LEP) children.
- **Title I/parent training:** Parents who do not speak English well need extra care and support to gain their active participation in the schooling of their children. The Department of Education is compiling a set of "best practices" for implementing family literacy and parent involvement programs. This will include guidelines for working with LEP parents.

Improving teaching and learning

- **America Reads:** The Education Department and Scholastic, Inc., have developed and are distributing, posters featuring the message "Reading is Power/Leer es Poder." The back of the poster provides reproducible reading activities for classroom use. Spanish language tutoring kits have been developed and will be distributed to Hispanic communities. LULAC has been an active partner in America Reads effort.
- **Bilingual/Teacher Training:** The Bipartisan Balanced Budget Agreement secures a 27 percent increase for the bilingual education program. As part of that increase, the Education Department will dedicate \$25 million to increase the number of teachers who are qualified to teach LEP children, and to improve teacher preparation programs so that all teachers can meet the needs of LEP students.
- **Technology:** To ensure that all schools take advantage of the funding available through the \$2 billion Technology Literacy Challenge Fund and the discounts of up to 90 percent (for the poorest schools) that will be available through the FCC's Universal Service Fund, the Education Department will conduct a series of technical assistance workshops, including some that are targeted to communities with large populations of Hispanic students. [Mention VP's leadership of outreach effort?]

Migrants

- **Technology:** The Education Department has awarded six grants, at \$15 million over five years, for projects that apply the use of technology to improve teaching and learning for migrant children.
- **Coordinated eligibility.** The Education Department is exploring the possibility of waiving eligibility requirements for Migrant Even Start and other education programs so that children of participants in the Job Training Partnership Act's migrant program (section 402), who have already been judged needy, will be automatically eligible.

Second chance and job training

- **Youth Opportunity Areas:** \$250 million has been appropriated for FY 1999, targeted to the highest poverty areas in the country to help out-of-school youth (age 16-24) become employable. (Currently six cities are funded. In NYC, 67% of those served are Hispanic; in Houston, 65%; in Los Angeles, 50%.)
- **Bilingual Contextual Learning.** The Labor Department is currently evaluating the results of an innovative approach for training individuals for the burgeoning home health care field. The Department will broadly disseminate the "lessons learned" from this experience.

- **ESL in Job Training.** The Labor Department will include guidance for providing services to limited-English-proficient populations in JTPA or successor programs.

College opportunity

- **TRIO programs:** The Education Department's reauthorization proposal will include measures designed to make the programs more available in areas that are now underserved by TRIO, including those with substantial Hispanic populations.
- **Information about college financial aid:** The largest Spanish language newspaper in the country, La Opinion, is publishing and distributing a Spanish-language version of the Education Department's guide, "Getting Ready for College Early." The Department is seeking out other opportunities to better reach Latino families.
- **Hispanic-Serving Institutions:** The Education Department's reauthorization of the Higher Education Act will include the creation of a new part under Title III for Hispanic-Serving Institutions.
- **Community College Articulation:** The reauthorization also would allow the Fund for Innovation in Postsecondary Education to focus a special competition on projects that promote articulation between two-year and four-year institutions.
- **Graduate Education:** The Education Department's proposal for reauthorizing Graduate Assistance in Areas of National Need gives special consideration, in awarding grants, to institutions that show a strong past and continuing performance in serving populations traditionally under represented in academic programs in areas of national need.

Other efforts: The Education Department will release a plan that includes a number of other items, and improvements in data collection and research relating to Hispanic and LEP students.

V. Views and Recommendations

Secretary Riley supports these investments, but thinks there should be more. He would like to see them packaged with increases in one or more of the larger programs that serve Hispanic children, such as Title I.

Sperling thinks these investments are a necessary platform for promoting the many other steps that we are taking to address the educational needs of Hispanic Americans.

Reed agrees that these are important investments that need to be considered in the context of other priorities.

Judy Winston notes that associating this effort with the President's Initiative on Race would help its multiethnic focus, *i.e.* moving beyond the black-white paradigm.

THE WHITE HOUSE
WASHINGTON

December 6, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING
BOB SHIREMAN

SUBJECT: School Construction

You have publicly made it clear on a number of occasions -- most recently in Chicago with Sen. Moseley-Braun -- that you will continue to fight to get Congress to address the problem of the crumbling school infrastructure. There are two issues on school construction that need to be considered in the context of FY 1999 Budget decisions: size and design (spending versus tax). This memorandum briefly describes some of the policy and political dynamics around the question of size, then lays out the pros and cons on the design issue.

Size

As with all of the new initiatives, we are not asking you decide at this time the amount of money that should be dedicated to the School Construction initiative. You should keep in mind, however, that because of the history of this proposal, its size in the FY 1999 Budget will be a substantive and political decision that will draw a great deal of attention.

The OMB passback funds the School Construction initiative at \$1.9 billion -- down from the \$5 billion that was proposed last year. That matches a Daschle-Gephardt proposal developed in the late summer as a last-ditch effort to get a down payment on the school construction issue. The amount was based on the size of the offset they were able to agree on (closing a tax loophole). There is no question that an initiative of that size would *not* be met warmly by supporters of a Federal investment in this area.

Pressures for us to re-propose a school construction initiative of *at least* \$5 billion are coming from a number of quarters:

- **Defining issue for Democrats.** Democrats see this as a popular initiative that sets them clearly apart from Republicans. Some have argued that the funding should be increased

above \$5 billion in order to provide more help to suburbs.

- **Urban needs.** In the context of negotiations over the voluntary national tests, School Construction came up a number of times with the Black Caucus as one item that would demonstrate the Administration's commitment to the needs of urban schools.
- **Class size.** Some have suggested that a school construction initiative could be tied to the idea of smaller class sizes.

Obviously, a funding decision needs to be made in the context of the whole budget, taking into consideration proposals for child care, smaller class size, health care, etc. If we are constrained by funds available in the five year budget window, you should keep in mind that one way to accommodate school construction might be to stretch it over a longer period (such as \$8 billion over 10 years, with \$3.5 billion in the first five years).

Design

You need to decide whether we should continue to propose our School Construction initiative as a mandatory spending proposal or shift it to a tax credit.

Spending proposal. The bill you proposed, the Partnership to Rebuild America's Schools, provided a one-time appropriation of \$5 billion for grants to States and localities to pay for up to one-half the interest cost of repayment of school construction bonds (or an equivalent amount in cases where an alternative financing mechanism is used). One-half of the funding was reserved for the 100 largest school districts. We estimated that the \$5 billion would leverage \$20 billion in new construction/renovation over four years.

Pros

- The Administration bill in the House gained 116 cosponsors, including ___ Republicans. A letter signed by 112 of them urges you to include the same, \$5 billion proposal in the FY 1999 Budget.
- The bill was designed to spur additional State and local effort (through a competitive portion of the funds) and to leverage the Federal funds. It is more difficult to design a tax credit that accomplishes those goals.
- This approach is more efficient at addressing our specific goals than a tax credit (tax incentives associated with bonds inevitably have some inefficiencies associated with them).
- The bill is flexible, allowing for creative funding mechanisms such as lease-buybacks, helping districts that are not able to float additional bonds.

Cons

- To propose \$5 billion or more, we probably will need to rely on closing tax loopholes as the offset, creating a “tax-and-spend” scenario.
- With a tax-side offset, the spending proposal and the offset would have to move through different committees, making the plan more difficult to achieve legislatively -- unless there is a reconciliation bill.
- While the education groups prefer the spending program in the abstract, they would prefer a tax-side approach *if it means more money could be dedicated to the purpose.*

Tax proposal. As part of the Taxpayer Relief Act of 1997, Congress enacted a tax credit proposal by Rep. Rangel that *includes* school renovation (but not construction). The provision allows State and local governments to issue bonds totaling \$800 million over two years. The Federal government essentially covers the interest on the bonds through a tax credit, providing the schools with an interest-free form of financing. These bonds can be used to cover certain costs of “academies” that link businesses with the schools to develop a curriculum that is employment-oriented (the description is not unlike your School-to-Work program). The bond proceeds can be used for a variety of expenses: rehabilitation, repairs, technology, equipment, curriculum development, and teacher training.

While supporters of school construction were pleased to see Congress ratify a proposal that included school renovation, they do not see the Rangel plan as a sufficient approach for two reasons: (1) its narrow focus on these school-business academies, and (2) the broad use of funds.

This bond/tax credit design could be expanded to focus more squarely on school construction and renovation, and beyond the academies in the Rangel provision. For example, Rep. Loretta Sanchez introduced legislation in October that would use the bond mechanism to support school construction in overcrowded districts. We would not need to provide detailed specifics in the budget. We could simply say that the bond/tax credit would be extended and expanded to assist school districts with their school construction and renovation needs. Then we could work with Mr. Rangel and others on the details.

Pros

- We can more easily propose a larger initiative on the tax side.
- A tax-side initiative will be revenue-neutral, and both the program and the offset would be handled by the same committees in Congress.
- The Senate sponsor of our School Construction legislation -- Sen. Moseley-Braun

Cons

- To propose \$5 billion or more, we probably will need to rely on closing tax loopholes as the offset, creating a "tax-and-spend" scenario.
- With a tax-side offset, the spending proposal and the offset would have to move through different committees, making the plan more difficult to achieve legislatively -- unless there is a reconciliation bill.
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Pros

- We can more easily propose a larger initiative on the tax side.
- A tax-side initiative will be revenue-neutral, and both the program and the offset would be handled by the same committees in Congress.
- The Senate sponsor of our School Construction legislation -- Sen. Moseley-Braun

-- is on the Finance Committee and would support the idea of a tax-side approach that she could push there.

- We might be able to develop a proposal that would have the strong support of the ranking member in the House (Mr. Rangel).
- The contentious issue of Davis-Bacon, which has caused some problems even with some members of the pro-school construction coalition, has not been an issue on the tax side.

Cons

- The bond/tax-credit approach is unprecedented, so we do not yet know how well it will work.
- The bells and whistles that we built into our School Construction proposal -- leveraging, rewarding State investments, etc. -- would be more difficult if not impossible to design and enforce in a tax-side approach.
- The House sponsor of our School Construction legislation -- Rep. Lowey -- prefers the spending bill that we proposed this year.
- Rep. Rangel is very committed to his design, and may not be willing to make the changes that we would want to steer this toward school construction and renovation and away from his "academies" approach. There is a chance we would have to part ways with him, or accept something that we do not like and does not satisfy the constituency groups.

Views and Recommendations

Treasury strongly supports a spending-side strategy. The tax credit approach is awkward and inefficient. While Treasury is making every effort to implement the Rangel provision effectively, it is an unprecedented approach -- as would be any tax-side approach to subsidizing school construction.

Secretary Riley also prefers the direct spending approach.

Secretary Herman heard from the Congressional Black Caucus on this issue in her efforts on Fast Track. She would prefer the tax side because it would allow Sen. Moseley-Braun and Rep. Rangel to champion the legislation.

Sperling and Reed would ideally prefer to stick with the your carefully-designed spending proposal, but believe that we should be willing to propose a revenue-neutral \$7 billion, 10-year

approach on the tax side if necessary to make room for child care, health care or other proposals.

Judy Winston considers either approach to be consistent with the President's Initiative on Race, and with the agenda for the December 17 Advisory Board meeting which will include a discussion of racial disparities in educational resources including facilities.