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THE WHITE HOUSE

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May 13, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: ERSKINE B. BOWLES

SUBJECT: Issues Update

This memo provides updates on some of the issues White House offices are tracking today.

TOBACCO REPORT

- **Please see attached memo from Bruce Reed summarizing the current status of our tobacco negotiations with Senators McCain and Hollings.**

  The Senate Finance Committee will meet on Thursday, May 14 to consider S. 1415, the McCain Tobacco Settlement bill. The Finance Committee is expected to consider whether or not the fees which the bill currently imposes on tobacco companies should be converted to an excise tax. Senator Lott has indicated that he would like to bring the bill to the Senate floor on Monday, May 18.

LEGISLATIVE REPORT

The House

- **On Wednesday, May 13, the House considered the following legislation:**

  - **Financial Services Competition Act (H.R. 10):** The bill eliminates many of the barriers between banking, securities, insurance, and other kinds of businesses, in addition to creating a new entity called a Financial Holding Company under which such affiliations would occur. Secretary Rubin has recommended that you veto the bill because it would, among other things, stifle innovation in the national banking system and impose needless costs on small banks. The House is expected to complete action on the bill late this evening. Among the substantial amendments considered are:

- ***DEFEATED (115-306) the LaFalce (D-NY)-Vento (D-MN) amendment*** which would have permitted all financial activities except insurance underwriting and real estate development to be performed through a bank's operating subsidiary. This amendment would have addressed many of Secretary Rubin's principal concerns.

- ***DEFEATED (140-281, 1 present) the Baker (R-LA) amendment*** which would have expanded permissible bank activities in operating subsidiaries and would have repealed application of the Community Reinvestment Act to smaller banks.

- **PASSED (voice) the Rule for the Mandates Information Act of 1998 (H.R. 3534):** The bill would allow a Member of Congress to raise a point of order against any legislation which contains a federal mandate on the private sector in excess of $100 million. The bill is expected to come to the floor either late this evening or Thursday, May 14.

- **Campaign Finance:** On Wednesday, the House Government Reform Committee Democrats once again voted unanimously to deny immunity for four witnesses in the campaign finance investigation. The final vote, 24-19, failed to get the two-thirds necessary for granting immunity. The action followed a failed Democratic attempt to require the committee to abide by the same bi-partisan rules as other congressional investigations, stripping Chairman Burton (R-IN) of his unilateral power.

  As a result, Speaker Gingrich may assign a portion of the investigation to the House Oversight Committee. Chaired by Bill Thomas (R-CA), this committee has a two-thirds Republican majority. Democratic Leader Gephardt may offer a privileged resolution on the floor of the House Thursday, May 14, calling for Burton to step down as chairman of the investigation.

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House Outlook

- **Thursday, May 14, the House is scheduled to consider the following:**

  - **Mandates Information Act of 1998 (H.R. 3534):** The bill would allow a Member of Congress to raise a point of order against any legislation which contains a federal mandate on the private sector in excess of $100 million. The limitations would not be permitted, however, against bills that have net decreases in tax revenues over five years -- even if the measure includes a tax increase. The Administration is strongly opposed to the bill because it may create a procedural obstacle to the enactment of legislation in the public interest, including legislation designed to protect human health, safety, the environment, or the Nation's economic well-being.

    The Democrats are expected to offer an amendment which requires that the benefits of any subject bill be considered along with the costs.

  - **Freedom From Religious Persecution Act of 1998 (H.R. 2431):** The bill, which your senior advisers recommend you veto, would automatically impose sanctions on any nation engaging in religious persecution. The Administration objects to the measure because it could harm religious minorities and bilateral relations with allies, as well as limit your flexibility and raise questions regarding U.S. international obligations.

  - **New Wildlife Refuge Authorization Act (H.R. 512):** The bill would prohibit the use of funding from the Land and Water Conservation Fund to establish new refuges unless Congress passes a specific law authorizing the action. Congress currently approves, through annual appropriations, all acquisitions financed by the Fund. The Secretary of Interior recommends that you veto the bill because it would add an additional layer of Congressional approval, making it more difficult to acquire much needed refuge lands in a timely manner. A manager's amendment may be offered to address many of the Administration's objections.

  - **Burton Privileged Resolution:** Democratic Leader Gephardt may offer a privileged resolution calling for Chairman Burton to step down as chairman of the House Government Reform campaign investigation.

<u>The Senate</u>

- **On Wednesday, May 13, the Senate considered the following:**

  - **American Missile Protection Act (S. 1873):** The Senate continued debate on the measure, sponsored by Senator Cochran, and failed to invoke cloture on the motion to proceed to consideration [(59-41) vote attached]. The Administration strongly opposes S. 1873 because it would commit the United States to deploy a national defense system in the absence of a current long-range ballistic missile threat by a rouge state.

  - **Religious Liberty and Charitable Donation Act (S. 1244):** The Senate passed (99-1) S. 1244, sponsored by Senator Grassley, the Religious Liberty and Charitable Donation Act (Kohl voted against.) The Administration-supported measure protects the donations made to religious and charitable groups by a debtor from being reclaimed by a bankruptcy court.

  - **Securities Litigation Uniform Standards Act (S. 1260):** The Senate passed (79-21) S. 1260, sponsored by Senator Gramm, which would require that all class-action securities fraud suits be filed in federal court. The Administration and the SEC were able to resolve all of their concerns with S. 1260 prior to final passage.

  - **Department of Defense Authorization Act for FY 1999 (S. 2057):** The Senate began consideration of S. 2057, sponsored by Senator Thurmond.

<u>Senate Outlook</u>

- On Thursday, May 14, the Senate is scheduled to resume consideration of S. 2057, the Department of Defense Authorization Act for FY 1999. Following S. 2057, the Senate may begin consideration of S. 1723, the American Competitiveness Act, H-1B visa waivers, sponsored by Senator Abraham. This measure is intended to respond to a reported skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under this program. The Secretary of Labor has recommended veto of this bill.

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ISTEA NEGOTIATIONS REPORT

- **ISTEA Reauthorization.** Larry Stein, Frank Raines and Jack Lew met this afternoon with Reps. Shuster and Petri to discuss the Republican response to the Administration's reauthorization offer of last week (see attached memo). Most of the discussion concerned two issues: total spending levels and the mechanism by which certain amounts of spending would be guaranteed.

  The spending levels in Shuster's plan present two problems. First, the plan may be too costly. Shuster contends that CBO would score his plan as requiring less than $20 billion in offsets over 1999-2003, roughly $4 billion more than would be available from the VA tobacco offset under OMB scoring of the offset. If Shuster's plan really costs that little, the difference could be bridged fairly readily if Shuster gave up elements of his plan that are not essential to his aims (we could save roughly $3 billion, for example, simply by setting spending equal to *prior-year* Trust Fund receipts as in the Administration's proposal rather than *current-year* receipts as in the Shuster plan). OMB suspects, however, that CBO will score the Shuster plan at $23-25 billion. If so, Shuster is extremely unlikely to lower his spending levels enough so that VA tobacco alone would pay for his bill.

  Also in dispute was the nature of the mechanism by which Congress would guarantee that the funds would be made available for obligation. The Administration's plan called for a guarantee that would serve as both a floor and a ceiling on surface transportation spending. By walling off surface transportation from other discretionary spending, the Administration's plan would prevent transportation from imposing ever growing demands on other discretionary priorities. Shuster takes a somewhat different approach. His plan would guarantee spending of roughly $200 billion (compared to $184 billion in the Administration's offer over the same 1998-2003 period). In addition, the plan would authorize $20 billion of additional spending that would compete with other priorities under the discretionary cap. Thus, Shuster's plan creates a floor but not a ceiling on surface transportation spending.

  Further discussion will be needed before we know whether Shuster's construction can be made acceptable. If Shuster guarantees all of his own priorities and leaves the Administration's priorities to be funded through the regular appropriations process, surface transportation spending will continue to crowd out your other domestic priorities. Shuster would not identify the specific programs that would be guaranteed, but promised that we would find no 'poison pill.' Shuster argued that the additional authorized spending would be for programs that neither the Appropriators nor the Administration would regard as critical. We await more details.

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ECONOMIC REPORT

- **Stock Market Rises To Record High.** The stock market rose today as data on PPI inflation and retail sales appeared to be favorably received by market participants. The Dow Jones Industrial Average rose 0.5 percent to a new record-high level of 9211.84, and closed above 9200 for the first time ever. The broad-based S&P 500 index rose 0.3 percent to close at 1118.86; this is slightly below the record high that was set on April 22nd. The Nasdaq composite index rose by 0.3 percent, and also remains below its April 22nd record high.

  Some observers credited the increase in stock prices to today's release of data on retail sales and the producer price index (PPI). Growth in retail sales in April was in line with market expectations; although April producer price inflation was slightly higher than market forecasts, roughly half of the increase in the core PPI (the PPI excluding food and energy) was the result of an increase in tobacco prices. Markets apparently saw these data as reducing the likelihood that the Federal Reserve will raise interest rates at the next FOMC meeting (this Tuesday, May 19th).

STAFF SECRETARY ITEM

- **Executive Orders.** You approved two related Executive Orders prior to your departure -- an update of the Federalism EO and then a necessary replacement of the tribal governments EO. You asked Phil whether tribal leaders had been consulted on the latter and whether they were ok with it. In the judgement of IGA and Lynn Cutler, the WH did not need to consult ahead of time on this EO. It is very similar to previous memos/EOs you have issued in this area and is better for the tribes in that it provides more access, coordination and consultation. Rather than consulting, the WH will be able to present the tribes with a bit of good news. If you have no objection, Phil will have the EOs issued on Thursday.

NSC REPORT

- Please see attached report from General Kerrick.

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

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THE DIRECTOR

May 13, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Franklin D. Raines

SUBJECT: Status of the Intermodal Surface Transportation Efficiency Act (ISTEA) Reauthorization -- INFORMATION

Erskine asked us to send you a comparison of the House and Senate versions of the transportation reauthorization bill now being considered in Conference.

Background

Earlier this month, the Administration offered a compromise on ISTEA that would provide Congress one of their key objectives (a guarantee that annual surface transportation spending would equal Highway Trust Fund receipts). In exchange for this spending guarantee, the proposal would set spending significantly below the levels contemplated in the House and Senate bills. The compromise would preserve the budget surplus and would protect discretionary funding for your other priorities.

Congress would like to complete floor action on this bill prior to the Memorial Day recess that begins May 22, but it is unclear whether they can meet this deadline. ISTEA programs have been operating this year under a short-term extension that permits transit, highway safety, and Department of Transportation administrative programs to continue at a reduced level for the next several months. However, States have been prohibited from obligating new highway construction funds since May 1, 1998. Although construction work continues using carryover funds, the pressure will increase for Congress to authorize a bill quickly.

On May 12, the Administration sent a letter to the conferees (attached) notifying them that your senior advisers will recommend that you veto the conference report if it "makes available an excessive level of budgetary resources if financed by spending the surplus, by reducing the domestic discretionary caps, by using unacceptable offsets, or by forcing cuts in domestic priorities." In addition, the letter stated that your senior advisers would "also recommend veto of a conference report that skews transportation priorities."

Funding Issues

The following table summarizes the funding levels included in the various reauthorization proposals. Each proposal is described in more detail below. For 1999 alone, surface transportation programs would be funded at more than 25 percent above the levels in the President's budget (roughly 1998 enacted). The attachment provides annual funding levels for each proposal.

Comparison of Budgetary Resources 1998-2003
(Mandatory and Discretionary $ in billions)

	Admin. NEXTEA	House BESTEA	Senate ISTEA 2	Admin. May 5 Proposal
Highways	137.6	183.0	177.5	150.3
Transit	28.7	36.7	40.5	33.5
TOTAL	166.5	219.7	218.0	183.8

<u>House: Building an Efficient Surface Transportation Efficiency Act (BESTEA)</u>

The House bill would provide $219.7 billion in budgetary resources, $53 billion above your request. This includes $9.3 billion for almost 1,500 highway demonstration projects that are funded as mandatory spending. Nearly 17 percent of the spending authorized by BESTEA is provided for transit. BESTEA includes a requirement that the Conference Report identify offsets to pay for any spending in the bill above a baseline frozen at the 1998 enacted level. To date, no offsets have been identified.

Under BESTEA, total budgetary resources (the amounts available for obligation) would be set at levels significantly above HTF receipts. Supporters nonetheless claim that "spending equals receipts" because <u>outlays</u> would equal receipts during the period 1998-2003. This of course means that beyond 2003 outlays would significantly exceed tax receipts. BESTEA would guarantee this spending by taking "off budget" all highway and transit spending that is financed by the Highway Trust Fund. To fund the spending contained in BESTEA, other non-defense outlays would need to be reduced by $34 billion during the period 1999-2003.

<u>Senate: The Intermodal Surface Transportation Efficiency Act 2 (ISTEA 2)</u>

The Senate proposal would provide $218 billion in budgetary resources, $51 billion above the President's Request. ISTEA2 includes no demonstration projects, although some

Senate demonstration projects will likely be included in the final bill. ISTEA2 includes a requirement that demonstration projects be incorporated into the regular highway program formula allocations among the States, thereby diminishing the incentive for earmarking. Roughly 19 percent of the total spending in ISTEA 2 would be devoted to transit.

ISTEA2 continues the current budgetary treatment of highway and transit programs. Almost all funding is subject to the appropriations process and is not guaranteed. ISTEA2 does not include any offsets, although the Senate Budget Resolution assumes that many of your new mandatory offset proposals would be redirected to offset highway spending.

Administration Proposal

On May 5, the Administration proposed a compromise designed to reflect four core principles: (1) the budget surplus shall not be used to pay for the legislation; (2) spending shall be offset fully, without lowering the cap on other discretionary spending; (3) after a phase-in period, total budgetary resources spent annually should equal total Trust Fund receipts; and (4) spending levels must be sustainable for the long-run.

The Administration proposal would provide total spending equal to $218.9 billion -- the average of the House and Senate bills -- but spread that spending over seven years rather than the six years contained in BESTEA and ISTEA 2. (The Administration offer would provide $183.8 billion during the 1998-2003 period contemplated by the House and Senate bills, an increase of $17.4 billion in budgetary resources and $8.1 in outlays over our original NEXTEA proposal). As in the Senate bill, the Administration's proposal would provide 19 percent of total resources to transit. No demonstration projects would be provided; to the extent they were included in the final legislation, they would need to be funded out of the total for highways.

The Administration proposal incorporates a key Congressional goal: guaranteeing that annual spending on surface transportation equal to annual receipts into the Highway Trust Fund. In contrast to BESTEA, however, the Administration's proposal sets spending so that budgetary resources, not outlays, equal receipts. This not only lowers the cost of our proposal, but also allows program spending levels to be sustained in the long-run (the House and Senate bills would obligate far more than receipts -- thus, at some time not too far beyond the budget window, spending would have to be curtailed or the gas tax would have to be increased). In addition, the Administration's proposal would guarantee *all* spending for transit and highways alike.

The Administration proposal would phase in the spending guarantee. Spending would equal the levels in the President's Budget for 1999 and 2000, and then rise to 97 percent of prior-year Trust Fund receipts in 2001, and 100 percent of prior-year receipts thereafter. This spending level would be guaranteed by creating a third category of spending (surface transportation) under the Budget Enforcement Act. This category would set not only a *floor*, but also a *ceiling* on surface transportation spending, and thereby protect other discretionary spending from pressure to approve even higher levels of transportation spending.

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Our proposal would be offset fully by CBO's current scoring of the $13.5 billion VA/tobacco provision contained in your budget. If CBO chose to adopt OMB scoring of this provision (at $21.8 billion), our proposal would support an additional $8.3 billion of transportation spending through 2004 (net of the spending on veterans' training and education programs).

Key Policy Issues

Many of the priorities included in the Administration's NEXTEA proposal are incorporated in both the House and Senate bills. For example, the Disadvantaged Business Enterprise program has been retained and the new Access to Jobs program is funded. Below are several of the issues that still need to be resolved in Conference.

fight hard for it

- .08 Blood Alcohol - As you know, the Senate bill includes a provision which withholds highway construction funds from States (beginning in Fiscal Year 2002) if they have not adopted a .08 blood alcohol concentration standard under state drunk driving laws. The House bill does not contain a similar provision. To date, the conferees have made no progress on this issue.

Agree w/ you

- Environmental Programs - BESTEA includes an onerous provision that would permit the oversight of the National Environmental Policy Act process to be delegated to the States. In addition, we oppose the transferability of environmental program funds to highway construction.

- Woodrow Wilson Bridge - The Woodrow Wilson Bridge is the only Federally-owned bridge on the Interstate System. The bridge is on the Capitol Beltway south of Washington. The Administration requested $400 million as the Federal share of the $1.9 billion replacement cost, with Maryland and Virginia responsible for the remaining cost. The Senate bill includes $900 million as the Federal share for this project, while the House provides no funding. In discussions with the Maryland and Virginia delegations, the Administration has pledged that it will not oppose up to $900 million as the Federal share and, if Maryland and Virginia want it, a Federal loan to help finance the State share. Maryland and Virginia are pushing for no less than $1.5 billion in Federal grant funding. To date, it appears that $900 million is as much as the States can expect from the conferees.

What about Boston Harbor tunnel - Gov. Cellucci? Senate - get as much as possible

Attachments

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

THE DIRECTOR

May 12, 1998

The Honorable Bud Shuster
Chairman
Committee on Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As the House-Senate conference on reauthorization of the *Intermodal Surface Transportation Efficiency Act* (H.R. 2400) proceeds, I write urging your consideration of a proposal the Administration has made to resolve the important budget issues raised by this legislation.

On April 30, I sent you a letter expressing the Administration's serious concerns about the excessive spending in the House and Senate bills; in particular, that the spending levels would either require unacceptable reductions in high priority discretionary program funding, or they would drain anticipated budget surpluses prior to fulfilling our commitment to save Social Security first.

These budgetary concerns were reiterated in a May 1 letter to conferees from Secretary Slater, along with a detailed review of other important policy issues that need to be resolved in an acceptable manner in order to bring this legislation to a conclusion. These issues include a stronger national standard for drunk driving and other safety concerns, maintenance of the historical balance in highway-transit funding, and ensuring protection of the environment as we carry out transportation programs.

Last week, during the course of ongoing discussions with conferees, the Administration proposed the attached framework for bridging some of the distance between the funding levels supported by the Administration, the House and the Senate. The framework is based on four principles: (1) the projected budget surplus shall not be used to pay for the legislation; (2) spending shall be offset fully, without lowering the caps on discretionary spending; (3) after a phase-in period, total budget resources spent each year should equal total receipts to the Highway Trust Fund (HTF); and (4) spending levels in the legislation shall be sustainable after the end of the authorization period.

This framework fulfills the objective of many in Congress that one hundred percent of Highway Trust Fund receipts be available for obligation. After an appropriate phase-in period, a new budget mechanism would require that total funding equal 100 percent of total HTF receipts. This funding guarantee would serve as both a floor and a ceiling for fiscal years 1999-2004. In exchange for the unprecedented guarantee of authority to spend all prior year Trust Fund receipts, this framework also establishes that total surface transportation spending will not exceed receipts. Total funding over the reauthorization period would equal $218.9 billion, which is between the amounts called for in the House and Senate bills. However, this funding would be provided over seven years, instead of six, in order to satisfy the Administration's core principles that the surplus not be depleted and the spending caps not be reduced.

The President's senior advisers would recommend that he veto a conference report that makes available an excessive level of budgetary resources if financed by spending the surplus, by reducing the domestic discretionary caps, by using unacceptable offsets, or by forcing cuts in domestic priorities. We would also recommend veto of a conference report that skews transportation priorities.

We need final action now on this critical legislation. The Administration strongly urges the conferees to seriously consider the framework discussed in this letter, which would ensure stable funding for surface transportation, in a manner that is both fiscally responsible and consistent with the President's pledge to save Social Security first.

Sincerely,

Franklin D. Raines
Director

Attachment

Surface Transportation Reauthorization Funding
Comparison of Congressional and Administration Proposals
(Mandatory and Discretionary $ in billions)

	1998	1999	2000	2001	2002	2003	2004	1998-2003 Total	1998-2004 Total
President's Budget									
BR	28.0	27.8	27.7	27.7	27.7	27.6	27.7	166.5	194.2
OL	26.5	27.3	27.7	27.8	28.0	28.1	28.1	165.4	193.5
Highway/Safety									
BR	*23.1*	*23.0*	*22.9*	*22.9*	*22.8*	*22.8*	*22.8*	*137.6*	*160.4*
OL	*22.3*	*23.3*	*23.4*	*23.3*	*23.2*	*23.1*	*23.2*	*138.7*	*161.9*
Transit									
BR	*4.8*	*4.8*	*4.8*	*4.8*	*4.8*	*4.8*	*4.9*	*28.7*	*33.6*
OL	*4.2*	*3.9*	*4.3*	*4.5*	*4.8*	*4.9*	*4.9*	*26.5*	*31.4*
HR 2400, BESTEA									
BR	29.3	35.0	38.9	38.8	38.9	38.8	--	219.7	--
OL	26.6	28.8	32.9	35.7	37.2	37.9	--	199.1	--
Highway/Safety									
BR	*24.5*	*29.0*	*32.5*	*32.4*	*32.4*	*32.4*	--	*183.0*	--
OL	*22.4*	*24.9*	*28.2*	*30.5*	*31.2*	*31.6*	--	*168.8*	--
Transit									
BR	*4.8*	*6.0*	*6.5*	*6.5*	*6.5*	*6.5*	--	*36.7*	--
OL	*4.2*	*4.0*	*4.7*	*5.3*	*5.9*	*6.3*	--	*30.3*	--
S 1173, ISTEA2									
BR	27.8	36.7	37.4	38.0	38.7	39.5	--	218.0	--
OL	26.4	29.4	33.4	35.5	36.9	38.0	--	199.6	--
Highway/Safety									
BR	*22.9*	*29.8*	*30.4*	*30.9*	*31.4*	*32.0*	--	*177.5*	--
OL	*22.3*	*25.3*	*28.4*	*29.7*	*30.4*	*31.0*	--	*167.1*	--
Transit									
BR	*4.8*	*6.9*	*7.0*	*7.1*	*7.3*	*7.5*	--	*40.5*	--
OL	*4.2*	*4.1*	*5.0*	*5.7*	*6.5*	*7.0*	--	*32.5*	--
Offer									
BR	28.0	27.8	27.7	32.1	33.8	34.4	35.1	183.8	218.9
OL	26.5	27.3	27.7	28.7	30.8	32.5	33.5	173.4	206.9
Highway/Safety									
BR	*23.1*	*23.0*	*22.9*	*26.0*	*27.4*	*27.9*	*28.4*	*150.3*	*178.8*
OL	*22.3*	*23.4*	*23.4*	*24.1*	*25.6*	*26.8*	*27.4*	*145.7*	*173.1*
Transit									
BR	*4.8*	*4.8*	*4.8*	*6.1*	*6.4*	*6.5*	*6.7*	*33.5*	*40.1*
OL	*4.2*	*3.9*	*4.3*	*4.6*	*5.1*	*5.7*	*6.0*	*27.7*	*33.8*

Identical Letter Sent To:

The Honorable Bud Shuster
The Honorable James Oberstar
The Honorable Tom Petri
The Honorable Nick Rahall
The Honorable John Chafee
The Honorable Max Baucus
The Honorable John Warner
The Honorable William Roth
The Honorable Daniel Patrick Moynihan
The Honorable Alfonse D'Amato
The Honorable Paul Sarbanes
The Honorable John McCain
The Honorable Ted Stevens
The Honorable Ernest Hollings
The Honorable Pete Domenici
The Honorable Frank Lautenberg
The Honorable Tom Bliley
The Honorable George Brown
The Honorable John Dingell
The Honorable Jim Sensenbrenner

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May 12, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: Tobacco Negotiations Status Report

Erskine, Larry, and we held a series of meetings today in an attempt to reach agreement with Sen. McCain on a manager's amendment to his tobacco bill. Although we have not yet nailed down a deal with McCain, our discussions with him were very fruitful. In later discussions, Sen. Daschle indicated real enthusiasm for the deal that we believe we can make. As explained further below, however, Sen. Conrad expressed severe disappointment on several issues.

The key features of the manager's amendment under discussion are as follows:

1. Price. As you know, the McCain bill imposes payments of about $65 billion over the next five years. OMB has calculated that these payments, when passed on to price, will increase the price of a pack of cigarettes by $1.10. We expect, however, that CBO will say tomorrow that if the McCain bill becomes law, the price of a pack of cigarettes will rise by over $2 in the next five years. A large part of this price differential reflects disparate assumptions about how much the volume of cigarettes sold will decline in this period. (The more consumption declines, the larger the per-pack price increase necessary to make the annual industry payments.)

To combat the new CBO figures, which will tend to support the industry's recent arguments, we would agree in the manager's amendment to incorporate an explicit "volume adjustment" in the first five years of the McCain bill. (There is already an explicit volume adjustment after year six; prior to this point, OMB's estimates about volume reduction were taken into account in setting the annual payments, but there is no correction mechanism if OMB is wrong.) This volume adjustment would ensure that the price increase attributable to the annual industry payments would not exceed $1.10 per pack, no matter how much volume declines. (CBO assumptions regarding additional factors, such as wholesale and retail mark-ups and state excise tax increases, should bring the total price increase to about $1.50 in five years.) The downside of this approach is that if CBO is right about how steeply consumption will fall, a volume adjustment will bring down the total revenue generated by the bill -- OMB estimates by between $5 and $10 billion in the first five years.

Sen. Conrad is worried that if we go this route, we will wind up with far less revenue than is necessary to fund what people expect from a tobacco bill. It is unclear, however, what Sen.

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Conrad would do to respond to the forthcoming CBO estimates. He seems to want to insist on an $1.50 per pack excise tax, but CBO would score that as above $2 as well, rendering this approach utterly impractical.

2. Lookbacks. As you recall, the McCain bill has industry-wide lookback penalties capped at approximately $3.5 billion per year, with no company-specific penalties at all. We have gotten McCain and Hollings to agree to raise the cap on industry-wide penalties to $4 billion. We have also gotten them to add a company-specific penalty wholly outside the cap of $1000 per child for every child by which the company misses its youth smoking targets. This figure represents twice the lifetime profits that a company earns from any youth smoker. Finally, we have gotten McCain and Hollings to agree to strengthen the provision linking a 20 percent miss to the loss of liability protection. Under the current provision, when a company misses by more than 20 percent, the government must show that a company committed affirmative misconduct in order to trigger the loss of liability provisions. Under the new provision, when a company misses by this amount, the tobacco company will have to show both that it did not engage in affirmative misconduct and that it used best efforts to reduce youth smoking in order to escape the loss of liability protections.

OK

Agree

Sen. Daschle was supportive of this agreement, but Sen. Conrad thought the provision on company-specific lookbacks is weak. His own proposal would impose far more onerous company-specific penalties, perhaps as much as ten or twenty times higher. We believe penalties of this magnitude would ensure that the companies never return to the bargaining table; we also could not possibly convince McCain and Hollings to accept company-specific penalties of this magnitude.

3. Liability. As you recall, the McCain bill provides for an annual liability cap of $6.5 billion, while avoiding the question of whether this money comes from the annual industry payments or from other industry assets. McCain has now agreed to push the liability cap to $8 billion, the exact amount of the Harkin-Chafee liability cap. (As you recall, you said you would sign Harkin-Chafee.) We have tentatively agreed that (1) half of the upfront payment that the industry makes will go to pay legal judgments and (2) when that amount is depleted, half the amount of judgments will come from the annual payments and half from other assets of the liable company(ies).

Another, perhaps even more tricky set of issues has arisen around other liability provisions in McCain. First, the legislation provides that suits for tobacco related disease can be brought only against a tobacco product manufacturer, and not against a wide variety of other parties, including their parents and affiliates; officers, directors, employees, agents, or attorneys; importers, distributors, wholesalers, and retailers; suppliers of component or constituent parts; growers; and insurers. We have succeeded in removing this liability protection for parents and affiliates. We do not think anyone cares about removing protection for growers, suppliers, or parties down the distribution chain. Conrad, however, has objected strongly to giving liability protection to attorneys, and we are trying to remove this provision. We may also try to remove

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5/14/98

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5. International. We think that Sens. McCain, Hollings, and Wyden have agreed to eliminate many of the international provisions in the current McCain bill. (Wyden was their original sponsor.) Under this agreement, the manager's amendment would eliminate the 2 cents per pack export fee, eliminate extraterritorial restrictions on advertising and marketing, and eliminate restrictions on tobacco products in duty-free stores and on military bases. The provisions would continue to fund international tobacco control efforts and would establish a mechanism for multi-lateral negotiations on tobacco marketing and advertising.

6. Spending. We have yet to have a full discussion of spending with McCain, but we believe we can convince him to divide money among (1) the states, (2) public health money (cessation, prevention, counteradvertising, etc.), (3) health research, and (4) farmers. We doubt we can convince McCain to earmark any of the state money to the specific programs we proposed in our budget -- child care and class size reduction. We think, however, that he will

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agree that states must use a portion of their money (representing the federal government's share of Medicaid recoveries) on programs appearing on a specified menu. We are currently developing an agreed-upon menu with the NGA; we hope it will include between 8 and 12 health and children's programs, <u>including</u> child care and class size reduction.

Good!

<u>7. Bureaucracies.</u> As you know, the industry and other opponents of the McCain legislation have accused it of setting up 17 new federal "bureaucracies." (Charts purporting to illustrate the legislation -- similar to those used in the health care debate -- are appearing all over.) We succeeded today in eliminating all of these 17 supposed bureaucracies, leaving a stripped-down, much simpler bill.

<u>8. Farmers.</u> We agreed to give Sen. Hollings help in ensuring passage of the LEAF Act. Hollings is worried that he will lose a vote on the floor to substitute Sen. Lugar's farming plan for his own. As you know, Lugar's plan would buy out all tobacco farmers and then end the tobacco price support system; Hollings's plan would compensate tobacco farmers for any loss suffered as a result of legislation (through buyouts and/or subsidies), while keeping the price support system in place.

Please let us know if you have any thoughts on, or objections to, what we are doing in these negotiations.

Lugar's plan
not really
fair to farmers
looks good
but SC matters

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THE WHITE HOUSE

WASHINGTON

THE PRESIDENT HAS SEEN
5/16/98

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May 14, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: ERSKINE B. BOWLES

SUBJECT: Issues Update

This memo provides updates on some of the issues White House offices are tracking today.

TOBACCO NEGOTIATIONS REPORT

- We continued our discussions today with Senators McCain and Hollings, and believe we now have the outlines of an agreement; over the next few days, we will work with McCain's and Hollings' staff to incorporate it in a manager's amendment. As we described yesterday, we have improved the bill in key areas: strengthened lookback penalties, a tougher ETS provision, a higher liability cap and the elimination of other liability protections, and a narrowed antitrust exemption. Notwithstanding these improvements, some Senators have objected to our anticipated agreement with McCain, arguing that it will undermine their ability to pass strengthening amendments on the floor. Erskine spoke to the Caucus today and explained that we wanted to strengthen the bill as much as we could before it gets to the floor, given the fairly low probability of passing Democratic amendments there.

ISTEA NEGOTIATIONS REPORT

- The Republicans continue to push to spend more money on highways than they can offset with acceptable savings. Your ISTEA negotiating team met today with Representatives Gephardt, Spratt, and Oberstar to discuss the current Republican offsets, several of which are unnecessarily controversial and damaging to your policy agenda. Gephardt said that the only way to get the Administration to the negotiating table is to demonstrate that we can sustain a veto. Oberstar expressed the opinion that the Administration should weigh in with the Speaker to seek joint agreement on the offsets. In response, Gephardt asked Oberstar to let the Republican leadership know they would not have Democratic votes if they do not come up with an acceptable offset package. Oberstar went back to the Speaker's staff to say that they need to negotiate; a meeting is being set for tomorrow. Attached is a memo from Frank Raines seeking your guidance with regards to our ongoing ISTEA negotiations.

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BUDGET REPORT

- Kasich House Budget Resolution. House Budget Committee Chairman John Kasich released a detailed budget resolution late yesterday. His resolution funds a $50-100 billion tax cut by cutting $46 billion from discretionary programs and $54 billion from mandatory programs (all over 5 years). He also recycles cuts that the Administration has objected to strongly in the past (e.g., elimination of National Service, CDFI, and the Legal Services Corporation).

  Frank Raines responded to Kasich's budget in a joint press conference with Congressman Spratt, at which they highlighted Kasich's spending cuts in health care, public schools, and the environment and his tax increases on the working poor through cuts in the EITC. They also highlighted the purely political cuts in the Kasich plan, particularly his proposals to eliminate the Departments of Commerce and Energy and the Council of Economic Advisers. Some reports have suggested that the Republicans may set this detailed plan aside and instead move forward with a budget resolution that contains only aggregate numbers. However, we will continue to characterize their resolution as cutting your priority investments.

LEGISLATIVE REPORT

The House

- During the evening of Wednesday, May 13, the House considered the following:

  - **PASSED (214-213) the Financial Services Competition Act (H.R. 10):** The bill would eliminate many of the barriers between banking, securities, insurance, and other industries. Only the last-minute vote changes of several Republicans enabled the bill to pass; seventy-three Republicans joined 139 Democrats in opposing the measure. Secretary Rubin has recommended that you veto the bill because it would, among other things, unnecessarily limit the ability of national banks to conduct financial activity through a subsidiary and undercut the Administration's regulatory authority over banking activities. Having failed to move the legislation successfully last year, it is unlikely that the Senate will take up the measure in the relatively few remaining legislative days left.

- On Thursday, May 14, the House considered the following:
    - **Privileged Resolution:** The House voted 223-196 to table Democratic Leader Gephardt's privileged resolution calling for Dan Burton (R-IN) to step down as chairman of the House Government Reform campaign investigation. The action blocked consideration of Gephardt's resolution.
    - **PASSED (375-41, 1 present) the Freedom From Religious Persecution Act of 1998 (H.R. 2431):** The bill, which your senior advisers recommend you veto, would automatically impose sanctions on any nation engaging in religious persecution. The Administration objects to the measure because it could harm religious minorities and bilateral relations with allies, as well as limit your flexibility and raise questions regarding U.S. international obligations.

<u>House Outlook</u>

- The House will resume legislative business Tuesday, May 19. Next week the House may consider the New Wildlife Refuge Act (H.R. 512) and the Mandates Information Act (H.R. 3534), both opposed by the Administration. The House may also consider the Bankruptcy Reform Act (H.R. 3150) and the Campaign Integrity Act (H.R. 2183), which is the bi-partisan campaign finance reform bill sponsored by Rep. Hutchinson (R-AR) and Rep. Allen (D-ME). The Defense authorization bill (HR. 3616) is also expected to be considered. In addition, two conference reports may come to the floor: the Intermodal Surface Transportation Efficiency Act (H.R. 2400), known as ISTEA, and the Education Savings Act (H.R. 2646), known in the Senate as the Coverdell bill.

<u>The Senate</u>

- **Department of Defense Authorization Act for FY 1999 (S. 2057):** The Senate continued debate on S. 2057, sponsored by Senator Thurmond. The Administration supports prompt Congressional consideration of S. 2057, which authorizes $270.6 billion for national defense programs in FY 1999, the amount you requested; however, the Administration has serious budget and policy concerns which must be addressed. Of particular concern, S. 2057 would reallocate funds to the Department of Defense military programs by reducing funding for the Department of Energy's FY 1999 defense discretionary budget request and by significantly reducing the Administration's request for intelligence activities. The bill also includes your $950 million request for researching a national ballistic missile defense. Unlike the House legislation, the Senate version would delay consideration of sex-segregated training until after a Congressional commission issues its report next year. Senators Hutchison and Byrd plan to offer an amendment requiring a phased withdrawal of troops from Bosnia over the next three years.

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- **Digital Millennium Act (S. 2037)**: The Senate passed (99-0) S. 2037, sponsored by Senator Hatch. The Administration-supported measure would enact the two new World Intellectual Property Organization (WIPO) treaties. This is crucial for promoting electronic commerce over the Internet and in other networking environments, and for protecting U.S. copyrighted works from international piracy.

Senate Outlook

- On Friday, May 15, the Senate may continue debate on S. 2057, the Department of Defense Authorization Act for FY 1999.

- On Monday, May 18, the Senate will begin debate on S. 1723, the American Competitiveness Act, H-1B visa waivers, sponsored by Senator Abraham. The Senate is expected to vote on final passage on S. 1723 the same day. This measure is intended to respond to a reported skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under this program. The Secretary of Labor has recommended that you veto this bill because it emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers. In addition, the bill does not help ensure that U.S. workers do not lose their jobs to temporary foreign workers. Nor does the bill ensure that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers have the opportunity to fill a job before temporary foreign worker is hired.

- Following consideration of S. 1723, the Senate will vote on the motion to invoke cloture to proceed to S. 1415, the McCain Tobacco Settlement bill.

DPC REPORT

- Drunk Driving -- .08 BAC: This morning, the Transportation Department released preliminary 1997 data indicating that while the overall number of traffic fatalities remained roughly level from the previous year's total (42,000), the percentage of alcohol-related fatalities dropped to its lowest level (39.3%) since DOT began collecting the data in 1975. DOT representatives announced the data at an event commemorating the 10th anniversary of the worst drunk driving crash in U.S. history, and were joined by MADD in pushing for .08 legislation. In addition, the Vice President and a bipartisan group of Senators and House Members held a press event in the Roosevelt Room yesterday to spotlight the .08 issue, which remains unresolved in the transportation bill conference. It was reported today that the conference may not conclude prior to the Memorial Day recess.

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OSTP REPORT

- **Climate Change.** Yesterday, May 13, a large climate change advertisement (attached) in the *Washington Post* contained the following statement from a group of prominent corporations: "First, we accept the views of most scientists that enough is known about the science and environmental impacts of climate change for us to take actions to address its consequences." The companies (Boeing, United Technologies, Lockheed-Martin, Sunoco, 3M, Maytag, Whirlpool, Enron, American Electric Power, Intercontinental Energy Corporation, BP, U.S. Generating Company, Toyota) pledge to establish and meet their own emissions reduction objectives and invest in new, more efficient technologies. They are members of the Business Environmental Leadership Council of the newly formed Pew Center on Global Climate Change, which paid for the advertisement. Also attached is a favorable *Washington Post* editorial on this initiative.

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Steve
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NSC REPORT

- Please see attached report from General Kerriok.

[illegible]

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A Few Brave Firms

The Washington Post

THURSDAY, MAY 14, 1998

THE DEBATE about global warming has featured too much name-calling and too little attention to practical solutions. Many U.S. corporations and their lobbyists have devoted more effort to belittling the science than to soberly preparing for the consequences. So it's encouraging to welcome a new player to the debate, the Pew Center on Global Climate Change. Funded initially by a $5 million grant from the Pew Charitable Trusts and headed by a former Clinton administration official, Eileen Claussen, the center intends to focus on research, public education and—most of all—figuring out what can and can't be done about this very real problem.

What's most heartening about this effort is the list of major corporations that have signed on as advisers to the center. For many of them, it has taken some courage to step out from the crowd of stone-throwers and commit themselves to pragmatic consideration of climate change, and to how they may participate in—and perhaps profit from—solutions.

These companies are not contributing money to the center, it's important to note, and they're not mostly firms that obviously stand to gain if climate change is taken seriously. On the contrary, they include mostly companies that will have to adapt and change considerably: gas and oil firms Sunoco, British Petroleum and Enron; power generators American Electric Power Co., Intercontinental Energy Corp. and U.S. Generating Co.; giant aerospace firms Boeing and Lockheed Martin; appliance makers Maytag and Whirlpool Corp.; the Toyota car maker; United Technologies, which has aerospace, automotive and other interests; and the consumer and chemical giant 3M.

It's not that these companies, coming together as the Business Environmental Leadership Council, have endorsed anything you could call radical. But they "accept the views of most scientists that enough is known about the science and environmental impacts of climate change for us to take actions to address its consequences." That sensible statement alone is enough to set them apart, and even no doubt subject them to some abuse from their competitors; you'll note there's no American auto maker on the list. In the long run, these forward-looking companies' willingness to accept the inevitable and begin dealing with it will doubtless give them a competitive advantage. In the short run, they deserve some credit for forthrightness.

7

U.S. Generating Company

BP

TOYOTA

Intercontinental Energy Corporation

ENRON

MAYTAG

WHAT DO WE ALL AGREE ON?

LOCKHEED MARTIN

United Technologies

SUNOCO

3M

AEP AMERICAN ELECTRIC POWER

ANSWER:

TAKING ON THE CHALLENGE OF GLOBAL CLIMATE CHANGE.

We believe we must address one of the major challenges of the 21st Century: responding to global climate change while maintaining economic growth. We are working together through the Pew Center on Global Climate Change, as members of its Business Environmental Leadership Council to educate the public in the U.S. and abroad, conduct studies and policy analyses and increase international understanding.

We begin this effort united in several beliefs:

First, we accept the views of most scientists that enough is known about the science and environmental impacts of climate change for us to take actions to address its consequences.

Second, businesses can and should take concrete steps now in the U.S and abroad to assess their opportunities for emission reductions, establish and meet their emission reduction objectives, and invest in new, more efficient products, practices and technologies.

Third, the Kyoto agreement represents a first step in the international process, but more must be done both to implement the market-based mechanisms that were adopted in principle in Kyoto and to more fully involve the rest of the world in the solution.

Fourth, we can make significant progress in addressing climate change and sustaining economic growth in the United States by adopting reasonable policies, programs and transition strategies.

PEW CENTER ON Global CLIMATE CHANGE

The Washington P[ost]
WEDNESDAY, MAY 13.

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WASHINGTON

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May 12, 1998

MEMORANDUM FOR THE PRESIDENT

5-14-98

FROM: Bruce Reed
Elena Kagan

SUBJECT: Tobacco Negotiations Status Report

Erskine, Larry, and we held a series of meetings today in an attempt to reach agreement with Sen. McCain on a manager's amendment to his tobacco bill. Although we have not yet nailed down a deal with McCain, our discussions with him were very fruitful. In later discussions, Sen. Daschle indicated real enthusiasm for the deal that we believe we can make. As explained further below, however, Sen. Conrad expressed severe disappointment on several issues.

The key features of the manager's amendment under discussion are as follows:

1. Price. As you know, the McCain bill imposes payments of about $65 billion over the next five years. OMB has calculated that these payments, when passed on to price, will increase the price of a pack of cigarettes by $1.10. We expect, however, that CBO will say tomorrow that if the McCain bill becomes law, the price of a pack of cigarettes will rise by over $2 in the next five years. A large part of this price differential reflects disparate assumptions about how much the volume of cigarettes sold will decline in this period. (The more consumption declines, the larger the per-pack price increase necessary to make the annual industry payments.)

To combat the new CBO figures, which will tend to support the industry's recent arguments, we would agree in the manager's amendment to incorporate an explicit "volume adjustment" in the first five years of the McCain bill. (There is already an explicit volume adjustment after year six; prior to this point, OMB's estimates about volume reduction were taken into account in setting the annual payments, but there is no correction mechanism if OMB is wrong.) This volume adjustment would ensure that the price increase attributable to the annual industry payments would not exceed $1.10 per pack, no matter how much volume declines. (CBO assumptions regarding additional factors, such as wholesale and retail mark-ups and state excise tax increases, should bring the total price increase to about $1.50 in five years.) The downside of this approach is that if CBO is right about how steeply consumption will fall, a volume adjustment will bring down the total revenue generated by the bill -- OMB estimates by between $5 and $10 billion in the first five years.

Sen. Conrad is worried that if we go this route, we will wind up with far less revenue than is necessary to fund what people expect from a tobacco bill. It is unclear, however, what Sen.

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Conrad would do to respond to the forthcoming CBO estimates. He seems to want to insist on an $1.50 per pack excise tax, but CBO would score that as above $2 as well, rendering this approach utterly impractical.

2. Lookbacks. As you recall, the McCain bill has industry-wide lookback penalties capped at approximately $3.5 billion per year, with no company-specific penalties at all. We have gotten McCain and Hollings to agree to raise the cap on industry-wide penalties to $4 billion. We have also gotten them to add a company-specific penalty wholly outside the cap of $1000 per child for every child by which the company misses its youth smoking targets. This figure represents twice the lifetime profits that a company earns from any youth smoker. Finally, we have gotten McCain and Hollings to agree to strengthen the provision linking a 20 percent miss to the loss of liability protection. Under the current provision, when a company misses by more than 20 percent, the government must show that a company committed affirmative misconduct in order to trigger the loss of liability provisions. Under the new provision, when a company misses by this amount, the tobacco company will have to show both that it did not engage in affirmative misconduct and that it used best efforts to reduce youth smoking in order to escape the loss of liability protections.

OK

Sen. Daschle was supportive of this agreement, but Sen. Conrad thought the provision on company-specific lookbacks is weak. His own proposal would impose far more onerous company-specific penalties, perhaps as much as ten or twenty times higher. We believe penalties of this magnitude would ensure that the companies never return to the bargaining table; we also could not possibly convince McCain and Hollings to accept company-specific penalties of this magnitude.

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5-14-98

agree that states must use a portion of their money (representing the federal government's share of Medicaid recoveries) on programs appearing on a specified menu. We are currently developing an agreed-upon menu with the NGA; we hope it will include between 8 and 12 health and children's programs, <u>including</u> child care and class size reduction.

Good!

<u>7. Bureaucracies.</u> As you know, the industry and other opponents of the McCain legislation have accused it of setting up 17 new federal "bureaucracies." (Charts purporting to illustrate the legislation -- similar to those used in the health care debate -- are appearing all over.) We succeeded today in eliminating all of these 17 supposed bureaucracies, leaving a stripped-down, much simpler bill.

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Please let us know if you have any thoughts on, or objections to, what we are doing in these negotiations.

Lugar's plan not really fair to farmers & today good but [illegible]

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THE WHITE HOUSE

WASHINGTON

THE PRESIDENT HAS SEEN
5/14/98

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May 13, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: ERSKINE B. BOWLES

SUBJECT: Issues Update

This memo provides updates on some of the issues White House offices are tracking today.

TOBACCO REPORT

- **Please see attached memo from Bruce Reed summarizing the current status of our tobacco negotiations with Senators McCain and Hollings.**

  The Senate Finance Committee will meet on Thursday, May 14 to consider S. 1415, the McCain Tobacco Settlement bill. The Finance Committee is expected to consider whether or not the fees which the bill currently imposes on tobacco companies should be converted to an excise tax. Senator Lott has indicated that he would like to bring the bill to the Senate floor on Monday, May 18.

LEGISLATIVE REPORT

The House

- **On Wednesday, May 13, the House considered the following legislation:**

  - **Financial Services Competition Act (H.R. 10):** The bill eliminates many of the barriers between banking, securities, insurance, and other kinds of businesses, in addition to creating a new entity called a Financial Holding Company under which such affiliations would occur. Secretary Rubin has recommended that you veto the bill because it would, among other things, stifle innovation in the national banking system and impose needless costs on small banks. The House is expected to complete action on the bill late this evening. Among the substantial amendments considered are:

- ***DEFEATED (115-306) the LaFalce (D-NY)-Vento (D-MN) amendment*** which would have permitted all financial activities except insurance underwriting and real estate development to be performed through a bank's operating subsidiary. This amendment would have addressed many of Secretary Rubin's principal concerns.

- ***DEFEATED (140-281, 1 present) the Baker (R-LA) amendment*** which would have expanded permissible bank activities in operating subsidiaries and would have repealed application of the Community Reinvestment Act to smaller banks.

- **PASSED (voice) the Rule for the Mandates Information Act of 1998 (H.R. 3534):** The bill would allow a Member of Congress to raise a point of order against any legislation which contains a federal mandate on the private sector in excess of $100 million. The bill is expected to come to the floor either late this evening or Thursday, May 14.

- **Campaign Finance:** On Wednesday, the House Government Reform Committee Democrats once again voted unanimously to deny immunity for four witnesses in the campaign finance investigation. The final vote, 24-19, failed to get the two-thirds necessary for granting immunity. The action followed a failed Democratic attempt to require the committee to abide by the same bi-partisan rules as other congressional investigations, stripping Chairman Burton (R-IN) of his unilateral power.

  As a result, Speaker Gingrich may assign a portion of the investigation to the House Oversight Committee. Chaired by Bill Thomas (R-CA), this committee has a two-thirds Republican majority. Democratic Leader Gephardt may offer a privileged resolution on the floor of the House Thursday, May 14, calling for Burton to step down as chairman of the investigation.

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House Outlook

- **Thursday, May 14, the House is scheduled to consider the following:**

  - **Mandates Information Act of 1998 (H.R. 3534):** The bill would allow a Member of Congress to raise a point of order against any legislation which contains a federal mandate on the private sector in excess of $100 million. The limitations would not be permitted, however, against bills that have net decreases in tax revenues over five years -- even if the measure includes a tax increase. The Administration is strongly opposed to the bill because it may create a procedural obstacle to the enactment of legislation in the public interest, including legislation designed to protect human health, safety, the environment, or the Nation's economic well-being.

    The Democrats are expected to offer an amendment which requires that the benefits of any subject bill be considered along with the costs.

  - **Freedom From Religious Persecution Act of 1998 (H.R. 2431):** The bill, which your senior advisers recommend you veto, would automatically impose sanctions on any nation engaging in religious persecution. The Administration objects to the measure because it could harm religious minorities and bilateral relations with allies, as well as limit your flexibility and raise questions regarding U.S. international obligations.

  - **New Wildlife Refuge Authorization Act (H.R. 512):** The bill would prohibit the use of funding from the Land and Water Conservation Fund to establish new refuges unless Congress passes a specific law authorizing the action. Congress currently approves, through annual appropriations, all acquisitions financed by the Fund. The Secretary of Interior recommends that you veto the bill because it would add an additional layer of Congressional approval, making it more difficult to acquire much needed refuge lands in a timely manner. A manager's amendment may be offered to address many of the Administration's objections.

  - **Burton Privileged Resolution:** Democratic Leader Gephardt may offer a privileged resolution calling for Chairman Burton to step down as chairman of the House Government Reform campaign investigation.

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The Senate

- **On Wednesday, May 13, the Senate considered the following:**

    - **American Missile Protection Act (S. 1873):** The Senate continued debate on the measure, sponsored by Senator Cochran, and failed to invoke cloture on the motion to proceed to consideration [(59-41) vote attached]. The Administration strongly opposes S. 1873 because it would commit the United States to deploy a national defense system in the absence of a current long-range ballistic missile threat by a rouge state.

    - **Religious Liberty and Charitable Donation Act (S. 1244):** The Senate passed (99-1) S. 1244, sponsored by Senator Grassley, the Religious Liberty and Charitable Donation Act (Kohl voted against.) The Administration-supported measure protects the donations made to religious and charitable groups by a debtor from being reclaimed by a bankruptcy court.

    - **Securities Litigation Uniform Standards Act (S. 1260):** The Senate passed (79-21) S. 1260, sponsored by Senator Gramm, which would require that all class-action securities fraud suits be filed in federal court. The Administration and the SEC were able to resolve all of their concerns with S. 1260 prior to final passage.

    - **Department of Defense Authorization Act for FY 1999 (S. 2057):** The Senate began consideration of S. 2057, sponsored by Senator Thurmond.

Senate Outlook

- On Thursday, May 14, the Senate is scheduled to resume consideration of S. 2057, the Department of Defense Authorization Act for FY 1999. Following S. 2057, the Senate may begin consideration of S. 1723, the American Competitiveness Act, H-1B visa waivers, sponsored by Senator Abraham. This measure is intended to respond to a reported skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under this program. The Secretary of Labor has recommended veto of this bill.

UNCLASSIFIED
WITH SECRET ATTACHMENT

5-14-98

ISTEA NEGOTIATIONS REPORT

- **ISTEA Reauthorization.** Larry Stein, Frank Raines and Jack Lew met this afternoon with Reps. Shuster and Petri to discuss the Republican response to the Administration's reauthorization offer of last week (see attached memo). Most of the discussion concerned two issues: total spending levels and the mechanism by which certain amounts of spending would be guaranteed.

The spending levels in Shuster's plan present two problems. First, the plan may be too costly. Shuster contends that CBO would score his plan as requiring less than $20 billion in offsets over 1999-2003, roughly $4 billion more than would be available from the VA tobacco offset under OMB scoring of the offset. If Shuster's plan really costs that little, the difference could be bridged fairly readily if Shuster gave up elements of his plan that are not essential to his aims (we could save roughly $3 billion, for example, simply by setting spending equal to *prior-year* Trust Fund receipts as in the Administration's proposal rather than *current-year* receipts as in the Shuster plan). OMB suspects, however, that CBO will score the Shuster plan at $23-25 billion. If so, Shuster is extremely unlikely to lower his spending levels enough so that VA tobacco alone would pay for his bill.

Also in dispute was the nature of the mechanism by which Congress would guarantee that the funds would be made available for obligation. The Administration's plan called for a guarantee that would serve as both a floor and a ceiling on surface transportation spending. By walling off surface transportation from other discretionary spending, the Administration's plan would prevent transportation from imposing ever growing demands on other discretionary priorities. Shuster takes a somewhat different approach. His plan would guarantee spending of roughly $200 billion (compared to $184 billion in the Administration's offer over the same 1998-2003 period). In addition, the plan would authorize $20 billion of additional spending that would compete with other priorities under the discretionary cap. Thus, Shuster's plan creates a floor but not a ceiling on surface transportation spending.

Further discussion will be needed before we know whether Shuster's construction can be made acceptable. If Shuster guarantees all of his own priorities and leaves the Administration's priorities to be funded through the regular appropriations process, surface transportation spending will continue to crowd out your other domestic priorities. Shuster would not identify the specific programs that would be guaranteed, but promised that we would find no 'poison pill.' Shuster argued that the additional authorized spending would be for programs that neither the Appropriators nor the Administration would regard as critical. We await more details.

UNCLASSIFIED
WITH SECRET ATTACHMENT

5-14-98

ECONOMIC REPORT

- **Stock Market Rises To Record High.** The stock market rose today as data on PPI inflation and retail sales appeared to be favorably received by market participants. The Dow Jones Industrial Average rose 0.5 percent to a new record-high level of 9211.84, and closed above 9200 for the first time ever. The broad-based S&P 500 index rose 0.3 percent to close at 1118.86; this is slightly below the record high that was set on April 22nd. The Nasdaq composite index rose by 0.3 percent, and also remains below its April 22nd record high.

  Some observers credited the increase in stock prices to today's release of data on retail sales and the producer price index (PPI). Growth in retail sales in April was in line with market expectations; although April producer price inflation was slightly higher than market forecasts, roughly half of the increase in the core PPI (the PPI excluding food and energy) was the result of an increase in tobacco prices. Markets apparently saw these data as reducing the likelihood that the Federal Reserve will raise interest rates at the next FOMC meeting (this Tuesday, May 19th).

STAFF SECRETARY ITEM

- **Executive Orders.** You approved two related Executive Orders prior to your departure -- an update of the Federalism EO and then a necessary replacement of the tribal governments EO. You asked Phil whether tribal leaders had been consulted on the latter and whether they were ok with it. In the judgement of IGA and Lynn Cutler, the WH did not need to consult ahead of time on this EO. It is very similar to previous memos/EOs you have issued in this area and is better for the tribes in that it provides more access, coordination and consultation. Rather than consulting, the WH will be able to present the tribes with a bit of good news. If you have no objection, Phil will have the EOs issued on Thursday.

NSC REPORT

- Please see attached report from General Kerrick.

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

THE DIRECTOR

May 13, 1998

5-14-98

MEMORANDUM FOR THE PRESIDENT

FROM: Franklin D. Raines

SUBJECT: Status of the Intermodal Surface Transportation Efficiency Act (ISTEA) Reauthorization -- INFORMATION

Erskine asked us to send you a comparison of the House and Senate versions of the transportation reauthorization bill now being considered in Conference.

Background

Earlier this month, the Administration offered a compromise on ISTEA that would provide Congress one of their key objectives (a guarantee that annual surface transportation spending would equal Highway Trust Fund receipts). In exchange for this spending guarantee, the proposal would set spending significantly below the levels contemplated in the House and Senate bills. The compromise would preserve the budget surplus and would protect discretionary funding for your other priorities.

Congress would like to complete floor action on this bill prior to the Memorial Day recess that begins May 22, but it is unclear whether they can meet this deadline. ISTEA programs have been operating this year under a short-term extension that permits transit, highway safety, and Department of Transportation administrative programs to continue at a reduced level for the next several months. However, States have been prohibited from obligating new highway construction funds since May 1, 1998. Although construction work continues using carryover funds, the pressure will increase for Congress to authorize a bill quickly.

On May 12, the Administration sent a letter to the conferees (attached) notifying them that your senior advisers will recommend that you veto the conference report if it "makes available an excessive level of budgetary resources if financed by spending the surplus, by reducing the domestic discretionary caps, by using unacceptable offsets, or by forcing cuts in domestic priorities." In addition, the letter stated that your senior advisers would "also recommend veto of a conference report that skews transportation priorities."

Copied
Raines
Bowles

Funding Issues

The following table summarizes the funding levels included in the various reauthorization proposals. Each proposal is described in more detail below. For 1999 alone, surface transportation programs would be funded at more than 25 percent above the levels in the President's budget (roughly 1998 enacted). The attachment provides annual funding levels for each proposal.

Comparison of Budgetary Resources 1998-2003
(Mandatory and Discretionary $ in billions)

	Admin. NEXTEA	House BESTEA	Senate ISTEA 2	Admin. May 5 Proposal
Highways	137.6	183.0	177.5	150.3
Transit	28.7	36.7	40.5	33.5
TOTAL	166.5	219.7	218.0	183.8

House: Building an Efficient Surface Transportation Efficiency Act (BESTEA)

The House bill would provide $219.7 billion in budgetary resources, $53 billion above your request. This includes $9.3 billion for almost 1,500 highway demonstration projects that are funded as mandatory spending. Nearly 17 percent of the spending authorized by BESTEA is provided for transit. BESTEA includes a requirement that the Conference Report identify offsets to pay for any spending in the bill above a baseline frozen at the 1998 enacted level. To date, no offsets have been identified.

Under BESTEA, total budgetary resources (the amounts available for obligation) would be set at levels significantly above HTF receipts. Supporters nonetheless claim that "spending equals receipts" because outlays would equal receipts during the period 1998-2003. This of course means that beyond 2003 outlays would significantly exceed tax receipts. BESTEA would guarantee this spending by taking "off budget" all highway and transit spending that is financed by the Highway Trust Fund. To fund the spending contained in BESTEA, other non-defense outlays would need to be reduced by $34 billion during the period 1999-2003.

Senate: The Intermodal Surface Transportation Efficiency Act 2 (ISTEA 2)

The Senate proposal would provide $218 billion in budgetary resources, $51 billion above the President's Request. ISTEA2 includes no demonstration projects, although some

Senate demonstration projects will likely be included in the final bill. ISTEA2 includes a requirement that demonstration projects be incorporated into the regular highway program formula allocations among the States, thereby diminishing the incentive for earmarking. Roughly 19 percent of the total spending in ISTEA 2 would be devoted to transit.

ISTEA2 continues the current budgetary treatment of highway and transit programs. Almost all funding is subject to the appropriations process and is not guaranteed. ISTEA2 does not include any offsets, although the Senate Budget Resolution assumes that many of your new mandatory offset proposals would be redirected to offset highway spending.

Administration Proposal

On May 5, the Administration proposed a compromise designed to reflect four core principles: (1) the budget surplus shall not be used to pay for the legislation; (2) spending shall be offset fully, without lowering the cap on other discretionary spending; (3) after a phase-in period, total budgetary resources spent annually should equal total Trust Fund receipts; and (4) spending levels must be sustainable for the long-run.

The Administration proposal would provide total spending equal to $218.9 billion -- the average of the House and Senate bills -- but spread that spending over seven years rather than the six years contained in BESTEA and ISTEA 2. (The Administration offer would provide $183.8 billion during the 1998-2003 period contemplated by the House and Senate bills, an increase of $17.4 billion in budgetary resources and $8.1 in outlays over our original NEXTEA proposal). As in the Senate bill, the Administration's proposal would provide 19 percent of total resources to transit. No demonstration projects would be provided; to the extent they were included in the final legislation, they would need to be funded out of the total for highways.

The Administration proposal incorporates a key Congressional goal: guaranteeing that annual spending on surface transportation equal to annual receipts into the Highway Trust Fund. In contrast to BESTEA, however, the Administration's proposal sets spending so that budgetary resources, not outlays, equal receipts. This not only lowers the cost of our proposal, but also allows program spending levels to be sustained in the long-run (the House and Senate bills would obligate far more than receipts -- thus, at some time not too far beyond the budget window, spending would have to be curtailed or the gas tax would have to be increased). In addition, the Administration's proposal would guarantee *all* spending for transit and highways alike.

The Administration proposal would phase in the spending guarantee. Spending would equal the levels in the President's Budget for 1999 and 2000, and then rise to 97 percent of prior-year Trust Fund receipts in 2001, and 100 percent of prior-year receipts thereafter. This spending level would be guaranteed by creating a third category of spending (surface transportation) under the Budget Enforcement Act. This category would set not only a *floor*, but also a *ceiling* on surface transportation spending, and thereby protect other discretionary spending from pressure to approve even higher levels of transportation spending.

5-14-98

Our proposal would be offset fully by CBO's current scoring of the $13.5 billion VA/tobacco provision contained in your budget. If CBO chose to adopt OMB scoring of this provision (at $21.8 billion), our proposal would support an additional $8.3 billion of transportation spending through 2004 (net of the spending on veterans' training and education programs).

Key Policy Issues

Many of the priorities included in the Administration's NEXTEA proposal are incorporated in both the House and Senate bills. For example, the Disadvantaged Business Enterprise program has been retained and the new Access to Jobs program is funded. Below are several of the issues that still need to be resolved in Conference.

Fight hard for it

- .08 Blood Alcohol - As you know, the Senate bill includes a provision which withholds highway construction funds from States (beginning in Fiscal Year 2002) if they have not adopted a .08 blood alcohol concentration standard under state drunk driving laws. The House bill does not contain a similar provision. To date, the conferees have made no progress on this issue.

Agree w/ Gore

- Environmental Programs - BESTEA includes an onerous provision that would permit the oversight of the National Environmental Policy Act process to be delegated to the States. In addition, we oppose the transferability of environmental program funds to highway construction.

- Woodrow Wilson Bridge - The Woodrow Wilson Bridge is the only Federally-owned bridge on the Interstate System. The bridge is on the Capitol Beltway south of Washington. The Administration requested $400 million as the Federal share of the $1.9 billion replacement cost, with Maryland and Virginia responsible for the remaining cost. The Senate bill includes $900 million as the Federal share for this project, while the House provides no funding. In discussions with the Maryland and Virginia delegations, the Administration has pledged that it will not oppose up to $900 million as the Federal share and, if Maryland and Virginia want it, a Federal loan to help finance the State share. Maryland and Virginia are pushing for no less than $1.5 billion in Federal grant funding. To date, it appears that $900 million is as much as the States can expect from the conferees.

What about Boston Harbor tunnel - Have [illegible] - [illegible] Steve - get [illegible] [illegible] Rosemary [illegible]

Attachments

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

May 12, 1998

THE DIRECTOR

The Honorable Bud Shuster
Chairman
Committee on Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As the House-Senate conference on reauthorization of the *Intermodal Surface Transportation Efficiency Act* (H.R. 2400) proceeds, I write urging your consideration of a proposal the Administration has made to resolve the important budget issues raised by this legislation.

On April 30, I sent you a letter expressing the Administration's serious concerns about the excessive spending in the House and Senate bills; in particular, that the spending levels would either require unacceptable reductions in high priority discretionary program funding, or they would drain anticipated budget surpluses prior to fulfilling our commitment to save Social Security first.

These budgetary concerns were reiterated in a May 1 letter to conferees from Secretary Slater, along with a detailed review of other important policy issues that need to be resolved in an acceptable manner in order to bring this legislation to a conclusion. These issues include a stronger national standard for drunk driving and other safety concerns, maintenance of the historical balance in highway-transit funding, and ensuring protection of the environment as we carry out transportation programs.

Last week, during the course of ongoing discussions with conferees, the Administration proposed the attached framework for bridging some of the distance between the funding levels supported by the Administration, the House and the Senate. The framework is based on four principles: (1) the projected budget surplus shall not be used to pay for the legislation; (2) spending shall be offset fully, without lowering the caps on discretionary spending; (3) after a phase-in period, total budget resources spent each year should equal total receipts to the Highway Trust Fund (HTF); and (4) spending levels in the legislation shall be sustainable after the end of the authorization period.

This framework fulfills the objective of many in Congress that one hundred percent of Highway Trust Fund receipts be available for obligation. After an appropriate phase-in period, a new budget mechanism would require that total funding equal 100 percent of total HTF receipts. This funding guarantee would serve as both a floor and a ceiling for fiscal years 1999-2004. In exchange for the unprecedented guarantee of authority to spend all prior year Trust Fund receipts, this framework also establishes that total surface transportation spending will not exceed receipts. Total funding over the reauthorization period would equal $218.9 billion, which is between the amounts called for in the House and Senate bills. However, this funding would be provided over seven years, instead of six, in order to satisfy the Administration's core principles that the surplus not be depleted and the spending caps not be reduced.

The President's senior advisers would recommend that he veto a conference report that makes available an excessive level of budgetary resources if financed by spending the surplus, by reducing the domestic discretionary caps, by using unacceptable offsets, or by forcing cuts in domestic priorities. We would also recommend veto of a conference report that skews transportation priorities.

We need final action now on this critical legislation. The Administration strongly urges the conferees to seriously consider the framework discussed in this letter, which would ensure stable funding for surface transportation, in a manner that is both fiscally responsible and consistent with the President's pledge to save Social Security first.

Sincerely,

Franklin D. Raines
Director

Attachment

Identical Letter Sent To:

The Honorable Bud Shuster
The Honorable James Oberstar
The Honorable Tom Petri
The Honorable Nick Rahall
The Honorable John Chafee
The Honorable Max Baucus
The Honorable John Warner
The Honorable William Roth
The Honorable Daniel Patrick Moynihan
The Honorable Alfonse D'Amato
The Honorable Paul Sarbanes
The Honorable John McCain
The Honorable Ted Stevens
The Honorable Ernest Hollings
The Honorable Pete Domenici
The Honorable Frank Lautenberg
The Honorable Tom Bliley
The Honorable George Brown
The Honorable John Dingell
The Honorable Jim Sensenbrenner

Surface Transportation Reauthorization Funding
Comparison of Congressional and Administration Proposals
(Mandatory and Discretionary $ in billions)

	1998	1999	2000	2001	2002	2003	2004	1998-2003 Total	1998-2004 Total
President's Budget									
BR	28.0	27.8	27.7	27.7	27.7	27.6	27.7	166.5	194.2
OL	26.5	27.3	27.7	27.8	28.0	28.1	28.1	165.4	193.5
Highway/Safety									
BR	*23.1*	*23.0*	*22.9*	*22.9*	*22.8*	*22.8*	*22.8*	*137.6*	*160.4*
OL	*22.3*	*23.3*	*23.4*	*23.3*	*23.2*	*23.1*	*23.2*	*138.7*	*161.9*
Transit									
BR	*4.8*	*4.8*	*4.8*	*4.8*	*4.8*	*4.8*	*4.9*	*28.7*	*33.6*
OL	*4.2*	*3.9*	*4.3*	*4.5*	*4.8*	*4.9*	*4.9*	*26.5*	*31.4*
HR 2400, BESTEA									
BR	29.3	35.0	38.9	38.8	38.9	38.8	–	219.7	–
OL	26.6	28.8	32.9	35.7	37.2	37.9	–	199.1	–
Highway/Safety									
BR	*24.5*	*29.0*	*32.5*	*32.4*	*32.4*	*32.4*	–	*183.0*	–
OL	*22.4*	*24.9*	*28.2*	*30.5*	*31.2*	*31.6*	–	*168.8*	–
Transit									
BR	*4.8*	*6.0*	*6.5*	*6.5*	*6.5*	*6.5*	–	*36.7*	–
OL	*4.2*	*4.0*	*4.7*	*5.3*	*5.9*	*6.3*	–	*30.3*	–
S 1173, ISTEA2									
BR	27.8	36.7	37.4	38.0	38.7	39.5	–	218.0	–
OL	26.4	29.4	33.4	35.5	36.9	38.0	–	199.6	–
Highway/Safety									
BR	*22.9*	*29.8*	*30.4*	*30.9*	*31.4*	*32.0*	–	*177.5*	–
OL	*22.3*	*25.3*	*28.4*	*29.7*	*30.4*	*31.0*	–	*167.1*	–
Transit									
BR	*4.8*	*6.9*	*7.0*	*7.1*	*7.3*	*7.5*	–	*40.5*	–
OL	*4.2*	*4.1*	*5.0*	*5.7*	*6.5*	*7.0*	–	*32.5*	–
Offer									
BR	28.0	27.8	27.7	32.1	33.8	34.4	35.1	183.8	218.9
OL	26.5	27.3	27.7	28.7	30.8	32.5	33.5	173.4	206.9
Highway/Safety									
BR	*23.1*	*23.0*	*22.9*	*26.0*	*27.4*	*27.9*	*28.4*	*150.3*	*178.8*
OL	*22.3*	*23.4*	*23.4*	*24.1*	*25.6*	*26.8*	*27.4*	*145.7*	*173.1*
Transit									
BR	*4.8*	*4.8*	*4.8*	*6.1*	*6.4*	*6.5*	*6.7*	*33.5*	*40.1*
OL	*4.2*	*3.9*	*4.3*	*4.6*	*5.1*	*5.7*	*6.0*	*27.7*	*33.8*

THE WHITE HOUSE

WASHINGTON

'98 MAY 14 PM3:00

May 14, 1998

MEMORANDUM FOR PHIL CAPLAN
ASSISTANT TO THE PRESIDENT
AND STAFF SECRETARY

FROM: DAN BURKHARDT
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR OF CORRESPONDENCE
AND PRESIDENTIAL MESSAGES

SUBJECT: AUTOPEN AUTHORITY

I would like to request your approval of autopen authority for the following individual in the areas of responsibility noted:

Delia Cohen — in accordance with approved procedures for correspondence not involving policy matters; for correspondence that involves policy matters, after clearance by the Staff Secretary and/or relevant policy office(s); for VIP personal correspondence; for photographs; and for Presidential messages in accordance with approved procedures.

If you agree that Delia should be granted autopen authority, please indicate that below, initial the attached memo, and return this package to me. I will pass along the original of the attachment to Terry Good. Thanks.

OK APPROVED ________DISAPPROVED ________DISCUSS

5-14-97

Enclosure

THE WHITE HOUSE

WASHINGTON

May 14, 1997

MEMORANDUM FOR TERRY GOOD
DIRECTOR
OFFICE OF RECORDS MANAGEMENT

FROM: PHIL CAPLAN Phil
ASSISTANT TO THE PRESIDENT
AND STAFF SECRETARY

SUBJECT: APPROVAL OF PRESIDENTIAL SIGNATURES

The following individual is authorized to approve use of the President's signature pen in the areas of responsibility noted:

Delia Cohen — in accordance with approved procedures for correspondence not involving policy matters; for correspondence that involves policy matters, after clearance by the Staff Secretary and/or relevant policy office(s); for VIP personal correspondence; for photographs; and for Presidential messages in accordance with approved procedures.

Exemplar of the sign-off that Delia will use follows. Thank you.

Delia Cohen

DC