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September 30, 1996

MEMORANDUM TO JOHN HILLEY

CC: Alexis Herman
Martha Foley
Richard Hayes

From: Harold Ickes

Re: Extending the Small Business Competitive Demonstration Program

On 19 September I received a phone call from Melvin Clark of Metroplex (202-488-7185) regarding the extension of the Small Business Competitive Demonstration (Comp. Demo.) Program. He strongly opposes the extension for three reasons. According to Mr. Clark, the extension would prohibit small business set-asides in construction (these are not race-based set-asides), it would prohibit construction businesses from receiving evaluation preferences, and he also stated that it would limit the growth of small businesses in construction.

H2
cc Alexis

THE WHITE HOUSE

WASHINGTON

April 8, 1997

MEMORANDUM FOR **THE PRESIDENT**

FROM: **GENE SPERLING**
ELLEN SEIDMAN

SUBJECT: **Friday's Wall Street Journal op ed piece titled "The Pension-Guarantee Time Bomb"**

Playing off your announcement last Monday of the first ever surplus of the Pension Benefit Guaranty Corporation, James Smalhout, a persistent critic of the defined benefit pension plans and the entire pension insurance system, argued in Friday's Wall Street Journal that the system is unsafe, unsound and "protects only 13% of the labor force." Smalhout's arguments are wrong on a number of factual and policy counts. (A copy of the Smalhout piece is attached.)

Smalhout's basic argument is that defined benefit pensions are archaic and debilitating, in that they tend to lock in the labor force to long-term jobs, and that a government guarantee -- even when the pension promise is funded and the insurance premiums fair -- enables pension promises to be made that never would be if there were not government backing. He goes on to assert that full funding and fair premiums are impossible because the system is politically run by an "unholy alliance" of "labor unions, companies that still sponsor such defined benefit programs and the consultants that service these programs."

The defined benefit (DB) pension system, including the PBGC guarantee, protects the retirement of more than 42 million American workers and retirees, including 440,000 who get their pensions directly from the PBGC. While there certainly are real concerns with defined benefit portability, and thus labor force lock-in, these have been mitigated in recent years by shorter vesting periods, a movement toward career average (rather than final average) pay plans, and various hybrid plans that allow cash-outs that include a portion of the employer liability. In addition, DB plans are an effective means of providing retirement security to lower wage workers who find saving for retirement extremely difficult. Your pension working group, as well as the Department of Labor, IRS and PBGC, are working on ways to enhance DB portability without either disadvantaging lower wage workers or making the plans so expensive to fund or administer that employers cease to make them available.

Once one accepts the utility of DB plans, the issue becomes whether the government should guarantee the benefits. The PBGC was established in 1974 in large part in response to the failure of Studebaker, which left its long-time workers without their promised pensions. Over the years, there have certainly been times when the guarantee fees were too low and the funding standards too lax. However, your Retirement Protection Act of 1994 was meant to put and keep the system on an actuarially sound footing, and it has moved the system very much in that direction. Of course, the fact that having pension plans at all is entirely voluntary with employers means that both the premium and funding rules are constantly under pressure, and there is no doubt that compromises were made to get the RPA enacted. However, to take either of Smalhout's preferred courses: doing away with the guarantee entirely -- which would severely disadvantage workers; or mandating even more funding -- which would drive employers out of the system, would be far less responsible than what we in fact accomplished.

As to Smalhout's charge that "Erisa left too much control over pension-benefit funding in the hands of plan sponsors," the RPA responded quite effectively. Over substantial objections from plan sponsors (businesses), the RPA put significant limitations on both mortality and interest rate assumptions. The RPA also tightened funding standards (although these are being phased in over fifteen years to encourage sponsors to retain plans), and strengthened the PBGC's early warning and enforcement tools to substantially limit the other problem Smalhout raises -- that the "the true size of these obligations doesn't become clear until the companies go out of business and their pension plans are terminated."

Finally, Smalhout charges that the assets funding defined benefit plans are illusory, with no investments to back up the promises. This is simply wrong. Plans are funded with real assets, which belong to the plan, not the employing company, and there are strict limits on the extent to which company stock can be used for funding. That is what the 1995 reversion argument was about: Republicans attempted to allow corporations to take the assets out of "overfunded" plans for general corporate use. We successfully beat back the proposal -- a proposal that would not have been made if the assets were not real and valuable.

In short, Smalhout's attack is not really an attack on the surplus announcement, but rather on the entire defined benefit guarantee system. At some levels, his issues are real, but they were addressed in the RPA. Your announcement was an annoucement of a true turnaround that will benefit millions of workers for years to come.

<u>PBGC response</u>

On Friday, at our request, the PBGC sent a letter to the editor of the <u>Wall Street Journal</u> objecting to the article. A copy of the letter is attached.

The Pension-Guarantee Time Bomb

By James H. Smalhout

President Clinton drifted off into the political surreal on Monday while throngs of children frolicked on the White House lawn during the traditional Easter Egg Roll. That Mr. Clinton chose one of this city's most child-centered moments to claim credit for apparent improvements at the Pension Benefit Guaranty Corp. speaks volumes about his vision and priorities. The kids waiting for the Easter eggs were visibly excited, but they should have been crying.

The PBGC is the government agency set up by the Employee Retirement Income Security Act, known as Erisa, in 1974 to make sure that workers received the pensions promised by private defined-benefit plans. The agency collects "premiums" (i.e., taxes) from private defined-benefit plans, and in return guarantees benefits of as much as $33,136 per year. But that function is almost beside the point. The PBGC is quite simply the plaything of an unholy alliance—labor unions, companies that still sponsor such defined-benefit programs and the consultants that service these programs—that doesn't care one whit about how much damage they inflict on the economy.

The PBGC produced almost $1 billion in revenues from insurance premiums last year. That revenue makes the federal budget look better at the moment. And for the first time since 1974 the PBGC reported that it collected enough money to pay for the pensions the agency has already taken over from sick and dying companies. That was the "good news" Mr. Clinton announced on Monday.

Bill Clinton

But taxpayers are hardly off the hook. Unfunded pension debt run up by private companies more than doubled, to $64 billion last year from $31 billion in 1995. This hardly reflects brilliant management, particularly during a bull market. But that $64 billion could actually understate the PBGC's problem, because Erisa left too much control over pension-benefit funding in the hands of plan sponsors. The true size of these obligations doesn't become clear until the companies go out of business and their pension plans are terminated. The savings-and-loan debacle should have taught us that in matters of financial regulation, what you see is not what you get. It's what you don't see that gets you.

The problem the Clinton administration ignored from the start is that the PBGC was invented to make sure that credit would go to places where credit is most definitely not due. For example, some firms use PBGC-guaranteed pension promises to avoid adhering to commercial creditors' lending standards. In effect, these companies borrow from their workers, in the form of pension promises, on the strength of a federal guarantee. The companies are not required to pay the full cost of these pensions with actual cash contributions. Instead, plans can remain indefinitely "underfund-ed" by as much as 10% without penalty. And dying companies play end-game strategies that can quickly make their government-guaranteed pension debts soar.

Nobody in his right mind would lend to these deadbeats without backup from Uncle Sam. And insurance premiums—at whatever level—won't reflect the true price of risk as long as congressmen and lobbyists keep a grip on the business. The situation hurt the economy by preventing capital and labor from flowing to their most productive uses. Yet most of the costs never show up as federal spending.

Nobody in his right mind would lend to these deadbeats without back-up from Uncle Sam.

Our system of partially funded and easily siphoned pensions turns out to be remarkably similar to those in several European countries. Companies can promise pensions to their workers and "fund" them by recording a "book reserve" for the debt on the company's balance sheet. There are no other investments to back up these promises. Only Sweden, with its private system, has a good record of allowing only truly creditworthy companies access to this form of borrowing. Finland's government program failed utterly and at a heavy cost (at least $500 for each of Finland's workers) in 1993, before the country privatized it.

Any sensible guarantee system for private pensions would require employers to overcollateralize them—match the liabilities dollar for dollar, and then some—with either a portfolio of stocks and bonds, or with the economic value of the company itself, or with some combination of both. The most important role for the PBGC or any other organization that guarantees private pensions should be to make sure that this happens. Experts and authorities world-wide recognize the importance of sound capital standards—with the notable exception of pensions, at least in the U.S. Banks must keep capital reserves of at least 8% above and beyond assets that cover all their outstanding debts. Similarly, margin requirements for investors prohibit them from borrowing more than half the value of their portfolios.

But the rules are incredibly lax for pensions. As a result, federal guarantees ensure that companies take unrealistic risks and lose billions of dollars that the government must repay. Unions leaders, pension consultants and other proponents of these government subsidies say that we should ignore them because pension guarantees are "social insurance." But that's hypocritical talk meant to cloak self-interest. The PBGC provides benefits that greatly exceed those needed to keep the elderly out of poverty. Besides, the program protects only 13% of the labor force. Private pensions are not the way for America to extend its social contract between the generations—that's Social Security's job.

The Erisa pension guarantee ties up workers in yesterday's industries as well as much of their savings. That damages our economy, and it's downright antisocial. There are much better ways of providing workers with safe and secure pensions. How strange it was for the president to suggest otherwise.

Mr. Smalhout is a visiting fellow at the Hudson Institute and author of "The Uncertain Retirement" (Irwin, 1996).

THE WALL STREET JOURNAL.

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Pension Benefit Guaranty Corporation
PBGC 1200 K Street, N.W., Washington, D.C. 20005-4026

April 4, 1997

Mr. Robert L. Bartley
Editorial Page Editor
The Wall Street Journal
200 Liberty Street
New York, New York 10281-1003

Dear Mr. Bartley:

The editorial commentary, "The Pension-Guarantee Time Bomb," on April 4, 1997, by Mr. Smalhout misses the point entirely. In attacking the Pension Benefit Guaranty Corporation, he states that the fact that PBGC was created by Congress in 1974 to protect the retirement incomes of American workers in private defined benefit pension plans "is almost beside the point." The more than 42 million workers whose pensions are insured by PBGC and their families would disagree, especially the 440,000 workers and retirees who depend directly on PBGC to pay their pensions. That is the point.

In the last four years, we have seen significant progress in achieving a secure defined benefit pension system and a strong pension insurance program. Today, most of the 50,000 pension plans insured by PBGC are well funded. In 1994, the Administration and the Congress recognized the need for improved pension funding and enacted the Retirement Protection Act. The law tightened pension funding requirements, providing the appropriate incentives for improving plan funding over the next 10 to 15 years. It strengthened the insurance program. And, for the first time in PBGC's history, the pension insurance program shows a surplus. While pension underfunding persists in some plans, we now have the tools to address it.

Improvements in the pension insurance system are real. The American people can be confident that the federal pension insurance program is financially sound.

Sincerely,

N. Anthony Calhoun
Deputy Executive Director
and Chief Financial Officer

8/30 copy
Alexis Herman
Richard Hayes

Metroplex
CORPORATION

August 23, 1996

By Hand Delivery

Honorable Leon E. Panetta
Chief of Staff to the President
White House
1st Floor, West Wing
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Honorable William J. Perry
Secretary
Department of Defense
The Pentagon
Washington, D.C. 20301

Honorable Jacob J. Lew
Acting Director
Office of Management and Budget
Room 252 OEOB
Washington, D.C. 20503

Re: National Coalition of Minority Business' ("NCMB") Opposition to Any Administration Proposal Compromising on the Elimination of the Small Business Competitiveness Demonstration Program

Dear Chief of Staff Panetta, Secretary Perry, and Director Lew:

Metroplex Corporation, a small disadvantaged business ("SDB") construction firm, herewith respectfully submits the enclosed opposition, prepared by NCMB, to any extension of the Small Business Competitiveness Demonstration ("CompDemo") Program beyond September 30, 1996 *or to any compromise that has substantially the same continuing adverse effect* on SDB concerns' exclusion from the Federal Small Business Set-Aside Program.

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Facsimile: (202) 488-8068

Small business construction companies have been denied access to the Small Business Set-Aside Program, under the so-called Rule of Two, *for seven years*, even though the CompDemo Program was supposed to be only a "test" program to develop data to assist in determining the competitiveness of small businesses in certain industry groups. The Bush Administration already extended the CompDemo Program once, until September 30, 1996, and we are still unaware of any data justifying the continuation of the CompDemo Program.

Elimination of the CompDemo Program has become even more critical due to the Department of Defense ("DoD") suspension last fall of the SDB Set-Aside Program, resulting in a tremendous and continuing loss of revenue to the minority community.

Thank you for your consideration of this matter of critical significance to small and small disadvantaged businesses, including Metroplex Corporation, which historically have had to rely on the equitable programs of the Federal Government, such as the Small Business Set-Aside Program, to achieve fair access to the nation's construction marketplace.

I look forward to conferring with you on this most important issue.

Respectfully submitted,

Melvin E. Clark -jef

Melvin E. Clark, Jr.
President & CEO

Enclosure
cc w/enc:
Honorable Harold Ickes✓
Assistant to the President and
Deputy Chief of Staff for Policy and
Political Affairs

Honorable Steven Kelman
Administrator
Office of Federal Procurement Policy

Honorable Paul J. "Page" Hoeper
Deputy Under Secretary of Defense
for International & Commercial Programs
United States Department of Defense

D.S. Parry, Captain, SC, USN
Director, Defense Acquisition
Regulations Council
Office of the Under Secretary of Defense

346299-01 / DOCSDC1

NATIONAL COALITION OF MINORITY BUSINESSES

MEMORANDUM

FROM: Weldon H. Latham WHL
General Counsel

DATE: August 23, 1996

RE: **Adverse Effects of an Extension of the Small Business Competitiveness Demonstration Program (or the Placement of any other Limitations on Participation in Small Business Set-Asides)**

This Memorandum sets forth the National Coalition of Minority Businesses' ("NCMB") strenuous opposition to any extension of the Small Business Competitiveness Demonstration Program (the "CompDemo Program" or the "Program") due to its adverse impact on small disadvantaged businesses ("SDB"), already beset by the adverse impact of the Department of Defense ("DoD") suspension/elimination of the Rule of Two mechanism to utilize SDB competitive procurements. Senator Kit Bonds and Congresswoman Jan Meyers have sponsored bills (S. 1784, H.R. 3719, H.R. 3720) which would extend the Program beyond its scheduled September 30, 1996 termination date. In addition, the Office of Federal Procurement Policy ("OFPP") has circulated an administrative proposal that would have the same substantive effect as the CompDemo Program: precluding -- without a compelling reason -- SDB's and other small businesses in the construction and other industries from benefiting from the long-standing Small Business Set-Aside Program.

HISTORY OF RECENT ELIMINATION OF PROCUREMENT BENEFITS TO SMALL DISADVANTAGED BUSINESSES

Congress established the CompDemo Program in 1988 largely to "test" the ability of small businesses to compete successfully in four (4) designated industry groups (construction, architect & engineering, refuse, non-nuclear ship repair), without any restrictions placed on competition.[1] The Program was to expire in four (4) years. In 1992, however, Congress extended the Program for another three (3) years, to September 30, 1996.[2]

[1] *See* Title VII of the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656.

[2] *See* Title II of Pub. L. 102-366 *and* FAR 19.1001.

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As a result of this Program, most contracts in the designated groups (i) may *not* be set aside for small businesses[3/] and (ii) are *ineligible* to receive a DoD SDB ten (10) percent price evaluation preference afforded all other SDB's in other industries[4/]. Thus, SDB's in the construction and other designated industries have been denied the benefits of these two (2) broad programs for the last seven (7) years.

Moreover, the CompDemo Program has been *artificially suppressing* an increase, to account for inflation, in the size standards of the four (4) designated industries, even though SBA has promulgated such an increase for all other industries. SBA raised most of the revenue-based size standards by 45.8% in April 1994, but *refused* to make any adjustment to the standards for the industries covered by the CompDemo Program because the Program "prohibits a change in size standards."[5/]

In addition, SDB's in these industries have suffered since last fall from DoD's "suspension," *i.e.*, total elimination, of a third program, the SDB Set-Aside Program.[6/] In that regard, moreover, DoD's creation earlier this year of a new SDB evaluation preference program for the construction industry[7/], whose professed purpose was to limit the adverse impact of the suspension, is of *de minimis* value because the program only seeks to remove bond cost differentials, as NCMB explained in detail in its January 19, 1996 Comments to the proposed rule. *See also* enclosed MBE articles: "Rule of None" and "Missing the Target."

Meanwhile, the Department of Justice ("DOJ") is developing a Government-wide SDB Program[8/], under the authority of the Federal Acquisition Streamlining Act of 1994, but it is rumored that, at least for the construction industry, the "benchmarks" may be so low that the SDB Program in fact will offer no benefits to SDB's in the construction industry. (In particular, Set-Asides would be totally prohibited, a proposal which, as discussed in NCMB's July 22, 1996 Comments to DOJ's proposal, is completely lacking in merit).

[3/] *See* FAR 19.1006(b)(1).

[4/] *See* DFARS 219.70. As you know, the DoD Evaluation Preference of DFARS 219.70 directs contracting officers to give offers from SDBs a preference in evaluation "by adding a factor of ten percent" to the price of all other offers. *See* DFARS 219.7002(a). DFARS 219.1006(b)(1)(B), however, states, "During the period when small business set-asides cannot be considered for acquisitions in the four designated groups -- . . . (B) The evaluation preference at 219.70 shall not be used."

[5/] *See* 59 Fed. Reg. 16513 at 16515.

[6/] *See* FAR 19.1006(b)(1) *and* DFARS 219.1006(b)(1)(A).

[7/] See 61 Fed. Reg. 18686 (Apr. 29, 1996).

[8/] *See* 61 Fed. Reg. 26042 (May 23, 1996).

PROPOSALS TO EXTEND THE COMPDEMO PROGRAM

In view of these recent adverse actions against SDB's in the construction industry -- the elimination of the DoD SDB Set-Aside Program, the institution of an ineffective new DoD evaluation preference program, and the rumored denial of benefits under the new Government-wide SDB Program -- *the Administration must now oppose any continuation of the CompDemo Program, including any limitations on construction firms' access to the Small Business Set-Aside Program.*

There are several CompDemo extension proposals pending:

S. 1784, The Small Business Investment Company Improvement Act of 1996, introduced by Senator Kit Bond, passed by the Senate July 25, 1996, and referred to the House Committee on Small Business on July 26, 1996. An amendment from the floor of the Senate added Section 12 to this bill, which would extend the CompDemo Program for one (1) year, until September 30, 1997.

H.R. 3719, The Small Business Programs Improvement Act of 1996, introduced by Congresswoman Meyers and referred to the Committee on Small Business on June 26, 1996, and committed to the Committee of the Whole House on August 2, 1996. This bill would extend the CompDemo Program for four (4) years, until September 30, 2000.

H.R. 3720, The Small Business Investment Company Reform Act of 1996, introduced by Congresswoman Meyers and referred to the Committee on Small Business on June 26, 1996. This bill is a companion bill to S. 1784. It does not presently contain a provision extending the CompDemo Program.

OFPP Draft Proposal. Most troubling is a proposal emanating from OFPP staff, which reportedly is circulating a draft "compromise" proposal that would implement the worst features of the CompDemo Program. Just like the irreparably damaging "suspension" of the DoD SDB Set-Aside Program, known as the "Rule of Two," this new OFPP proposal would "suspend" the Small Business Set-Aside Program "Rule of Two" for the four (4) industries now covered by the CompDemo Program, if the small business share exceeded 40 percent of the market. This proposal thus implements the most damaging of all features of the CompDemo Program -- denial of access to the Small Business Set-Aside Program and, presumably, the DoD SDB ten (10) percent price evaluation preference as well.

ANALYSIS

As indicated above, SDB concerns in the construction and other industries covered by the CompDemo Program have been denied access to the following programs:

1. The "Suspended" DoD SDB Set-Aside Program,

2. The Goverment-wide Small Business Set-Aside Program, and

3. The DoD SDB Ten (10) Percent Evaluation Preference Program.

The CompDemo Program was ostensibly only a "test" program. It was to last four (4) years. Under the Bush Administration, this "test" program was extended another three (3) years, for a total of seven (7) years. To NCMB's knowledge, there has never been any study that indicated that the Program was a "success." Nor has there ever been a study that indicates that *another* extension of the Program would produce any positive "results."

This test must now be over. Although it certainly would seem prudent to critically evaluate the results of the "test," it would be disingenuous to extend the so-called "test" without a compelling, legitimate rationale, particularly when it adversely affects so many small and SDB concerns.

During the time period in which any results are assessed, logic and fairness dictate that the Government return to the *status quo*. The status quo is achieved by allowing the CompDemo Program to expire by its own terms. Doing so would (1) *permit* numerous small businesses and SDB's to *again* participate in the federal Small Business Set-Aside Program, (2) *finally authorize* the resumption of the DoD SDB ten (10) percent price evaluation preference to all SDB's, and (3) *now permit* SBA to raise the size standard to a fair and natural inflation-adjusted level in all affected industry groups. Conversely, continuation of the CompDemo program could also interfere with DOJ's development and implementation of a Government-wide SDB Program.

Most critically, allowing the CompDemo Program now to be extended, again, *would severely and unfairly damage the financial viability of numerous small and SDB concerns*, as well as *conflict* with the Clinton Administration's repeated statements of support for small and small disadvantaged businesses. Accordingly, this Administration must rebuff further efforts to eliminate programs providing fair access to the Federal marketplace, by opposing the pending legislative proposals and eschewing administrative proposals that would have the same effect.

CONCLUSION

President Clinton has continually stated his commitment to compensate for the loss to the minority community attributable to the suspension of the SDB Rule of Two Program. White House staff have been frustrated in their efforts to accomplish his goals, particularly as relates to the construction industry due to the existence of the CompDemo Program. Thus, it is crucial that now that the law authorizing the CompDemo Program is about to expire, DoD as the President's agent and the rest of the Administration aggressively oppose any legislative extension of the CompDemo Program or any administrative "compromise" related thereto, which would obviously fly in the face of the President's stated objectives to support the minority community, still suffering from the suspension of the SDB Rule of Two.

346156-01 / DOCSDC1

Rule of None

As the Justice Department works to implement President Clinton's "mend it, don't end it" policy, the Defense Department scraps its set aside rule for minority contractors. What's next?

Weldon H. Latham is a senior partner of the national law firm Shaw, Pittman, Potts & Trowbridge in Washington, D.C. He maintains an extensive legal practice in government procurement, corporate law, and legislative and regulatory matters. He also serves as a member of the Clinton SBA National Advisory Council and Civilian Aide to the Secretary of the Army.

As part of his affirmative action policy statement this past summer, President Clinton directed the Department of Justice (DoJ) to conduct a review of all federal affirmative action programs to insure that they were in compliance with the recent Supreme Court decision in *Adarand v. Peña* and his own policy objectives. DoJ requested individual agencies to prepare inventories of programs that might conceivably be subject to *Adarand*. The U.S. Associate Attorney General's office also conducted an analysis of those programs, guided by the dual purpose of abiding by *Adarand*'s "strict scrutiny" standard and fulfilling the Clinton administration's commitment to more fairly broaden opportunities for minority owned firms to do business with the federal government.

The first casualty resulting from this review process occurred in late October when the Department of Defense (DoD) announced the presumably "temporary" suspension of the so-called "Rule of Two." Under DoD's Rule of Two, DoD prime contracts were to be set aside for small disadvantaged business (SDB) competitive procurements whenever two or more SDBs were available and qualified to present bids, of no more than ten percent above the government's estimated fair market value of the goods or services.

At the same time that DoD was suspending the Rule of Two, Undersecretary of Defense for Acquisition Paul G. Kaminski exhorted "all DoD contracting activities to use their utmost skill and existing authorities to increase awards to SDBs." During fiscal years 1992-1994, the DoD for the first time exceeded its statutory goal of awarding five percent of contracts and subcontracts to SDBs, Historically Black Colleges and Universities, and other minority institutions. Through the first three quarters of this year, DoD awarded $5.4 billion of its prime contracts and subcontracts to these groups. SDB prime contracts awarded utilizing the Rule of Two accounted for $1 billion of SDB prime contract awards in fiscal year 1994 and $516 million in the first three quaters of 1995.

The key players in charge of overseeing the federal government's commitment to broadening minority business opportunities, within the parameters of *Adarand*, are senior Clinton DoJ officials John R. Schmidt and Deval L. Patrick.

Schmidt was appointed Associate Attorney General in 1994. He oversees the work of the Justice Department's Civil, Civil Rights, Antitrust, Tax, and Environment and Natural Resources Divisions. Schmidt previously served as ambassador and U.S. chief negotiator for the Uruguay Round of the World Trade Talks under the General Agreement on Tariffs and Trade (GATT). While a senior partner in the Chicago office of Skadden, Arps, Slate, Meagher and Flom, in the mid-1980s, Schmidt specialized in mergers and acquisitions as well as other corporate and commercial transactions. He was named by *American Lawyer* as one of 27 "all-stars" of the 1990's of the American Bar and was recognized by the *American Law Journal* as one of the 100 most influential lawyers in America.

For many years Schmidt has also been a leader in a wide range of civic and professional activities in Chicago and a supporter of minority groups' interests. He was co-counsel for the Coalition of Minorities, Women and Others which successfully challenged the seating of delegates from Chicago at the 1972 Democratic Convention. He is also co-chair of the Committee to Support Project Vote, a voter registration effort which focuses on the minority community, and has had many successes in helping to secure subcontracts for minority owned firms on major public and private projects in Chicago.

Patrick is the Assistant Attorney General for Civil Rights. He directs the DoJ division responsible for enforcing federal statutes and orders that prohibit unlawful discrimination.

After law school and a clerkship on the U.S. Court of Appeals for the Ninth Circuit, Patrick joined the NAACP Legal Defense and Education Fund in New York City as a staff attorney. Just prior to becoming Assistant Attorney General, he was one of the few African American partners with one of the nation's major law firms, Hill & Barlow, in Boston. In his current position, Patrick has focused his attention on vigorous enforcement of the nation's civil rights laws. During Patrick's tenure, the division has achieved acclaim for the landmark public accommodations settlement with Denny's Restaurants, the defense of challenges to congressional districts under the Voting Rights Act, groundbreaking educational enforcement efforts under the Americans With Disabilities Act, expansion of the Fair Lending Program, and the first successful criminal prosecutions under the Freedom of Access to Clinic Entrances Act. Patrick took a prominent role in President Clinton's post-*Adarand* affirmative action review.


Tracey Attlee

Justice Department officials John R. Schmidt (left) and Deval L. Patrick (center) discuss the Clinton administration's ongoing review of federal affirmative action programs with* MBE *contributing writer Weldon H. Latham.

I met with Schmidt and Patrick at their offices at the Department of Justice on the same day that DoJ and DoD announced the suspension of the Rule of Two. We discussed DoJ's key role since the *Adarand* decision, the President's policy statement, DoJ's commitment to President Clinton's minority business policy, and what impact the suspension of the Rule of Two will have on the minority business community.

LATHAM: *We know the Justice Department is playing a key role in ensuring that current federal programs are in compliance with* Adarand. *What is the status of the Justice Department's review of minority business programs?*

SCHMIDT: We began reviewing minority business programs back in July, which was a few weeks after the *Adarand* decision. It was an effort that was led by Justice, but it involves a lot of people at various federal agencies. We went through an initial stage of asking the agencies to give us inventories of all programs that might conceivably be subject to *Adarand*, and we have since been reviewing those programs. We are now beginning to take some action, which I think is going to be an incremental process.

LATHAM: *Mr. Patrick, any additions that relate specifically to minority business programs?*

PATRICK: The Justice Department has also continued to defend programs challenged in the federal courts on constitutional grounds, after *Adarand*, as we had before the decision. We have had a slight increase in the number of challenges, but so far we have not sustained any adverse judgments. The effort of defending programs, which is directed by the Civil Rights Division, and the effort to do a pro-active analysis of programs after *Adarand*, which is directed by the Associate Attorney General's office, run on parallel tracks, and we stay in very close touch with each other. We are both guided by the dual purposes of abiding by the Constitution on the legal level; and on the policy level, seeking to fulfill President Clinton's commitment to broadening participation by minority businesses in federal contracts.

LATHAM: *As you know, SDB prime contracts represent $1 billion in revenues to minority businesses. What are the next steps after the suspension of the Rule of Two to assist SDB contractors?*

SCHMIDT: We have discussed with the Department of Defense steps they can take to try to make sure that, even without this particular device, they will continue to have a very substantial and, we hope, essentially the same level of aggregate contracts going into the minority community, as they had previously. All that is being suspended here is one particular mechanism to award SDB contracts. They have other methods already in place—a price preference that is available under some circumstances for minority firms, and the 8(a) program through the Small Business Administration is also utilized on a very large scale. DoD also has a program of setting goals for minority subcontracts under major prime contracts. We have talked with them about how they can strengthen their use of those other techniques in order to continue to maintain a similar overall level of minority contracts during the suspension.

LATHAM: *Mr. Patrick, the 8(a) program is mentioned often in the* Adarand *case. It appeared that Justice O'Connor, at least, indicated in more that one instance where, in her opinion, the 8(a) program appeared to satisfy the "strict scrutiny" standard. What is your view of that, and are any changes planned for the 8(a) program solely due to* Adarand?

PATRICK: We are not jumping to conclusions about the lawfulness of any program. The process that Mr. Schmidt has described is an ongoing and serious one, and we will consider the 8(a) program in turn. Our expectation—frankly, just like the expectation of the majority of the Supreme Court—is that there will continue to be means that the federal government can use to expand contracting opportunities for minority businesses. If you combine that with the commitment of the Clinton administration, we are quite confident that we will be able not just to preserve, but strengthen minority business procurement programs.

LATHAM: *Do you agree with the view that the 8(a) program appears to pass scrutiny based on the Justice Department's analysis?*

SCHMIDT: We feel very hopeful about the 8(a) program.

LATHAM: *Very politically said! As you assist the Department of Defense in its review, a number of people have suggested that one possibility to replace the Rule of Two is an approach that includes points the Supreme Court mentioned, such as certification and a predicate for granting contracts—for example, the actual experience in a given region of the country where minority contractors are still grossly underutilized, if not blatantly discriminated against. Mr. Schmidt, do you have any thoughts about the way the SDB program might be reconfigured to comply with* Adarand?

SCHMIDT: I think those kinds of elements are what courts have looked to. If you consider the decisions after *Richmond v. Croson*, you will recall that state and local governments became subject to the same strict scrutiny standard that we are now subject to at the federal level under *Adarand*. The narrow tailoring that the courts have followed has allowed them to sustain these programs. Those are the kinds of options we are beginning to look at. We should be clear that we did not have to, nor did we, come to any conclusion that the Rule of Two is unconstitutional in order to take the action that is now being taken by DoD. The Rule of Two is not a statutorily mandated program, but is something that the Defense Department had voluntarily adopted, and the DoD is now voluntarily deciding to suspend it. What makes the Rule of Two more vulnerable is that it is stated in such an absolute fashion, and in a sense appears to be an arbitrary rule. It says in every case where you find that there are two or more small disadvantaged firms available to bid, DoD will set aside the contract. Narrow tailoring, such as looking at what the impact is in a particular region, is not available under this rule. So as we look at what kind of program will work, we must look at adding the narrow tailoring conditions of *Adarand* and *Croson*.

LATHAM: *Mr. Patrick, has the Justice Department gotten the level of support it needs from the other agencies to achieve the President's objectives?*

PATRICK: We have been working very cooperatively with the general counsels of the other agencies. There is a tremendous amount of information which we have been gathering, trying to distill, and that would be impossible without the assistance of all the other agencies. I think everybody has a clear understanding of what our goal is, which is to do a serious analysis of programs in light of *Adarand* and where "mending" is necessary to undertake those actions and try to do it promptly, as the President directed.

LATHAM: *Our readers are more interested in minority business than other areas of affirmative action, Mr. Schmidt, but perhaps you can give us an overview of the other areas where DoJ is involved, such as employment and college enrollment.*

SCHMIDT: We are looking at the whole range of affirmative action programs—in the education area, scholarship programs, targeted grant programs, which tend to raise special issues. They may have legal justifications, for example, that go beyond simply overcoming past discrimination and that are also constitutionally permissible. Some may be easier to defend. I would say, though, that initially our principal focus has been on the contracting procurement area, because that is where we have had by far the greatest amount of litigation.

LATHAM: *Mr. Patrick, in looking at these procurement programs, it is interesting to note that only some include nonminority women, such as the Department of Transportation and the Agency for International Development. A number of them, however, such as the 8(a) and DoD's SDB programs, do not. Has your office reached any conclusions about whether women should or should not be included in all these programs?*

PATRICK: Across the board? No. It is obviously something we have got to look at, but with the thought of how to assure that we are not inappropriately displacing qualified minority contractors, in the interest of including other contractors who might well benefit from these kinds of inclusionary efforts to enhance participation.

LATHAM: *Women's groups traditionally have complained that they are not included, that the Congress has enacted different legislation and different requirements for various agency programs. Is part of your assessment of these programs going to examine whether women should be included?*

PATRICK: From a legal standpoint, of course, we have a Supreme Court decision in *Adarand* that deals solely with race-based programs and subjects those programs to constitutional scrutiny. So our charge from the President is to examine programs that might conceivably raise issues under *Adarand* and determine whether they comply with that standard. At this point, the Supreme Court has not said that programs that are designed specifically to assist women are subject to the same constitutional test. That appears to be more of a policy question than a legal question. Our legal job is focused on the race-based programs, although we have tried in doing this analysis to pay attention to whether programs include women.

LATHAM: *Mr. Patrick, in your earlier comment you alluded to an issue that*

Will DoD Replace the Rule of Two?

THE DEFENSE DEPARTMENT IS EXAMINING WAYS IN WHICH IT can expand its contracting opportunities for SDBs. Alternatives include:

- reinstating a substantially revised SDB prime contracting program
- breaking large contracts into smaller parcels
- increasing minority participation in "thrust areas" where minority owned firms have had little representation
- creating incentives for prime contractors to increase SDB subcontracts

comes up a lot—displacement—in that when you open programs to additional groups you may displace another. What is your thinking about the concept of separate goals? If you have both women and minorities in these programs, should they have separate goals, or should they fall under the same goal?

PATRICK: That is a prerogative of the Congress. Not being a member of Congress, I do not want to second-guess those judgments, but I think we have to be sensitive to those issues as we are developing ways to strengthen these programs. That will make the reforms better, stronger, and more effective. Not just better to sustain a legal challenge, but more successful in going forward.

LATHAM: *Concerning federal minority business programs, what support can minority business owners lend to your efforts?*

SCHMIDT: We have been talking with people such as you, Weldon, who know the field in a very extensive and practical way. They know what works and what doesn't. What the Constitution and the Supreme Court are now requiring us to do is engage in a very proactive analysis—which includes what works best without going further than is needed in using race-based decisions. To the extent people will engage with us in that process, I think it can be very helpful in coming up with something that is more than just words on paper.

PATRICK: I would add that I think it is natural for people to view the *Adarand* decision as a setback. Nobody is pretending that it was not a blow to the ease with which the federal government can develop minority contracting programs. But now that we have *Adarand*, it is probably more useful that we view it as an opportunity and take on the role that the President has given us to approach this in a proactive manner. The review will help us develop reforms, where necessary, using this exercise as an opportunity not just to make the programs legally defensible, but also to make them as effective as possible. That is where our contacts with the minority business community are key and have already been extremely useful in this process.

SCHMIDT: The other thing that could be very helpful is, people need to be open to change and recognize that change does not necessarily mean that you will not achieve the objectives. Because of *Adarand* we may have to get there a different way. If people can be open to doing things in different ways, it will better prepare us to defend programs in court, if necessary, and give us the flexibility to do things that most likely will withstand any constitutional challenge.

LATHAM: *How much longer do you think Justice and the agencies will be working together to respond to the President's directive?*

SCHMIDT: We have avoided setting any unrealistic deadlines because we simply do not know. We are very much in the throes of the process and we are going to go through a period of very intensive, continuing action. At some point it will begin to wind down. But, I have never seen it as a process where we reach a point and say, "as of this date we are done." It is a very complex subject, one that requires ongoing review. We're not talking years, but we're not going to be done next week.

LATHAM: *The President in his policy statement outlined four principles that he deemed crucially important, which presumably are also in line with* Adarand. *Specifically, he wants to make sure all affirmative action programs do not create quotas, do not create preferences for unqualified individuals, do not create reverse discrimination and are not continued after the programs' goals have been achieved. Has the Justice Department refined those "don'ts" in advising the agencies on* Adarand *compliance? Are there any other things that the agencies need to be careful about in this regard?*

SCHMIDT: Well, we have not tried to do it in an abstract way. We are applying the President's principles. I think those principles would probably be followed pretty much from *Adarand* in any event.

LATHAM: *We are at a time now when the minority community is watching this administration carefully. I think they have been encouraged by the President's series of positive speeches, including his July 19 policy statement, his speech to the Congressional Black Caucus, and his speech in Texas on race relations on the day of the Million Man March. But the next step is seeing that implementation is in line with his stated goals and objectives. What more can this administration do to make minority business people, and the minority community in general, feel that they are being well represented by their President?*

SCHMIDT: To some extent, of course, our job is a legal one and I think we have an obligation in the interests of the minority community to develop the programs that are the most likely to be sustained constitutionally. In that sense there is a real lawyer's job here—it involves a lot of practical analysis of what will work and what will not work. But I think if we do our lawyer's job well, then we will end up with programs that we will be able to sustain. When you read *Adarand*, the fact is that the majority of the Court believes there are affirmative action programs that should be sustained, even the program at issue in *Adarand* itself. There are three Justices who said they thought that particular program would likely withstand strict scrutiny. So it is not as if we are operating from a negative kind of presumption. On the other hand, I think we have to do the job right and do it in ways that allow us to win in court.

PATRICK: Ideally, the proper approach is to have a fully developed reform. I do want to make sure that the minority business community understands how much effort is going into the task of reforming programs so that they can withstand constitutional challenges. That is a very high priority for all of us here in the Department of Justice and in the administration.

LATHAM: *How long is it going to take to reformulate DoD's procedures so that there will be another SDB set aside program, in full compliance with* Adarand?

PATRICK: We are working on a 30-day time frame to develop a tool which may be a substitute for the Rule of Two.

LATHAM: *We'll check back with you in 30 days.* ◆

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MBE
Minority • Business • Entrepreneur

Missing the Target

The Department of Defense's proposed SDB regulations fall woefully short of its goal to ensure that minority owned firms get a fair share of contract awards.

Weldon H. Latham

By **Weldon H. Latham**

Last October, the Department of Defense (DoD) suspended the so-called Rule of Two [see *MBE* November/December 1995]. The rule permitted DoD to set aside prime contracts for award on a competitive basis to small disadvantaged businesses (SDBs). Its suspension was part of an effort to revamp the SDB program to comply with the Supreme Court's *Adarand v. Peña* decision, which was handed down last June.

According to DoD, SDB prime contract awards under the Rule of Two represented nearly $1 billion to minority owned businesses. Both the White House and the Department of Justice (DoJ) had urged prompt action by DoD to ensure the President's "fair share" contracting objectives were not abandoned in complying with *Adarand*.

Thus far, DoD's response has been extremely disappointing.

DoD's SDB contract performance with SDBs has improved under the Clinton administration. DoD for the first time exceeded the statutorily mandated five percent contracting goal, when it awarded 5.5 percent of its contracts to SDBs in fiscal year 1994. DoD expects to exceed that accomplishment once the fiscal year 1995 final numbers are calculated.

In December, DoD published a Federal Register Notice of Proposed Rulemaking, proposing changes to the Defense Federal Acquisition Regulation Supplement (DFARS). These proposed changes fail to fulfill DoD's own stated goal of seeking to compensate for the suspension of the Rule of Two. It is an extremely ineffective and uninspired approach which offers little or no relief to SDBs and ignores the adverse impact of the suspension. One billion dollars may not be significant to certain DoD officials, as the agency's total procurement budget is approximately $107 billion (and many individual majority contractors secure annual revenues solely from DoD in excess of $1 billion each), but $1 billion is still an extremely significant amount of money to most Americans, and particularly to the minority community.

> With each day the Rule of Two suspension remains in effect, SDBs are being denied a "fair share" of DoD contracts.

DoD's four proposed initiatives badly fail in their attempt to "limit the adverse impact of the suspension," even though the proposed rules are "an initial response" to the suspension. DoD's stated goal is, as it should be, to provide immediate relief to the SDB community. But the impact of its proposed regulations is neither immediate nor does it provide any relief.

Highlighted below are the proposed regulations and recommendations for changes that would truly assist SDB companies in their efforts to continue to maintain their share of DoD's procurement dollars.

Evaluation preference for construction procurements

The proposed rules would create a pilot program in which SDBs would be granted a 10 percent evaluation preference in construction procurements in order to compensate for the higher costs of bonding that SDBs generally encounter.

This rule change will have an insignificant impact—and probably a damaging overall effect—on SDBs in construction. The proposed 10 percent price preference, limited to redressing discrimination only in the bonding arena, fails to recognize that discrimination affects the entire cost structure of SDBs, especially those in the particularly credit- and capital-intensive construction industry.

Rather than limit the 10 percent evaluation preference only to bonding, the evaluation preference should be used in construction procurements under the same rules that apply to the traditional evaluation preference for all other SDBs, as is currently set forth in DFARS.

The general evaluation preference

This proposal would reform the general rule of applicability of the traditional 10 percent evaluation preference for SDBs and extend it to procurements where awards would be based on factors other than price. The present regulations only require the use of the evaluation preference "where award is based on price and price-related factors."

This rule change is much welcomed. In the past, contracting officers have often refused to utilize the evaluation preference in instances where price was only one of several factors considered in the award of a contract. In "best value" procurements, the evaluation preference is an appropriate means to enhance SDB contracting, but it has not been utilized.

The comments that will accompany the final rule should clearly explain that the evaluation preference is mandatory in all procurements except as specified in DFARS. They should also clearly explain that the rule is intended to expand the evaluation preference program's coverage to procurements without regard to whether the award will be based solely on price.

Past performance in complying with subcontracting clauses

The proposed rule would require contracting officers merely to evaluate offerors' past performance in complying with the Subcontracting Utilization and Subcontracting Plan clauses of their contracts. These contracting clauses are intended to "encourage" prime contractors to fulfill agencies' goals of increasing subcontracts to both small and small disadvantaged businesses. The clauses are necessary because, historically, prime contractors have failed or refused to satisfy this governmental objective.

This proposed rule, however, is based on two dubious assumptions and may not lead to any increase in subcontract awards to SDBs. One is that most contractors are in violation of their subcontracting clause obligations, which are nebulous and impossible to enforce. Another is that lacking any tangible incentive, contractors would react to the rule change by altering their subcontracting practices and relationships.

DoD, which has both the traditional "contractual" remedies and liquidated damage "penalties" available to it under existing law, has never utilized these potentially potent tools. DoD has failed to demonstrate the level of commitment to the SDB program needed to require prime contractors to meet reasonable subcontracting goals, especially when they have neglected or refused to satisfy the contract clause provisions.

To achieve the goal of increasing subcontract awards to SDBs, the DFARS should require every bidder or offeror to include in its bid or proposal legally enforceable proof (in the form of written subcontracts with SDBs) of the utilization of eligible SDBs in the performance of the contract. A contractor that does not include such proof should be regarded as "nonresponsive," and be ineligible to participate even in the competition for the contract award.

Each "responsive" bid or offer should also be given additional credit toward the contract award if it exceeds the minimum level of subcontracting to SDBs. These approaches would not represent any significant burden on the contracting community, but would immediately create a "self-enforcing" process in which major prime contractors would have a strong incentive to find and secure mutually beneficial relationships with the best and most efficient SDB contractors. Legitimate relationships between major prime contractors and well qualified SDBs will naturally develop and effective compliance will result, which up to this point has not been achieved.

Notification of subcontractor substitutions

DoD has proposed that contractors notify their contracting officer of substitutions they make of any small businesses, SDBs and women owned businesses specifically listed in the subcontracting plan when the substitutions are not small, disadvantaged or women owned.

This proposed rule would afford no immediate relief from the suspended Rule of Two because it is merely a notice requirement. It is also more evidence that the DoD bureaucracy is prepared to accept the excuses and substitutions of prime contractors in lieu of fulfilling the requirement that they make a legitimate, good faith effort to fulfill their subcontracting goals with SDBs. This proposed rule in no way even seeks to enhance compliance. Rather, it offers a regulatory means by which its prime contractors can fail to satisfy their goals by merely reporting their own failure.

Prime contractors should be required not only to identify specific SDB subcontractors in their bids, but also to enter into enforceable, written contracts with those SDBs. The only time subcontractor substitutions should be permitted is when a subcontractor defaults or otherwise is unable to perform its contractual obligations. Under those circumstances, the regulations should require a prime contractor to substitute a defaulting SDB contractor with another eligible and qualified SDB.

In summary, DoD's proposed rulemaking should include the following recommendations:

1) Expand the use of 10 percent evaluation preference generally to all instances where price and contract cost represent any part of the evaluation criteria, including best value procurements.

2) Immediately begin utilizing the evaluation preference, if necessary on a test basis, to include construction contracts.

3) Require proof of enforceable contractual relationships between all major prime contractors and prospective SDB subcontractors competing for DoD contracts, in order for those bids and proposals to be responsive and eligible for the competition.

4) Award evaluation points for bidders that exceed SDB subcontracting minimum goals; and

5) Only permit contractors to replace SDB subcontractors that are unable to perform due to default, and require that substitutes also be eligible SDBs.

Each of these recommendations is intended to have a real and measurable impact in increasing the number of SDB prime and subcontract awards in DoD procurement.

DoD is required by law to seek the written comments of interested individuals on its proposed rules. Comments are due February 12.

Individual minority business owners and their employees, business trade associations, attorneys representing businesses and associations, and any other interested groups should make their views known. Your action will make a real difference—write your comments today and encourage others to do likewise.

As part of the comment process, DoD should adopt these recommendations and promulgate them immediately as interim or final regulations, since with each day the Rule of Two suspension remains in effect without any significant replacement, SDBs are being denied a "fair share" of DoD contracts. ◆

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Weldon H. Latham

Weldon Latham is a senior partner of the national law firm **Shaw, Pittman, Potts & Trowbridge.** Shaw Pittman is one of Washington's largest and most respected full-service law firms and Mr. Latham's practice involves government procurement, corporate law, and legislative and regulatory matters. He is a nationally recognized expert on minority business matters, including the Small Business Administration Section 8(a) and the Department of Defense Small Disadvantaged Business Programs as well as other Federal procurement programs involving national policy, legislation, regulatory issues and landmark litigation, such as Adarand v. Pena. Mr. Latham has a distinguished record of public service having served as Assistant General Counsel, Executive Office of the President, Office of Management and Budget in the White House during the Ford Administration and as General Deputy Assistant Secretary, United States Department of Housing and Urban Development in the Carter Administration. Mr. Latham also served on active military duty in the Office of the Secretary, Department of the Air Force, General Counsel's Honor Program, at the Pentagon. More recently, he served on a Bush Administration Department of Defense Advisory Committee on procurement and technical data rights, and he currently serves as a member of the Clinton Small Business Administration National Advisory Council and as Civilian Aide to the Secretary of the Army. Mr. Latham holds a Juris Doctors degree from Georgetown University Law Center and a Bachelor of Arts in Business Administration from Howard University.

SHAW, PITTMAN, POTTS & TROWBRIDGE

2300 N STREET, N.W.
WASHINGTON, D.C. 20037-1128
(202) 663-9228

1501 FARM CREDIT DRIVE
MCLEAN, VIRGINIA 22102-5004
(703) 790-7900

115 SOUTH UNION STREET
ALEXANDRIA, VIRGINIA 22314
(703) 739-6650

201 LIBERTY STREET, S.W.
LEESBURG, VIRGINIA 22075-2721
(703) 777-0004

900 THIRD AVENUE
SUITE 1800
NEW YORK, NEW YORK 10022
(212) 836-4200

Name	Date
Sally Paxton	11/13/78

Counsel

CC-OPS
High Tech Support Services and Systems Engineering

July 12, 1995

Speak
Declined
Spoke to Gen
9/5/95
Los Angeles
[illegible]

Ms. Alexis M. Herman
Presidential Assistant/ Director of Public Liaison
The White House
Washington, DC 20500

Dear Alexis:

As always it was a pleasure seeing you at The White House Conference on Small Business. The conference provided an excellent opportunity for small business owners to come together and brain storm on the issues facing us today. The conference was undoubtedly a success since all 17 of the initiatives discussed were listed on the ballot.

My involvement with the National Association of Women Business Owner's (NAWBO) and as Chair of the Black Business Association (BBA) put me in the position to get fully involved in the various issues facing the community today. I am dedicated to informing voters of the facts about Affirmative Action as well as making the community at large know about all the good the President has done over the past four years. Through our efforts to fight the repeal of Affirmative Action, we seek to increase voter participation in next year's upcoming election.

I would like to make arrangement for you to come and speak with small business owners about our role in the election process. So many are misinformed and do not realize the power in their vote. It is crucial that more small businesses become involved in the re-election of President Clinton.

This speaking engagement would provide the perfect opportunity for you take a pulse of the community. The number of small business owners in the Los Angeles area alone are more that 25,000. Their level of influence in the community could make a favorable impact on the poles in 1996.

Please let me know the dates that will be best for you so we can make the arrangements and get the word out about your coming. I look forward to hearing from you and hearing the information you will bring to the small business community.

Thank you for your time and consideration.

Sincerely,

Mary Ann Mitchell

Mary Ann Mitchell
President

IBM Authorized Industry Remarketer 600 Corporate Pointe, Suite 1010 · Culver City, CA 90230-7600 · 310.417.5170 · FAX 310.417.7991

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AmericanAirlines

Arnold

EDWARD P. FABERMAN
VICE PRESIDENT
GOVERNMENT AFFAIRS

February 2, 1994

FEB - 2 1994

Ms. Alexis Herman
Special Assistant to the President and
Director of Public Liaison
The White House
Washington, DC

Dear Alexis:

Attached is a copy of the letter that went out yesterday to all members of the Business Roundtable. I've also attached a hand-out that we provided to several BRT members. Hopefully, these actions will result in change of position of various members.

Very truly yours,

Ed

Attachment

1101 Seventeenth Street, N.W., Washington, D.C. 20036, Tel. (202) 857-4221

February 1, 1994

Dear Fellow BRT Member:

There may be a time, later this year, when it makes sense for the Business Roundtable to endorse a health care reform bill. This is not the time to endorse any bill, even as a starting point, in the health care reform debate.

This is not the time because the debate about health care reform, on and off Capitol Hill, is so fluid. The members of Congress have just returned to Washington, and the co-sponsors of the major bills (including, we should emphasize, the Administration's bill) are negotiating, within co-sponsor groups and across them, to see what changes in the bills would strengthen them and attract more votes. The overwhelming likelihood is that all of the bills will be changed in fundamental ways, or combined with another group's bill in some fashion, before they get voted on. Any endorsement of a bill as it is now drafted will almost certainly be moot two months from now.

With respect to the Cooper/Breaux bills, we are concerned they would exacerbate cost-shifting from the public sector to the private sector. The bills cut the rates of growth in Medicare and Medicaid, thereby inviting providers to make up for lost revenue by raising premiums paid by businesses – and, because they fall short of effective cost containment, they don't protect businesses and others from that cost-shifting. And by falling short of assuring universal coverage, they perpetuate the burden that we carry, in the premiums we are charged, attributable to the cost of emergency and other care provided to those, in and out of the workforce, who do not have coverage.

Also, contrary to the BRT's position, the Cooper/Breaux bills sharply limit the tax deductibility of corporate expenditures on health care coverage. Deductibility would be capped in each region at the price of the least expensive Accountable Health Plan in that region which is certain to increase costs.

We believe the best approach for the Business Roundtable is to continue to make clear, in testimony and otherwise, what the concerns of our membership are and what we believe health care reform legislation must and must not do.

Sincerely,

Robert L. Crandall
Chairman & CEO
American Airlines

Dwayne O. Andreas
Chairman & CEO
Archer Daniels Midland Co.

Curtis H. Barnette
Chairman & CEO
Bethlehem Steel

Lawrence Perlman
Chairman & CEO
Ceridian

Robert J. Eaton
Chairman & CEO
Chrysler Corporation

Alex Trotman
Chairman & CEO
Ford Motor Company

Michael H. Jordan
Chairman & CEO
Westinghouse Electric Corporation

John F. Smith, Jr.
President & CEO
General Motors Corporation

J. Lawrence Wilson
Chairman & CEO
Rohm and Haas Company

John E. Bryson
Chairman & CEO
Southern California Edison

ISSUE	CLINTON PLAN	COOPER PLAN	COMMENTS/ACTION
Cost Shifting	Implements universal coverage through: - an employer mandate; and - subsidies for unemployed, low-income individuals.	Does not implement universal coverage. Insurance available for purchase by all individuals and small business through purchasing coops.	Universal coverage necessary to reduce cost shifting. Two methods to achieve: - Employer mandate; or - National government system.
Tax Policy Implications	Employer: all employer paid health benefit costs deductible. Employee: value of employer provided benefits in excess of standard plan counted as taxable income, 10 years after implementation.	Employer: taxed on all benefits and premium costs in excess of lowest cost basic plan. Employees: all employer provided premium contributions in excess of lowest cost basic benefit plan counted as taxable income.	Cooper plan increases tax liability of employers. (Estimates indicate benefit costs increase by 25%.) Cooper plan defines basic benefits on annual basis presenting difficulties in benefit planning. (National board recommends basic benefits to Congress each year, with Congressional approval required each year)
Retiree Benefit Obligations	Early retirees receive coverage through regional alliance, NO EMPLOYER OBLIGATION. Retirees age 65: Medicare remains in place with added benefits of perscription drug coverage and some long term care.	No early retiree provision. Medicare remains, NO ADDITIONS TO PROGRAM.	Retiree obligations present competitiveness issues for many industries.

XX ASAP XX

To

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A. Zisook

from

Ruby

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2/3/94

February 10, 1993

Ms. Alexis Herman
Assistant to the President
& Director of Public Liaison
THE WHITE HOUSE
1600 Pennsylvania Avenue
Washington, D. C. 20001

Dear Ms. Herman:

My name is Namon Lewis and I am the President/Chief Executive Officer of The Sable Group, a management development company located in Weston, Connecticut. Mr. Carlton Stockton, Vice President of Employee Relations for the MCI Corporation is one of my clients, and he asked me to coordinate a two and one-half day seminar for senior MCI Human Resource Executives on March 31, April 1 & 2 in the greater Washington, D. C. area.

Due to your successful stewardship of the Democratic National Convention, your high-profile in the campaign/transition, and your strategic importance to the Clinton Administration, it would be quite exciting if you would accept this invitation to be our luncheon speaker on Wednesday, March 31, 1993 at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia (703/920-3230).

Because your presentation is entitled "The Clinton Presidency", you would have a wide latitude in which to frame your remarks. Your audience is Human Resource Executives, and I have attached some information for your information/assistance in preparation. Your remarks should be 15 - 20 minutes, with an additional 5 - 10 minutes allowed for a question and answer period.

I will meet you in the lobby of the hotel between 11:45 and 12:00 noon, and will escort you to the luncheon room. Should you or your staff need any additional information, please contact me.

Sincerely,

Namon Lewis

February 25, 1993

Dr. Michael Pesci
Vice President - Training & Development
USF&G CORPORATION
100 Light Street
Baltimore, MD 21202

Dear Dr. Pesci:

Thank you very much for accepting our invitation to be the luncheon speaker on Thursday, April 1, 1993 at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia (703/920-3230).

We are extremely excited about your appearance and anxious to hear your perspectives on "Creating a New Paradigm" at USF&G and your Company's resurgence.

Attached is a program agenda and directions to the Crystal Gateway Marriott. If you have special audio visual requirements, please let me know. Should you or your staff need any further information, please contact me.

Sincerely,

Carlton A. Stockton

Enclosures

October 10, 1996

NOTE TO: **LEON PANETTA**
HAROLD ICKES

FROM: **KITTY HIGGINS** KH

FYI.

cc: Alexis Herman

Ben) R Hayes

Amut

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

October 7, 1996

Office of
the Chairman

Ms. Kathryn O'L. Higgins
Deputy Assistant to the President and Secretary
to the Cabinet
Office of Cabinet Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Kitty:

I have just completed my second year as Chairman and wanted to give you an update on our success in addressing the challenges identified in the December, 1992 Transition Team Report about the EEOC. Our new approach to civil rights enforcement and efforts at reinvention have been largely successful:

- we have brought the backlog down by 30% from last year's high of over 111,000 private sector discrimination complaints;

- we implemented mediation-based alternative dispute resolution as part of our new private sector enforcement procedures;

- we have obtained monetary benefits for victims of discrimination through administrative and judicial enforcement in excess of $250 million;

- we have facilitated voluntary compliance by issuing much needed and well-received policy guidance on the laws we enforce and by expanding our public outreach, education and technical assistance; and

- we so transformed our internal relationships and improved employee morale that we earned a Hammer of Reinvention for labor-management partnership.

Congress recognized our progress by increasing our FY97 appropriation. These many accomplishments during this era of diminished resources are a testament to our dedicated staff, to the relationships we have forged with our many and diverse public stakeholders, and to the Administration's support.

Sincerely,

Gilbert F. Casellas
Chairman

Pending
Lee + DD
comments

v

NEW YORK CITY

CENTRAL LABOR COUNCIL AFL-CIO

386 Park Avenue South, New York, N.Y. 10016

(212) 685-9552
FAX (212) 685-9557

October 5, 1995

Alexis M. Herman, Director
Office of Public Liaison
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C 20500

BY FAX & MAIL

Dear Director Herman:

Alexis

You did it to me again. I know it isn't intentional, but...

Why is it, whenever special invitations from the President, the Vice President and/or anyone else from The White House are sent out, this Secretary of the largest Central Labor Council (over 1.5 million members), and an active partner in all activities of this Council--labor, community and political--with the current President, Brian McLaughlin--and, for almost ten years, the only sitting officer of this Council, is always overlooked--until and unless I push myself, and always after the invitations have gone out? And, truly, I do hate to continually push! No other organization overlooks my position.

Is there no way that my name can be added to whatever lists currently exist, so that I don't have to keep "begging"?

I must underscore that I have always been an important player in the political activities of this Council, as you may recall back in the days of the New York City Democratic Convention.

Please extend to me the same courtesies that I have always made certain were extended to the NDC and to President Clinton, when he was a candidate.

Please do not attach any anger to this letter. No anger is intended. I simply ask for the normal protocol and courtesy attached to my office and activities.

All the best, and continued good luck to you and the President.

Sincerely,

Ted H. Jacobsen
Secretary of the Council

opeiu:153

36

THE SABLE GROUP, INC.

PRESENTS

"MOVING FORWARD"

A

SENIOR HUMAN RESOURCE DEVELOPMENT CONFERENCE

MCI CORPORATION

MARCH 31, APRIL 1-2, 1993

ARLINGTON, VIRGINIA

Prepared

for

Ms. Alexis Herman
Assistant to the President &
Director of
THE WHITE HOUSE
Washington, D.C.

Alexis, FYI Mailing!

Richard Feldman, the group's president, said in a recent telephone interview.

To bolster its lobbying on Capitol Hill and at the Treasury Department's Bureau of Alcohol, Tobacco and Firearms, the ASSC also recently retained Francis J. Duggan, a partner in the small Washington law firm of Mullenholz & Brimsek. Other lobbyists could be added to the team if needed, said ASSC chairman Michael R. Saporito, senior vice president of RSR Wholesale Guns in Winter Park, Fla.

In early February, the ASSC plans to bring scores of firearms industry executives to Washington for several days of intense lobbying. Among those expected to attend are officials of top gun makers such as Colt Manufacturing Co., Smith & Wesson Inc. and Sturm, Ruger & Co.

"People who take aim at our civil rights are lobbying the Congress on a daily basis," Saporito said. "Essentially, we are just trying to level the playing field."

For years, firearms manufacturers ignored most gun control battles in Washington; for example, they didn't oppose the Brady bill, the recently enacted legislation that established a five-day waiting period for handgun purchases. The industry hasn't even raised questions about a flood of imported firearms that has threatened its economic viability.

But industry leaders have increasingly felt under siege. Passage of the Brady bill produced new calls for gun control legislation, including a ban on assault weapons, additional gun licensing, registration and testing requirements and higher excise taxes on guns and ammunition.

"We always referred to the Brady bill as an icebreaker. But it has proved a floodgate, unleashing a torrent of public desires to do something about the guns," said Richard M. Aborn, president of Washington-based Handgun Control Inc. Handgun Control now is calling not only for a ban on assault weapons, which is part of the Senate-passed crime bill, but also for passage of comprehensive gun control legislation later this year. ASSC's Feldman said that his group's first battle is to defeat the proposed ban on assault weapons.

Ironically, the fear of crime that spurred renewed calls for gun control produced a banner year in sales for the firearms industry, which grosses about $9 billion annually.

The industry intends to use its economic clout in arguing against new restrictions. The proposed legislation, Feldman said, "would have a tremendous ripple effect on the economy." For instance, gun manufacturers purchase hundreds of thousands of tons of steel a year. And Colt has 250 vendors in Connecticut, in addition to its 800 employees, Feldman said.

Although the firearms industry "now wants to be a major player," Feldman said, the ASSC will not form what would seem to be an obvious alliance with the National Rifle Association (NRA). "The NRA has been vilified by our mutual enemies," Feldman said. "They have made the NRA the issue, and it was a very successful strategy." The NRA "has baggage that this industry does not have."

Even without the NRA, the ASSC hopes to galvanize the nation's estimated 72 million gun owners. Gun control advocates have made a strategic mistake by revealing that their eventual goal is to ban the public's right to own some guns, Feldman contended. "Congress is looking at a political revolution here," Saporito said.

But advocates say that such scare tactics have failed in the past and won't stop Congress from enacting legitimate gun control measures. Even Saporito concedes that gun manufacturers face a major fight for economic survival. "Now I know how Custer felt," he said. ■

IS BUSINESS STILL ABOARD?

BY JULIE KOSTERLITZ

WASHINGTON INC.

The White House has mounted an intense campaign to shore up crumbling support among big businesses for its health care reform proposal.

Shortly before Christmas, a task force of the Business Roundtable, a group of 200 chief executives of blue-chip companies, voted to endorse—as a starting point for negotiations—an alternative health reform proposal by Reps. Jim Cooper, D-Tenn., and Fred Grandy, R-Iowa, and Sens. John B. Breaux, D-La., and Dave Durenberger, R-Minn.

With the group's policy committee set to vote on the issue in mid-January, the White House began a furious round of telephone calls to more than 30 chief executives. Calls were made by such top Administration officials as deputy Treasury secretary Roger C. Altman, National Economic Council head Robert E. Rubin and White House public liaison director Alexis M. Herman.

In conference calls on Jan. 13-14, a majority of the policy committee supported the Cooper bill but, in deference to the White House, agreed to hold off an endorsement until a meeting on Feb. 2.

Initially, the White House saw big business as a natural ally in the health care debate. Most large employers already insure their workers and have borne much of the brunt of rising health care costs—subsidizing not only their own employees but also, indirectly, the uninsured and medicare and medicaid recipients. They seemed likely to support cost control measures and a requirement that all employers insure their workers.

Some important employer groups, including the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM), reacted positively to the Administration's proposal as it was being developed. But after the final version was unveiled last fall, the NAM began to back away, with president Jerry Jasinowski saying in October that the plan "must be dramatically scaled back."

The chamber has maintained its overall support, but if the Business Roundtable embraces the Cooper approach, it may feel pressure to defect.

Administration officials have invited business leaders to a series of White House meetings, with Hillary Rodham Clinton sitting in on some sessions. "We are sending a clear message that we hear [their concerns] and that we want to work with them to respond to those issues," Herman said in a phone interview.

But corporate executives express doubt that the White House, which they view as having largely disregarded their concerns before its proposal was introduced, can do much now that the bill is pending in Congress. "You can't shmooze anymore. The moment has passed," a corporate official said. ■

Areas of Interest/Anticipated Questions

Areas of Interest

- **Democratic Convention: Challenges/Strategies**
- **Presidential Campaign: Challenges/Strategies**
- **Transition: Challenges/Strategies**
- **NLRB Issues**
- **EEO/Affirmative Action**
- **NAFTA**
- **ECC**
- **Immigration Issues**
- **Environmental Issues**
- **Economy Stimulation Activity**
- **Trade/Technology**

Anticipated Questions

- **Day Care/"Nannygate"**
- **Healthcare**
- **Any foreseeable changes in NLRB Board? Ideology/change?**
- **Role of EEOC/OFCCP?**
  - **Tougher Penalties?**
  - **More Audits?**
  - **Reduced Charge Backlog Status?**
- **What is the current major charge activity (race vs. age vs. gender)**
- **Anticipated impact of NAFTA?**
- **Anticipated impact of ECC?**
- **Immigration (Haiti vs. Mexico vs. Asia vs. Cuba)**
- **Tougher Environmental Standards?**
- **Foreseeable changes in trade/technology legislation?**

Amc?

National Association of Manufacturers

Jerry J. Jasinowski
President

cc Kate Carr

October 20, 1995

The Honorable Alexis M. Herman
Assistant to the President and
Director of Public Liaison
The White House
Washington, DC 20500

Dear Alexis:

Attached is a letter to President Clinton sent by NAM Chairman Dana Mead and me urging an end to White House opposition to comprehensive regulatory reform bill S. 343. Also attached for your information is a letter signed by more than 120 NAM directors and an earlier letter to the President from the Alliance for Reasonable Regulation Executive Committee. I hope you work to ensure White House support for a reasonable, bipartisan regulatory reform bill.

Please call me at (202) 637-3106 if I can provide you with additional information or answer questions.

Best regards,

Jerry J.

Manufacturing Makes America Strong

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law or regulation, and it does not impose extraordinary burdens on the EPA and the bureaucracy. It is simply a bill that will encourage government to regulate smarter.

Regulatory reform remains a top priority for a nationally united business community. Enactment of S. 343 would be a critical step toward achieving sustained, vigorous economic growth. We urge you to support bipartisan efforts to pass a regulatory reform bill in the Senate that is reasonable in scope, backed by the entire business community and reflects your commitment to making government work better.

Sincerely,

Dana G. Mead
Chairman and Chief Executive Officer
Tenneco Inc.
Chairman
National Association of Manufacturers

Jerry J. Jasinowski
President
National Association of Manufacturers

NAM National Association of Manufacturers

October 19, 1995

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

We urge your support for regulatory reform legislation in the Senate. Until now, S. 343 has not received the support of your Administration for reasons that several senior Executive Branch officials have expressed.

During the past several weeks, as the bill was discussed and debated in the Senate, substantial compromises were made to address concerns expressed by those Administration officials. The current version of the bill, as modified by numerous adopted and pending amendments and by the continuing efforts of Senators Robb, Rockefeller and others, addresses all substantive issues your Administration has raised during public debate. The result is an unquestionably reasonable bill, even a moderate one. Its passage would be a major step forward in the effort to reform, modernize and streamline the process by which the federal government regulates against threats to health, safety and the environment.

The NAM's overriding objective continues to be increasing the pace of economic growth. Economic expansion -- in the range of 3 to 3.5 percent annual GDP growth -- will be the key to future job creation, wage growth, a healthy environment and improved living standards for all Americans.

Meaningful regulatory reform is a principal means to achieving and sustaining such future growth. While the private sector has cut cost <u>and</u> improved quality, the federal regulatory system remains frozen in time and is today a significant obstacle to growth. Our antiquated command-and-control oriented regulatory regime in the environmental area alone, according to Dale Jorgenson of Harvard University, will reduce economic growth by $224 billion by the year 2004. A firmer reliance on flexibility, accountability and sound scientific and economic analysis will increase productivity and growth. S. 343 would move us solidly in this direction.

Mr. President, we all know that strong emotions surround today's debates about environmental policy. In this charged atmosphere, it is especially important to remember that S. 343 seeks only to improve the process by which federal regulations are developed. Its provisions require greater reliance on sound scientific and cost-benefit analysis -- objectives your Administration has embraced, as have many Democrats in the Senate. The bill eliminates none of the environmental protections currently in force; it repeals not a <u>single</u>

NAM National Association of Manufacturers

September 22, 1995

The Honorable Robert J. Dole
United States Senate
141 Senate Hart Office Building
Washington, DC 20510

Dear Bob:

We, the undersigned members of the NAM Board of Directors, are committed to providing a healthy, safe and clean environment for our customers, employees and shareholders. Clearly, manufacturers have made progress toward these objectives over the past 25 years -- and at the same time have helped make America number one in global competitiveness.

But the competitiveness battle wages on. Although we've updated and modernized our plants, processes and management practices, the federal regulatory system remains frozen in time. This antiquated system must be re-engineered now to fit the realities of global competition in the 21st century. The fact is our science, technology and analytical capabilities have become far more sophisticated. We've learned which regulatory systems work, and which do not. This knowledge should be applied.

That requires basing regulations on realistic estimates of risk, using sound economic analysis and maximizing flexibility in meeting the nation's health, safety and environmental objectives. In short, we believe a modernized, flexible regulatory system will yield smarter regulations that achieve greater results at less cost.

Senate passage of S. 343, the Comprehensive Regulatory Reform Act of 1995, would be a crucial step toward smarter regulations and is a top priority for a nationally-united business community. After months of debate and bipartisan compromise, we believe S. 343 is a reasonable, moderate bill that deserves your support. The current version of the bill, as modified by the adopted and pending amendments, addresses or rectifies <u>all</u> substantive concerns raised by the Administration during the long public debate on this measure.

We think there has been sufficient consideration of this legislation. It's time to proceed to final debate and amendments on the bill. We strongly urge your support for a fourth cloture vote on S. 343 and for final passage of the bill.

The manufacturing community will continue to work with you in a bipartisan fashion to ensure this important bill moves forward. We hope we can count on your support.

Sincerely,

Jerry J. Jasinowski

Jerry J. Jasinowski
President
National Association of Manufacturers

Manufacturing Makes America Strong

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Charles B. Walker
Vice Chairman, Chief Financial Officer
and Treasurer
Ethyl Corporation

Paul A. Yhouse
President & CEO
Holnam Inc.

ALLIANCE FOR REASONABLE REGULATION

September 19, 1995

The President
The White House
Washington, DC 20500

Dear Mr. President:

We are writing to express our strong support for S. 343, the Comprehensive Regulatory Reform Act of 1995, and to urge you to support bipartisan efforts to move this important piece of legislation forward. We believe the current version of the bill, which includes those amendments adopted and pending, addresses all substantive concerns your Administration has raised.

We want to emphasize that regulatory reform through legislation is vital. Your support will be a clear indicator of the Administration's understanding of the importance of this issue to the entire business community and to all Americans. Practically every homeowner, factory worker, farmer, municipal officer and business person has some personal experience with a regulation that just does not make sense. Modernization and streamlining of the regulatory process, in a systemic manner, is now within reach. We hope you will take an active, positive role in bringing about what can be an historic achievement.

You correctly identified this important issue during your campaign and addressed it early in your term. We were encouraged by the Democratic Leadership Council's plan for reform of the regulatory system called for in Mandate for Change. We supported the issuance of Executive Order 12866 on Regulatory Planning and Review and applauded your Administration's work. This Executive Order represents a balanced, common-sense first step to regulatory reform. Similarly, we supported much of Vice President Gore's "Reinventing Government" initiative.

But experience over the past two years has demonstrated that the Executive Order alone has not been enough to bring about needed change. A legislative mandate is essential.

As you correctly assessed during the campaign, the public understands the need to be smarter about how we manage regulation. S. 343 is about delivering better, smarter regulation, not about regulatory roll backs.

Since S. 343 was reported out of the Senate Judiciary Committee on May 26, numerous changes have been made as a result of extensive negotiations between the staffs of the key committees. Further substantial modifications were made during the floor debate.

1331 PENNSYLVANIA AVENUE, NW · SUITE 1500 · NORTH TOWER · WASHINGTON, DC 20004-1790 · (202) 637-3161 FAX (202) 637-3182

The current version of the bill addresses or rectifies the principal concerns publicly raised by the Administration. Attached are two documents we hope will explain our understanding of the extensive changes made since the bill's introduction.

So far, much of the debate has been conducted in the language of politics, not of policy. It's worth noting, as The Washington Post said earlier this year, "that amid the uproar, there is in fact a pretty broad consensus in favor of risk assessment and cost-benefit analysis."

We believe this bill, as modified to respond to various concerns, provides for effective, common-sense regulatory reform and -- for the first time -- provides a unifying theme for improving our nation's health, safety and environmental protection programs. It certainly captures the spirit of public commitment to improving the protection of health, safety and the environment that all business must support.

We strongly urge you to support bipartisan efforts to ensure that this vital piece of legislation moves forward so that your Administration can take credit for its leadership in making these improvements a reality.

Sincerely,

Jerry J. Jasinowski
President, National Association of Manufacturers
Chairman, Alliance for Reasonable Regulation

Charles J. DiBona
President
American Petroleum Institute

Frederick L. Webber
President & Chief Executive Officer
Chemical Manufacturers Association

Thomas Kuhn
President & Chief Executive Officer
Edison Electric Institute

Larry L. Thomas
President & Chief Executive Officer
The Society of the Plastics Industry

Richard L. Lawson
President
National Mining Association

Manly Molpus
President & Chief Executive Officer
Grocery Manufacturers of America

Red Cavaney
President & Chief Executive Officer
American Plastics Council

Richard L. Lesher
President
U.S. Chamber of Commerce

c: The Honorable Albert Gore, Jr., Vice President of the United States
The Honorable Robert Rubin, Secretary of Treasury
The Honorable Ronald Brown, Secretary of Commerce
The Honorable Leon Panetta, Chief of Staff to the President
The Honorable Alice Rivlin, Director, Office of Management & Budget
The Honorable Laura Tyson, National Economic Adviser
The Honorable Joseph Stiglitz, Chairman, Council of Economic Advisers
The Honorable Michael Kantor, U.S. Trade Representative
The Honorable Kathleen McGinty, Chair, Council on Environmental Quality
The Honorable Harold Ickes, Assistant to the President & Deputy Chief of Staff
The Honorable Carol Rasco, Assistant to the President for Domestic Policy
The Honorable John Gibbons, Assistant to the President for Science & Technology
The Honorable Alexis Herman, Assistant to the President & Director of Public Liaison
The Honorable Jack Quinn, Chief of Staff to the Vice President
The Honorable Sally Katzen, Administrator, Office of Information & Regulatory Affrs.
The Honorable Kate Carr, Special Assistant to the President for Public Liaison

S. 343, The Comprehensive Regulatory Reform Act of 1995
Summary of Modifications to Address Concerns

Threshold

- A concern was raised that the original threshold for defining major rules ($50 million) was too low, and would require agencies to address too many rules. The threshold was changed by amendment to $100 million, consistent with previous Administrations' thresholds for identifying major rules, despite the fact that under President Clinton's regulatory review executive order (E.O. 12866), OMB currently subjects many rules below $100 million and even below $50 million to the kind of review and analysis required by S. 343.

Risk Assessment

The Administration expressed concern that the risk assessment provisions are overly broad in scope and would micromanage the risk assessment process. Subchapter III, however, always required agencies to employ the level of detail and rigor proportionate to the significance and complexity of the problem to be addressed. Agency heads are also required to conduct risk assessments with public input as part of the process. These provisions give agencies the ability to conduct risk assessments with the level of attention and resources appropriate to their specific mission and the activity at hand. Nevertheless, to further maximize use of agency resources, an amendment passed allowing risk assessments conducted in support of proposed rules to be used in support of final rules.

Environmental Cleanups

Some Senators and the Administration were concerned that S.343 could halt hazardous waste cleanups now underway and prolong cleanups ready to begin. While these concerns could have been addressed readily in other ways, the section, requiring consideration of benefits and costs in clean up activities costing more than $10 million, was deleted entirely.

Effective Date

The Administration felt that a transition period was needed to allow agencies time to refocus resources and adapt to the new provisions in the bill. Therefore, the bill was amended to provide a greater transition period: any rulemaking pending on July 12, 1995 for which a notice of proposed rulemaking or proposed rulemaking was published before April 1, 1995 is not subject to the risk assessment and benefit-cost provisions of subchapters II and III, respectively.

Decisional Criteria

The Administration and other opponents felt agencies would be required to issue unsound regulations by forcing the choice of the least costly regulation available where a slightly more costly regulation would yield substantially greater benefits. The bill originally required that rules adopt the least cost alternative of the reasonable alternatives that achieve the objective of the statute. This would be revised by a pending amendment requiring agencies adopt the alternative with greater net benefits than the other reasonable alternatives that achieve the objectives of the statute. If this cannot be met, an alternative requirements section states that rules adopt the alternative with the least net cost of the reasonable alternatives that achieve the objectives of the statute. In either case, the amendment permits the agency to consider both benefits and costs in selecting a regulatory alternative.

Applicability to Current Law

The relationship of S.343 to current law has been controversial and generated mistaken claims that the benefit-cost provisions would constitute a so-called "supermandate" overriding existing statutory requirements. The bill originally stated that the requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law. Moreover, the benefit-cost criteria in S. 343 are only for the purpose of selecting among the reasonable alternatives which are "alternatives the agency has the authority to consider under the statute granting rulemaking authority." To clarify the intent further, however, an amendment adopted during debate stated that: "Nothing in this section shall be construed to override any statutory requirement, including health, safety, and environmental requirements."

Judicial Review

Another major concern focused on the judicial review provisions. The Administration contended S.343 would invite a substantial amount of litigation. First, note that the judicial review provisions in S. 343 do not add new judicial review. Rather, they limit judicial review of agency compliance with the requirements in S. 343 (and, therefore, its enforceability) from what would be the case if there was no judicial review provision at all. Nevertheless, to address the contention that new opportunitites for judicial review would be created, the standards for judicial review were changed so that failure to comply with subchapters II or III may not be considered by the court except for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion. In addition, the review provisions that required early, separate review of certain determinations, such as whether the rule was a major rule, were deleted. The significance of these changes are that judicial review applies only to the final agency action, and this standard for judicial review is more restrictive than is currently allowed under Section 706 of the Administrative Procedures Act.

Petitions

An opportunity for citizens and other affected parties to petition agencies for redress is an important provision of S.343. To address concerns this could tie up agencies' resources, the petition-related provisions were significantly narrowed. For example, the original provisions allowed for 553(l) petitions for the issuance, amendment, or repeal of a rule; amendment or repeal of an interpretive rule or general statement of policy or guidance; and interpretation regarding the meaning of a rule, interpretive rule, general statement of policy, or guidance. In order to address the Administration's concern that these provisions would tie up agencies, they were scaled back to allow petitions under 553(l) only for the issuance, amendment, or repeal of a rule. Also, petitions to put a rule on an agency's schedule for review are limited to a 180-day period every five years.

Deadlines, Repeal (Sunset) of Existing Rules

The Administration argued the provision in S.343 requiring agencies to create a schedule for periodic review of rules contains an arbitrary deadline as trigger for sunsetting regulations. Initially, the bill required that if the review of a rule is not completed by deadlines established in the schedule, the head of the agency "shall not enforce the rule, and the rule shall terminate by operation of law as of such date." A pending amendment revises this requirement, eliminating the automatic sunset and specifying only that a rulemaking to terminate the rule would be commenced if the deadline passes.

S. 343 further stipulated all deadlines in statutes or imposed by courts requiring agencies to propose or promulgate rules during the 5-year period beginning on the effective date of this section shall be suspended for 2 years after the date of the applicable deadline. A pending amendment has reduced the time lines to a 2-year period beginning on the section's effective date with suspension for 6 months after the date of the applicable deadline.

Regulatory Flexibility

S.343 recognizes small businesses have unique problems with respect to regulatory policy. The bill attempted to address small business concerns rationally and fairly through the regulatory flexibility analysis (RFA) process. The Administration surmised that the provisions for judicial review of RFAs would generate substantial litigation. Originally, S.343 allowed affected small entities to petition for the judicial review of a final regulatory flexibility analysis and certification. It stipulated an agency could not promulgate a final rule under this section unless it found the final rule minimizes significant economic impact on small entities. This provision would be modified by a pending amendment requiring the agency to find the final rule minimizes compliance burdens on small entities. In order to alleviate concerns that agencies would be overloaded with rules requiring a RFA, a pending amendment restricts the number of proposed rules subject to an RFA to a maximum of 150 in any year.

S.343, The Comprehensive Regulatory Reform Act of 1995
Summary of Modifications to Address Concerns

Concern	S. 343, as introduced on June 30	S. 343, revisions as of July 20
THRESHOLD - applies to too many rule-makings - ties up agencies	- Act applies to major rules "likely to have a gross annual effect on the economy of $50 million or more	- threshold for major rules changed to $100 million
RISK ASSESSMENT - too prescriptive - conflict of interest on peer review panels - micromanages agencies	- must employ level of detail proportionate to significance and complexity of problem - peer review panel selected based on relevant expertise	- exempts food safety threat (including *e.coli*), mammography quality rules (from CBA), children poison protection rules (from both CBA & RA) - sense of the Senate indicates nothing in Act intended to delay rules for human health and safety threat - allows risk assessments for a proposed rule to be used for related final rule - agency may exclude person with relevant expertise from peer review panel if there is a potential financial interest in the outcome
ENVIRONMENTAL CLEANUPS - cleanups would be halted or delayed - unnecessary since risk assessments often already are done	- risk assessments must be done <u>according to the principles in the Act</u> - benefit-cost analysis of cleanup action must be conducted	- section deleted from bill, therefore: - risk assessments need not comply with principles of the Act - benefit-cost analyses not required
EFFECTIVE DATE - no transition period provided - in-progress rulemakings would be delayed and need rework	- Act takes effect on date of enactment	- proposed rulemakings published before April 1, 1995 are not subject to risk assessment and benefit-cost requirements

As of August 24, 1995

CONCERN	S. 343, AS INTRODUCED ON JUNE 30	S. 343, REVISIONS AS OF JULY 20
DECISIONAL CRITERIA - requires choice of least cost regulation when a more costly regulation yields substantially greater benefits.	- decisional criteria require: - benefits justify costs; - flexible, performance-based mechanisms; and - <u>least cost</u> alternative of the reasonable alternatives that achieve the objective of the statute	- a pending amendment would change the least cost criterion to <u>greater net benefits</u>
APPLICABILITY TO CURRENT LAW - "decisional criteria" would create a "supermandate" overriding existing law	- bill states decisional criteria "shall supplement, and not supersede, any other decisional criteria otherwise provided by law."	- bill amended to add: "Nothing in this section shall be construed to override any statutory requirement, including health, safety, and environmental requirements." - a pending amendment would clarify that if a rule cannot comply <u>as a matter of law</u> both with the decisional criteria and any requirement of the statute authorizing the rule, the decisional criteria shall not apply
JUDICIAL REVIEW - creates new opportunities for litigation - invites large amount of litigation - ties up agencies	- bill does not add new opportunities for judicial review - limits judicial review to failure to comply with risk assessment and cost-benefit sections from what otherwise would be the case - failure to comply <u>may be</u> considered <u>solely</u> for purpose of determining if the rule is arbitrary and capricious or abuse of discretion	- judicial review language clarified so that failure to comply with the benefit-cost and risk assessment provisions <u>may not be</u> considered <u>except</u> for purpose of determining as arbitrary and capricious or abuse of discretion - provisions allowing early, separate review of certain determinations, such as whether the rule was a major rule, were deleted - deleted "substantial support" standard from section 706

S.343, THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995
SUMMARY OF MODIFICATIONS TO ADDRESS CONCERNS

CONCERN	S. 343, AS INTRODUCED ON JUNE 30	S. 343, REVISIONS AS OF JULY 20

PETITIONS
- would open up too many decisions
 	
- tie up agencies
	- sec. 553(l) petitions allowed for:
	  - issuance, amendment, or repeal of a rule;
	  - amendment or repeal of an interpretive rule or general statement of policy or guidance;
	  - interpretation regarding the meaning of a rule, interpretive rule, general statement of policy, or guidance
	
	- sec. 623(c) petitions also allowed to place a rule on agency's schedule for reviewing existing rules
		- A pending amendment changes sec. 553(l) petitions to limit petitions only for the issuance, amendment, or repeal of a rule. Other types of Sec. 553(l) petitions deleted.
		
		- The pending amendment also requires court to consolidate actions in one proceeding
		
		- sec. 623(c) petitions can only be submitted during 180 day window every five years

REVIEW OF REGULATIONS - shuts down needed regulatory programs - suspends statutory or judicial deadlines - ties up agencies	- if agency review not completed on schedule, <u>rule terminates</u> - all statutory or judicial rulemaking deadlines occurring <u>5-years</u> after this Act are suspended for <u>2 years</u>	- language changed so that if agency review not completed on schedule, a <u>rulemaking to repeal rule is begun</u> - language changed so that all deadlines within <u>2-years</u> after this Act are suspended for <u>6 months</u>
REGULATORY FLEXIBILITY - creates new opportunities for litigation - invites large amount of litigation - ties up agencies	- agency cannot issue rule unless it certifies final rule minimizes <u>significant economic impact</u> on small entities - affected small entities can petition for judicial review of a final regulatory flexibility analysis and agency certification	- changed so that agency cannot issue rule unless it certifies final rule minimizes <u>compliance burdens</u> on small entities - maximum of 150 proposed rules subject to regulatory flexibility analysis in any year

National Association of Manufacturers

Jerry J. Jasinowski
President

October 19, 1995

The Honorable Lawrence Summers
Deputy Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW, Room 3326
Washington, DC 20220

Dear Larry:

I'm pleased to follow-up your meeting yesterday morning with Tom Kuhn and other members of the Trade Association Liaison Council involved in the Alliance for Reasonable Regulation.

The Alliance is continuing to press aggressively for Senate passage of comprehensive regulatory reform bill S. 343. However, we remain disappointed at the Administration's stiff opposition to the bill despite significant modifications to the measure and the continuing efforts of Sens. Robb and Rockefeller to reach an acceptable bipartisan compromise. We firmly believe S. 343 as modified by adopted and pending amendments addresses all substantive issues raised by senior Executive Branch officials.

The business community remains united in its commitment to achieving meaningful regulatory reform. The enclosed items demonstrate the depth and breadth of business support for S. 343.

I appreciate your assistance emphasizing the importance of this issue to the business community. Please call me if I can provide you with additional information or answer questions.

Sincerely

Jerry

Jerry J. Jasinowski
President
National Association of Manufacturers

c: The Honorable Alexis Herman
The Honorable Kate Carr

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National Association of Manufacturers

October 19, 1995

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

We urge your support for regulatory reform legislation in the Senate. Until now, S. 343 has not received the support of your Administration for reasons that several senior Executive Branch officials have expressed.

During the past several weeks, as the bill was discussed and debated in the Senate, substantial compromises were made to address concerns expressed by those Administration officials. The current version of the bill, as modified by numerous adopted and pending amendments and by the continuing efforts of Senators Robb, Rockefeller and others, addresses all substantive issues your Administration has raised during public debate. The result is an unquestionably reasonable bill, even a moderate one. Its passage would be a major step forward in the effort to reform, modernize and streamline the process by which the federal government regulates against threats to health, safety and the environment.

The NAM's overriding objective continues to be increasing the pace of economic growth. Economic expansion -- in the range of 3 to 3.5 percent annual GDP growth -- will be the key to future job creation, wage growth, a healthy environment and improved living standards for all Americans.

Meaningful regulatory reform is a principal means to achieving and sustaining such future growth. While the private sector has cut cost <u>and</u> improved quality, the federal regulatory system remains frozen in time and is today a significant obstacle to growth. Our antiquated command-and-control oriented regulatory regime in the environmental area alone, according to Dale Jorgenson of Harvard University, will reduce economic growth by $224 billion by the year 2004. A firmer reliance on flexibility, accountability and sound scientific and economic analysis will increase productivity and growth. S. 343 would move us solidly in this direction.

Mr. President, we all know that strong emotions surround today's debates about environmental policy. In this charged atmosphere, it is especially important to remember that S. 343 seeks only to improve the process by which federal regulations are developed. Its provisions require greater reliance on sound scientific and cost-benefit analysis -- objectives your Administration has embraced, as have many Democrats in the Senate. The bill eliminates none of the environmental protections currently in force; it repeals not a <u>single</u>

law or regulation, and it does not impose extraordinary burdens on the EPA and the bureaucracy. It is simply a bill that will encourage government to regulate smarter.

Regulatory reform remains a top priority for a nationally united business community. Enactment of S. 343 would be a critical step toward achieving sustained, vigorous economic growth. We urge you to support bipartisan efforts to pass a regulatory reform bill in the Senate that is reasonable in scope, backed by the entire business community and reflects your commitment to making government work better.

Sincerely,

Dana G. Mead
Chairman and Chief Executive Officer
Tenneco Inc.
Chairman
National Association of Manufacturers

Jerry J. Jasinowski
President
National Association of Manufacturers

National Association of Manufacturers

September 22, 1995

The Honorable Robert J. Dole
United States Senate
141 Senate Hart Office Building
Washington, DC 20510

Dear Bob:

We, the undersigned members of the NAM Board of Directors, are committed to providing a healthy, safe and clean environment for our customers, employees and shareholders. Clearly, manufacturers have made progress toward these objectives over the past 25 years -- and at the same time have helped make America number one in global competitiveness.

But the competitiveness battle wages on. Although we've updated and modernized our plants, processes and management practices, the federal regulatory system remains frozen in time. This antiquated system must be re-engineered now to fit the realities of global competition in the 21st century. The fact is our science, technology and analytical capabilities have become far more sophisticated. We've learned which regulatory systems work, and which do not. This knowledge should be applied.

That requires basing regulations on realistic estimates of risk, using sound economic analysis and maximizing flexibility in meeting the nation's health, safety and environmental objectives. In short, we believe a modernized, flexible regulatory system will yield smarter regulations that achieve greater results at less cost.

Senate passage of S. 343, the Comprehensive Regulatory Reform Act of 1995, would be a crucial step toward smarter regulations and is a top priority for a nationally-united business community. After months of debate and bipartisan compromise, we believe S. 343 is a reasonable, moderate bill that deserves your support. The current version of the bill, as modified by the adopted and pending amendments, addresses or rectifies all substantive concerns raised by the Administration during the long public debate on this measure.

We think there has been sufficient consideration of this legislation. It's time to proceed to final debate and amendments on the bill. We strongly urge your support for a fourth cloture vote on S. 343 and for final passage of the bill.

The manufacturing community will continue to work with you in a bipartisan fashion to ensure this important bill moves forward. We hope we can count on your support.

Sincerely,

Jerry J. Jasinowski

Jerry J. Jasinowski
President
National Association of Manufacturers

Manufacturing Makes America Strong

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Holnam Inc.

MJ B 5/26

(Amit)

May 26, 1994

MEMO TO: Sandy Berger
David Gergen
Mark Gearan
Alexis Herman
Joan Baggett
Alan Kreczko
Michael Waldman
Jody Greenstone

FROM: Nancy Soderberg NS

RE: Eastern and Central Europe Conference

Attached is a memo from Jeff Garten at Commerce suggesting we approve using the Business Council for International Understanding (BCIU) to organize and manage the White House conference we are planning to hold in the fall on Trade and Investment in Central and Eastern Europe.

In general, I don't see why we can't assign a team of US government officials to work full time on logistics. However, Commerce and State seem to feel strongly they don't have the personnel and need an outside organization.

BCIU looks fine and I don't see the down side. I'm inclined to approve their involvement but wanted your concurrence first.

Please let me know your views by noon on Friday, May 27. I'm at x62224.

Thanks.

MAY 26 1994

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

MAY 16 1994

MEMORANDUM FOR NANCY SODERBERG
Staff Director
National Security Council

FROM: Jeffrey E. Garten JG

SUBJECT: White House Conference on Trade and Investment in Central and Eastern Europe; Organization and Management Issues.

On May 6, an interagency group met with you to seek resolution of outstanding issues related to the subject White House Conference (WHC). Issues regarding timing, location, the President's involvement, and level of involvement by Central and East European (CEE) officials were all resolved, leaving open for decision only the matter of Conference organization and management. At your request, Commerce, State, and other agencies involved in WHC planning reviewed again the Conference management issue, including its resource and funding implications. We have come to the conclusions outlined below.

Within the USG, Commerce will take lead responsibility for coordinating the Conference, working closely with State. Secretary Brown has taken a strong interest in Central and Eastern Europe, and he plans to be prominently involved in this important event. Commerce believes that the economic/commercial dimension of our relations with the region is crucial, and we wish to play a highly activist role over the next few years to help further U.S. interests throughout the region.

ORGANIZATION/MANAGEMENT

Given present program commitments, budgetary and manpower constraints, and staff capabilities within all involved USG agencies, we are absolutely convinced that the USG must have an outside organizer/manager for the Conference. The size, complexity and scope of this Conference calls for the skills and abilities of an experienced private sector organization which can deal effectively with key issues such as invitations, procurement of a conference facility, fees and budget, and transportation and lodging for participants. We do not find such skill and experience within the USG and are concerned that anything less runs the risk of this being a poorly executed Conference that might embarrass the President.

We believe that the Business Council for International Understanding (BCIU) is particularly well suited to run the Conference. BCIU is an independent, non-partisan, not-for-profit business association supported by 150 major corporations. It has worked closely and successfully with both Commerce and State to bridge business and foreign policy interests. For example, last month BCIU organized for Commerce a highly successful Central Asia Business Conference involving more than 350 U.S. companies. BCIU, which has no institutional affiliation with the U.S. Chamber of Commerce, is very interested in undertaking this Conference. We believe that BCIU can secure a local hotel in which to hold the Conference during our desired timeframe; alternatively, an agency auditorium, such as State's Loy Henderson Room could be used.

FUNDING

We estimate that the Conference will cost at least $350,000 and as much as $500,000, depending on the cost of facilities involved and to what extent we would have to underwrite the travel and housing costs of the CEE delegations. To cover such a budget we would need both the outside organizer/manager referenced above as well as USG financial support from outside the Department of Commerce.

We would like to keep registration fees for each U.S. corporate participant at $500 or lower; so based on a Conference of 350-400 business registrants, fees would cover upwards of $200,000 in the budget. Also, it is customary for the outside organizer to obtain corporate contributions to help defray costs. This would still likely leave up to $200,000 to come from USG sources. We understand that some SEED Act money can be made available, and we believe that USIA funds could be made available to help defray the international travel costs for some CEE participants.

TIMING OF THE CONFERENCE

While we focused on the Sept. 18-28 timeframe at your May 6 meeting, we have just learned that the German government is now planning to hold a major conference in Berlin on Sept. 19-20. This conference would likely attract many of the same Central and East European government officials we would like to invite for the White House Conference. In light of this information, we may wish to avoid scheduling dates that conflict with the German conference or consider looking at an alternative window of time in October (say Oct. 11-14) following the World Bank/IMF meetings in Spain.

RECOMMENDATION

1. That the USG use the Business Council for International Understanding (BCIU) to organize and manage the White House Conference on Trade and Investment in Central and Eastern Europe in a manner similar to that used between Commerce and BCIU in holding the May 2-3, 1994, Central Asia Business Conference.

2. That we obtain quickly a decision to use SEED Act funds to cover the difference between revenues from Conference participants and Conference costs. Also, that we explore with USIA the possibility of using their funds to help defray international travel costs associated with the Conference.

These recommendations have been developed on an interagency basis, and the State Department and USIA strongly concur in this memo. Dan Fried has been intimately involved in the drafting process.

In addition, I have spoken to Ambassador Schifter several times in the past few days about the Conference, and he has suggested that I send this memo to you. I look forward to your reactions to the memo and to moving forward with Conference planning and organization.

cc: Amb. Schifter
Assistant Secretary Oxman

THE WHITE HOUSE

WASHINGTON

May 27, 1994

COPY

MEMORANDUM FOR NANCY SODERBERG

FROM: MARILYN DIGIACOBBE M.

THROUGH: ALEXIS HERMAN

SUBJECT: EASTERN AND CENTRAL EUROPE CONFERENCE

We do not know enough about the Business Council for International Understanding (BCIU) to make a judgement at this point, and therefore defer to you. It would be helpful to know who their Executive Director is as well as the names of the 150 supporting corporations.

It is important that the Business Council for International Understanding's role be that of a support role to the lead agencies. OPL is particularly concerned with the invitation process. We would like to ensure that the White House along with the participating government agencies have adequate input into the invitation list and that the member companies of the BCIU do not have preferential treatment in the process.

The approximate cost of $500 for each company participant raises the question of whether there will be any small business component to this event. This conference should be affordable for small business and mid-size entrepreneurs.

cc: Steve Hilton
Amy Zisook
Caren Wilcox

MDB

red tag

May 26, 1994

MAY 26 1994

MEMO TO: Sandy Berger
David Gergen
Mark Gearan
Alexis Herman
Joan Baggett
Alan Kreczko
Michael Waldman
Jody Greenstone

FROM: Nancy Soderberg NS

RE: Eastern and Central Europe Conference

Attached is a memo from Jeff Garten at Commerce suggesting we approve using the Business Council for International Understanding (BCIU) to organize and manage the White House conference we are planning to hold in the fall on Trade and Investment in Central and Eastern Europe.

In general, I don't see why we can't assign a team of US government officials to work full time on logistics. However, Commerce and State seem to feel strongly they don't have the personnel and need an outside organization.

BCIU looks fine and I don't see the down side. I'm inclined to approve their involvement but wanted your concurrence first.

Please let me know your views by [redacted]. I'm at x62224

Thanks.

Issues: (1) Politically who is BCIU - Exec Dir etc.?
(2) Is there a small business component?
How will companies be identified to participate? Does BCIU have record of affirmative outreach to Dem. base?

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

MAY 16 1994

MEMORANDUM FOR NANCY SODERBERG
Staff Director
National Security Council

FROM: Jeffrey E. Garten JEG

SUBJECT: White House Conference on Trade and Investment in Central and Eastern Europe; Organization and Management Issues.

On May 6, an interagency group met with you to seek resolution of outstanding issues related to the subject White House Conference (WHC). Issues regarding timing, location, the President's involvement, and level of involvement by Central and East European (CEE) officials were all resolved, leaving open for decision only the matter of Conference organization and management. At your request, Commerce, State, and other agencies involved in WHC planning reviewed again the Conference management issue, including its resource and funding implications. We have come to the conclusions outlined below.

Within the USG, Commerce will take lead responsibility for coordinating the Conference, working closely with State. Secretary Brown has taken a strong interest in Central and Eastern Europe, and he plans to be prominently involved in this important event. Commerce believes that the economic/commercial dimension of our relations with the region is crucial, and we wish to play a highly activist role over the next few years to help further U.S. interests throughout the region.

ORGANIZATION/MANAGEMENT

Given present program commitments, budgetary and manpower constraints, and staff capabilities within all involved USG agencies, we are absolutely convinced that the USG must have an outside organizer/manager for the Conference. The size, complexity and scope of this Conference calls for the skills and abilities of an experienced private sector organization which can deal effectively with key issues such as invitations, procurement of a conference facility, fees and budget, and transportation and lodging for participants. We do not find such skill and experience within the USG and are concerned that anything less runs the risk of this being a poorly executed Conference that might embarrass the President.

We believe that the Business Council for International Understanding (BCIU) is particularly well suited to run the Conference. BCIU is an independent, non-partisan, not-for-profit business association supported by 150 major corporations. It has worked closely and successfully with both Commerce and State to bridge business and foreign policy interests. For example, last month BCIU organized for Commerce a highly successful Central Asia Business Conference involving more than 350 U.S. companies. BCIU, which has no institutional affiliation with the U.S. Chamber of Commerce, is very interested in undertaking this Conference. We believe that BCIU can secure a local hotel in which to hold the Conference during our desired timeframe; alternatively, an agency auditorium, such as State's Loy Henderson Room could be used.

FUNDING

We estimate that the Conference will cost at least $350,000 and as much as $500,000, depending on the cost of facilities involved and to what extent we would have to underwrite the travel and housing costs of the CEE delegations. To cover such a budget we would need both the outside organizer/manager referenced above as well as USG financial support from outside the Department of Commerce.

We would like to keep registration fees for each U.S. corporate participant at $500 or lower; so based on a Conference of 350-400 business registrants, fees would cover upwards of $200,000 in the budget. Also, it is customary for the outside organizer to obtain corporate contributions to help defray costs. This would still likely leave up to $200,000 to come from USG sources. We understand that some SEED Act money can be made available, and we believe that USIA funds could be made available to help defray the international travel costs for some CEE participants.

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In addition, I have spoken to Ambassador Schifter several times in the past few days about the Conference, and he has suggested that I send this memo to you. I look forward to your reactions to the memo and to moving forward with Conference planning and organization.

cc: Amb. Schifter
Assistant Secretary Oxman

January 25, 1994

JAN 26 1994

MEMORANDUM FOR HAROLD ICKES AND IRA MAGAZINER

FROM: Mike Lux

SUBJECT: Action Plan on Constituencies

CC: Alexis Herman, Melanne Verveer, Pat Griffin, Steve Ricchetti

Following is a summary, based on our Friday meeting and subsequent discussions with OPL and DNC/NHCC staff, of what I think our action plan on constituencies should be in the coming month:

I. Have a Strong Emphasis Around Critically Important Constituencies:

1. Senior Citizens
2. Physicians
3. Small Business Owners
4. Big Business CEO's

For a variety of reasons, we can't depend on groups or associations to help us get these constituencies organized for us to the degree they need to be organized. For that reason, the White House, Cabinet departments, and the DNC's National Health Care Campaign must aggressively educate, motivate, and organize local grassroots leaders of these constituencies district by district.

You have already received a memo from me on a senior strategy for the next month, which needs to be approved and put into place. Lynn Margherio, under the direction of Ira and myself, is doing an excellent job at developing and implementing a very aggressive physician outreach program -- I believe you have already received her memo on that. Amy Zisook of the OPL staff is heading up a small business outreach team that includes SBA and the DNC, and they will produce a planning memo by early next week. (Two notes on small business: first, Erskine Bowles has made an enormous commitment of time and resources. He has been invaluable and will be even more so in the future as we do retail education to small business. Second, our entire plan is based on a serious commitment of resources by the DNC/NHCC to doing small business recruitment -- it won't work any other way.) Alexis Herman continues to head up our big business strategy, currently focussed on holding off the Business Roundtable and National Association of Manufacturers in possible endorsements of Cooper.

II. Targeting Congressional Districts for Outreach, Education, and Building Enthusiasm

Central to our work in the coming weeks and months must be a focus on the key Congressional districts. As we have done on other key legislative initiatives, that is a combination of many different things:

- the President, First Lady, and other top administration officials doing visits and satellite feeds;
- administration officials doing radio talk shows;
- organizing in targeted districts by the DNC; and
- field activities organized by groups in targeted districts.

The Office of Public Liaison will contribute to this targeting effort by:

- identifying and communicating with CEO's of companies that have large workforces in those districts;
- as mentioned above, identifying and inviting leaders and members of key constituencies in these districts to the White House;
- identifying and bringing to the White House broader groups of opinion leaders -- organizational activists, hospital administrators, Democratic Party activists and finance people, etc. -- for briefings. These "opinion leader" meetings -- which we can also use to generate great local press -- will begin in February.

III. Developing and Keeping Current a Constituency Information Grid

Another important project that we are working on is developing a comprehensive information grid by targeted Congressional district of key constituency activity and strength, which we will also keep updated with information about what the White House and DNC have done in those districts. The grid will include the following kinds of information:

- the economic/political strength in the district of important constituencies, both allies and opposition: with the help of the DNC and allied organizations, we have information on which districts have high concentrations of insurance, pharmaceutical, tobacco, and health workers; while all districts have lots of small business, I've got an analysis of which districts are economically dominated by small business (i.e. don't have a lot of people working for big business and/or government); demographic information, so we know where are the highest concentrations of seniors, blacks, etc.; and where our allies are strong politically and/or have field staff in place.

- continually updated information about what we have done in each targeted district (Cabinet visits, opinion leader meetings, etc.)

- information about what different kinds of PACS have given to those Congresspeople (insurance, pharmaceutical, tobacco, providers, labor)

IV. Working the Powerful Groups in the Middle

As Steve Richetti said, nothing is more important than making sure the big constituencies positioned in the middle of this debate -- AMA, American Hospital Association, Blue Cross Blue Shield, the Big 5 Insurers, big business, the Catholic Conference -- don't join forces with our outright enemies. OPL will spend a great deal of time working with these constituencies -- politically and substantively -- to keep them working constructively with us. This includes bringing their associations in for meetings on a very regular basis; reaching out to a lot of individual CEO's, hospital administrators, and physicians; staying on the phone with their lobbyists on practically a daily basis; and continuing policy discussions between them, ourselves, and the White House.

V. Continually Motivating and Reassuring our Allied Organizations, While Holding Them Accountable

I will continue to pay daily attention to our allies throughout this process to make certain they are feeling plugged in, and to make certain they are continuing to do what they have said they would do to help us. We will also continue to make them a part of our rapid response operation, and get their help on doing events, press releases, etc. that complement White House and DNC efforts.

These five projects will be the heart and soul of our constituency work the next few months. If we have success in all five areas, it will make a huge difference in influencing this debate.

THE WHITE HOUSE

WASHINGTON

March 31, 1997

MEMORANDUM FOR LEEANN INADOMI

FROM: STEVE SILVERMAN

SUBJECT: LIST OF INVITES TO COMMERCE EVENT

Please consider inviting the following individuals for the Commerce Event on Thursday, April 3.

Erskine Bowles
Thomas (Mack) McLarty
Sylvia Mathews
Don Baer
Sandy Berger
Maria Echeveste
Rahm Emanuel
John (Jack) Gibbons
Marcia Hale
Kitty Higgins
John Hilley
Ron Klain
Ann Lewis
Bruce Lindsey
Michael McCurry
Bob Nash
John Podesta
Victoria Radd
Bruce Reed
Charles Ruff
Craig Smith
Douglas Sosnik
Gene Sperling
Todd Stern
Dan Tarullo
Jodie Torkelson
Melanne Verveer
Minyon Moore
Cheryl Mills
Susan Brophy
Ben Johnson
Flo McAfee
Marilyn DeGiacobbe
Cheri Carter
Ginny Terzano
Steve Silverman
Ginny Terzano

cc: Kitty Higgins

Name	Date
Sally Payton	11/23/98

Council

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

December 2, 1996

MEMORANDUM FOR DISTRIBUTION

FROM: Larry Haas LH

RE: The Attached

FYI.

LETTERS TO THE EDITOR

Inflating Immigration Figures

The Nov. 18 front-page article "Immigration Issues Await New Congress" leaves the inaccurate impression that immigration will rise into the future, when actually the numbers will drop after a temporary, artificial increase, primarily caused by the 1986 amnesty.

Since 1986, the spouses and children of many immigrants legalized by the amnesty have been living with their sponsors in the United States awaiting visas. Now that those formerly illegal immigrants are becoming citizens, under the law they can gain visas immediately for their spouses and children. This shows up as an "increase" in the immigration numbers even though these people have physically been in the country for years, many on underprotected status.

The article also failed to note that unused employment-based visas from 1995 were by law added on a one-time basis to the 1996 family visa allotment, thus further artificially inflating the numbers. In 1997, family preference visas will fall from 311,000 to 226,000, a 27 percent decline.

Because our system already is restricted almost exclusively to refugees, close family members—spouses, children, siblings, parents—and those with company sponsors, further restrictions would hit people hard and for little reason.

The projected 1996 immigration total is actually below the level for 1993. Legal immigration has fallen 20 percent the past few years and is projected to fall to previous levels by 1998 or 1999. In other words, by the time any new law would take effect, the numbers already would have declined. Therefore, it makes little sense to cite a temporary, artificial increase in immigration to justify permanent cutbacks in our already highly regulated and limited legal immigration system.

Since both houses of Congress rejected cuts in legal immigration in 1996, members are unlikely to revisit this contentious issue again next year.

STUART ANDERSON
Director, Trade and Immigration Studies
Cato Institute
Washington

Sympathy, Not Disdain

I greatly enjoyed the description of how I've tried to occupy the "vital center" throughout my career ["The Balancer at Budget," Business, Nov. 17]. Nevertheless, in an otherwise accurate and enjoyable article, I want to clarify two points that came out a bit confused.

First, contrary to the notion that I remember "turning up my nose at an early invitation to the 'Renaissance weekends,'" I did no such thing. In fact, I view Renaissance Weekend as the premiere networking event for people interested in policy. My point was that I am such a bad networker that I have not taken advantage of opportunities over the years to attend the event.

Second, despite the contention that "[Mr.] Raines scarcely conceals his disdain for elected politicians," my 15-year-old essay on the subject that the article cites actually was less critical of them than sympathetic. I believed then, as I do now, that the burdens imposed on elected officials are too great, prompting many excellent public servants to leave their posts—to the detriment of the nation.

FRANK RAINES
Director
Office of Management and Budget
Washington

Domestic Violence and Women

In reference to the article on the rise of domestic violence arrests among women ["Increasingly, Abuse Shows Female Side," Metro, Nov. 18], I have no quarrel with what Leef Smith reported. Considering that most domestic violence advocates are loath to admit that any woman might be violent, I think Ms. Smith did a good job. But as a criminologist who has specialized in domestic violence for almost 20 years, I read this story several times and still failed to find what I thought was a sufficient answer for why we're seeing an increase in women arrested for domestic violence.

Based on my professional experience and conversations with law enforcement officials and domestic violence service providers, I doubt that women are any more violent today than they were 200 years ago, just as I doubt that men are any more or less violent now. We don't have more domestic violence, but more reporting of domestic violence. This in turn leads to more calls for police response and increased arrests. Perhaps Prof. Larry Sherman got closest to the truth when he said that "mandatory arrests are leading to more [implied female] arrests." That seems reasonable. If you cast a wider net, you'll arrest more people. But if women are not any more violent, why are more being arrested?

Here's what I think may be the culprit. As director of a federally funded domestic violence project in the late 1980s, I trained police officials around the country on how to write and implement domestic violence policies. One of the topics was what to do if officers responding to a domestic call find injuries on both parties. The standard reaction was to arrest both, terming them "mutual combatants." The problem with such an approach, however, is that women usually were being arrested for defending themselves against their batterers. The Dallas police department developed what was at the time a novel solution by instructing their officers to try to determine whom to arrest by answering one to three questions:

- Did one of the two parties strike in self-defense? If yes, arrest the aggressor.
- Who was the primary aggressor? If unable to ascertain, try to find out.
- Who will reinitiate the violence? Arrest that individual.

If officers could not obtain answers to any of these questions, they were directed to arrest both parties. Using this approach, Dallas reduced its dual arrest rate from 7 percent to 2 percent. I wonder how many police departments use that method today. And I wonder what would happen to their domestic violence arrest statistics concerning women if they did.

SUSAN R. PAISNER
Adelphi

The Washington Post

MONDAY, DECEMBER 2, 1996