September ~~8~~ 9, 1998

MEMORANDUM FOR BRUCE REED
ELENA KAGAN

FROM: Domestic Policy Council Staff

SUBJECT: **Compilation of Preliminary New Ideas**

CHILDREN AND FAMILIES

1. Child Care. While this is not a new idea, we must maintain our support for our child care initiative in order to have credibility on the rest of a new "families first" agenda.

ok **2. Paid Parental Leave.** Funding for paid-parental leave for the purpose of looking after a newborn baby, or a newly-adopted child for up to 12 weeks (although we may reduce the length of time, depending on costs). A leave initiative may be targeted to families whose incomes are below a certain level.

ok (small) **3. Home visitation.** Funding for programs that counsel and support new parents. These programs are often conducted by trained professionals, such as nurses and counselors, and they can dramatically decrease levels of abuse, which in turn decreases rates of delinquency and crime amongst children and youth. welfare/teen angle?

doesn't matter **4. Child Welfare.** Additional funding for and improvements to the independent living program to assist youth in foster care "aging out" of the child welfare system with life skills training and vocational and educational needs.

No plan **5. Child Tax Credit.** Double the Child Tax Credit, from $500 per child to $1000, for parents of children aged 0 to three.

Treasury looking into **6. Home Office Tax Deduction.** Expand the allowable expenses for those who work out of their home.

OK **7. Flex-Time.** Offer tax incentives for companies that offer flexible work hours for their employees, compressed work weeks, part-time work with benefits, job sharing, career sequencing, and extended parental leave.

? look into **8.After-School Programs.** Support after-school programs in both school-based and non-school-based settings, with a priority to those programs that are tailored to work hours.

Quality pre-school

CIVIL RIGHTS

OK **1. Enhance the CRS program at Justice.** The Community Relations Service at Justice has been a significant force in cooling racial tensions in communities all over the country. Since the 1980s, their budget has been decimated. This initiative could (1) enhance CRS's ability to provide mediation services to resolve how much (?)

community civil rights concerns as an alternative to litigation; and (2) provide CRS conflict resolution training and technical assistance to communities. The CRS is very popular with the AG and she often talks of wanting it strengthened.

2. Inter-Agency Task force on Discrimination. This initiative would create an inter-agency task force (headed by the Civil Rights Division at Justice) to expand research on the extent of racial discrimination in the country. The research would focus on developing uniform testing protocols in housing, employment, and access to capital and then using these tools to asses the nature and extent of discrimination in these areas. This effort could be linked to agency compliance and/or enforcement work.

3. Improve Civil Rights Information Sharing. This proposal would provide funds to establish and maintain a system that links the data bases of agencies with civil rights enforcement responsibilities -- thus allowing, for example, OCR at Education to have better access to work being done by the Education Section at Civil Rights.

4. Becoming an American. A national effort to focus on easing the transition to the U.S. for new immigrants. We could provide grants to community-based organizations that fund English and civics classes for new immigrants. Also, we could encourage the development of programs that provide practical transition-type help to new immigrants -- such as understanding the public education system; understanding the housing system, etc. According to the INS, there is a bit of this being done on the community level, but they do not fund any of it. Also, some of the education bits are done by the Dept. of Ed. (adult education and/or literacy), but not in a coordinated way. HHS funds some transition work for refugees. This general idea was first talked about by the Jordan Commission.

5. Sweat-Shop Initiative. Expand enforcement against labor abuses in "sweatshops" and on farms that employ migrant farm laborers. Many of the wage & hour laws in place to protect low-wage workers are not adequately enforced by the Department of Labor, in part because of dramatic reduction in funding for these efforts during the 1980s. These workplaces often serve as places of gateway employment for new immigrants, and thus the abuses disproportionally affect Latinos and Asians.

6. Equal Pay. A program that could be run by the EEOC and DOL to increase outreach to businesses to educate them about the legal requirements for paying equal wages, provide technical assistance, improve training for EEOC employees and resources for increases in enforcement capabilities.

→ $100 million proposal fm EEOC / DOL

COMMUNITY EMPOWERMENT

1. Access To Capital For All Americans.

- **CDFI Tax Credit.** In 1996, we proposed a tax credit for investors in CDFIs. We could re-propose this $100 million non-refundable tax credit. The maximum amount of credit allocable to a particular investment would be 25 percent of the amount invested.

- **Voluntary CRA.** Launch a bully pulpit effort to encourage non-bank financial institutions to develop and implement principles for community investment.

•**Micro-Enterprise.** Provide authorization and funding for CDFI Fund to provide technical assistance to micro enterprise organizations and micro-entrepreneurs (PRIME Act, Kennedy-Domenici).

•**Secondary Market.** Develop coordinated administration initiative to take first steps towards secondary market for community development loans, including data collection, education, standardization, regulatory review, and the creation of a loan loss reserve fund to back pools of community development loans pooled and sold by the private sector.

•**Fair Lending.** Continue to push the Fed to permit collection of data on race and income of small business borrowers; consider legislation if this fails.

•**Capital Access Programs.** Push to give the CDFI Fund authorization to launch small business capital enhancement program to back state-run loan loss reserve funds that permit banks to make more difficult small business loans.

2. **Sustainable Development.**

•**Environmental Activity Bonds.** In response to the growing needs of urban areas, an environmental bond would help cities meet the environmental goals set by the Clinton Administration. EPA has identified three areas which would be candidates eligible to receive funding: brownfields, drinking water, urban river/waterfront cleanup, and the creation of parks and other public spaces. Drinking water (as cities need to improve infrastructure to meet the requirements of the Safe Drinking Water Act) and brownfields are two areas that cities continue to seek assistance for financing. Our preference is to be more inclusive and allow municipalities increased flexibility to identify their priorities. However, there should be attention paid to how this financing would intersect with other Administration initiatives like the Clean Water Action Plan, Drinking Water Revolving Loan Fund, and TEA-21.

•**Urban River Corridors and Wetlands Restoration Projects.** EPA proposes urban river corridor and wetlands restoration efforts tailored to improve the human health and economic opportunities in urban communities. To date, EPA has made small grants to a number of cities and municipalities for these types of projects. With additional grants to local communities, the Agency could provide the necessary funding for projects to improve community water resources. These projects would provide employment opportunities for residents, benefit the economic welfare and technical competence of local residents, and empower the community to build for a better future. Restored areas can serve to attract and sustain business as well as provide outlets for recreation.

•**Community Preference and Visualization Tools.** Building the social capital necessary to change transportation and land-use policies to create more livable communities also requires tools that the average citizen can use to understand the implications of major policy choices. EPA proposed to act as a catalyst in the development and use of such innovative decision making tools. The types of tools would include: 1) Community Preference Surveys, which show communities pictures of different neighborhood types, and help the community reach a consensus about the types of development that are desirable; 2) simulation tools, which would get a community "development ready" or help a community experiment with alternatives that have been proposed; and 3) new software, accessible to the public as well as urban planners, to view and evaluate alternative urban designs for any community.

•**Asthma Initiatives.** Through better implementation and new investments, EPA believes the Federal government can take action that will show immediate and long term results to reduce asthma rates among children.

•**Air Quality Credits.** EPA proposes to provide incentives to transportation planning by developing protocols for potential air quality credits toward state attainment plans for locally-initiated strategies and projects that create less auto-dependent communities. Similarly, the Agency proposes to create the next generation of the Clean Air Brownfields Partnership Pilot by continuing and expanding its ongoing efforts to link air quality goals and brownfields/infill redevelopment. After 2000, EPA proposes to partner with cities that have a significant brownfield site in the decision-making phase of redevelopment, work with the city, state, and developer to come up with a project design that maximizes air quality benefits, and allow credit for these activities under the State Implementation Plan.

3. Job Creation in Distressed Communities.

•**Local Infra structural Improvement and Economic Revitalization Fund.** Emil forwarded this idea to establish a Federal grant program to fund local Infra structural improvements. This would spark revitalization of declining or stagnant low-income areas by providing funds to upgrade local infrastructure. These Federal dollars could leverage State, local, and private funds for such Infra structural efforts.

PW doesn't like

•**Community Revitalization Tax Credit.** LISC proposes a Community Revitalization Tax Credit (CRTC) --similar to the Low-Income Housing Tax Credit --to help stimulate private-sector investment in commercial property in under served neighborhoods.

Treasury hates

•**Community Development Corporation Tax Credit.** In 1993, we put in place a demonstration tax credit for investors in 20 CDCs. According to this report for Bruce Katz' shop at Brookings, this program has been effective. We could propose expanding this CDC tax credit to more areas. The author of this report also proposes some changes to make the tax credit more effective.

Extend

•**Expand and Rationalize Employer-Side Tax Incentives.** This includes EZs, Welfare to Work, WOTC, DC Jobs Credit.

•**Working Ventures Fund.** Fund one or more national non-profits to fund, evaluate, share best practices, develop networks, and link non-profits to their business community, in the job training and placement field, as LISC and Enterprise do in the housing

•**Community Empowerment Fund.** a) Include targeting for welfare to work projects; b) allow links to venture capital focused on minority-owned or small business in distressed areas; c) eliminate mandatory pledge of CDBG dollars for CEF loans.

• Tax credits for job training

Xavier •**Metro Jobs/Community Development Corporation (CDC) Links.** Would target job-poor but CDC-served central-city neighborhoods to create or strengthen a welfare-to-work infrastructure that is place-based but people-focused and regional in orientation (where the jobs are). Would build on HUD's Bridges to Work and complement DOL and HHS efforts, focusing on concentrations of assisted housing run by CBOs.

4. Low Income Savings.

•**Asset Development for Section 8 Voucher Recipients.** Currently, an individual still sees the size of their subsidy reduced for each extra dollar he/she earns. This new idea from Liebman and Orszag would roll-over any savings --or a part of the savings --from an individual earning more money into an Individual Development Account (IDA). That is, if the size of a person's Section 8 voucher is reduced by about 30 cents for each extra dollar he/she earns, we could put this savings --up to 30 cents --in an IDA. We could also the capabilities created by EFT '99 to electronically transfer money to efficiently establish IDAs for more Americans.

Food stamps?

VP •**Brownfields Meets Community Development.** Under this proposal, we would push banks to invest in brownfields as part of their CRA commitments.

5. Affordable Housing.

•**Elderly Housing Initiative.** 1) Housing modernization grants to existing elderly housing projects for modernization, physical redesign, and/or conversion to assisted living; 2) Expanded and more flexible service coordinator grants to meet needs of increasingly frail population in public and assisted housing; 3) authority for PHAs to use vouchers for the housing component of assisted living costs.

HUD

•**Regional Affordable Housing Initiative**. Targeting regions with severe jobs-housing imbalance and established partnerships for regional collaboration, HUD would provide grants and loan guarantees to support planning, regulatory streamlining across jurisdictions, and development.

new twist? •**Vouchers.** An expanded request will focus on incrementals, welfare to work, and homeless.

6. Promoting Homeownership In Distressed Communities.

•**Low-Income Homeownership Tax Credit.** Self-Help --a community group in North Carolina --proposes a tax credit for investors who provide second mortgages to low-income families. This could significantly reduce the barriers to homeownership among low-income families, who do not really benefit from the home mortgage interest deduction.

•**Increase Allocation of Mortgage Revenue Bonds.** Each state receives a supply of tax-exempt mortgage revenue bonds. These bonds help low-income families become homeowners and help develop affordable rental housing. There are currently 53 co-sponsors of legislation in the Senate and 316 co-sponsors of legislation in the House to increase the allocation of mortgage revenue bonds by slightly more than 50 percent and then index it to the rate of inflation.

• Fed releasing more data on metropolitan spending/decision-making to empower communities and advocates to understand how $ etc.

•**Expand Use of Mortgage Credit Certificates.** Mortgage Credit Certificates (MCCs) are credits against federal income tax equal to between 10 and 50 percent of mortgage interest (to a limit of $2,000 per homeowner) issued by state governments. MCCs count *against* state's ability to issue mortgage revenue bonds. We could propose to expand the MCC program to allow the limit to be $4,000 for homeowners in EZs or ECs. We could also propose allowing states to not have to count MCCs against their mortgage revenue bond base.

Group as an inner-city development initiative

•**First-Time Homebuyer Tax Credit.** The 1997 tax law put in place a $5,000 tax credit for first-time homebuyers in the District of Columbia. To boost homeownership in Empowerment Zones, we could propose allowing any first-time homebuyer in an EZ to take advantage of this tax provision.

•**Historic Homeownership Assistance Tax Credit.** The National Trust for Historic Preservation proposes a 20-percent tax credit to homeowners who rehabilitate or purchase a newly rehabilitated historic home and occupy it as a principal residence.

•**Homeownership Vouchers.** Already authorized, would apply rental subsidies to mortgage-related expenses for first-time homebuyers who were Section 8 tenants.

• Focused initiative on great urban neighborhoods like Harlem or the South Side of Chicago.

EDUCATION

1. Class Size Reduction. Reintroduce President's proposal to reduce class size in grades 1-3 to an average of 18. Needs to be funded on the mandatory side. If necessary, we could combine this with a teacher quality/recruitment initiative, so that funds in the early years of the program are devoted to (1) incentives for people to enter teaching and/or (2) teacher training and professional development.

2. School Modernization. We've tried this on the mandatory side and we've tried this on the tax side. Assuming we don't get it this year, we've got to try again next year.

3. School Discipline/Safety. We are working on an overhaul of the Safe and Drug Free Schools Program, that will: (1) focus the program on comprehensive, proven approaches to improve school discipline and safety; (2) better target the funds to schools/communities with the greatest needs; and, (3) improve data collection and reporting, including school report cards on safety/discipline issues. Because the program currently spreads (small amounts of) funds around to almost all school, and because of its initial emphasis on keeping schools drug-free, the politics of this program will probably require that any shift in emphasis on greater targeting will require additional resources.

Directive @ Oct 15 conf

4. Teacher Supply and Quality. Here are three initial ideas for improving teacher quality. The first two came out of our initial discussions on the President's race report. We can decide down the road whether to keep them focused on high poverty schools, or make them more universal. We can also break out particular pieces of them into separate initiatives if we want to:

•**Make sure there are qualified teachers in high poverty schools**. First, encourage and support state and local efforts to improve the preparation, certification, recruitment, selection, induction, retention, evaluation, reward and dismissal of teachers overall. Support necessary R&D on critical components of an upgraded system, such assessing teacher competence in the classroom. Second, work to end the practice of disproportionately placing and keeping unqualified teachers in high poverty schools. Require states to require prospective teacher to pass basic skills/subject matter tests (and help them develop more demanding assessments) in order to be licensed Prohibit school districts receiving Title 1 funds from staffing Title 1 funded classes (what about schoolwides???) with unqualified teachers, and bar those without an effective system for teacher evaluation (including removal of incompetent teachers) from receiving Federal (or just Title 1) funds. Require K-4 teachers in Title 1 schools to successfully complete training in teaching reading, and fund the training. Third, help attract and retain the best teachers for high poverty schools. Fund induction and continuing professional development programs in high poverty schools. Provide incentives for Board-certified teachers to teach in high poverty schools.

- **Recruit More Minority Teachers**. Many believe that a major factor influencing children's success in education is role models. Enhance current recruitment programs with effective incentives to attract more minorities to the teaching profession. Minority teachers, administrators, and school personnel serve as role models for minority students and can provide an important link between schools and parents.

- **Establish subject-specific teacher/administrator training institutes/academies/centers in every state.** There are crying needs to train existing teachers in key subject areas, such as reading, technology use, math/science and other academic subject. We should establish subject specific training centers in each state (or perhaps in geographic regions within states). The idea is to create a place, probably at a university, that has the subject-matter capacity and can work with school systems to develop and implement a strategy for ensuring that every teacher who needs it gets high quality, intensive and ongoing training in the subject and how to teach it. This could either substitute for or complement the current teacher training program (Eisenhower Professional Development Program), which provides funds to states and school districts on a formula basis, with broad discretion on how the funds can be used for professional development. We could also establish training centers for principals and other school leaders.

- **Continuing the Troops to Teachers (TTT) program** (due to phase out in Oct 1999). TTT provides stipends to encourage retired military personnel to teach and school districts to hire and train them. TTT attracts more minorities and men into the teaching profession than are traditionally represented, they have background in understaffed subjects such as math and science, and are more willing to teach in inner-city classrooms.

5. Recruiting and Training Principals. Most states and communities lack good strategies for recruiting and preparing individuals with the knowledge and skills to provide the kind of leadership and management schools need right now. We could propose a competitive demonstration program to provide focus, leadership and effective models for the field. This would not be a big-ticket item.

6. Urban/Rural Initiative. This could take two forms. One would be some version of Education Opportunity Zones--a competitive grants program that rewards performance and requires accountability. A second would be to create local performance partnerships, in which local communities agree to create schools that are safe, have high standards and qualified teachers, after-school programs, tutors and other forms of extra help for kids, technology, etc. The districts would be responsible for creating schools with these opportunities, and would be accountable for improving achievement across the board (perhaps as measured against national standards). In return, the districts would (1) be able to combine funds from relevant ED and other programs, so they can figure out the best way to provide the learning opportunities; (2) get extra funding over and above the funding from the existing categorical programs; and (3) gain or lose additional funding based on performance (with some floor established to minimize the risk for districts).

Title I strings for states (?) Zones (?) Universal choice (?)

7. Choice Demonstration Program. Establish a demonstration program to challenge states and school districts/cities to expand the range of high quality schools students and families can choose among, thereby enabling students in low performing schools to move to better ones. A variety of approaches should be encouraged, including:

EK: could we require states and local school districts to do certain things (like universal choice?) (?) Is there really a commerce clause problem w/ this (?) Could we push the envelope on this (?)

• **Community College Enrollment.** High school students should be permitted to enroll in community colleges, for high school level or college level courses. This step could provide inner city students with access to more qualified teachers, because most community colleges have faculty with subject matter expertise (whereas urban high schools often have teachers teaching out of field). It could also help boost minority enrollment in college. [see if this can build on existing tech-prep programs, or other articulation agreements.]

• **Contract School System.** Transform urban school systems from bureaucracies which operate large numbers of schools into systems in which the local governing body contracts out the operation of each school--to teachers, nonprofits, school management firms, etc. In effect every school becomes a charter school, with a distinct mission, control over its own staffing and budget, and accountable for results. The local school board is responsible for selecting the schools, identifying new types of schools that might be needed and soliciting proposals to operate the school, monitoring the performance of each school and holding it accountable. Under this approach, all schools would eventually be schools of choice.[see Paul Hill's work for background on this]

• **Schools located at large employers.** Encourage large employers to provide facilities on site for schools for children of their own employees, while the school district provides the teachers, curriculum, instructional materials, etc. Dade County's Satellite Learning Centers provide the model for this approach. Dade's experience shows that these schools can (1) be more diverse than other schools, because work sites are more diverse than residential neighborhoods (2) save the school districts the cost of new facilities (3) save employers costs associated with employee turnover and (4) increase parental involvement in the schools.

•**Expanding choice through smaller, schools-within-schools.** Transform large, impersonal schools into smaller schools-within-schools that would dramatically expand choices within public education for families without requiring students to leave their neighborhoods. Many parents want more choice in education but don't want to send their children to school far from home. This proposal would address that need and enable many more students to get the personalized learning attention that so many families want; it also may reduce discipline and violence problems. A grants program could support networks of schools or school districts to plan and implement this concept and provide information and counseling to help students and their families make good choices. This proposal could be linked or combined with the "contract" schools concept by creating a competitive process to award contracts to manage each school-within-a-school to teachers, non-profits, charter schools, etc.

8. English Language Acquisition. As part of the planned overhaul of the Bilingual Education Program, we should consider a number of initiatives:

teachers?

- **Make every LEP child competent in English within 3 years of obtaining services.** English language competency is the key to success in schooling and the economy. ESL and similar services should be made universally available to all students who need them. Federal funding can provide matching grants to States to do this. The requirement--including funding and accountability--for serving LEP kids and helping them become competent in English within 3 years should be built into the Title 1 program. Other programs, such as after-school and technology, should also be designed so that in schools with significant numbers of LEP kids, they are also focused on helping kids learn English within 3 years.

- **Support English Plus.** In addition to ensuring that all LEP students learn English, we should promote foreign language learning, starting in the early grades, for student's whose native language is English. The objective is to dramatically increase the number of students who leave school fluent in two or more languages, regardless of their native language.

- **Support demonstrations of, and if effective greatly expand, "Newcomer High Schools" for recently arrived immigrant students.** Many school districts are facing an increasing number of secondary immigrant students who have low level English or native language skills, and in many cases, have had limited formal education in their native countries. In order to prevent these students from dropping out (and these children are a significant factor in the 40% Hispanic drop-out rate), these students must learn English, take the required content courses and catch up to their U.S. peers. Some district have developed Newcomer programs --either a separate school or a school-within-a-school. These programs typically educate students for a limited period of time (most for less than two years) before enrolling them in their home schools. Three such schools are 4-year high schools. The programs reach beyond the students themselves, providing classes to orient parents to the U.S. and 63% offer adult ESL classes. There are currently 75 such programs in 18 States and the Center for Applied Linguistics has sponsored an evaluation of their effectiveness.

9. Quality pre-school education. We can propose an initiative to make quality pre-school universally available, or at least universally available for poor kids. There should be two key components to this. One is to provide a number of funding streams to pay for it. Head Start should be the base, though we should also look at ways in which Title 1 could play a larger role. Second, we should provide incentives to both preschools and school districts that receive federal funds, to work together to help ensure that the preschools programs are focused on helping kids get ready for school, by requiring the schools to reach out to preschools and let them know what they expect kids to know and be able to do when they come to kindergarten, and by giving the preschools the help they need to provide an appropriate curriculum. Focus on quality

link pre-schools w/schools

Don't neglect infants/toddlers.

10. Federal Matching Funds for AP courses and for AP and SAT/ACT Preparation. The President has made universal access to two years of higher education a priority, and has created ways to alleviate the financial hurdles. A logical next step in improving the quality of access is to make all students more competitive by closing the gaps in advanced course availability as well as SAT and ACT test scores. The Federal government could establish funding matching mechanisms to encourage states to improve access to AP courses and preparation for AP tests in low-income schools; in areas where AP courses are not available, funds could be used for partnerships with community colleges that offer similar courses. Similarly, matched funds could be used to do one of a number of things for SAT/ACT preparation: pay for low-income youth to attend prep courses (e.g., Kaplan; Princeton Review); fund poor school districts to set up their own test prep programs; as in America Reads, waive the federal match for Work Study students who help prepare disadvantaged students for the tests.

11. "High Hopes" for Adults. While the President has made enormous progress in making available resources for higher education for people of all ages, the primary focus of Administration informational campaigns and initiatives like High Hopes have been to encourage young people to go to college. A new initiative could combine two efforts. First, the Administration could launch an informational campaign encouraging adults to go back to school and inform them of new resources available to help, including Lifetime Learning and Hope Scholarship Tax Credits, Individual Training Accounts under the new Workforce Investment Act, and Pell Grants (which apparently few realize can be used for part-time students). Second, a new "High Hopes" grants program targeted at adults, partly focused on encouraging minorities and women to go back to school, could support local partnerships of business, community colleges, labor unions, one-stop centers and others to provide the information and counseling needed to encourage and assist adults to enroll in courses and programs that will help them succeed in their local job market.

12. Encourage High Schools to Offer/Require Service Learning. We should consider expanding the service learning initiative (Learn and Serve) to encourage more school districts to incorporate service into their education programs. The service learning program could be expanded to provide a stronger infrastructure, e.g., service coordinators for high schools, in order to make the service experience both more rewarding and educational for students.

HEALTH

1. Long-Term Care and Medicare Reforms for Elderly, Disabled and Their Families

- **Providing new long-term care tax credit**. Along with the lack of coverage of prescription drugs, the poor coverage of long-term care represents a major cost burden for the elderly and their families. Long-term care costs account for nearly half of all out-of-pocket health expenditures for Medicare beneficiaries. This proposal would give people with two or more limitations in activities of daily living (ADL) or their care givers a tax credit of $500 (or more, if affordable) to help pay for formal or informal long-term care. This initiative would be coupled with other long-term care policies (e.g., offering private long-term care insurance offering to Federal employees). (Cost: About $4 billion over 5 years, offset by closing some tax loopholes, and would help about 3.4 million people).

- **Offering private long-term care insurance to Federal employees**. Since expanding Federal programs alone cannot address the next century's long-term care needs, the Federal government --as the nation's largest employer --could illustrate that a model employer should promote high-quality private long-term care insurance policies to its employees. Under this proposal, OPM would offer its employees the choice of buying differing types of high quality policies and use its market leverage to extract better prices for these policies. There would be no Federal contribution for this coverage. (Cost: Small administrative costs; OPM estimates about 300,000 participants).

• **Providing new tax credit for work-related impairment expenses for people with disabilities.** Almost 75 percent of people with significant disabilities are unemployed; many of those within the population cite the cost of employment support services and devices, as well as the potential to lose Medicaid or Medicare coverage, as the primary barriers to seeking and keeping employment. This proposal, strongly advocated by your Task Force on Employment of Adults with Disabilities, would give a 50 percent tax credit, up to $5,000, for impairment-related work expenses. It could be a stand alone proposal in the budget or packaged as a long-term care initiative if we decide to defer announcing the long-term care tax credit. (Cost: About $500 million over 5 years, offset by closing tax loopholes, and would help about 300,000 people).

• **Offering new family care giver "one-stop-shop" support program.** About 50 million people provide some type of long-term care to family and friends. Families who have a relative who develops long-term care needs often do not know how to provide such care and where to turn for help. This proposal would give grants from the Administration on Aging to states to provide for a "one-stop-shop" access point to assist families who care for elderly relatives with 2 or more ADL limitations and/or severe cognitive impairment. This assistance would include providing information, counseling, training and arranging for respite services for care givers. (Cost: About $500 -750 million over 5 years).

• **Adding prescription drug coverage to Medicare (new policy).** The lack of coverage for prescription drugs in Medicare is widely believed to be its most glaring shortcoming. Recognizing the medical community's reliance on prescriptions for the provision of much of the care provided to Americans, virtually every private health plan for the under-65 population has a drug benefit. Medicare's lack of coverage is largely responsible for the fact that drug costs are the highest out-of-pocket cost for three out of four elderly. This burden will only become more acute in the next century as the vast majority of advances in health care interventions will be pharmacologically-based. Responding to this fact, Republicans and Democrats on the Medicare Commission, as well as almost every health care policy expert, are consistently stating that reforming Medicare without addressing the prescription drug coverage issue would be a mistake. We are developing a wide variety of options, including a means-tested option, a managed care benefit only approach, and a traditional benefit for all beneficiaries. If desirable, a proposal could be included in the budget or coordinated with the March release of the Medicare Commission's recommendations. (Cost: Varies significantly depending on proposal, but could be $1 -20 billion a year; assumed offset would be Medicare savings, which might more easily be achieved in context of a broader reform proposal).

• **Establishing a new cancer clinical trials demonstration (FY 1999 budget; not passed).** Less than three percent of cancer patients participate in clinical trials. Moreover, Americans over the age of 65 make up half of all cancer patients, and are 10 times more likely to get cancer than younger Americans. This proposed three-year demonstration, extremely popular with the cancer patient community, would cover the patient care costs associated with certain high-quality clinical trials. (Cost: $750 million over 3 years).

• **Redesigning and increasing enrollment in Medicare's premium assistance program for vulnerable seniors (extension of July executive action and new policy).** Over 3 million low-income Medicare beneficiaries are eligible but do not receive Medicaid coverage of their Medicare premiums and cost sharing. Many more may not get enough assistance through the new, BBA provision that is supposed to help higher income beneficiaries. We are developing a range of proposals that build on the

President's actions in this area to better utilize Social Security Offices to educate beneficiaries about this program, to reduce administrative complexity for states and to give them incentives to engage in more aggressive outreach efforts. (Costs vary depending on policies; probably about $500 million to $2 billion over 5 years).

2. Health Insurance Coverage Expansions and Reforms

- **Providing new coverage options for people ages 55 to 65 (FY 1999 budget; not passed).** Americans ages 55 to 65 have a greater risk of becoming sick; have a weakened connection to work-based health insurance, and face high premiums in the individual insurance market. This three-part initiative would: (1) allow Americans ages 62 to 65 to buy into Medicare, through a premium designed so that this policy is self-financed; (2) offer a similar Medicare buy-in to displaced workers ages 55 and over who have involuntarily lost their jobs and health care coverage; and (3) give retirees 55 and over whose retiree health benefits have been ended access to their former employers' health insurance. A proposal such as this would be minimally necessary for any serious consideration of proposals to raise Medicare's eligibility age. (Cost: About $1.5 billion over 5 years, which would assist about 300,000 people).

- **Expanding health insurance options for people with disabilities --Jeffords/Kennedy bill (new policy, but the concept was endorsed by you in this past summer during your ADA anniversary commemoration).** People with disabilities who want to return to work not only lose their cash benefits (SSI and SSDI) but also lose their Medicaid and Medicare coverage. You succeeded in incorporating a provision in BBA that provides an option to states to allow workers to buy into the Medicaid program. Unfortunately, because of limitations that the Republicans insisted on incorporating (like an income cap on eligible populations), no state has yet taken up this option. Working with Senators' Jeffords and Kennedy, we are proposed to: (1) expand the BBA Medicaid buy-in option by lifting strict income and resource limits and allowing states to cover less disabled people as well (such as working people with HIV AIDS); (2) provide grants to states as incentives to take these options; and (3) extend Medicare coverage for people leaving SSDI for work. So far, the disability groups, the NGA and a growing bipartisan Congressional coalition are supportive. (Cost: about $1.3 billion over 5 years, offset by Medicare and SSA fraud savings that were in the FY 1999 budget).

- **Offering health coverage for the temporarily unemployed (FY 1997 and 1998 budgets; not passed).** Because most health insurance is employment based, job changes put families at risk of losing their health care coverage. In fact, 58 percent of the two million Americans who lose their health insurance each month cite a change in employment as the primary reason for losing coverage. This break in coverage not only leaves the worker and his or her family extremely vulnerable to catastrophic health care costs, it puts them at risk of losing the portability protection provided by the Kassebaum-Kennedy law. The proposal would provide temporary premium assistance for up to six months for workers between jobs who previously had health insurance through their employer, are in between jobs, and may not be able to pay the full cost of coverage on their own. (Costs depend on whether it is done as a demo (about $2.5 billion over 5 years, which would help about 600,000 people) or nationwide (about $10 billion over 5 years, which would cover about 1.4 million persons).

- **Providing coverage to parents of children on CHIP (new policy).** Since children who are uninsured usually have parents who are uninsured, an easy way to target uninsured adults is to extend

Linked to work(?)

eligibility for Medicaid or CHIP to parents of children covered by these programs. This has been done successfully in some states, through Medicaid 1115 waivers, and would be a logical next step to covering low-income adults. (Cost: Depends on the proposal and assumed take-up rates by the states).

• **Establishing a new state option to expand coverage through Medicaid eligibility simplification (new policy).** In the wake of welfare reform, Medicaid eligibility rules have become even more complex since states must cover people who would have been eligible for AFDC under the old rules. Additionally, Medicaid law allows states to cover parents but not adults without children --even if they are very poor. This proposal would allow states to opt for a pure poverty standard for Medicaid eligibility for all people (like we do for children) rather than the old categorical eligibility categories. Not only would such an approach simplify the Medicaid program for families and states; it would provide an opportunity for significant coverage expansion. While any change in Medicaid almost always raises concerns amongst some advocates, this proposal would be supported by the Governors and advocates such as the Center for Budget and Policy Priorities. (Cost: Depends on the proposal and projected coverage expansion take-up rates).

• **Establishing new and effective children's health insurance outreach initiatives (FY 1999 budget; not passed and new policy).** The success of the Children's Health Insurance Program (CHIP) and Welfare reform may well depend on our success at targeting and signing up the over 4 million children who are eligible, but not enrolled in CHIP or Medicaid. Last year's budget included several policies to promote outreach, including allowing states to temporarily enrolling uninsured children in Medicaid through child care referral centers, schools, etc; and allowing States to access extra Federal funds for children's outreach campaigns. An additional proposal is to pay for a nationwide toll-free number that connects families with state eligibility workers. NGA is sponsoring this line for one year only; such a line is essential for the nationwide media campaign that we are planning to launch in January with the NGA and America's Promise (Colin Powell's group). (Cost: Between $400 and $1 billion over 5 years.)

• **Establishing new voluntary purchasing cooperatives (FY 1997, 1998, and 1999 budgets; not passed).** Workers in small firms are most likely to be uninsured; over a quarter of workers in firms with fewer than 10 employees lack health insurance —almost twice the nationwide average. This results in large part because administrative costs are higher and that small businesses pay more for the same benefits as larger firms. This proposal would provide seed money for states to establish voluntary purchasing cooperatives. These cooperatives would allow small employers to pool their purchasing power to try to negotiate better rates for their employees. (Cost: about $100 million over 5 years).

• **Strengthening OPM's hand in negotiating with FEHBP plans to better constrain costs (new policy).** Last year, premiums in FEHBP rose by 8 percent; this year, they are projected to grow at a slightly higher rate. In part, this reflects trends out of FEHBP's control, such as continued rapid increases in drug costs and an aging employee population. However, it also results because OPM has fewer tools at its disposal than private sector employers. This proposal would increase the bargaining power of OPM as well as implement other provisions that could reduce health premium costs to both the Federal government and Federal employees. Although these types of proposals have been controversial since they affect plans that want to participate in FEHBP, there may be an opening this year because of two consecutive years of high premium growth. (Could be savings, depending on the proposal).

3. Public Health/Underserved Populations

- **Combating Resistance to Anti-biotics (Super Bug).** Recent reports have indicated that resistance to anti-biotics is becoming a major public health crisis. Some viruses, such as pneumonia and many hospital-based infections, are starting to beat even the strongest anti-biotics, causing prolonged illnesses and even death. For example, pneumonia, which impacts over 500,000 Americans per year, is becoming resistant to the strongest antibiotics. CDC believes that this critical public health problem is on track to affect more and more viruses. In the past we have generally addressed this by developing new antibiotics, but it is becoming increasingly difficult to keep developing antibiotics that do not become ineffective. However, this problem could be dramatically reduced if we knew more about which viruses are likely to become resistant and why and if drugs were prescribed and used more appropriately. For example, there are over 50 million inappropriate outpatient antibiotic prescriptions written annually. The budget could fund a major public health campaign that would: educate consumers and health providers to help assure appropriate use of anti-biotics; and improve surveillance and research efforts to understand which antibiotics are at risk for becoming ineffective and why. (Cost: up to $50 million).

- **Improving Access to Health Care in Underserved Rural Areas.** The 25 million Americans that live in rural areas frequently do not have access to adequate health care services. For example, the physician-to-patient ratio is more than 80 percent lower in rural communities and more rural Americans are uninsured and lack access to health care services. The budget could include an initiative that would help maintain and improve access to health care in rural communities by: giving grants to help develop creative emergency services to enable rural health facilities to remain operational and responsive to the needs of their populations; providing assistance to states to help take advantage of a Balanced Budget Act provision that provides higher Medicare payments to hospitals that revamp services to meet the specific needs of their communities; and increasing the number of health professionals in rural communities by providing loan repayments or scholarships to train rural Americans who are likely to stay in the communities to become nurse practitioners. (Cost: Unclear. Approximately $100 million).

- **Improving Access to Emergency Room Care for Veterans.** As part of the President's request to bring Federal health programs into compliance with the patients' bill of rights, the issue of whether the VA provides veterans adequate access to emergency room services has been widely publicized. The VA currently only reimburses for VA emergency visits at VA hospitals, which is certainly not consistent with the patient protection to assure emergency services when and where the need arises. We expect Senator Daschle to offer a proposal to extend VA access to emergency room services, and it may well be advisable for us to address this issue so we are not perceived as falling short on our commitment to apply the patients' bill of rights where we can. (Cost: VA's current proposal costs $550 million per year. However, OMB has been working to dramatically reduce the costs of this proposal).

- **Enhancing Drug Approvals, Food Safety, and other FDA priorities.** The FDA has unprecedented new challenges, including: a surge in promising technologies and drugs that need approval; increasingly challenging diseases, such as AIDS and emerging pathogens; important public health issues such as food and blood safety; as well as major new statutory responsibilities from FDA reform. However, funding for this agency has not increased in several years. This has serious implications for the agency, as food inspections, organ banks, and drug companies are rarely inspected and it is more challenging to meet drug approval needs. Since Congress has been unwilling to fund user fees for FDA, it may be necessary to make it a priority to fund FDA at higher levels (Cost: $100 to $300 million).

- **Food Safety.** The President's FY 2000 budget will build on the food Safety Initiative by expanding resources for collecting food safety data (Foodnet, Pulsenet), inspections (especially imports), and research. This continues the President's historic efforts to ensure food safety issues are considered as part of a comprehensive, science-based, policy.

- **Investing in Promising DOD Breast Cancer/Prostate Cancer Programs.** We have continually highlighted DOD's innovative, popular cancer research programs (most recently the President announced grants in the DoD prostate cancer research program in his Father's Day radio address). However, we have received increasing scrutiny as to why your budget never proposes funding for this critical program by advocates who question your commitment to this program and believe that the lack of an Administration proposal makes it much more difficult to lobby for this funding on the Hill. DoD is somewhat resistant to this concept as they believe that even though they have developed a model program in response to a Congressional mandate, cancer research is not within their military mission. (Cost: it is unclear what the Congress will propose for this year's funding (the Senate bill includes $250 million). If you chose to fund this area, we would need to at least match FY1999 funding and potentially increase this amount.

- **Continuing the President's Successful Race and Health Initiative.** The race and health initiative proposed in the President's FY1999 budget was extremely well received by the minority and public health communities. As part of this initiative designed to eliminate racial health disparities in six critical health areas, we committed to investing $400 million over five years. Therefore, it is important that the President's FY2000 budget include no less than the $80 million we promised for each year, and we may want to consider additional funding for this issue. (Cost: $80 million).

- **Investing in Promising Biomedical Research.** Your FY 1999 budget includes historic increases in the NIH. However, the Congress will no doubt fund NIH at higher levels, regardless of how much you propose in this area. Therefore, you could either continue to fund this research at historic levels or since Congress will likely anyway, you may want to propose less to make room for other priorities. (Cost: over $300 million to $1 billion).

- **Improving Access to Promising HIV/AIDS Drugs.** Since there has been so much progress in therapies for HIV/AIDS, the AIDS community has been pushing to expand access to these drugs. Their expectations were raised last year when the Vice President asked HCFA to look into the feasibility of a demo to expand Medicaid to patients with HIV at an earlier point in their disease. Depending where we end up on Jeffords-Kennedy, we may want to consider additional options to extend drug therapies for patients with HIV/AIDS. Last year, we proposed significant funding for the AIDS Drugs Assistance Programs (ADAP), but there may be other approaches. Regardless of Kennedy-Jeffords, we may receive a great deal of criticism from the community if we propose no increases for treatment or prevention. (Cost: approximately $100 million).

- **Improving Health for Medically Underserved Native Americans.** Native Americans have particularly poor health status (as much as five times higher diabetes rates, and three to four times the rate for SIDS). It is widely recognized that the IHS, the main resource for Indian tribes who deliver health programs to their communities, is not sufficiently funded to address the needs of this population. We could develop a number of initiatives to help improve health for Native Americans, including: focusing on particular health problems such as an elder care, domestic violence, or alcoholism; providing an overall budget increase allowing more resources for all services; or desperately needed improvements in sanitation or other public health infrastructure efforts. This would build on your efforts to elevate the Director of IHS to an Assistant Secretary position and your participation in the conference on "Building Economic Self-Determination in Indian Communities" and would compliment well the President's race and health initiative. (Cost: about $100 million).

4. Increase the Indian Health Service budget. In order to reach more of the targeted population, we should provide a significant increase to the IHS budget in order to address areas such as substance abuse, elder health care, injury prevention, domestic violence and child abuse, and sanitation facilities.

HOMELESS

1. Homeless Veterans. The National Coalition of Homeless Veterans estimates that there are as many as 275,000 homeless veterans on any given night. According to the Department of Veterans Affairs, an approximately $60 million increase in funding would constitute the single largest investment into breaking the cycle of homelessness among veterans. This proposal would seek to increase residential alternatives, community-based contracted care, job preparation activities, stand down activities (community-sponsored events that conduct one-stop service delivery programs for homeless veterans), the distribution of clothing, and long-term housing. The VA estimates that this proposal would positively impact approximately 100,000 to 150,000 veterans annually.

2. Allow VA to sell surplus property with 10 percent of proceeds going to homeless veterans. OMB proposes to amend the Property Act of 1949 to create a 5-year pilot project for the VA to sell off property with 10 percent of the proceeds going to local homelessness projects under the McKinney Act (with this 10 percent being earmarked for homeless veterans) and the other 90 percent going to the VA for capital funds (buildings, equipment, infrastructure, but not staff). Currently, the way the law works is that all the proceeds from surplus property goes to homelessness, but this has not provided an incentive to the agencies to sell property because they do not get to keep any of the proceeds. OMB states that since 1989, only one piece of property has been sold under this provision. OMB will be circulating their proposal within a couple of weeks. OMB would propose to permit VA to sell 25 pieces of property, but does not have a cost estimate yet.

3. Homelessness Demonstration Project Modeled after TANF. Funds could be set aside in the FY2000 budget to create a demonstration project so that one state, region, or locality could try to move persons from homelessness to self-sufficiency. The demonstration project should set up performance goals similar to TANF so that there is a measure of how many persons have been made self-sufficient. There could be a performance bonus for the demonstration project if the goal of the project is met.

4. Medicaid Outreach Project for Homelessness. A Medicaid outreach project could be set up, similar to the CHIP outreach project, that would reach out and cover homeless persons. We should develop a cost estimate to determine that, over time, dollars would be saved if persons are treated under Medicaid rather than on an as-needed basis in emergency rooms and clinics. This idea could be expanded to reach out to more than simply the homeless population to include all groups who are Medicaid-eligible.

EAB

CONSUMERS

fraud initiative

1. Consumer ~~Bill of Rights~~. A consumer ~~bill of rights~~ could address a number of areas such as enforcement, notice to consumers, and dissemination of information. We could announce this bill of rights as a package, but then pull out separate pieces for separate events like we do in the Patients' Bill of Rights area. We could include a number of different areas such as the following:

•**Auto Insurance Fraud.** Auto insurance fraud is a $13 billion-a-year problem in America. We could propose significant funding for a Justice Department anti-auto insurance fraud. Since an estimated 13 percent of auto-insurance premiums go to pay for fraud, we could claim that this effort will help drive down auto-insurance premiums.

•**Slamming/Cramming.** Cramming, in which con artists add bogus charges to consumers' telephone bills, and slamming, the unwanted switching of long-distance telephone service from one carrier to another, and are the top two respective complaints reported to the National Fraud Information Center in 1998. In 1997, the FCC received more than 20,000 complaints from customers who were slammed. So far, the FCC has fined slammers, announcing a $5.7 million fine this year, and announced voluntary guidelines for cramming that local telephone companies say they will follow. We could add money for enforcement to the FCC and/or DOJ. In May, the Senate overwhelming passed legislation that would impose new penalties on slammers and would eliminate common slamming methods, such as contest entry forms that, when signed by unsuspecting customers, authorize a switch of their long-distance carriers.

•**Telemarketing Fraud.** Telemarketing fraud is among America's worst white-collar crimes, robbing unsuspecting victims of an estimated $40 billion per year. We could increase the FBI budget to increase investigations of this type of fraud. Recently, the Washington Post reported that volunteers from the American Association of Retired Persons (AARP) work undercover for the FBI, posing as potential victims to catch telemarketers on the prowl. Because telemarketing fraud often is targeted against the elderly, we could combine this piece with the elder abuse in a separate event.

moving forward w/ Treasury

•**ATM Proposal.** Weinstein proposes that Treasury publish an annual report on consumer financial issues, including ATM fees. In each report, Treasury would provide a list of insured financial institutions based on geographic divisions and by size. Treasury would report on the following categories: (1) Fees charged to depositors at ATMs at their home branches; (2) Fees charged by institutions to depositors using other banks ATMs; (3) Fees charged by ATM networks; (4) ATM fees charged to non-member depositors by institutions; (5) Minimum deposit requirements for checking and savings accounts; (6) Fees for overdrafts; and (7) Checking account fees. We will need to develop categories which underscore the differences in types of accounts. If we just list checking account fees, the fees that aren't reported would increase.

TOBACCO

1. Tobacco Counter advertising. Fund a $200 million per year tobacco Counter advertising and education campaign, as proposed in the President's 1999 budget and McCain legislation. This campaign would develop

Counter advertising and purchase enough media time to reach teens at least four times a week. The campaign would also fund an extensive school-and community-based anti-tobacco education campaign.

2) **Tobacco Cessation.** Each year, 20 million smokers attempt to quit, but only 1 million, or 5 percent, succeed. More than 90 percent smokers who attempt to quit do so on their own, and the vast majority fail within 2 to 3 days. However, research shows that effective cessation methods could raise success rates to 10-20 percent (over 2 million people annually). The Agency for Health Care Policy and Research (AHCPR) endorsed 5 smoking cessation methods that have been proven to be effective in helping people to quit: gum, patch, nasal spray, inhaler, and pill (Zyban). A full course of these treatments costs around $200-300 (for a three months supply, without counseling). However, less than half of managed care organizations provide coverage of any AHCPR-approved therapies, and those that provide coverage may impose cost-sharing requirements that hinder access to treatment. In fact, a study of managed care in Washington State found that eliminating copayments for smoking cessation services significantly increased participation rates.

3) **Continued call for comprehensive legislation to stop children from smoking before they start.** Total combined cost of all these initiatives: $855 million over 5 years. We could make a series of proposals, some part of the budget and some not: (1) Fall --announce new DOD anti-tobacco plan, and new DOL and OPM tobacco-free workplace programs; (2) Winter --propose Medicaid and Veterans coverage of cessation benefits through FY2000 Budget; and (3) Spring --tax coverage of cessation as a medical expense and expanded coverage of cessation benefits in FEHBP.

•**New Department of Defense anti-tobacco plan.** This plan is still being vetted at the agency but will likely include covering over-the-counter nicotine replacement therapies under military health care coverage as part of a comprehensive military-wide anti-tobacco plan. Cost: $60 million per year.

•**Anti-tobacco workplace initiatives by DOL and OPM.** DOL could expand its drug-free workplace initiative to provide information to employers on steps they can take to reduce tobacco use among employees (cost: $63,000 per year). OPM could disseminate a model workplace cessation program for all federal agencies (agencies would use existing appropriated funds).

• **Medicaid coverage.** Currently, smoking cessation prescription and non-prescription drugs are optional state benefits under the Medicaid statute. We could propose to require states to cover cessation, as the McCain bill did (CBO estimated cost: $120 million over 5 years, HCFA estimated $114 million). Alternatively, we could propose an enhanced federal matching rate for smoking cessation treatments, in order to offer the states an incentive to cover these services. The Hansen-Meehan bill establishes a 90 percent match rate for state costs of smoking cessation services at an estimated cost of about $110 million over 5 years. Currently, 23 states cover Zyban, 6 states cover non-prescription treatments, and 5 states cover cessation counseling. A study by the Center on Addiction and Substance Abuse at Columbia University found that over 42 percent of Medicaid recipients smoke, as compared to 25 percent of the general population and that nearly 10 percent of all Medicaid hospital days are attributable to smoking.

• **Veterans.** We should re-propose the plan from the President's 1999 budget which created a new discretionary program open to all veterans who began using tobacco products while in the service, regardless of their eligibility for other VA health care services (currently less than 15 percent of veterans receive their health care through the VA system because of statutory limits --veterans must be low income or have a service-related injury.) The VA would contract with private sector entities to furnish AHCPR-approved services to interested veterans. OMB estimates that this proposal would cost $87 million for the first year, and $435 million over 5 years. Thirty-six percent of the 25 million veterans in this country smoke.

• **Tax Treatment.** Currently, the cost of cessation treatment cannot be claimed as a deductible medical expense because the IRS does not recognize smoking or tobacco addiction as a "disease." The IRS has indicated in written opinions that an official medical authority classification of smoking as a disease would allow cessation to deduct these expenses. Treasury is interested in pursuing this in 1999. This would be done outside of the budget.

no budget item -

• **Federal Employees Health Benefit Program.** We could require enhanced coverage of smoking cessation services. One option is to raise coverage limits to more accurately reflect the cost of AHCPR-approved treatments, and to raise the number of treatments allowed per lifetime to account for the fact that the average smoker requires three to five cessation attempts before they successfully quit (i.e., require coverage of $300-400 per treatment, with three maximum treatments covered per lifetime). Another option is to waive the deductible and copayment requirement for cessation benefits. Currently FEHBP fee for service plans, which cover 70 percent of beneficiaries, are required to provide only $100 in smoking cessation benefits. Generally, this coverage does not kick in until after the calendar-year deductible has been met, and most plans restrict benefits to once per lifetime. Many plans only cover prescription drugs. HMO coverage of smoking cessation benefits varies greatly. This would be done outside of the budget, but would have to occur in the spring as part of OPM's annual letter to contracting plans, establishing the terms for the following year of coverage.

WELFARE

1. Helping the Hardest-to-Employ Get and Keep Jobs.

• **Extend Welfare-to-Work Grants and Strengthen Focus on Fathers.** Funding for the $3 billion grant program that the President fought for in the Balanced Budget Act ends in FY 1999. These funds are targeted at the hardest-to-place welfare recipients, and non-custodial parents of children on welfare, and at concentrated areas of poverty. 75% of the funds are allocated to states, who in turn pass them to local Private Industry Councils and 25% of the funds are available on a competitive basis. We expect DOL to propose extension of the grant program in their FY 2000 budget proposal. We should consider revising the statutory language to increase the focus on increasing employment of fathers. While there is a significant level of interest in serving this population, there is likely more we could do to increase the quantity and quality of services. This should also increase support from the Ways & Means committee as Shaw is very interested in fatherhood issues. Possible approaches include requiring states and communities to designate a minimum portion of WTW formula funds for fathers, setting aside a portion of competitive grant funds for this purpose, or earmarking funds for needed technical assistance and capacity building on this relatively new area. Other changes worth considering: shifting more funds toward competitive grants, increasing tribal set aside (currently 1%), and streamlining data collection requirements. Assuming level funding, this would cost $1.5 billion annually. ?

sever link to DOL(?)
How do we keep the money flowing when states have a surplus and we don't want the $ now. CR likes DOL involvement in this.

ties to work(?)
stronger than Shaw?

•Request Additional Welfare-to-Work Housing Vouchers. We are unlikely to get the full 50,000 housing vouchers requested for FY 99. This approach continues to have merit, both in helping families move from welfare to work and as a catalyst for changing the way local housing authorities, and HUD, do business. Cost to fully fund 50,000 vouchers is $283 million. Some, including Deich and Edley, have also suggested allowing housing authorities to convert Section 8 vouchers that are turning over to the more flexible approach of the WTW vouchers. IDA or homeownership + WtW

Adult Ed @ Educ?

• Invest in Increasing English Language and other Literacy Skills. There is evidence that those with low education levels have a harder time leaving welfare. There is also emerging evidence that English language may be a barrier for some minority welfare recipients, including immigrants. We may want to explore whether there is more the federal government could do to increase access to ESL and other basic education that is combined with work, though this does not necessarily have to be done with TANF funds. We need to first explore what is available, whether there are successful models that can be replicated, and what the demand is.

2. Helping New Workers Succeed in the Workforce/Achieve Self-Sufficiency.
There are several ways to ensure people moving from welfare to work can get to their jobs:

•Request full $150 million authorized for Access to Jobs for FY 2000 (TEA-21 set guaranteed funding from the Highway Trust Fund at $60 million for FY 2000). This would allow DOT to fund more competitive grants. Note these funds can be spent on current and former welfare recipients, as well as families up to 150% of poverty so they help the working poor as well.

?

• Donate surplus federal vehicles to welfare to work programs. These could be given, leased, or sold to current and former welfare recipients for whom public transit it not a viable option, including those living in rural areas. Cars could be allocated through community-based organizations or intermediaries. This could be modeled after the initiative to donate federal computers to schools.

•Help former welfare recipients access funds to purchase cars. In some areas, public transit is not a viable option for a family moving from welfare to work. In addition, owning a car is something many poor families aspire to, and something that helps them become part of the economic mainstream. Family Services of America, and other organizations, currently offer revolving loans for low income families to purchase cars. FSA's model currently operates in 20 sites and is scheduled to expand to 60 sites later this Fall, with partial funding from foundations and private financial institutions. They are also seeking federal funding to help with this expansion. Possible sources include: HUD, Treasury, DOL WTW grants, as well as existing federal and state TANF funds. Another option is to expand allowable uses of IDAs to include purchasing a car needed to go to work.

•Connection between TANF and Unemployment Insurance. There is growing interest in exploring the relationship between these two systems. Historically, few welfare recipients have qualified for UI, and some have essentially used AFDC as a form of unemployment insurance. As more welfare recipients join~~ing~~ the labor force, we need to consider the most appropriate way to provide income support to them between jobs. Various approaches include: (a) changing rules of the UI system ~~that~~ to make it ~~hard~~ easier for former welfare recipients to qualify for UI once they go to work and in the event they lose a job and (b) creative uses of federal TANF or state MOE funds to provide income support to people in between jobs. Either approach should be accompanied by a strong effort to promote job retention and rapid re-employment. This could be considered as part of a more comprehensive UI reform initiative that NEC has been considering, but it would not depend on that. NOTE: NGA has a grant to explore this issue and several states are trying innovative approaches. While we do not have to frame the issue in terms of planning for economic downturns, it seems prudent to address this issue earlier rather than later.

•**Optional State Coverage Expansion Through Eligibility Simplification** (new policy). In the wake of welfare reform, Medicaid eligibility rules have become even more complex since states must cover people who would have been eligible for AFDC under the old rules. Additionally, Medicaid law allows states to cover parents but not adults without children --even if they are very poor. This proposal would allow states to opt for a pure poverty standard for Medicaid eligibility for all people (like we do for children) rather than the old categorical eligibility categories. Not only would such an approach simplify the Medicaid program for families and states; it would provide an opportunity for significant coverage expansion. While any change in Medicaid almost always raises concerns amongst some advocates, this proposal would be strongly supported by the Governors and advocates such as the Center for Budget and Policy Priorities. (Cost: Depends on the proposal and projected coverage expansion take-up rates).

•**Transitional Medicaid.** Families can currently receive Transitional Medicaid for up to 12 months after leaving welfare, but only about 20 to 30 percent of eligible families are enrolled. The program has many procedural hurdles that make it more difficult to access than regular Medicaid coverage and the 12 months transitional period is too short for many families. The budget could eliminate some of the current prescriptive reporting requirements now in the law (that, for example, requires families to report earnings in the fourth, seventh, and tenth months of coverage and divides the 12 months of coverage into two 6 month segments with different co-pay and benefit rules) and allow states to provide a full 12 months of coverage without regard to changes in family circumstances, similar to the 12-month option for children that was adopted in the Balanced Budget Act. In addition, the budget could provide states the option of extending transitional Medicaid to 24 or 36. These ideas need to be fully discussed, vetted, and costed out. The current program reauthorization sunsets in 2001.

•**Extend the Work Opportunity Tax Credit and Welfare-to-Work Tax Credits** (WOTC has already expired and WTW will expire in 1999).

• Child support (?) (budget ideas?)

DISABILITY POLICY

1. **Expanding the Defense Department's "CAP" program.** The Defense Department's Computer Accommodations Program ("CAP") purchases equipment for DOD employees with disabilities to allows them to keep working if they become disabled, or for new employees just joining the workforce. By using a central $2 million fund for such purchases, individual offices do not have to bear the cost within their own budgets, and are less likely to be deterred from hiring a person with a disability. CAP is also able to get better prices on equipment through its bulk purchases and expertise. It has a showroom to help employees try out appropriate adaptive devices (CAP makes the decision on what equipment is purchased, not the employee). It has provided over 9,000 accommodations since its inception in 1990. This program is a good example of how employers and employees are taking advantage of new (and increasingly cheap) technology, such as computers for the blind that talk and listen, and alternative computer keyboards for people with dexterity problems, that allow

OMB doesn't like this but cheap and good for this populat people with disabilities to work. Expanding the program has the strong support of the Administration's appointees with disabilities, in particular for Tony Coelho, chair of the President's Committee on Employment of People with Disabilities.

Defense has estimated that it would cost $8 million a year to expand CAP government-wide, but this is likely overstated since CAP now serves the entire Defense Department for $2 million a year. A more realistic range is $2 -5 million a year. While having DOD perform this service for all federal employees is a bit unusual, they have a great deal of expertise at this task and they are ready to take on the added responsibility.

2. Tax Credit for Disability Related Expenses. New tax credit for employers and/or individuals with disabilities with extraordinary disability-related expenses, such as assistive technology or a personal assistant. The proposed credit would allow a credit of 50 percent of the first $10,000 of disability-related work expenses. [Need Treasury information on scoring.]

3. New BRIDGE grant program. This program would create interdisciplinary consortiums of service providers (employment, transportation, etc.) to better assist people with disabilities in going to work. NEC and DPC will receive revised proposal shortly from the President's Task Force on Employment of People with Disabilities and will evaluate and vet.

4. Information and Communication Technologies for People with Disabilities. NEC has developed draft proposals now being vetted to ensure that new technologies will be designed from the beginning to be accessible to people with disabilities. Ideas include leveraging federal government procurement, investing in R&D, funding industry consortia, training the next generation of engineers, etc. (Tom Kalil is working on this, coordinating with DPC and OMB).

Nick Retsinas

FHLBB
~~More~~
Residential

~~FHA/VA~~
tied to commitment of ~~largest lender to~~ CRA goal

System is a GSE that had to redefine & restate a mission.

Home loan bank system is a other than being a bank for banks, not one for community development.

Great potential
(At least Fannie has affordable housing goals)

Has affordable housing program
($100 million/year in a system that has billion)

System: adopt a mission to help ameliorate credit gaps in underserved areas.

Resistance from Congress and banks (member institutions)

Bruce Morrison: agrees on direction & goals

~~[illegible]~~
System has been around for 65 yrs.
Has yet to suffer a credit loss.

Treasury position:
This GSE had outlived its usefulness
(to give depository institutions access to capital)

Many institutions are dependent on it.

We should shape and mold it.

More credit gaps w/ small business than housing!

① Alan Fishbein
Center for Community Change

② Sylvia Martinez
(@ Finance Board)

FHA/VA

How to move FH

Look @ CRA
How ↗ in an odd way. It's time may have past.

1978 77%
now 30%

Extension of CRA principles to entire financial service industries.

non-discrim
access to $
outreach to underserved areas.

~~Create competitive env. that~~

[insurance co
~~etc.~~]

Treasury reporting back. (?) No vocabulary for
Someone has to say:
This is a good idea

Not just mortgage banks

- **Adult Literacy (ESL) linked to civics instruction** (new policy). Approximately 25% of adults with the most serious literacy needs are immigrants. This proposal would target a portion of the overall Adult Literacy effort to ESL for recent immigrants. In addition, because many within this same population are also in need of civics and/or citizenship education, the literacy/English-language classes could have a component that is designed to instruct on basic civics and citizenship information. The third wrinkle to this idea is technology. According to the Department of Education, technology can be a useful instruction tool for adults (because it allows instruction to take place in private; at home; at night; etc.). Thus, we could structure a competitive grant program (through the Department of Education) where successful proposals would have three components: (1) English language instruction for adults; (2) an instructional component related to civics and citizenship; and (3) with preference for programs that use technology (internet; video-links). (Cost: ?? -- addition to Andrea's list of literacy ideas)

rcvd material on refugees, Another mtg. w/ literacy group today. Tape from Educ. on civics.

- **Enhance the Community Relations Service program at Justice.** (part existing program to be enhanced; part new policy). Since 1964, CRS has contributed significantly to community stability through the effective resolution of thousands of racial and ethnic community conflicts. Since the 1980s, their budget has been decimated (from a staff of over 300 to a current staff of 45). An increase in funding for this program fits well with the President's Race Initiative. This initiative could (1) enhance CRS's current ability to respond to racial unrest in communities (like Jasper, TX) by increasing staff (with an emphasis of field and regional conciliators) and enhanced technology; (2) provide community mediation and conflict resolution training to local governments, law enforcement, community groups and other stakeholders (techniques that can be used by communities as an alternative to litigation); (3) allow the CRS to fulfill their commitment to provide technical assistance on hate crimes to the 93 U.S. attorneys around the country. (Cost: ??? but less than $10 million)

Proposal today (w/ $)

- **Promoting Racially Integrated Communities.** Enlist private real estate industry in a national campaign that promotes ~~that promotes~~ the advantages of housing integration (similar to the effort being formed re: diversity in higher education). (no cost)

need to coordinate w/ HUD. National Assoc. of Realtors. One America. Realtors

- **Civil Rights Coordination.** This initiative would create an inter-agency civil rights coordinating council to (1) improve cross-agency coordination of civil rights enforcement; (2) expand and coordinate data collection across agencies; (3) coordinate research on the extent of racial discrimination in the country (including developing models for paired testing in emerging areas, such as employment and public accommodations); and (4) include a linking of data bases across enforcement agencies. This is an idea put forward last year by the civil rights agencies and this year (in a slightly modified form) by Counsel's office. (Cost: ?? -- (probably very little, except perhaps for the data base linkage).

data collection re: discrimination collecting; disseminat (through evaluating testing efforts and other studies)

make recommendations re: where we need more research, etc. Coord. w/ NRC or (?) Foundations

Ideas from the Race Book Community Development working group (Edley; OMB; DPC; NEC)

① collect and ~~so~~ report info on the extent of discrim in various sectors
② evaluate various methodologies for determ. discrim in every sector.

Regions would submit proposals on how to re-tool and re-target resources from various sectors to 35

- **Regional Jobs ~~Placement~~ Strategy.** This initiative has the objective of raising the employment rates of young adults in neighborhoods of concentrated poverty (currently at over 40%) to the metropolitan or rural county average within five (ten?) years. Metropolitan regions would be challenged: in return for some additional resources, targeted incentives, and greatly enhanced flexibility with dozens of current federal and state programs, regions will accept accountability for creatively tackling the difficult problems of adult youth unemployment. This may be accomplished by flexibly linking programs in education, training, job search, transportation, employer networking, day care, housing assistance, drug treatment, etc. (OMB proposal)

- **Put financial markets to work in disadvantaged communities**. Two ideas are emerging: (1) calling on depository institutions (i.e., Chase, Nations Bank) to create more effective patterns of lending to distressed communities in conjunction with a revised charter for the Federal Home Loan Bank Board system; and (2) harness the power of emerging independent non-depository lenders by encouraging participation in lending pools of both government-insured and conventional loans for distressed communities through limiting the ability to be endorsed as an FHA and/or VA lender to those who participate in these inner-city investment strategies.

- **Violence Against Women Act (VAWA II).** In 1994, Congress passed the Violence Against Women Act (VAWA I), an historic piece of federal legislation that contains a broad array of ground-breaking laws to combat the epidemic of violence against women. Despite VAWA I's success, legislators and advocates alike agree that many gaps in our laws remain. Building upon these successful initial steps, VAWA II creates a more comprehensive approach to violence against women by making employers, campuses, and the military partners in ending the violence. (Cost: $1.6 billion over 4 years; $100 million increase in the first year over authorized level; VAWA needs to be reauthorized in FY2001)

- **1000 New Teachers for Native American Students.** This initiative creates an American Indian Corps of Teachers (ACT) and has three parts: (1) funding for 25 grants to institutions to create teacher training programs for Native American communities; (2) creating five centers, which promote distance learning, to provide continuing education for in-service teachers to improve the quality of teaching to Native American communities; and (3) a fellowship program that will fund 1000 new American Indian and Alaska Native teachers over 4 years by providing for their expenses while attending school, including child care. (Cost: $37.5 million in first year (fellowships are $80 million over 4 years); Julie and Mary have been working on this together)

- **Criminal Disarmament Act.** Research shows that most gun-related felonies are committed by felons, probationers, or parolees. However, prosecutors do not consistently prosecute felons in possession of guns. This bill is a list of possible actions designed to take guns out of the hands of felons including: making it a mandatory condition of probation and parole not to carry weapons and to submit to searches; forcing DNA sampling of all convicted violent felons; broadening dissemination of names of probationers and parolees and release conditions to police; and creating gun courts. (Cost: **????**)

- **Adult Day Care.** With the aging of the baby boomers, the need to care for America's aging population has grown. Currently, there are about 4,000 community-based programs for elder care/adult day care. The National Adult Day Services Association estimates, however, that by the year 2000, 10,000 such programs will be needed. Adult day care is designed to serve adults who are physically impaired or mentally confused and may require supervision, increased social opportunities, assistance with personal care, or other daily living activities. Adult day care is less costly than tow of the alternatives -- home care or nursing home care. Medicare does not pay for adult day care, although it pays for the less efficient and more costly homebound care. We could support the "Medicare Substitute Adult Day Care Services Act" which would allow qualifying adult day service providers to become Medicare certified home health agencies and to bill Medicare for services. Alternatively, we could propose this as one of the elder care options for federal employees. (Cost: None)

Enhance and Strengthen Title VI. Title VI is the primary tool to ensure that the federal government is meeting its special responsibility to ensure that programs that are funded by the federal government are meeting anti-discrimination standards. A proposal to strengthen the use of Title VI would: (1) issue an executive order reaffirming the federal government's commitment to be a leader in anti-discrimination efforts; (2) require entities that receive federal funds to perform a Title VI self-assessment (to evaluate compliance); (3) authorize the Civil Rights Division at Justice to monitor and coordinate Title VI compliance across agencies.

Strengthen Anti-Discrimination Laws related to immigrants. This proposal would amend the INA's anti-discrimination provision, 8 U.S.C. Sec. 1324b, to include, as a per se offense, the use of foreign labor through the certification process when the company has knowledge or constructive knowledge of the existence of available and qualified U.S. workers. Remedies could include make-whole relief for injured U.S. workers, civil penalties, and equitable relief. The amendment would provide the Justice Department's Office of Special Counsel with jurisdiction. The OSC already has jurisdiction over other immigration-related unfair employment practices.

Strengthen protection against discrimination based on citizenship status and national origin under the INA's current anti-discrimination provision. This proposal would (1) eliminate the statutory six-month naturalization deadline for permanent residents to remain protected from citizenship status discrimination. With the change, all permanent residents would receive protection from citizenship status discrimination; (2) prohibit discrimination with respect to the terms and conditions of employment under 8 U.S.C. Sec. 1324d (citizenship status). Under current law, an employer is free to discriminate in terms and conditions based on citizenship status; (3) create an explicit cause of action making it an unfair employment practice for an employer to deny employment to a qualified and available U.S. worker while knowingly employing an unauthorized worker in the sought-after position. Currently, OSC must pass the very difficult hurdle of establishing that the employer knowingly and intentionally rejected the U.S. worker because of his/her citizenship status; (4) modify statutory language to enable OSC to bring adverse impact cases. Their current regulations follow President Reagan's signing statement and permit a cause of action only upon a showing of disparate treatment.

secure loans
where profits

Entity buys loans made by
member banks

members
more aggressive in Indian country
(urban reservation areas)

FHLBB

Function like a GSE

objective to buy loans from members (in the system)

Bruce
Morrison

Attempt to make them more agressive
to become stronger in insisting members provide
funding in low & mod income
neighborhoods.

objective
more
aggressive
goals re:
community
investment

Some in Treasury reluctant to be more
aggressive

Concern re: enough capital structure (to insure losses)
safety and soundness
targeted community development
purpose
(low-income)

Bank Board system is making a lot of $

Nick Retsinas (available to talk)
from Joint Center for Housing @ Harvard

NRS — George Knight — better capital flows
more responsible

Neighborhood Reinvestment Services

Wed. am

$25 million initiative
Housing Rehab in inner-city

Chartered w/12 bank board
To have savings and loan industry to have
equity credit to draw upon.
(to develop collateral)

Ex If a S&L wants to make invest in
affordable housing programs.

&

Federal Housing Finance Board
(Jim Gray: Senior Economist)

Jim Apgar > on travel

GSEs/FHA

Michele to formulate Qs to: Retsinas

John G = Call Retsinas

was Secy's rep. to Bank Board
System.

Cisneros

CRIME AND DRUGS

1. Crime Bill II. While the 1994 Crime Act is set to expire at the end of FY 2000, we should get ahead of the crime debate by including an outline of Crime Bill II in next year's budget that emphasizes and builds on key Clinton crime initiatives. This includes: extending COPS; establishing community-based prosecutors, courts, and corrections; promoting targeted deterrence for guns, gangs, etc.; funding drug testing and treatment for all persons under criminal justice supervision; reauthorizing VAWA; creating police youth academies; and other new crime programs.

$700 million for Border Patrol out of Crime Bill (Justice Operations)

OMB has already built $4.8 billion into the base for continued crime funding over the next 5 years, but this only includes $400 million of the $1.4 billion we have been spending on COPS and continued funding for other popular crime bill programs (i.e., VAWA, prisons, federal law enforcement, etc.). Thus, to keep crime bill funding at its current level -- and to allow us more flexibility in proposing new programs -- we will need $1 billion more in the FY 2000 budget.

2. Expansions of Youth Crime Gun Interdiction Initiative (YCGII). This year it looks as though we will succeed in getting $28 million in funding for President's YCGII initiative to trace all crime guns and hire more ATF agents to crackdown on gun traffickers in 27 cities. We should follow-up in the FY 2000 budget by expanding the YCGII to all cities with populations of more than 250,000. This would cost about another $35 million. NB: Currently, Treasury is only planning to propose adding another 10 cities in next year's budget..

3. Expand Values-Based Initiative. At a minimum, we should seek funds in FY 2000 to continue the Administration's values-based crime prevention initiative in 16 cities -- as well as to expand it to another 20 to 30 cities. This would only take about $5 to $10 million annually and could come from Crime Bill II funds if necessary. More importantly, however, we should propose changes to existing crime prevention and drug treatment programs to ensure that faith-based organizations are allowed to participate -- and that common sense values are included.

4. Drug Treatment Parity. A long overdue policy change that we should consider embracing ~~in~~ this year's budget is to require health insurers to guarantee some type of meaningful substance abuse coverage -- much akin to what the Administration supported for mental health benefits.

5. School Shooting Response Fund. In our recent meeting with the communities impacted by multiple school shootings, one of the key recommendations made by all of the local leaders was that the federal government should establish an emergency fund that would allow communities that are overwhelmed by multiple victimizations to have the resources they need to facilitate the short- and long-term response. This includes year-long support for increased security and enforcement, investigations, media response, additional counselors, and other such costs.

6. Prison drug treatment

7. Domestic terrorism

8. Straw purchasers (gun shows)

9. Teen courts

10. More in Drugs

U.S. Department of Justice

Civil Rights Division

Special Counsel for Immigration Related
Unfair Employment Practices
P.O. Box 27728
Washington, DC 20038-7728

APR 8 1998

MEMORANDUM

To: Greg Jones
Office of Legislative Affairs

From: John D. Trasviña
Special Counsel
Office of Special Counsel for Immigration Related
Unfair Employment Practices

JOHN

Subject: American Competitiveness Act, S. 1723

Thank you for the opportunity to comment upon the American Competitiveness Act, S. 1723. My comments appear below, in the order in which the subject appears in the proposed legislation.

I. Section 2, Findings

A. Finding (2)

Finding (2) states that companies in the United States are faced with a severe high skill labor shortage that threatens their ability to compete in the marketplace. We understand that there are a number of conflicting studies concerning this subject (Cf. GAO Report (March 1998) with Department of Commerce study (September 1997)).

In our experience, we have seen firsthand many instances in which the labor certification process has been abused by companies to the detriment of available and qualified U.S. workers. These cases have run the gamut from aircraft workers for General Dynamics in San Diego to unionized iron workers in New York City. Typically, a company seeks a visa for a foreign worker and claims that there are no available and qualified U.S. workers. Our investigations have uncovered many U.S. workers whose resumes were ignored, or who received perfunctory interviews.

The benefits to the employer in these situations are many. For example, the foreign workers often work at a lower salary than U.S. workers. Moreover, since the foreign worker is authorized to work only for the sponsoring company, the employer obtains a more compliant work force. To the extent that we have firsthand knowledge of the problem, we do not agree with the notion that a severe high skill labor shortage exists in this country.

B. Finding (11)

Finding (11) states that companies move key operations overseas because they cannot find qualified and available U.S. workers. We believe that the reason is more complex. To the extent that we have firsthand knowledge of the problem, overseas workers may be paid a lower salary than U.S. workers. Moreover, the rules of fair and non-discriminatory employment, not to mention all U.S. statutory and regulatory requirements, likely do not apply. Thus, it seems to us that profits (or demand for cheaper labor) and relief from U.S. law also determine whether a company moves its operations overseas.

II. Section 3, Increased Access to Skilled Personnel for United States Companies and Universities

A. Creation of New Visa Category, and Increasing the Number of H1-B Visas

We oppose the creation of a new visa category (H1-C) and the expansion of the number of visas granted for the H1-B visa category. Under these visa categories, an employer is not required to establish that it is unable to locate available and qualified U.S. workers. If the purpose of the legislation is to aid employers who cannot find workers, we believe that the H1-B and H1-C categories should include a process through which the employer establishes that it is unable to employ U.S. workers before approval of the visa application.

Otherwise, many instances will occur in which the employer imports foreign labor not because it is unable to secure a comparable U.S. worker, but because the use of foreign labor provides other benefits. Companies may decide to terminate higher paid U.S. workers in exchange for lower wage foreign workers. Companies may wave the threat of importing lower wage foreign workers to its U.S. workers in an attempt to better control its work force. There are even reports of U.S. workers training their "foreign worker" replacements.

III. Section 5, Increased Enforcement Penalties and Improved Operations

The provision concerning layoff protection to U.S. workers is weak and not sufficient. It addresses only instances in which an employer replaces a U.S. worker with a worker on a H1-B or H1-C visa <u>and</u> commits fraud. It does <u>not</u> address instances in which an employer:

- replaces a U.S. worker but does not commit fraud,

- hires a visa holder but does not hire an available and qualified U.S. worker,

- commits fraud in the H2-B process and an available and qualified U.S. worker either loses or is not selected for a job, and

- hires an H2-B visa holder but does not hire an available and qualified U.S. worker.

Further, the provision provides only civil penalties. It does not provide a remedy to the injured U.S. worker, including backpay, reinstatement, benefits, attorney fees, and the other remedies provided in discrimination law suits.

The provision concerning the definition of "replace" and "laid off" is also too limited and provides loopholes for employers to evade liability. For instance, the new visa holder must work in the same specific place of employment as the replaced worker. This provides an easy avenue for employers to replace U.S. workers by using the new visa holder at a different location, whether down the street or in a different state. In either case, the U.S. worker was replaced. It also requires the new visa holder to work "in the specific employment opportunity" of the U.S. worker. Thus, a revised job title seems to allow the employer to avoid liability.

The definition of laid off is also too lenient. For example, it provides that someone is not laid off if a grant, contract or other agreement expires, even if a new contract, grant, or agreement requiring the same skills is entered into by the employer. In addition, the definition states that a U.S. worker is not laid off if he or she is offered a similar employment opportunity with the same employer at the same or higher salary or benefits than she or he had. Thus, a U.S. worker could be sent to a less desirous employment location, etc., by an employer that intends to force the employee to quit, but the worker would have no redress even though the new visa holder is sitting in the U.S. worker's old desk.

B. Remedies

It is important that legislation that increases the use of non-immigrant labor provides real remedies (e.g., back pay, reinstatement, attorney fees, and other remedies available to individuals prevailing in discrimination suits) to available and qualified U.S. workers who are injured as a result. These remedies should be provided to any U.S. worker that loses a job, whether through termination or not being hired. They should also be provided to any U.S. worker that is replaced by any visa holder, not only the H1-B and H1-C visa holder.

1. Employer Preference for Temporary Foreign Workers:

One potential remedy is to amend the Immigration and Nationality Act's anti-discrimination provision, 8 U.S.C. § 1324b, to include, as a per se offense, the use of foreign labor through the certification process when the company has knowledge or constructive knowledge of the existence of available and qualified U.S. workers. Remedies could include make-whole relief for injured U.S. workers, civil penalties, and equitable relief.

This amendment would provide the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), within the Justice Department's Civil Rights Division, with jurisdiction. The OSC already has jurisdiction over other immigration-related unfair employment practices, the administrative backbone already exists for charges, investigations, and administrative hearings through the Executive Office for Immigration Review.

Because the legislation provides employers with additional ability to hire non-immigrant employees, current U.S. workers should also receive greater protection against discrimination based upon citizenship status and national origin under the INA's current anti-discrimination provision.

In addition to the recommendation above, we urge that the following legislative reforms be included as a part of S. 1723.

2. Revisit Class of Protected Workers under INA's Anti-Discrimination Provision:

Eliminate the statutory six-month naturalization deadline for permanent residents to remain protected from citizenship status discrimination. Currently, not all permanent residents are protected from citizenship status discrimination. Permanent residents who fail to apply for naturalization within six months of becoming eligible to do so lose their protection against citizenship status discrimination. Thus, as currently written, the law permits citizenship status discrimination against a permanent resident who has held such status for more than five and a half years and who has not applied for naturalization. The current naturalization requirement should be eliminated; it results in the seemingly arbitrary exclusion of numerous permanent residents from protection against discrimination.

Under our proposed amendment, all permanent residents would receive protection from citizenship status discrimination. The protected group would largely remain intact, because only citizens and the four immigrant classes would be protected from citizenship status discrimination. However, protection from such discrimination would not depend on whether a permanent resident has applied for citizenship.

3. Terms and Conditions of Employment:

Prohibit discrimination with respect to the terms and conditions of employment under 8 U.S.C. § 1324b. Under current law, an employer is free to discriminate in the terms and conditions of employment based upon citizenship status. Thus, both citizens and work authorized non-citizens may legally be subject to unequal and unfair treatment after hire. Thus, non-citizens may be paid less than similarly situated citizens, and denied other benefits simply because of their citizenship status. Similarly, in certain situations, citizens may be treated worse than non-citizens, e.g., when an employer desires a foreign workforce. Similarly, small

Title VII is only > 15 workers, plus is "national origin"
Statute for citizenship ~~is~~ does not protect.
for terms & condit

employers are free to discriminate on the basis of national origin in the terms and conditions of employment. For example, small employers may legally pay Hispanic workers less than other workers without violating the anti-discrimination provision. An argument exists that the anti-discrimination provision of current law covers initial disparities in working conditions, but the proposed amendment would make clear that terms and conditions are covered.

4. Mixed Motive Cases:

Adopt Title VII's language concerning mixed motive cases that reverses the Supreme Court's Price Waterhouse decision. The new amendment should provide that any employment decision based in part on a prohibited factor is unlawful discrimination. Currently, employers may argue that they can avoid liability by showing that they would have done the same act regardless of illegal motive.

ADEA ADA

5. Employer Preference for Unauthorized Workers:

Create an explicit cause of action making it an unfair employment practice for an employer to deny employment to a qualified and available U.S. worker (U.S. citizen or national, permanent resident, temporary resident, asylee or refugee) while knowingly employing an unauthorized worker in the sought after position. Currently, the OSC must pass the very difficult hurdle of establishing that the employer knowingly and intentionally rejected the U.S. worker because of his/her citizenship status.

6. Independent Investigations:

Extend the time in which the OSC may file a complaint based upon its independent authority. Current Department of Justice regulations give OSC a very limited time period in which to file suit based upon an independent investigation. OSC has only 180 days from the date of the alleged discriminatory act to file a complaint. Thus, if OSC learns of the discriminatory act 5 months after it occurred, it has only one month to investigate and file suit. A longer filing period would make more effective the OSC's authority to perform independent investigations.

7. Sovereign Immunity:

Specifically provide that the Federal Government is covered by the anti-discrimination provision, and that the OSC has jurisdiction to investigate and file complaints when federal agencies are involved. The Department of Justice has decided that the anti-discrimination provision does not waive sovereign immunity where a government agency is charged with unlawful discrimination under IRCA. Thus, private parties with meritorious charges against the federal government are forced to hire private attorneys or be without redress. The Special Counsel should be able to seek remedy for any injured private party, regardless of the type of employer that discriminated. The proposed statutory language would make clear that the Special

Dpt. has gone back and forth on whether we can sue states

not clear

Sue and be sued clauses in some agencies

who are targets of this (?)

Counsel has the right, as does a charging party, to file a complaint before an administrative law judge in cases where a federal government agency is charged with discrimination. The federal government should assume the parallel obligation we impose on private employers.

8. Adverse Impact Litigation:

Modify statutory language to enable OSC to bring adverse impact cases. Our current regulations follow President Reagan's IRCA signing statement and permit a cause of action only upon a showing of disparate treatment.

If you need additional information, please contact me. We are willing to provide a more comprehensive response if the need arises.