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Attached is the pending issues document for June 9, 2005.

June 9, 2005

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

FROM: KRISTEN SILVERBERG, BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

Appropriations. The Senate Appropriations Committee this afternoon adopted its 302(b) allocations for FY06. They were reported out by voice with surprisingly little discussion. While they essentially hit our top line, there were some major shifts from our request and the House 302(b)s, particularly Defense, which is below our Budget by \$6.3 billion. Labor/HHS/Ed is close to our request and \$1.2 billion below the House; TT/HUD is almost \$1 billion below the House – if you add in the adjustment for IRS tax enforcement, they are about \$500 million below the request; Energy/Water – is about \$1.5 billion above the request (the House was at our request). OMB has heard that the int'l affairs accounts fared better in the Senate than in the House, but cannot confirm that quite yet.

Postal Reform. Chairman Davis has reported his postal reform bill and has been pressing leadership for floor consideration. Leadership has not committed to schedule the bill, mostly in deference to the Administration, but also thanks to complaints from House conservatives. Our next step is to have Claude meet with Davis, Collins, and leadership representatives fairly soon to lay out our framework for moving the bill. It would require any money freed up from escrow or military service to be used to pre-fund health liabilities, ensuring there would be no deficit impact. We would press for additional cost-saving reforms that Davis left out, along with a rate cap, which will go a long way towards getting mailers comfortable. To mitigate concerns about a possible 2007 rate increase, we would signal support for a temporary increase in the Postal Service's borrowing authority. Finally, while we would continue to oppose changes in military service treatment, we may be willing able to accept a compromise on that point (for example, holding them harmless for liabilities that accrued prior to 2003) so long as any windfall goes to further funding of health liabilities. The Senate plans to mark up its bill June 22.

Judges. Tonight, the Senate confirmed the following circuit court nominees:

Bill Pryor (11th Circuit): 53-45-2

- Democrats voting for: Nelson (NE) and Salazar
- Republicans voting against: Chafee, Snowe, and Collins

Richard Griffin (6th Circuit): 95-0

David McKeague (6th Circuit): 96-0

Immigration. At Policy Time today it was agreed that DHS will brief the President this Monday with maps showing the staffing and technology that DHS proposes to use at the SW border to achieve operational control.

Other Issues

- *International HIV/AIDS (Thompson/DPC; Hook) -- Labor-HHS Approps Subcommittee Chairman Regula suggested that the Labor-HHS bill not instruct NIH to transfer the \$100m that is HHS' portion of funding for the Global Fund. NIH could still transfer the money but it would no longer be required. Regula told the Subcommittee Members that he would like to provide the \$100m for the Global Fund, but if NIH's allocation drops from last year an off-set will be necessary in order to instruct that the money be transferred to the Global Fund. OMB thinks NIH's allocation will not drop but they are working with Legislative Affairs to get more information.*
- 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.
- Appropriations (Kaplan/OMB; Silverberg) – The House has passed Agriculture, Energy & Water, Homeland Security, Interior, and Mil Quality of Life.
- Asbestos (Ho/DPC; Hook)
- Avian Flu (DPC; Katz) -- Avian Flu (Leggitt/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 sent a new funding proposal to OMB today which OMB plans to review.*
- 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) – CFIUS (Russell/NEC; Katz) – Deputies met on 6/8 and approved agencies initiating negotiations with the Company. Deputies plan to meet again on Monday 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) – Today Chairman Regula marked up the Labor HHS Approps bill in subcommittee and included a provision to rescind \$125 million in FY 2005 community college grant funds. He would use the rescission to fund an equivalent program in FY 2006. DOL has already sent out a Solicitation for Grant Applications asking for funding proposals for community college grants. The first round of funding is scheduled to go out next month. This funding will not be affected by the rescission because the Approps bill will not yet be enacted. However, DOL had scheduled a second round of grants for the Fall that may be affected. The Chairman is unhappy with the way DOL has constructed the grant program this year. He believes that workforce investment boards and one-stop career centers should be eligible for these funds, but we have always viewed this program as community college specific.*
- 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.
- DHS Reorganization (McMillin/OMB; Hook) -- 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. 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.
- Digital Television (Russell/NEC; Katz) – Deputies met on 6/7 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) – Today DPC with Leg Affairs and HHS Senior Staff discussed a strategy for discussions w/Senate HELP staff tomorrow. The overall strategy surrounding importation will be to reemphasize the Administration's strong concerns regarding safety issues associated with importation and advise that any prospective legislation on importation, although unlikely to satisfy the Administration's concerns, must be narrowly tailored to the limited context referenced in the December 2004 HHS task force report. We will also advise that they should seek technical assistance from HHS, if needed.*
- 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.
- *FDA (Levin/DPC; Katz) -- The House voted last night 218-210 on an Ag Approps amendment to prohibit scientists and physicians serving on FDA drug approval panels from holding a financial interest in the drugs on which they take action.*
- 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) -- HHS expects to get us the AHIC charter by tomorrow. We plan to put the charter through staffing.*
- Helping America's Youth Initiative (Medina/DPC; Hook)
- Highway Bill (McMillan/OMB; Silverberg) –
- 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 have submitted principles for reform 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 Ruppersberger 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) -- NEC hosted a call with HHS to discuss next steps. HHS plans to informally submit a complete list of proposed members to the WH tomorrow*

for review. As part of the list we have asked that HHS include their reasoning for proposing each member as well as specific areas where they expect certain members to differ.

- *Medical Device User Fee and Modernization Act (Leggitt/DPC; Katz)* - OMB and DPC have extensively reviewed FDA's justification for MDUFMA fee revenue scenarios. We are comfortable with HHS negotiating a fee revenue increase between 4.5% and 9%. Keeping these levels in mind, negotiations should not result in a termination of the program, even if temporarily. Moreover, RIFs are not an option within these funding levels as well.
- 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 plan to convene Principals next week to discuss a potential compromise.

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- Native Hawaiians (Ho/DPC; Silverberg) -- 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. DPC is hosting a deputies meeting tomorrow.
- 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.
- 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)* - HUD has been reaching out to the Hill and relevant committees, explaining their thinking and a process for moving forward.
- School Choice (Troy/DPC; Hook) -- The President said at policy time that he favors a non-entitlement Pell type grant to high school students. DPC and the Department will be working together to develop a program that meets the President's specifications.

- 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 will issue a press release tomorrow that is in WH clearance announcing that the SPR fill will be complete in August at 700 million barrels.
- 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)* - NEC hosted a PCC met today following up on the Principals telecom meeting and they are developing options on USF.
- *Veterans (Leggitt/DPC; Katz)* – WH staff hopes 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 fine to release as part of a House VA Committee hearing that they announced Tuesday. The hearing will take place in June to discuss veterans' health care modeling. Claude plans to meet tomorrow 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.