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Subject: Night Note 6/6

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[Pending Issues- 6-6.doc](#)

Attached is the Pending Issues document, with apologies for the delay.

June 6, 2005

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

FROM: KRISTEN SILVERBERG, BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

Immigration. Principals met today and discussed DHS' white paper on border security and interior enforcement. With some minor clarifications, principals agreed to present the plan to the President on Thursday. DPC presented various issues for consideration, and principals accepted the working group's recommendation that TWP workers should be granted a three-year stay, with the potential of one three-year extension, for a maximum of six years; agreed to increase the number of green cards available in both the family and job-based programs by exempting families from the numerical limits; and decided that previous illegal status would not be waived for purposes of adjustment of status.

School Choice. Principals met today with Secretary Spellings in advance of policy time on Wednesday. Margaret will call Chairman Regula tomorrow and review some specific choice programs that we have identified for his possible support. She will brief the President on the results of her conversation. Principals also agreed to give more study to longer term proposals involving Pell Grants for Kids and Title I portability, but to share with the President the direction of our early thinking.

Executive Order to Prohibit Payroll Deductions for Political Activity. Principals met today and decided against a proposal to issue an EO preventing automatic payroll deductions for political purposes, e.g., to prevent Federal employees unions from exploiting the federal payroll system to fund political activities.

FOIA. Senator Cornyn's office has let us know that he with Senator Leahy intend to move one provision of the Senator's Open Government FOIA reform bill that requires any future statute granting a FOIA exemption to cite to that exemption. Harriet hosted a meeting this evening with OMB, OLA, and DOC to discuss our response. While we believe that the proposal is largely benign, the provision has the potential to attract other, more significant changes to FOIA. Harriet would like to phone Senator Cornyn tomorrow and offer to not oppose the proposal in exchange for his assurance that this legislation will not grow beyond the single provision. We are inclined to offer this deal because Cornyn has retreated from his original plan to move Open Government and Faster FOIA.

Outer Continental Shelf. Secretary Norton is planning on calling Karl tomorrow. She is very eager to move forward with their 5-year plan for oil and gas activities on the OCS, and is looking for guidance given her recent conversations.

Patriot Act. Principals met today in advance of policy time tomorrow morning. Principals approved the memo to the President and it went through staffing today. Fran suggested that the AG explain at policy time his "strengthening and clarifying" approach to changes to the PATRIOT Act from his 4/5 SJC testimony.

Other Issues

- Amtrak (Sharp/DPC; Hook) – Sec. Mineta sent a letter to Amtrak President David Gunn on 5/25 warning that the railroad seemed poised to spend more in '05 than it can afford. Secretary Mineta recommended immediate costs cuts and cash conservation to moderate the cash burn rate and prevent a shutdown or government bailout.
- Appropriations (Kaplan/OMB; Silverberg) -- 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.
- CAFE (Connaughton/DPC; Hook) -- DPC convened an internal deputies meeting on 5/31 to discuss fuel standards for light trucks for model year 2008 and beyond. DOT is required by law to establish standards for these vehicles no later than April 1, 2006. Deputies discussed our regulatory proposal to make the standards size based. A number of offices (OVP, CEA, NEC) would like to pursue legislative changes to restructure CAFE entirely. A second deputies meeting will be convened with the relevant agencies before going to principals.
- *CFIUS (Russell/NEC; Katz) – Deputies met today to resolve issues associated with potential mitigation measures that would allow the transaction to go forward.*
- 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.
- Climate Change (CEQ; Hook) – Hagel, Craig and Voinovich will meet to craft a second-degree amendment to Bingaman's proposal to impose a light carbon national cap and trade program.
- Community College Initiative (Sharp/DPC; Hook) – DOL 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.
- DHS Reorganization (Townsend/HSC; Hook) -- Following discussions with Joe, HSC will set up a briefing this week with interested WH offices. We would ask DHS to present the plan to the Chief the following week (after WH offices have resolved or crystallized any disagreements). If the proposal is ready, we would hope to brief the President next week.
- Digital Television (Russell/NEC; Katz) – Chairman Barton has stated that he is committed to seeking a hard date of December 31, 2008 for the transition. Dingell and other D's argued the government should provide free DTV converters to all viewers; Barton suggested he might support a narrowly targeted subsidy instead. He plans to attach legislation to the reconciliation package in September after passing it through Committee.
- Drug Reimportation (Leggitt/DPC; Katz) – DPC hosted a meeting with OMB, OVP, OLA, CEA, Communications, 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.
- 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 Friday, 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.
- FDIC (Warsh/NEC; Katz)
- *FMLA (Sharp/DPC; Hook) – On Friday, deputies reviewed DOL's proposed package of regulatory reforms to the FMLA. The changes would largely help employers better manage unscheduled absences. 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. There are also communications challenges associated with any perceived change to cut back*

FMLA leave. 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 Wednesday. We plan to put the charter through staffing.*
- Helping America's Youth Initiative (Medina/DPC; Hook)
- Highway Bill (McMillan/OMB; Silverberg) – A letter from Sec. Mineta to the highway bill conferees went through staffing on 5/31.
- Indian Trust/Cobell (Ho/DPC; Hook) -- 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 yet to submit its proposed members to the WH. The Commission includes a non-voting group of Congressional advisors to be appointed by House and Senate leaders of both parties and by the chairmen and ranking members of Senate Finance and House Energy and Commerce. Last month, the Democrat members who are authorized to make appointments advised Secretary Leavitt in writing that they do not intend to make appointments. OLA learned earlier today that, in light of the actions by Congressional Democrats, Speaker Hastert and Leader Frist may announce that they also will refrain from making appointments. The decision not to appoint is not final yet, but we expect it will be final by this time tomorrow. Secretary Leavitt hopes to appoint the 15-member commission (as opposed to the Congressional advisory group) later this week, although, according to OLA, he has agreed to a request from the NGA to delay the appointment of two sitting Governors until September.*
- Medicare Drug Implementation (Jackson; Katz)
- *Methamphetamine (Ho/DPC; Katz) -- DPC held a deputies meeting with HHS, DOJ, ONDCP, OLA, WHC, and CEA on potential steps to restrict pseudoephedrine availability. 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. DPC is trying to reschedule Wednesday's Principal meeting. A Senate hearing on the subject is set for June 28th.*

- Native Hawaiians (Ho/DPC; Silverberg) – We now think that Senate action on the bill is more likely. Senator Kyl will not block the bill. 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 plans to brief Senator Coburn's staff by the end of this week.
- 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).
- *Reformulated Gasoline Program (Hannegan/CEQ; Katz) -- EPA announced last week that it denied requests from CA, CT, and NY for a waiver of the oxygen content requirement of RFG program.*
- School Choice (Medina/DPC; Hook) – DPC has scheduled a principals meeting for Monday to review school choice options. Tevi hosted a deputies meeting today to discuss the three options that will be presented to principals to expand choice. OMB expressed strong concerns about the cost of Lamar Alexander's plan and similar policy proposals.
- 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. It is likely that tomorrow Secretary Bodman will announce that the SPR fill will stop 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.

- *TRLA (Warsh/NEC; Katz) – NEC held a deputies meeting with Treasury, OMB, CEA and WHC to review a Treasury report recommending a two year extension of TRLA. The report won't be released until June 30th, and WH staff envisions significant revisions in the lead up to the report's release. WH staff is skeptical of reading too much into the results of the report. NEC will prepare a memo in preparation for a Principals meeting on Wednesday. OMB will take the draft Treasury report and submit it through the formal staffing process no later than June 16th in preparation for policy time with the President.*
- *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.*
- *Veterans (Leggitt/DPC; Katz) – VA conducted a survey, which asked a series of politically charged questions to VA's 21 Veterans Service Networks, at the request of Congressman Lane Evans (D-IL) in lieu of his attempt to directly survey the Networks. DPC and WHLA objected to releasing the survey in its current form without any explanation of the survey results. WH staff met today with Deputy Secretary Mansfield to discuss the revised document that VA will eventually share with Congressman Evans. DPC spoke with WHC about the document and WHC believes that we could likely avoid FOIA but not requests from the Hill for the document. WH staff are satisfied that the revised document would be ok to release after VA sits down with Majority staff.*
- *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.*