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Subject: Pending Issues 6-8
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Attached is the Pending Issues document for June 8, 2005.

June 8, 2005

MEMORANDUM FOR ANDY CARD, KARL ROVE, JOE HAGIN, and MIKE GERSON

FROM: KRISTEN SILVERBERG, BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

CAFE Reform. Deputies met tonight to poll EOP offices on their positions on CAFE in preparation for a Principals meeting tentatively scheduled for Monday and Policy Time scheduled for Wednesday. DPC, OMB, WH Comm, WH Press, CEA, and CEQ support DOT's reform proposal (some with modifications); OVP and WH Counsel support a two track approach in which the proposed rule would solicit comments on both the DOT reform proposal and on a three-year freeze of CAFE standards. WH Leg did not take a substantive position, but did express concern that a proposal could interfere with the Energy bill and therefore want the group to be sensitive to timing. NEC was not represented but will be consulted tomorrow.

DHS Reorganization. Sec. Chertoff and Dep. Sec. Jackson briefed EOP Principals on elements of their "second stage review" of departmental operations, with a particular focus on a significant reorganization of the current structure. Questions were raised about the number of operational agencies that would become direct reports, the relationship between IA and IP, and rollout strategy (including timing, budget/interaction with appropriators, use of reorganization authority versus legislation, communications issues). HSC will arrange follow-on briefings for the Chief of Staff and the President in the near future, and will coordinate further work on rollout and implementation issues.

School Choice. DPC and Education had policy time with the President to discuss school choice. The President made it clear that he favored a non-entitlement Pell type grant to high school students, and DPC and the Department will be working together to develop a program that meets the President's specifications.

Farm Bill. Policy staff from OVP and OMB met yesterday with Sec. Johanns to discuss the Farm Bill. The Secretary will give a speech in Illinois on June 16 to the Future Farmers of America, kicking off a national listening tour and laying out six topic areas for Farm Bill Reauthorization. The President may presage the Secretary's speech in a speech to the FFA on June 14. Johanns is interested in eventually proposing specific legislative language. OMB thinks he has laid out a good agenda and puts the Administration in an excellent position to lead on the Farm Bill debate.

Judges. Janice Rogers Brown's nomination to the DC Circuit Court of Appeals was approved by a vote of 56-43. All Republicans voted for Brown, plus Sen. Nelson.

Other Issues

- Airline Pensions (Sharp/DPC; Hook) -- Senator Grassley held a hearing on 6/7 to examine defined benefit pension underfunding. The hearing was precipitated by United's successful pension termination last month, which left the Federal government on the hook for \$6.6 billion in benefits payments to workers. The hearing focused both on structural reforms to the pension funding rules and possible relief specifically for airlines. The CEOs of Delta and Northwest airlines both testified that their pension payments may drive them into bankruptcy without legislative relief. Senator Grassley said, "The facts are alarming. The time to act is now. Tinkering with the current rules won't do."
- Amtrak (Sharp/DPC; Hook) – DPC hosted a conference call with DOT to discuss appropriations strategy on Amtrak. Next Wednesday, House Transportation Approps Subcom Chairman Knollenberg plans to mark up his bill, and he has asked the Administration to present reforms that could be included in the approps bill in the (likely) event a comprehensive reform bill does not pass. Secretary Mineta will meet with the Chairman this evening to discuss elements of the Administration's reform proposal that could be added through the Appropriations process, but will not commit the Administration to any level of funding Knollenberg may propose.
- Appropriations (Kaplan/OMB; Silverberg) – The House has passed Energy & Water, Homeland Security, Interior, and Mil Quality of Life.
- Asbestos (Ho/DPC; Hook)
- Avian Flu (DPC; Katz) -- WH staff met last week with HHS to discuss a funding strategy for vaccines and antivirals for FY05-FY07. HHS proposes to buy as much vaccine as can be produced in FY06 and FY07. By the end of FY07, HHS would have 20 million courses of antiviral and 20 million of vaccine. HHS is still working on the funding proposal which they will share and discuss with WH staff on Wednesday.
- Byrd Amendment (Daly/NSC; Katz) – The Administration supports repeal, although congressional support for full repeal is unlikely. NSC and Treasury are reviewing other possible legislative approaches.
- CFIUS (Russell/NEC; Katz) – Deputies met and approved agencies initiating negotiations with the Company. Deputies plan to meet again to follow-up on the negotiations.
- Civil Service Reform (Sharp/DPC; Silverberg)
- Clear Skies (Cooney/CEQ; Hook) – At a House Energy and Commerce Air subcommittee hearing, Connaughton and Holmstead agreed to provide some of the modeling requested by Senator Carper.
- Community College Initiative (Sharp/DPC; Hook) – DOL has sent out the first of two solicitations for grant applications (SGA) for the \$125 million in community college grants. The SGA allowed only community colleges to apply for funding. Chairman Regula believes that other entities, including workforce investment boards and one stop centers, should also be eligible for grant money. DPC is discussing with OMB and DOL the possibility of configuring the second SGA to permit such grants beyond community colleges.
- Cooperative Conservation event (Pinero/DPC; Hook) – CEQ is on schedule for a three-day conference at the end of August in St. Louis.
- Corporation for Public Broadcasting (Russell/NEC; Katz)
- Crime/Guns/Lautenberg (Ho/DPC; Hook) – DOJ/OLP formed a study group with the FBI to review the GAO report. The OLP group has developed its recommendations, which are

currently before the AG. DOJ is recommending administrative and legislative changes. DPC will review them in the near future.

- Democracy Fund (OMB; Silverberg) -- At last September's UNGA, the President called for establishment of a UN Democracy Fund to help establish institutions in emerging democracies. He committed to make an initial contribution and challenged other countries to contribute as well. We have not yet identified funds from the '05 budget for reprogramming. OMB is discussing options with the State Department.
- *Digital Television (Russell/NEC; Katz) – Deputies met today and discussed: 1) should the Administration publicly support a hard date for a transition from analog to digital television; and 2) do we support some sort of a subsidy to low income Americans who will have their analog TVs become obsolete once the transition takes place. There was agreement that we will not publicly call for a specific hard date, but that we quietly share with the Hill our preference for a hard date of July 2009. There were concerns expressed about a subsidy, but if a subsidy were to be included a discussion centered around limiting its cost. Deputies will reconvene in the near future.*
- *Drug Reimportation (Leggitt/DPC; Katz) – DPC hosted a meeting with FDA and HHS staff to discuss strategies for dealing with potential legislation on the Hill. A growing number of cities and states are passing laws to allow for the importation of drugs from Canada. DPC and WHLA plan to go to the Hill on Friday to meet with leadership staff on Senate HELP regarding importation.*
- EEO-1 (Sharp/DPC; Hook) – EEOC gave us a cost estimate of compliance with the proposed new form. OIRA is working with EEOC to confirm the numbers. DPC and OMB met Friday with EEOC and asked EEOC to revise their cost estimates based on concerns OMB has raised about their assumptions. Once completed, DPC will meet with Barry and others to review the numbers.
- EEOC Definition of “Applicant” (Sharp/DPC; Hook) – DOL has informally submitted an NPRM and will formally submit in the next week or two.
- Economic and Community Development (Halaska/DPC; Hook)
- Endangered Species Act (CEQ; Silverberg) – On 6/3, DPC hosted a deputies meeting with Interior officials to discuss our strategy on ESA. The decision was made to put administrative reform on hold pending legislative reform attempts this session. If the Hill makes no progress, as is anticipated, then the Administration will consider administrative reform proposals. Deputies encouraged Secretary Norton and DOI to speak more publicly on the issues surrounding ESA to build support for reform. We will also work with outside groups to do the same.
- Faith Based Initiative (Towey/OFBCI; Hook) - JCT published a report in January proposing twelve measures designed to eliminate fraud and abuse related to charities. OFBCI has concerns that a number of the provisions are unnecessary and would burden charities unfairly. Grassley is pushing to include a number of these provisions in the CARE Act. NEC hosted a meeting with Treasury’s Office of Tax Policy last week to examine the provisions. Grassley’s staff told OLA that they plan to mark up in late June or early July.
- FAA Labor Negotiations (Sharp/DPC; Hook) – On 6/7 FAA briefed DPC and OVP on the upcoming labor negotiations with their air traffic controllers. Since 1998 when the last contract was signed, controllers’ compensation has increased 64% and FAA has seen its management flexibility erode. Unions set staffing levels, control schedules, and restrict the introduction of new technologies. FAA is looking to bring its inherited costs under control and recapture its management flexibility, and will be finalizing its specific pay and

work rule proposals in July for exchange with the controllers' union. DPC will continue to monitor the negotiations.

- FDIC (Warsh/NEC; Katz)
- FMLA (Sharp/DPC; Hook) – On 6/3, deputies reviewed DOL's proposed package of regulatory reforms to the FMLA. Deputies support most of the reforms, but there wasn't agreement to let DOL proceed with draft regs. The regulations would draw intense criticism from employer and women's groups, and some question the commitment of the employer community to fighting legislative attempts to undo the regulations. DPC will convene a principals meeting in the coming weeks to develop a recommendation on FMLA reform.
- GSEs (Warsh/NEC; Katz) --
- G-8 (Shirzad/NSC; Silverberg) –
- Head Start (Halaska/DPC; Hook) – The bill was marked up by Enzi's committee on 5/25. DPC and OLA have serious concerns that the policy does not contain enough reform, and the authorization levels are far above what was in our budget. The committee does plan to continue working and will offer another manager's amendment on the floor, but OLA doesn't hold much hope that we will get what we want.
- Health IT (NEC; Katz) -- We hope to have the draft AHIC charter from HHS by the end of the week. We plan to put the charter through staffing.
- Helping America's Youth Initiative (Medina/DPC; Hook)
- *Highway Bill (McMillan/OMB; Silverberg) – Sec. Minetta sent a letter today to Chairman Inhofe and conferees restating our veto threat and expressing our specific concerns with the bill.*
- Indian Trust/Cobell (Ho/DPC; Hook) – DPC will host a deputies meeting on Friday to discuss draft principles for resolving Indian trust challenges. DOI is proposing legislation to allow it to buy out Indian lands using a loan from Treasury. Treasury would be paid back over 50 years from proceeds from the land. DOJ, DOI, and Treasury planned to submit a formal proposal to OMB on 6/2. Senator McCain is very focused on the issue and is expected to introduce legislation soon.
- Job Training Reform (Sharp/DPC; Katz) – The Senate is hoping to schedule floor time on WIA in June or July. The bill does not include our reforms and has bad religious hiring language.
- Medical Liability (Ho/DPC; Silverberg) - House Democrats Baird, Moran and Ruppertsberger introduced medical liability legislation on 5/25. Their bill would cap non-economic damages at \$800,000 and allow that figure to fluctuate with inflation.
- Medicaid Commission (NEC; Katz) -- HHS has submitted its proposed members to the WH. Barry plans to call HHS today to communicate WH concerns over the list's current state.
- Medicare Drug Implementation (Jackson; Katz)
- *Methamphetamine (Ho/DPC; Katz) -- DPC is working to reach a compromise acceptable to HHS, DOJ, and ONDCP. In addition to quantity-of-purchase restrictions, DOJ supports treating pseudoephedrine as a Schedule V-like drug and restricting sales to pharmacies -- as the proposed Talent-Feinstein bill would do. HHS had strong concerns with this proposal regarding availability of widely used pseudoephedrine products. A potential middle ground would require pseudoephedrine products to be held behind store counters, but not limit sales to only pharmacies. A Senate hearing on the subject is set for June 28th. We hope to get this by the end of the week but if a compromise is not reached then we will convene Principals.*

- *Native Hawaiians (Ho/DPC; Silverberg) – The Republican Policy Committee issued an internal memo yesterday announcing a forthcoming policy paper that will urge opposition to the Native Hawaiian bill. According to Leadership staff, a vote on the bill is likely in July. Senator Kyl will not block a floor vote on the bill, though he will oppose it. OMB believes strongly we should go on record with Administration concerns; OPA believes strongly we should weigh in only if necessary. We have asked OMB to draft a views letter, and will solicit Principals' views once the draft is prepared. DOJ briefed Senator Coburn's staff on Friday.*
- NCLB (Medina/DPC; Hook)
- Northwest Airlines Mechanics Negotiations (Sharp/DPC; Hook) -- Northwest Airlines has asked the National Mediation Board (NMB) to release them from mediation. If the NMB agrees that negotiations with the Aircraft Fraternal Mechanics Association have reached impasse, a vote to release the parties will trigger a 30-day cooling off period, following which the union may strike or the airline may lock out workers. The President can convene a Presidential Emergency Board to temporarily avoid a work action and attempt to broker a settlement. The NMB will meet with the union in the coming weeks to determine if an impasse has been reached.
- "Open Loop" Technology (Hannegan/CEQ; Katz)
- Personal Stockpiles (Rapuano; HSC; Silverberg) – HHS has prepared a proposal, which Secretary Leavitt will briefly discuss at the HSC Principals meeting.
- Postal Reform (Sharp/DPC; Hook) –
- Protection of Lawful Commerce in Arms Act (Ho/DPC; Hook) -- House Judiciary Committee reported the bill last week. There is some discussion that the House may wait on a vote and let the Senate act, but there is also a possibility that the House will have a vote after recess.
- Real Estate Settlement Procedures Act (Halaska/DPC; Katz) - Secretary Jackson will begin outreach to solicit public reaction to various options (including the rule we considered in 2004).
- Secure Flight (Sharp/DPC; Hook) – TSA is expecting to issue an Interim Final Rule in mid-June compelling airlines to submit their passenger manifests.
- Steroids (Ho/DPC; Hook) – Chairman Davis's "Clean Sports Act" steroids bill passed the House Government Reform Committee. Davis' staff know that we do not support the bill. Another steroids bill is going through the House Commerce Committee. The two panels will consult and possibly combine the two bills.
- Strategic Petroleum Reserve (Hutto/NSC; Katz) - DOE briefed NSC, CEA, OMB and CEQ last week on a model to determine the optimal size of the reserve.
- Tax Reform (NEC; Katz) – The tax reform panel was planning on issuing a report at the end of July. Karl has asked that they wait to issue the report until September.
- *TRIA (Warsh/NEC; Katz) – NEC Principals convened today and agreed on offering two recommendations to POTUS at policy time on the 23rd: 1) TRIA could be terminated at year end without negatively impacting the macro economy; or 2) if, according to WHLA, a TRIA extension in some form is inevitable, then the Principals agreed on a paired down TRIA that incorporates several reforms that would in effect halve taxpayer's exposure.*
- Tricare Rx (Leggitt/DPC; Katz) – The Coalition for Government Procurement filed suit against the DOD/VA in U.S. District Court on March 24.

- Union Financial Transparency (Sharp/DPC; Hook) – OIRA has begun its review of the proposed rule and has asked DOL for stronger justification. OMB is working with DOL to improve the rule in anticipation that it will undergo OMB clearance.
- Universal Service Fund (Russell/NEC; Katz) - Following up on the Principals telecom meeting, we are developing options on USF. NEC hosted a meeting on 5/31 where we reviewed options for modernizing USF and ERATE from OMB, CEA, Education and Commerce. PCC plans to meet again on Thursday.
- *Veterans (Leggitt/DPC; Katz) –WH staff hope to have a revised document consisting of answers to a survey that VA sent out to their 21 Veterans Services Networks by tomorrow which we believe will be ok to release. The House VA Committee announced yesterday that they will release the survey as part of a broader hearing to take place in June to discuss veterans' health care modeling. Claude plans to meet Friday with Secretary Nicholson to discuss this and other WH concerns.*
- Voting Rights Act (Ho/DPC; Silverberg) – In advance of the anniversary of the VRA, we will need to settle on policy regarding reauthorization of Section 5. DPC will begin a policy process to resolve the issue.
- VNRs (Brosnahan/WHC; Silverberg)
- Welfare Reform (Halaska/DPC; Hook) – The next extension needs to be passed by June 30, 2005. DPC continues to work with Congress on how best to proceed.