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**Subject:** Night Note 8/18

**Sent:** Thu, 18 Aug 2005 20:59:14 -0500

[Pending Issues 8-18.doc](#)

[POLICY TIME CALENDAR- 8-18.doc](#)

Attached are the Pending Issues for August 18, and the Policy Time Calendar.

August 18, 2005

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

FROM: BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

**Avian Flu.** Today, HHS agreed to a contract with Sanofi Pasteur, a French pharmaceutical company, for vaccine procurement as agreed to at the policy time meeting on July 29<sup>th</sup>. HHS assured us the agreement would be signed tonight, but reported late tonight that the agreement will be signed tomorrow. The CoS at HHS said that Sanofi has assured us there will be no delay in production, which is expected to begin September 6.

**Medicaid Clawback.** Governor Perry is attempting to organize a multi-state lawsuit against the Administration concerning our Medicaid clawback policy. Perry invited all of the nation's AGs, Governor's Policy Directors, and DC Directors to attend a meeting that Perry's Attorney General will host tomorrow in Washington. They will discuss whether our policy is constitutional. IGA does not know who has agreed to participate in the meeting. IGA and CMS offered Administration participation at the meeting and the Governor's office declined. Leavitt called Perry late this afternoon but was not able to reach him. Leavitt hopes to speak to Perry tomorrow.

**Native Hawaiian.** DOJ staff met on Tuesday with Hawaii delegation staff, which accepted almost all of our proposed changes. There is still an unresolved issue concerning consultation obligations imposed by the bill on DOD, but DOJ hopes to resolve that issue with staff today or tomorrow. At the meeting yesterday, Ben Ginsberg pressed for some public acknowledgement that these issues are now resolved, such as a follow-up letter to Senator McCain to supplement DOJ's previous views letter. DOJ staff were noncommittal, and responded that the issue would need to be discussed internally. We are against issuing any follow-up letter, which we will communicate to the delegation next week. Additionally, NPR's *Morning Edition* on Tuesday ran a feature on native Hawaiians, and they quote Sen. Akaka saying that his bill could lead to independence or secession for the State of Hawaii. Akaka claims he was misquoted (which he may have been after reviewing the transcript), and he released a statement this afternoon that he does not support independence or secession.

**Indian Trust/Cobell.** DOJ filed a brief yesterday seeking to have Federal District Judge Royce Lamberth removed from the case because of "legal errors and unconventional case management." In its brief, DOJ asked the Court of Appeals for the D.C. Circuit to order the change, saying that Judge Lamberth had made "gratuitous" references in a ruling last month to murder, dispossession, forced marches, and other incidents of cultural genocide against Indians. Secretary Norton had been advocating this approach for months to the Attorney General, and Lamberth's recent ruling convinced DOJ that the request for removal is appropriate.

### Other Issues

- Administrative Reform (Noe/OMB; Hook) -- OMB/OIRA and OMB/OGC have developed a package of administrative reforms of the regulatory review process, including amendments to Executive Order 12866 and an OMB Bulletin on good guidance practices.
- *Airlines/Northwest (Sharp/DPC; Hook) -- At 12:01 am on Saturday morning, Northwest's mechanics may go on strike. Northwest has spent several months preparing for a walkout (lining up contract mechanics) and believes it will continue to fly relatively uninterrupted. Northwest does not expect its other unions to honor the mechanics' picket lines. The National Mediation Board is overseeing talks between the airline and the union in the days leading up to the deadline hoping to broker an agreement and avoid a strike.*
- *Airlines/US Airways/America West Merger (Sharp/DPC; Hook) -- On 7/22, the Air Transportation Stabilization Board (ATSB) approved the merger deal. The ATSB reviewed the merger application because both airlines have outstanding loans with the ATSB. Recently the Department of Justice cleared the merger as well. US Airways' bankruptcy judge and the Department of Transportation must now sign off for the merger to go through.*
- *Amtrak (Sharp/DPC; Hook) -- Senator Commerce passed out of committee its Amtrak bill on 7/28. The six-year bill would authorize \$11 billion in capital/operating spending and debt restructuring and make modest reforms designed to improve efficiency and service. Overall the bill falls far short of the Administration's vision for comprehensive Amtrak reform, but does incorporate small elements of DOT's proposal including limited introduction of competition, Federal/state capital grants, and performance standards for long-distance routes. Senator McCain is our best Amtrak critic on the committee.*
- Asbestos (Ho/DPC; Hook)
- *Aviation system challenges (Sharp/DPC; Hook) -- DPC recently convened a working group (DOT, CEA, OMB, OVP) to discuss proposals for revamping the tax and fee structure that pays for airport improvements and our air traffic control system, rationalizing the process for allocating take off and landing slots at the most congested airports, and increasing U.S. airlines' access to global capital. DOT is developing both legislative and regulatory changes in these areas changes in preparation for the FY 2007 budget and for reauthorization of the FAA. We expect to be briefed on the foreign investment proposal in about two weeks and the tax and fee proposal in mid-September.*
- Brazil Compulsory Licensing of HIV/AIDS Drugs (Hunter/NSC; Katz)
- *BSE (Sommers/NEC; Katz) - Yesterday, USDA learned that a Canadian veterinarian falsified the records of three animals that were over 30 months old. These animals entered the U.S. August 3, were slaughtered, and processed. There is no reason to believe they are tainted animals. When the Canadian border reopened to cattle trade, only cattle under 30 months old were determined eligible to enter the U.S. (The 30-month limit exists because that is the point at which BSE, if present, is likely to be found.) USDA is determining what actions to take, but it will probably involve a very small recall.*
- *CAFE (Sharp/DPC; Hook) -- OMB expects to clear DOT's draft CAFE reform regulation in the next few days for notice and comment. The final rule must be published by April 2006, to allow 18 months before the beginning of Model Year 2008.*
- Charitable Choice (Towey/OFBI; Hook)
- *Clear Skies (CEQ; Hook) -- EPA modeling is underway. CEQ plans to brief Senate EPW staff on the modeling details very soon. The outputs are expected in eight to ten weeks.*

- Climate (CEQ; Hook)
- *Community College Initiative* (Sharp/DPC; Hook) – The Senate Labor HHS Appropriations Subcommittee included \$125 million for CCS, which is equal to the House number (we requested \$250 million). *DOL expects to award its first round of FY 2005 grants in October.*
- *Cooperative Conservation Event* (Pinero/DPC; Hook) -- *CEQ expects 1,200 participants (1,100 have already accepted). No governors have accepted, but three mayors, and two senators will attend. Five Secretaries from the named agencies in the EO will each speak. CEQ is working with the agencies on their remarks.*
- *DoD* (Leggitt/DPC; Katz) - DPC, in coordination with WH Communications, Cabinet Liaison and NSC, convened a meeting Tuesday with DOT, DOJ, DOC, DHS, State, HHS, DOD, USDA, VA, Treasury and DOL to discuss current benefits provided to the service members returning from Operation Enduring Freedom and/or Operation Iraqi Freedom and their families. This meeting also covered prospective new initiatives that the Administration could undertake in this area. The goal is to have a comprehensive list by the end of the week for WH Communications, as well as to continue to develop new policy initiatives ready for the fall. *DPC and NSC will meet with Communications tomorrow to review the information submitted and determine next steps.*
- Drug Reimportation (Leggitt/DPC; Katz)
- Economic and Community Development (DPC; Hook) – Senate Commerce-Justice-Science Appropriations Subcommittee did not adopt on 6/21 the Strengthening America's Communities Initiative, as we expected.
- Education (DPC; Hook) – On 7/22, the House Education Committee approved the College Access & Opportunity Act, to reform and strengthen federal student aid and higher education programs, adding new options for student loan borrowers, greater accountability to empower consumers, and refocusing the law back to its original mission by expanding college access for low- and middle-income students.
- EEO-1 (Sharp/DPC; Hook) – DPC has received cost estimates from EEOC. DPC, OMB, and Barry met recently with EEOC officials to discuss policy options given the revised cost estimates.
- Endangered Species Act (CEQ; Hook)
- EEO-1 (Sharp/DPC; Hook) -- DPC, OMB, and OPA agree that the high implementation costs associated with expanding race and ethnicity reporting requirements for Hispanics and Latinos are not offset by any increased enforcement benefits. Therefore, the group agrees that EEOC should proceed with its proposed changes to the EEO-1 form that comply with OMB's standards without requiring these additional costly data points for Hispanics and Latinos.
- EEOC Definition of "Applicant" (Sharp/DPC; Hook) -- Currently, EEOC requires companies to keep records all job applicants. In the Internet age, companies like Monster.com can flood a company with resumes, making compliance very burdensome. DOL formally submitted on 6/5 a draft final rule to OMB that modifies job applicant recordkeeping requirements. DOL's rule would narrow the definition of an "applicant" to filter out applications from individuals that do not meet minimal qualifications for the job.
- FAA Contract Negotiations (Sharp/DPC; Hook)
- *Faith Based Initiative* (Towey/OFBCI; Hook) – *HHS and USDA are drafting a guidance letter for States allowing food stamp recipients to use food stamps while getting treatment at a faith-based treatment provider. The action is prompted by complaints from Bob Woodson that States are denying food stamps to people who get treatment at faith-based*

*providers, a problem created by a combination of Federal statutes and States' flexibility in applying the statutes. Woodson was threatening a press release critical of the Administration, but he has agreed to hold off to see how we respond.*

- FDIC (Warsh/NEC; Katz)
- Federal Sentencing Guidelines (Ho/DPC; Hook)
- Fiduciary Duties of Union Officials (Sharp/DPC; Hook) -- DOL has formally submitted to OMB clearance a request for information regarding the fiduciary duties of union officials under the Labor Management Reporting and Disclosure Act.
- Florida Everglades (Hannegan/CEQ; Hook)
- FMLA (Sharp/DPC; Hook) – Barry recently met with Secretary Chao. She made the case for moving the FMLA rule. Barry told her he didn't think there was a policy disagreement, only tactical on timing and up front support from the Hill and business community. Additionally Barry told her we've asked the coalition to round up signatures calling on DOL to issue the rule, focusing on labor Republicans, to set the table for the rule and more importantly, to ID members who will stand with us on another approps rider fight. Barry recommends we hold on the rule until we see what names the coalition is able to come up with in a public fashion and then make sure OLA feels those names demonstrate the right amount of assistance from the Hill to charge into this fight. Assuming we get satisfactory info, DPC plans to tee up a principals' meeting for September.
- The Global Fund (Thompson/DPC; Hook) - By law, the United States cannot contribute more than 33 percent of total contributions to the Fund at any one time. Each year, on July 31, the United States calculates the amount of contributions received by the Fund from other donors in order to determine the amount the U.S. is legally allowed to contribute. For FY 2005, the Global Fund has received enough contributions from non-U.S. donors for the U.S. to contribute the full \$435 million appropriated by Congress. However, the Global Fund must meet other requirements to be eligible for the full U.S. contribution. Twenty-five percent of the appropriation must be withheld until the Secretary of State certifies that the Global Fund has made progress in operational areas including support for country-level bodies, coordination of technical assistance, and the establishment of an independent Inspector General. The Office of the Global AIDS Coordinator conducted an initial assessment of the Global Fund's compliance with these provisions in July and has said that it expects to make a final judgment later this month.
- GSEs (Warsh/NEC; Katz)
- Head Start (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 (Leggitt/DPC; Katz) - Today we reviewed Secretary Leavitt's AHIC nominations with Karl, and returned the final list of WH approved nominees to HHS. HHS was pleased with the passback, but Secretary Leavitt plans to call Karl tomorrow to raise three issues:*

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- Helping America's Youth Initiative (Medina/DPC; Hook)
- *Identity Theft (Warsh/NEC; Katz)* – On September 1<sup>st</sup> NEC will do a short briefing with the President on ID Theft, followed by a press avail with the President, the AG (task force chair), and FTC Chairman Deb Majores (task force co-chair).
- *Immigration (Ho/DPC; Hook)* -- DPC and OLA met yesterday with Sen. Specter's immigration staffer at her request. She said that Specter may introduce an immigration bill of his own, rather than marking up one of the pending bills in Committee. Also, the Pew Hispanic Center released a survey this week taken among Hispanics in the U.S. and among Mexican citizens about attitudes toward immigration. They found that 56% of U.S. Hispanics favor proposals to create a temporary worker program allowing current illegal immigrants to live and work in the U.S. legally for a number of years before obliging them to return home, while 84% favor proposals that would give illegals permanent legal status here and eventually allow them to become U.S. citizens. The study also found that 54% of Mexicans say they would be inclined to go to the U.S. through a temporary worker program that would require them to return to Mexico in some years, and roughly 70% said their relatives and friends would be interested in participating.
- *Impotence Drugs (Ramthun/NEC; Katz)* - Congress is taking steps to prohibit Medicare/Medicaid funds from paying for such drugs through the appropriations process. We continue to take the position that we should not revisit the Medicare bill, but Congress will likely pass some form of prohibition.
- *Job Training Reform (Sharp/DPC; Katz)*
- *Judicial Security (Ho/DPC; Hook)* – The Justice Department recently forwarded to OMB a spending plan for the \$12 million appropriation provided for off-site judicial security enhancement and for the installation of home alarm systems. The Attorney General was briefed August 15 on a report prepared by a DOJ work group. The Office of Legal Policy will meet with DPC next week to discuss the Justice Department's proposed plan for moving forward with the report's recommendations.
- *MCC (Shirzad/NSC; Katz)* – NSC circulated a draft memo with proposed steps to accelerate the program.
- *Medicaid Commission (Ramthun/NEC; Katz)* – The second meeting of the Commission took place Wednesday and today and had presentations from NGA, CBO and CMS on cost saving options. Other groups also presented ideas. The Commission voted on proposals that will achieve \$11 billion in savings over the next five years.
- *Medicaid Waiver (Ramthun/NEC; Katz)* – Josh had asked for closure on the Medicaid Waiver request for Florida by COB August 17. That has not occurred. On August 16<sup>th</sup> OMB and CMS made a good faith offer to Florida and we have yet to hear back. We hope this can be resolved by the end of next week.
- *Medical Liability (Ho/DPC; Hook)* -- The House on 7/28 passed by 230-194 medical malpractice legislation that would cap pain and suffering awards at \$250,000.
- *Mercury (Stolpe/CEQ; Hook)* – OMB has circulated a draft SAP strongly opposing SJ Res 20, which would disapprove the EPA rule delisting Coal and Oil-directed Units from the CAA Source Category List. The resolution is now on the Senate calendar and can be brought up at any time. The resolution must also be enacted by the House and the President must sign it. The resolution was introduced in the House this week and sponsors are now circulating a discharge petition. House rules require signature by a majority of members on the petition.

- *Methamphetamine (Leggitt/DPC; Katz)* – Today, the AG, Sec Leavitt and Director Walters participated in a cabinet level event on the Administration's efforts to combat meth. Communications reports that the event was a success. Additionally, HHS received a letter from Congressman Souder expressing concern about HHS' participation in a methamphetamine/HIV/TB conference in Utah this Friday, which is sponsored by the Harm Reduction Project. Generally speaking, the HRP advocates needle exchanges, as opposed to going after drug users. HHS is not sponsoring the conference and has asked HRP to remove its name as a sponsor. However, CDC has several employees participating in workshops, moderating discussions, and setting up an information booth. HHS confirms that the CDC information provided at the conference is consistent with Administration policy, and recommends that the CDC employees not be pulled from the conference. IGA contacted Gov. Huntsman's Chief of Staff today and neither he nor the Governor were aware of the content of the conference.
- NCLB (Medina/DPC; Hook)
- *OCS (Hannegan/NEC; Katz)* - Interior intends to move on Monday on publishing its Request for Comments on the 2007-2012 OCS 5-Year Plan, and CEQ has edited for WH review a draft of the notice as well as draft talking points and a press release. DOI will request comment on all OCS planning areas, including those presently under moratoria, based on the OCS inventory requirement in the energy bill and the end of the Presidential withdrawals in 2012. Interior states the President's continuing commitment to the existing moratoria, and notes that we give deference to the rights of States to determine what actions take place off their shores. Interior will also indicate for the first time that the Secretary has no intention to offer for leasing any areas within 100 miles of the Florida coast.
- "Open Loop" Technology (Hannegan/CEQ; Katz) --
- Patriot Act (Mitnick/HSC; Hook) -- DOJ has prepared a draft letter for conferees, which is being circulated informally before submission to Principals or through the LRM process.
- Pensions (Hennessey/NEC; Katz) – The Senate Finance Committee passed the bill by voice vote and it was sent to the Senate floor. Chairman Grassley said the bill is not likely to be taken up until late September and might be rolled into a budget reconciliation package to account in part for probable premium increases charged to companies sponsoring pension plans.
- Personal Stockpiles (Rapuano; HSC; Katz) --
- Postal Reform (Sharp/DPC; Hook) – On 7/27 the House passed the Postal Accountability and Enhancement Act 410-20.
- Project Safe Neighborhoods (Ho/DPC; Hook) -- DPC was briefed on 7/7 by DOJ on internal discussions about retooling Project Safe Neighborhoods (PSN) to focus more on gang prosecution efforts. The change is being considered as a result of both funding problems in Congress, which appears more interested in addressing the gang problem, and (2) internal concern about the continuing viability of the program's metrics, which are now gun-possession prosecutions. Although PSN has posted high increases in such prosecutions every year, DOJ is concerned that the number will naturally begin to fall before too long (as a result of the program's success) and subject PSN to criticism. DPC will convene a larger meeting next week to begin a policy process on the issue.
- Real Estate Settlement Procedures Act (DPC; Katz)
- Ryan White (Thompson/DPC; Katz)
- Secure Flight (Sharp/DPC; Hook) – DHS is planning on issuing an interim final rule this September. DHS will proceed with enrolling initial carriers over the summer and

developing the pilot system. The air carriers asked DHS to delay the issuance of the IFR until after the Labor Day weekend since it is such a heavy travel period.

- Stem Cells (Levin/DPC; Hook) – OMB will respond to a FOIA request from Ceci Connolly for documents relating to “the 60 or more human embryonic stem cell lines that NIH has deemed to be extent and suitable for study by federally funded scientists in this country” and to the development of the August 9, 2001 announcement. OMB will decline to turn over the documents on the ground that they are pre-decisional.
- Steroids (Ho/DPC; Hook) – House Leadership will not move a bill before the recess. The Senate Commerce Committee has indicated they would like to do a steroids hearing in the Fall.
- Tax Reform (NEC; Katz)
- Telecom (Russell/NEC; Katz)
- TRIA (Warsh/NEC; Katz)
- Tricare Rx (Leggitt/DPC; Katz) – Al Hubbard and Josh discussed the potential of use of HSAs as a part of Tricare in order to reduce DoD costs. DPC and NEC will work with OMB to further develop the concept.
- Union Officer Conflict of Interest Reporting, LM-30 (Sharp/DPC; Hook) -- Later this week, OMB will clear a proposed DOL rule that tightens reporting requirements for unions officers to expose and deter any potential conflicts of interest. Given the likely union and media interest in this regulation, DPC hosted a meeting today with relevant EOP offices to discuss the rollout of the rule.
- *Veterans (Leggitt/DPC; Katz) – HVAC Ranking Member Lane Evans has a request concerning slides produced by the Veterans Health Administration’s National Leadership Board relating to VA healthcare budget issues. One of the slides from December 2004 references a \$1.5 billion budget deficit anticipated in FY05. VA indicates that this slide is only a snapshot based on the first month’s expenditures and trends in FY05 and is not intended to be used to suggest a need for increased funding in FY05. WH Counsel has reviewed the request, and indicates there is no legal basis for withholding the documents. VA has prepared a list of Q&As and a transmittal letter, which OMB, Communications, WHC, OLA and DPC have approved. The current plan is that VA will deliver the cover letter and materials to the Hill early next week.*
- Voting Rights Act (Ho/DPC; Hook)
- Vouchers (Pardue/CEA; Hook) -- DPC, OFBCI, OMB and General Counsel met on 7/15 to discuss the expansion and implementation of vouchers in programs across agencies. OFBCI worked with OMB to develop an initial analysis, and DPC will follow up with a secondary analysis and recommendations for specific programs.

## POLICY TIME – AUGUST/SEPTEMBER 2005

SUN	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT
28	29 NO TIME  Congressional Recess	30 NO TIME  Congressional Recess	31 NO TIME  Congressional Recess	1 NO TIME  Congressional Recess	2 NO TIME  Congressional Recess	3
4	5 NO TIME  Congressional Recess	6  NEC: Defining Problem of Health Care Costs (45 min.)	7 NO TIME	8  OMB: Appropriations Briefing (45 min.)	9  DPC: Avian Flu (45 min.)	10
11	12  [45 MINUTES]	13 NO TIME	14 NO TIME	15  [45 MINUTES]	16  [45 MINUTES]	17
18	19	20	21	22	23	24

7/29/2005

**Early September policy times- China Overview; Immigration;**