

From: "Hook, Brian H."
To: "Bennett, Jessica C.", "Hughes, Taylor A.", "Jackson, Barry S.", "Smith, Heidi M.", "Silverberg, Kristen", "Kavanaugh, Brett M.", "West, Christal R.", "Weinstein, Jared B.", "Boyer, Matthew W.", "Kropp, Emily L.", "Katz, Jeremy L.", "Ralston, Susan B.", "Kane, Mary L.", "Hoare, Thomas H."
Subject: Pending Issues 7/28
Sent: Thu, 28 Jul 2005 18:57:44 -0500
[Pending Issues- 7-28.doc](#)

Attached is the Pending Issues document for July 28.

From: Bennett, Jessica C.
Sent: Thursday, July 28, 2005 7:42 PM
To: Hughes, Taylor A.; Jackson, Barry S.; Smith, Heidi M.; Hook, Brian H.; Silverberg, Kristen; Kavanaugh, Brett M.; West, Christal R.; Weinstein, Jared B.; Boyer, Matthew W.; Kropp, Emily L.; Katz, Jeremy L.; Ralston, Susan B.; Kane, Mary L.; Hoare, Thomas H.
Subject: Night Note 7/28

[Pls note- this information is sensitive; eyes only](#)

Attached is the Policy Time Calendar for this month and next, the Working Group Calendar for this week and next, and the Cabinet Member Schedule for the following week. Brian will send the Pending Issues later.

Thanks,
Jessica
x61475

July 28, 2005

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

FROM: KRISTEN SILVERBERG, BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

Avian Flu. DPC led a Deputies meeting this morning with HHS, DHS and DOT in preparation for tomorrow's policy time. They are prepared to update tomorrow, but it will be necessary to have a follow up meeting in early September.

Energy Bill. The House passed the energy bill earlier today by a bipartisan vote of 275-156. The Senate will debate the energy bill tonight (after a vote on CAFTA) under a time agreement with three hours of debate, equally divided. The Senate will vote on the bill in the morning. Sen. Feingold's budget point of order will be raised in the morning (the authorizing portion of the bill scores at \$2.2 billion, higher than the reserve allotted by the Budget Committee of \$2 billion). There will be therefore be two votes in the morning: the first on the budget point of order, which will require 60 votes to defeat, and, if successfully defeated, a second vote on final passage.

Medical Liability. The House passed by 230-194 medical malpractice legislation that would cap pain and suffering awards at \$250,000.

Identity Theft. NEC hosted a Principals meeting today and Principals agreed to having an event with the President centered around the announcement of a task force (which will be done by EO). Dan plans to speak to Andy about timing on the calendar and hopes to do something with the President in August or early September. Principals also agreed it should be co-chaired by the AG and the FTC Commissioner.

Immigration. Karl hosted a bipartisan meeting today in the Roosevelt Room with ten Senators to discuss immigration reform. Steven Law, Michael Jackson, and Roger Noriega briefed them on border security, interior enforcement, the elements of our TWP, and relations with Mexico.

Highway Bill. The House filed its conference report at 7:00 pm. The rule will be done at 8:00, and the bill will be off the floor by 10:30 tonight.

CAFTA. The Senate has agreed to vote on the bill this evening.

Other Issues

- Airlines/Northwest Strike (Sharp/DPC; Hook) – On 7/20 the NMB released Northwest and AMFA from mediation. In 30 days, the mechanics will be free to strike unless the President convenes a Presidential Emergency Board. The Administration has said that the President will not create a PEB because we agree with the NMB that, because of Northwest's contingency planning, a mechanics strike would not have a substantial impact on interstate commerce. Northwest has made plans to outsource heavy maintenance and address day-to-day maintenance through agreements with other carriers, use of management mechanics, and use of trained contingency mechanics. To ensure the transition to outsourced maintenance goes smoothly and safely, FAA will add additional inspectors to monitor Northwest. Northwest also believes, and DOT agrees, that the other unions, particularly the pilots, will not honor AMFA's picket lines because a shutdown may push the carrier into bankruptcy. DOT believes at this time that Northwest's contingency plan is both safe and adequate to ensure continuity of service. Therefore a PEB is not necessary.
- 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 today.* 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.
- *Appropriations (McMillin/OMB/Hook) -- DHS Approps will not likely be voted on before the August recess because conferees are in dispute over the Coast Guard's Deepwater program. The House bill cuts \$466 million from the program.*
- Asbestos (Ho/DPC; Hook)
- BSE (Sommers/NEC; Katz) - We may have another case of BSE. A 12-year old animal died in Oklahoma in April. The veterinarian who treated the cow sent a sample to the Ames, IA lab after a considerable delay. The test was inconclusive. They are re-testing the sample in Ames and will consult with the lab in Weybridge, England. This animal poses no threat to our food supply because it did not enter the human food or animal feed chains. A memo to the President is currently in staffing.
- CAFE (Sharp/DPC; Hook) -- On Monday July 25, OMB formally received DOT's draft CAFE reform regulation. OMB will likely clear it in mid-late August for notice and public 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; Silverberg)
- 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 passed its bill last week and included \$125 million for CCS, which is equal to the House number (we requested \$250 million).
- Cooperative Conservation Event (Pinero/DPC; Hook) -- CEQ expects 1,200 participants (1000 have already accepted). The conference agenda is essentially finalized. CEQ is working with the departments on their planned remarks.
- 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 a bill, 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; Silverberg) – It is being reported that Chairman Pombo is negotiating with Democrats to introduce a rewrite of the Endangered Species Act by the end of this month. Senator Chafee held a hearing on ESA on 7/13.
- 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) – A memo to the President explaining the status of labor negotiations is in staffing.*
- 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's staff may mark up late July.
- FDIC (Warsh/NEC; Katz) – We expect to get word in August from Oxley and Shelby on their negotiation regarding FDIC and coverage limits.
- Federal Sentencing Guidelines (Ho/DPC; Hook) – DOJ provided on 6/5 an informational briefing for DPC and Counsel's office on the legislative fix they are likely to propose to Congress. There is a possibility that Congress may try to enact sentencing reform as early as September as part of a bill on child sex crimes (and not as stand-alone legislation). The Department will keep EOP apprised of its proposal as it develops.

- 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.
- FMLA (Sharp/DPC; Hook) – Senate HELP Committee held a hearing on 6/23 on FMLA. Chairman Enzi called on DOL to examine the definition of “serious medical condition,” the rules on “intermittent leave,” and procedures for employers to “assess the validity of leave requests.” Employee groups and Senator Kennedy strongly oppose any reforms.
- *GSEs (Warsh/NEC; Katz) – The panel approved Banking Chairman Shelby's legislation on an 11-9 party-line vote after rejecting, along party lines, a Democratic-sponsored substitute that had portfolio provisions closer to those in the House bill.*
- Guns (Ho/DPC; Hook) -- On 6/8 the Attorney General approved the roll-out of ATF's decision to stop granting permits for imported replacement gun barrels and receivers, based on an OLC opinion that ATF does not have the statutory authority to issue such permits. The Department began briefing the industry and Congress today on the decision and our willingness to support a legislative fix. The Industry was not surprised. In fact, the NRA began drafting a legislative fix about a month ago.
- Guns/Terrorist Watchlist (Ho/DPC; Hook) – Lautenberg was blocked from offering his amendment to the gun manufacturers liability bill.
- 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) – There were two hearings yesterday in the House Government Reform Subcommittee on Federal Workforce and Agency Organization and the House Ways and Means Committee. Dr. Brailer testified in both and AHRQ Director Caroline Clancy testified in the Gov Reform Hearing. HHS Leg reports that both hearings were well received. The nomination period for the AHIC closes on August 5th. Secretary Leavitt will then brief the WH on their recommendations on August 9th.
- Health Legislation Week (Levin/DPC; Hook) – There has been a lot of action relating to health bills and health week. The Shadegg bill which allows individuals to buy health insurance across state lines hit significant problems in committee, including multiple amendments relating to mandated benefits. There is a meeting tonight among leadership staff to develop a floor strategy. OLA indicates that there has to be a very carefully constructed rule on the floor, otherwise a tough vote gets impossible. The Senate is looking to UC patient safety, Health IT, and MDUFMA this week so the House can complete these bills as part of their health week. OLA notes that Senator Grassley, however, is holding Health IT because he is upset with provisions relating to pay-for-performance.
- Helping America's Youth Initiative (Medina/DPC; Hook) –
- Impotence Drugs (Ramthun/NEC; Katz) - NEC convened an initial meeting with HHS, OMB, CMS, WHL and Communications to discuss our position regarding Medicare and Medicaid coverage of impotence drugs. 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.
- Indian Trust/Cobell (Ho/DPC; Hook) – OMB recently met with the Interior Department to discuss their testimony at the hearing next Tuesday on Senator McCain's bill. Both OMB

and Interior's preliminary assessment of the bill is that it is a great improvement over past legislative efforts, a good starting point, and something that the Administration can work with to achieve final resolution of the Cobell litigation problems. Interior's testimony will not break new ground but will express appreciation for the bill sponsor's efforts and convey the need for a reasonable legislative solution to the litigation.

- Job Training Reform (Sharp/DPC; Katz) – The Senate is hoping to schedule floor time on WIA in July. The bill does not include our reforms and has bad religious hiring language.
- Judicial Security (Ho/DPC; Hook) – DPC hosted a meeting on 6/20 on judicial security. DOJ gave a briefing on the efforts of its own working group, whose report DOJ will circulate informally to EOP shortly. DOJ was asked to prepare forward-leaning options on how to improve the quality of marshals, and the level of security offered to federal judges in general.
- MCC (Shirzad/NSC; Silverberg) – NSC circulated a draft memo with proposed steps to accelerate the program.
- MDUFMA - (Leggitt/DPC; Katz) – The House passed the compromise. The compromise sets a small business threshold of \$100 million with an application fee increase of 8.5%. It also keeps the threshold for a PMA fee waiver for first time applications at \$30 million instead of \$100 million. According to FDA this brings the average fee increase to just over 6% for FY06 and FY07 which had been our goal. The Senate will take it up tomorrow and be ready for the President's signature next week.
- *Medicaid Clawback (Ramthun/NEC; Katz) - Secretary Leavitt, Josh, and Mark McClellan have called Governors from TX, NY, OH, IN, CA, AR, AZ and GA to ask them to identify a high level contact to work with CMS and HHS to get all the facts and determine whether or not there is, in fact, a problem. All the Gobs have agreed to provide a contact except for Gov Perry who still wants more time to think about a point person that we can deal with.*
- *Medicaid Commission (Ramthun/NEC; Katz) – The Medicaid Commission held its first meeting yesterday.*

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Presentations addressed the mechanics of Medicaid financing, and longer-term budget projections and financial instability. The second meeting is tentatively scheduled for Aug. 16-18 and will have a presentation from NGA, among others. NEC has repeatedly communicated to the Secretary's senior staff that Leavitt needs to call Karl to discuss the two remaining openings on the commission reserved for current Governors. HHS informs NEC that Leavitt plans to call Karl next week.

- 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) Communications is working on a set of talkers for the interagency group. They will run be run through the interagency process. DPC will convene a meeting on Monday with DOJ, HHS and ONDCP Communications to set a date for the August cabinet level announcement of regional summits, which will take place in the Fall. There will be four prongs to each regional summit to train and educate law*

enforcement: 1) prevention and treatment; 2) law enforcement; 3) cleanup and environment and 4) consequence for communities (e.g foster children).

- *NASA (Russell/OSTP; Katz) - The Space Shuttle Discovery successfully docked with the International Space Station today and the crew is now onboard the facility. As Discovery approached the ISS, the crew performed a unique "back flip" maneuver that allowed the station's crew to obtain high-resolution imagery of Discovery's under belly. This new imagery should help NASA to assess the safety implications of the chipped thermal tile on the underside of Discovery more conclusively. Thus far, however, all indications are that Discovery is in "good shape." In the meantime, NASA is continuing to study the foam debris problem and maintains that it will not proceed with the next launch (previously scheduled for September 10th) until it has a better understanding of and has worked to solve the problem.*
- *Native Hawaiians (Ho/DPC; Silverberg) -- Frist will file for cloture on the motion to proceed this week. The cloture vote will ripen the first week back in September. We are making progress with the delegation on the liability issue.*
- *NCLB (Medina/DPC; Hook)*
- *"Open Loop" Technology (Hannegan/CEQ; Katz)*
- *Patriot Act (Mitnick/HSC; Hook)*
- *Pensions (Hennessey/NEC; Katz) – On Wednesday, 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; Silverberg)*
- *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.*
- *Protection of Lawful Commerce in Arms Act (Ho/DPC; Hook) – It is still unclear when cloture will be invoked before recess, but the Senate may stay into the weekend to finish the bill.*
- *Real Estate Settlement Procedures Act (DPC; Katz) – Following Hill outreach, Secretary Jackson on 6/27 outlined HUD's plan to have listening sessions and town halls with the industry and the public. Following extensive outreach, HUD will propose a new rule.*
- *Ryan White (Thompson/DPC; Katz) – Yesterday, Secretary Leavitt hosted a meeting with AIDS stakeholder groups to announce the Administration's Ryan White Reauthorization Principles. The Secretary's announcement was followed by a question and answer session with HHS officials. After the meeting, HHS issued a press release and hosted a conference call with the press corps. Several groups have issued positive/supportive statements about the principles and the announcement. On the legislative front, DPC has learned that while not certain, it's likely that Senator Coburn will be introducing a reauthorization bill*

tomorrow. The bill is likely to track closely with the Administration's priorities for Ryan White reauthorization.

- 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; Silverberg) – It is reported that Senate Republicans remain unable to reach agreement to bring a package of bills to the floor. OLA expects the Senate to vote on four bills: 1) The Senate version of the Castle bill; 2) A bill to promote cord blood research; 3) Brownback legislation on cloning; and 4) a compromise approach sponsored by Frist to promote alternative forms of research.
- 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) – Tomorrow Barry is hosting a meeting with Chris Smith, Chief of Staff at Treasury and Jeff Kupfer, Exec Director of the Tax Reform Panel to discuss timing issues.
- Telecom (Russell/NEC; Katz)
- TRIA (Warsh/NEC; Katz) – OLA is arguing that our top litigation priority should be the protection against federal payment of punitive damages. Leslie, Kristen, and Brett think this provision is not very valuable because most punitive damages are uninsurable and wouldn't be paid by the federal government backstop in any event.
- Tricare Rx (Leggitt/DPC; Katz) – The petitioner has not filed a brief that was due on July 8th and instead has filed a request for an extension. The court has not ruled on the request for the extension, but DOJ believes that the Court will grant an additional 40 day extension.
- Union Financial Transparency (Sharp/DPC; Hook) -- DOL will formally submit its revised LM-30 form for OMB clearance.
- Veterans (Leggitt/DPC; Katz) – We are working to collect examples of programs for vets and military families.
- Voting Rights Act (Ho/DPC; Hook) – We are supporting reauthorization and will “work with Congress on proposals to strengthen the Act.”
- 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.