

**Subject:** Night Note 3/28  
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[Pending Issues 3-28.doc](#)  
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[Working Group Calendar 3-28.doc](#)  
[Cabinet Member Schedule 3-28.doc](#)

**Please Note - This Information is Sensitive; Eyes Only**

Attached are the Pending Issues, the Policy Time Calendar for this month, the Working Group Calendar for this week and next, and the Cabinet Member Schedule for the following week.

Thanks,  
James  
x61475

March 28, 2006

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

FROM: STEVE MCMILLIN, JEREMY KATZ, and MYRIAH JORDAN

RE: NIGHT NOTE

**Pensions.** Over the past week, a number of disagreements have arisen among Hill pension conference staff and with Members returning this week, they will be asked to sort out these disagreements. We believe there is a meeting this afternoon of some of the pension conference (Enzi, Grassley, Boehner, Thomas, and McKeon). Most of the disagreements at the staff level have concerned the resolution of the "credit rating" and "credit balance" issues. The basic issue regarding credit ratings is whether a plan sponsor's credit rating should be referenced when determining whether the plan is at risk of terminating. Both the Administration proposal and the Senate bill include references to sponsor credit ratings, whereas the House proposal does not. Grassley thought he had an agreement at the Member level the previous week, on a compromise between the Senate and the House provisions, but the agreement broke down when staff tried to implement. On the credit rating issue, Enzi opposes Grassley/Thomas, and Boehner appeared to be with Enzi. But Grassley's staff have indicated to NEC/OLA that they believe they have reached a tentative agreement with Boehner's staff: one that would delay the effective date of the provision (reportedly Boehner's ask) while adding some strengtheners from the House bill to the original Senate language. In the meantime, Enzi staff continue to float other ideas that Grassley staff are dismissing. Also on the credit rating issue, there are rumors downtown of a "Thomas proposal" to deal with troubled industries, but no one has found any evidence of such a proposal existing. The technical information provided to us, of a possible Grassley/Thomas/Boehner agreement on credit ratings, does not include such a provision. The Administration's top priorities have been to improve the bill's provisions regarding: mortality projections, the bond quality in the yield curve, and allowing for a transition that does not relax funding requirements dangerously in the near term. NEC/OLA continue to receive good feedback on these issues at the staff level, but there will be no firm resolution of them until the Hill staff have resolved these other issues. Administration staff continue to provide the Hill with analyses of various ideas floated by Hill staffs for handling the transition. NEC/OLA delivered such runs to Hill offices last Thursday and over the weekend, additional runs were completed. NEC has asked PBGC to change the presentation of these runs to be more useful/palatable to Hill staff, and expect soon to have another batch of projections to deliver. Enzi staff in particular continue to see problems at every turn. They are trying to deal with pressures from outside for various special rules. In our Hill meetings, NEC declined to spend our negotiating capital to resolve differences between the conferees over the cash balance and the multi-employer provisions. We would accept either the Senate or House language on these, and there is thus little reason for us to wade into these arguments. NEC/OLA believe Hill staff are spending a tremendous amount of energy in conflict over issues that are unlikely to be the fundamental tipping points for us. We are getting positive feedback on our issues, but no commitments. So things could still go either way, but they are unlikely to go any particular way for so long as the Hill staff remain hung up on such issues as credit ratings, credit balances, multi-employer plans, etc. NEC/OLA staff will be discussing further with Senate pension staff this evening.

## Other Issues

- Administrative Reforms (Troy/DPC; Jordan)
- Advanced Energy Initiative Action Team (Epifani/NEC; Katz)
- AFL-CIO (Sharp/DPC; Jordan)
- Airlines (Sharp/DPC; Jordan) – As of 3/22, DOT, the mediator, and the controllers have agreed to extend negotiations through the middle of this week even though there has been little progress recently. DPC met on 3/27 to discuss legislative and communications strategy in anticipation of either a settlement or an impasse sometime late this week.
- AHPs (Leggitt/DPC; Katz) – On 3/23, DPC convened a meeting with OLA, DOL, HHS, DOJ, and OMB to review the language of S. 1955 (Health Insurance Marketplace Modernization and Affordability Act) which was reported from Senate HELP with an amendment in the nature of a substitute. S. 1955 is Senator Enzi's alternative to the Administration's AHP proposal. This legislation establishes a uniform set of Federal health insurance rules as an alternative to the current state-by-state regulatory scheme. The legislation would allow bona fide trade and business associations to pool together and purchase group health insurance for their employees as under the Administration AHP proposal, but would not allow AHPs to establish a self-insured plan as an alternative to purchasing coverage from an insurance company. Although this legislation is more intrusive than the Administration's proposal from a federalism perspective, DOL advises it may actually facilitate implementation of several other Administration health care reform proposals including expanded AHPs, portable HSAs, and purchasing health insurance across state lines. DPC has requested that DOL, HHS, and DOJ prepare an assessment of recommended changes to the bill. DPC, OLA, DOL and HHS will be meeting with the AHP coalition at the WH 3/30 to discuss strategy regarding the Enzi bill.
- Amtrak (Sharp/DPC; Jordan)
- Asbestos (Ho/DPC; Jordan)
- *Avian Flu (Venkayya/HSC; Katz) – Today, Cathie Martin of WH Communications hosted a weekly interagency meeting with Communication Directors where we walked through the communications plan following the detection of H5N1 in a wild bird in the U.S. If preliminary testing by DOI shows H5N1 in wild birds then DOI will host a press conference with USDA and HHS (not Cabinet Secretaries). Additionally, on 4/12 and 4/17, Secretaries Johanns and Leavitt will go to New York to meet with Network executives and on-air personalities for an off-the-record education session on avian flu.*
- Aviation Security (Baker/HSC; Jordan)
- Bioethics Agenda (Levin/DPC; Jordan) – OLA and DPC met on 3/15 with Blunt's staff to discuss advancing the President's bioethics agenda. Blunt's staff expressed interest in seeing the items referenced by the President in the State of the Union Address (prohibitions on fetal farming, human-animal hybrids, and commerce in embryos) introduced as stand-alone measures in the coming months. They suggested that a bill prohibiting fetal farming (i.e. the initiation of pregnancy solely for research purposes) stood the best chance of success, while the other measures may stand a better chance as appropriations riders later in the year, but that all should be introduced, as pro-life Members would find them appealing this year. Blunt's staff will seek out sponsors, and continue to work with us to shape the bills.
- *BSE (Hermann/NSC; Katz) – USDA announced on 3/13 that it had confirmed, through both initial and follow-up testing, a third BSE infected cow in Alabama. On 3/16, USDA exhumed the cow and was able to verify that the animal is over 10 years old (thus born before the feed ban was put in place). Authorities have determined that the infected (dead) cow had at least two*

calves. One is dead, and the second calf has been quarantined since shortly after the detection was announced. The calf has now been transferred to a facility in Des Moines, and may be monitored over its lifetime. USDA also reports the Koreans have been voicing concerns about the new detection. USDA has been working with the Koreans to assure them our inspection system is rigorous and that the beef exported from the United States is safe. *Secretary Johanns spoke with Korea's Ambassador to the United States today (3/29). The Ambassador was insistent that USDA provide an official response with information on the age of the cow and he also requested info on USDA's investigation. USDA indicated that would take some time for its investigation results to be concluded, but USDA is working to put something together for the Ambassador on what we know about the cow by tomorrow morning. The Ambassador indicated he was pushing to be able to have a Korean team of experts come to the U.S. in the "middle of next month."*

- *CAFE (Sharp/DPC; Katz) – On 3/15, Deputies met to discuss DOT's draft final rule which sets new fuel economy standards for light trucks, saving 10.7 billion gallons of fuel. The rule will also change the compliance system to reduce the safety hazards associated with the current system, to push all manufacturers to introduce fuel saving technologies into their vehicles, and to cover Medium-Duty Passenger Vehicles (8,500-10,000 lbs.) for the first time. Mineta will rollout its CAFE reform rule in Baltimore on 3/29.*
- CALEA (Russell/NEC; Katz)
- Campaign Finance Reform (Taylor/OPA; Jordan)
- Canadian Lumber (Hunter/NSC; Katz)
- Career Advancement Accounts (Sharp/DPC; Jordan) – On 3/21 DPC, OLA, and OMB, met with DOL to discuss the Administration's strategy for advancing CAAs. DOL is meeting with workforce boards, think tanks, and community colleges in key states and talking to Senators and Members of Congress with interest in job training reform. DOL is also preparing the legislative package for OMB clearance and transmission to the Hill. Ideally, CAAs would be inserted into the pending Workforce Investment Act (WIA) reform legislation, but that bill has been held by Senator Durbin since August. On a parallel track, DOL is preparing the paperwork for an administrative demonstration of CAAs (which would not require legislation) and is preparing to submit a WIA reform regulation to OMB for clearance.
- Cargo Security/TWIC (Baker/HSC; Jordan) – DHS briefed HSC and OMB on the implementation of the Transportation Workers Identity Credential (TWIC) and their plans for enhancing cargo/supply chain security on 3/13.
- *CDBG (Streeter/DPC; Jordan) – DPC held a PCC meeting with HUD today on their proposed reforms to the CDBG program. The main objective was to resolve open issues and identify any options for decision at a deputies meeting. The reforms have three parts: a new formula to target resources to communities most in need; a new performance framework for assessing results; and a challenge fund to serve as an incentive for communities to take extra steps to promote economic progress. The first two items are on relatively firm footing, but the meeting showed that more work needs to be done to have a better recommendation for deputies on how the challenge fund will function. DPC and OMB are meeting with HUD tomorrow with the goal of firming up the challenge fund proposal for a deputies meeting, which we hope to have next week.*
- CFIUS Arysta LifeScience (Japan)/Micro Flo-BASF (Shirzad/NSC; Katz) – CFIUS will need to decide by 3/ 29, whether to investigate the proposed purchase of Micro Flo-BASF (on or about 3/31), an ag biotech company. NSC does not expect that this case will require an investigation.

- CFIUS Checkpoint (Shirzad/NSC; Katz) – The company withdrew their filing on 3/23. As part of Checkpoint’s withdrawal, the company is releasing a press statement, and Q&As saying that they are withdrawing and have determined that “they have decided to pursue alternative ways for Check Point and Sourefire to partner in order to bring to market the most secure leading security solutions.” Treasury sent to the companies its standard withdrawal letter, noting that CFIUS will allow for the withdrawal, but should the companies determine to move forward with an acquisition, Treasury reserves the right to begin another CFIUS case.
- CFIUS DP World (Shirzad/NSC; Katz) – CFIUS, DP World and P&O are discussing a withdrawal of the filing currently in the 30-day review phase, subject to a letter that requires them to complete the sale to a U.S. buyer and continue to keep the operations separate until the sale is completed. Day 30 is 4/3, Day 45 is 5/19.
- CFIUS Investigation of Dubai Holdings (Shirzad/NSC; Katz) – An article in the Financial Times on Dubai Holdings’ proposed purchase of Doncasters (UK), mischaracterized the nature of the products that Doncasters sells to DOD. NSC has been working with Treasury on Q&As and TPs and have gotten the DOD to prepare TPs on their purchases from Doncasters. Day 45 of the investigation is 4/13. DOD is working to determine whether it can resolve a sole sourcing issue involving one part that it purchases from a subsidiary of Doncasters. Other than this issue, no CFIUS agency has indicated any substantive concern with the transaction.
- CFIUS Press Interest of Istithmar (Dubai)/ISS Inchcape Shipping Services (UK) (Shirzad/NSC; Katz) – Istithmar’s purchase of ISS in January 2006 did not go through a CFIUS review. CFIUS has asked the companies for more information on the transaction and may request that they file. ISS is a Marine Services firm with operations in 210 ports in 50 countries and multiple U.S. port locations. ISS is a shipping agent, broker, and forwarding agent and DHS is looking into the scope of their activities.
- CFIUS Review of GE Fanuc (Japan)/Condor Engineering (Shirzad/NSC; Katz) – CFIUS will need to decide by 3/30, whether to investigate the proposed purchase of Condor Engineering (on or about 3/31), an aircraft data communications company. NSC believes that this case will necessitate an investigation. GE Fanuc is a 50-50 joint venture of GE (US) and FANUC (Japan, private). CFIUS agencies are awaiting the CARC report and DOD is determining if Condor would be considered a sole source supplier of data communications for aircraft manufacturers.
- *CFIUS Review of SES Global (Luxembourg)/New Skies Satellites (Shirzad/NSC; Katz) – CFIUS agencies agreed that this transaction would not go to investigation. Treasury will notify Congress of CFIUS’s determination following a notification to companies. The companies negotiated a security agreement with DOJ and DHS.*
- Civil Rights (Ho/DPC; Jordan)
- Clear Skies (Stolpe/CEQ; Jordan)
- Clean Air Act (Stolpe/CEQ; Jordan)
- *Climate Change (Connaughton/CEQ; Jordan) – On April 4<sup>th</sup>, the Senate Energy Committee will host a multi-panel conference on climate change.*
- Competitiveness (Wilson/DPC; Jordan)
- Cooperative Conservation (Butler/CEQ; Jordan) – Last week CEQ hosted a series of meetings between OMB examiners and policy and legislative staff from USDA, DOI, DOC-NOAA and EPA. The purpose of the meetings was to reconcile any and all outstanding issues that have been raised during the LRM vetting process. Each component of the legislative package has gone through the interagency review process and comments have been received. The status of each is as follows: a) DOI- most of the substantive issues/concerns have been resolved and a draft reflecting the most recent agreements is currently being circulated for comment. b) DOC-

NOAA is reviewing the comments and drafting another version that they expect will address all outstanding issues. c) EPA- has reviewed comments and met with CEQ and OMB on 3/23 to reconcile any outstanding issues. However, it appears that there is a general consensus on the underlying principles of the legislation. d) USDA- met with CEQ and OMB at CEQ on 3/21. A tentative agreement was reached on revisions to the package. USDA is going to rework and circulate another draft this week.

- Critical Infrastructures Protection (Nielson/HSC; Jordan)
- Counter Radicalization (Nielsen/HSC; Jordan)
- Doha (Shirzad/NSC; Katz)
- Drug Free Communities (Leggitt/DPC; Katz)
- Drug Reimportation (Leggitt/DPC; Katz)
- Education (Wilson/DPC; Jordan)
- Endangered Species Act (Schildwachter/CEQ; Jordan) – CEQ hosted a PCC discussion on 3/14 on development of a new ESA rule. The drafting team briefed on the approach to Critical Habitat, science, interagency consultation, new listings, and reinstating the distinction between Threatened and Endangered species. The drafting team has provided rule language to OMB for informal review, and is finalizing language for formal review. CEQ is prepping read-aheads for a Deputies meeting this week.
- Entitlement Commission (Blahous/NEC; Katz)
- Everglades (Connaughton/CEQ; Jordan)
- Farm Bill (Hennessey/NEC; Katz)
- FDA (Leggitt/DPC; Katz) – FDA is supposed to release a statement on its web site on 3/29 that affirmatively indicates there is no approved medicinal use for smoking marijuana and that marijuana is harmful. ONDCP and HHS coordinated with the release of this statement.
- Federal Sentencing Guidelines (Ho/DPC; Jordan) – Bill Mercer (Principal Associate Deputy AG) testified on 3/16 before the House Subcommittee on Crime, Terrorism, and Homeland Security and present DOJ's proposal for reform of the federal sentencing guidelines. In response to the increasing number of sentences below the recommended guidelines in the wake of the Supreme Court's Booker decision in 2005, DOJ will propose that a system of minimum guidelines be enacted in order to restore mandatory sentencing. DOJ plans to brief DPC and other White House offices 3/28 on follow-up legislative strategy for the sentencing reform proposal. Chairman Sensenbrenner has spoken out forcefully against lower sentences and increased racial disparity indicated by recent studies.
- FHA Reform (Streeter/DPC; Jordan) – The PCC meeting on 3/22 resolved open issues at the end of the last deputies meeting on this topic. First, there was basic agreement that credit reform and additional language OMB has recommended for the legislative draft will ensure enough accountability for FHA to begin offering new mortgage insurance products. The products will enable lower and moderate income families with little to no down payment resources and with impaired credit to get conventional, FHA-backed loans as an alternative to the sub prime loans that are often their only option now. Second, there was basic agreement that the loan limits for an FHA insured mortgage should be raised in higher-cost areas (essentially ten markets) and that the ceiling in the lowest-cost markets should also be raised to enable more low/moderate-income families the opportunity to finance their homes with conventional mortgages. We are moving to closure as quickly as possible so that draft legislation can move into clearance in time for an April 5 hearing on the topic that House Financial Services has called.
- Flood Insurance Program (Kupfer/NEC; McMillin) – House Financial Services Committee finished its mark-up of a flood insurance bill. The measure would increase the program's

borrowing authority to \$25 billion and would institute a number of reforms. The only significant action in the Committee was the defeat, by a vote of 45-10, of a Hensarling (R-TX) amendment requiring the immediate elimination of all subsidies. Instead, the bill has a gradual phase out of the subsidies for non-primary and non-residential properties.

- Foreign Investment in U.S. Airlines (Sharp/DPC; Jordan) – On 3/27, DPC, OMB, OLA, OVP, COS, and Communications met with DOT to discuss the agency's proposed rule to allow greater foreign investment in U.S. airlines. DOT feels strongly the rule should be sent to OMB for final clearance to give the Europeans time to examine it prior to the June meeting of the Transport Ministers. This rule is likely to seal a U.S./EU Open Skies agreement. However, there is still some concern following the Dubai Ports World situation that the Administration will get very negative press coverage and Congress may try to overturn the rule. Attendees were asked to get feedback from their Principals by Friday before we tell DOT whether to proceed.
- *Global Internet Task Force (Shirzad/NSC; Katz) – State and Commerce have drafted an operational plan designed to encourage Internet companies to develop and announce a set of broad Internet freedom principles prior to the Hu visit. Al Hubbard has approved, and following NSC clearance, State and Commerce will reach out to senior Internet company executives to explore their willingness meet on 4/3 in Washington to adopt a set of broad principles encompassing the following general concepts: 1) maximizing free flow of information, 2) promoting access to the Internet, 3) ensuring transparency of content restrictions, 4) requiring formality of legal process, and 5) protecting user data. Faryar will be hosting follow-up meeting to track progress.*
- GSEs (Kupfer/NEC; Katz)
- Health Action Team (Ramthun/NEC; Katz)
- Health Care Price Transparency (Ramthun/NEC; Katz)
- Health IT (Leggitt/DPC; Katz) – The next AHIC meeting is 4/25. DPC will host a meeting with HHS the week before the AHIC meeting to preview the 4/25 meeting.
- Helping America's Youth (Parker/DPC; Jordan)
- HHS Vouchers (Towey/OFBI; Jordan)
- HIV/AIDS (Troy/DPC; Jordan)
- Hotels in Gulf (Streeter/DPC; Jordan)
- HSAs (Ramthun/NEC; Katz)
- Immigration Assimilation (Ho/DPC; Jordan)
- Immigration Border Patrol (Baker/HSC; Jordan)
- Immigration Borders (Ho/DPC; Jordan)
- Immigration Extension of Temporary Protected Status (Ho/DPC; Jordan)
- Immigration No Match (Baker/HSC; Jordan)
- *Immigration Reform (Ho/DPC; Jordan) – The Senate is expected to proceed to consideration of immigration legislation upon completion of the lobbying reform bill late today. Leader Frist obtained unanimous consent to vitiate an afternoon cloture vote on the motion to proceed to his immigration bill. Reports indicate that both Leader Frist's enforcement bill and the broader Judiciary Committee bill will be brought to the floor simultaneously and amended over the next two weeks. Most amendments will be offered to the Judiciary Committee bill, as there will need to be unanimous consent to set that aside and amend the Frist bill.*
- Immigration Refugees/Material Support (Ho/DPC; Jordan) – As agreed at a prior deputies' meeting, NSC convened an interagency "lawyers meeting" on 3/27 to discuss the meaning of statutory provisions (1) barring admission to the U.S. of individuals who belong to terrorist

organizations and/or have provided material support to such organizations, and (2) providing for a "waiver" of the bar by the Secretary of Homeland Security. As a matter of law, the agencies do not appear to disagree that the statutory bar is so expansive that the only way "around" the prohibition is to exercise the waiver authority. As a matter of policy, however, there seems to be significant disagreement on the threshold question whether the waiver authority should ever be used. DOJ, OVP, and to a lesser extent DHS seem very uncomfortable with the national security and litigation risks posed by any use of the waiver authority, while DOS and the WH FBO believe foreign-policy interests (and concerns raised by the faith-based community about the President's commitment to refugee resettlement) require its exercise in a limited, targeted fashion. At the close of the meeting, NSC asked DOJ to comment more specifically on the litigation risks posed by DOS's plans so the issue can be teed up again for deputies.

- Immigration Secure Border Initiative (Baker/HSC; Jordan) – DHS briefed HSC on 3/8 on the progress that has been made on SBI. They reported that they have essentially eliminated catch and release for Latin American OTM's (Other Than Mexicans) on the southwest border except for families and El Salvador nationals. This is still a very small subset of illegal immigrants, but they plan to begin detaining family groups around 4/15, and hope to achieve a legislative solution for El Salvadoran immigrants. Currently, El Salvadorans cannot be placed in expedited removal because of an outstanding injunction. They also reported on the progress of SBInet – or lack thereof. DHS hopes to issue a Request for Proposal (RFP) in early April, and to award the contract in September. HSC has still been unable to obtain a report on SBI from DHS (it was originally promised by Monday, 3/13), and has not yet received a draft of the RFP.
- Immigration Worksite Enforcement (Baker/HSC; Jordan)
- Indecency (Russell/OSTP; Katz)
- Indian Gaming (Ho/DPC; Jordan)
- Indian Trust/Cobell (Ho/DPC; Jordan)
- *International Waste Legislation (Cohen/CEQ; Jordan) – State, EPA, and USTR all have letters circulating in the OMB clearance process in response to H.R. 2491, the International Solid Waste Importation and Management Act of 2005. State and USTR express serious concerns with the legislation, while EPA does not take a position. USTR and State believe that this bill could lead to inconsistent and conflicting state rules making compliance by regulated firms and enforcement by federal and state officials complex and costly. Such a trade-based patchwork approach to waste regulation could raise issues not only of foreign relations but also of consistency with U.S. international trade obligations. WHLA and CEQ leg have a hold on these letters until we can confirm that H.R. 2491 will appear on the House Suspension Calendar.*
- Internet Communications (Ho/DPC; Jordan)
- *Internet Gambling (Shirzad/NSC; Katz) - DOJ is working to file suit before 4/3, seeking a ruling that inter-state Internet gambling on horse racing is impermissible under the federal Wire Act. The suit is being filed to bring the U.S. into compliance with a decision issued by the WTO Appellate Body last April that largely sustained U.S. restrictions on Internet gambling, but requires us to demonstrate that horse racing does not receive special treatment. The suit could be delayed if Justice does not have sufficient information to go forward by Friday, possibly leading to more criticism of U.S. WTO compliance efforts, as 4/3 is the deadline for compliance. Justice's action will be unpopular with race track owners, and will likely attract attention on the Hill. The action will also be unpopular with Antigua and Barbuda, which brought the WTO challenge and expect us to further liberalize Internet gambling rather than restrict it.*
- *Katrina Flood Maps/Levees (Copeland CEQ/McMillin) – Al convened EOP Principals plus Powell on 3/28 to review additional analysis before launching the outreach/rollout plan.*

*Principals have tentatively decided to recommend a +\$3 billion option that would result in certified levees everywhere except lower Plaquemines parish. A smaller group will convene Wednesday morning to settle the details of a rollout strategy, including how much time should elapse between "sharing the problem" and issuing the maps that indicate our proposed solution. Powell now favors the +\$3 billion option.*

- Katrina Mobile Homes (Streeter/DPC; McMillin) – DPC and OMB have converted FEMA's various contemplated courses of action into a one-page plan to which DHS/FEMA is to react this week. The plan envisions moving 5,000 of the 10,000 units into MS and LA by late June. The MS units should be in place by mid-May, but the LA units will take longer to deploy given the challenges of siting them. Given the historical average annual rate for using these type of units, OMB's projection is that less than 1,000 units will be deployed for upcoming 2006 storms, leaving more than 4,000 units to disperse elsewhere. DHS has said they need until 3/31 to develop a complete plan for dispersing the remaining units to multiple storage sites from which they can be deployed in storms beyond 2006 until depleted. But they have at least said their plan would involve putting units in California and in northern states in which their usage is more common.
- Legal Reform (Ho/DPC; Jordan) - DPC convened a meeting on 3/23 with OMB GC, WH Counsel, and outside legal reform experts (including Governor Engler, David McIntosh, John Schmitz, and Jim Wooton) to discuss possible next steps on legal reform, particularly things that could be done administratively. Suggestions included an Executive Order ending (or requiring the Attorney General to approve) the practice of Federal agencies hiring trial lawyers on a contingency basis to pursue litigation on their behalf (as the FDIC did last year when it hired a self-described "Master of the Malpractice Universe" to win a \$125 million settlement against Ernst & Young for conducting flawed audits). Also mentioned was an outside symposium on federalism to provide intellectual support for the Administration's position that federalism, properly understood, does not prohibit federal preemption of state tort suits where (i) Congress has properly delegated regulatory authority to the agency, and (ii) consumer safety is best served by a uniform national standard.
- Levees (Hannegan/CEQ; Jordan)
- LNG (Hannegan/CEQ; Katz)
- Lobbying Reform (Kelley/WHC; Jordan)
- Medicaid Clawback (Ramthun/NEC; Katz)
- Medicaid Commission (Ramthun/NEC; Katz) – The Commission's next meeting is 5/17-5/18, in Dallas.
- Medical Liability Reform (Ho/DPC; Jordan) – DPC convened a meeting on 3/23 with various White House offices and DOJ in order to develop a strategy on medical liability reform in anticipation of a likely May cloture vote in the Senate. In the month leading up to the vote, WH-OLA and DOJ-OLA will identify important members, particularly Republicans who may be inclined to vote against cloture and Democrats in key states. Communications will work on placing op-eds where appropriate. DPC will continue to work with DOJ to identify policy priorities in this area, including possible compromises (e.g., liability reform targeted at certain specialties such as OBs).
- Methamphetamine (Leggitt/DPC; Katz)
- Mine Safety (Sharp/DPC; Jordan)
- MTBE (Epifani/NEC; Katz) – On 3/30, Senate EPW is holding a hearing on MTBE elimination and transition to ethanol. EIA will testify and characterize the first half of 2006 as a potential logistical problem for ethanol but not an outright shortage for ethanol.

- NASA (Russell/OSTP; Katz)
- Native Hawaiian (Ho/DPC; Jordan)
- NCLB (Medina/DPC; Jordan)
- New Orleans Elections (Ho/DPC; Jordan)
- *New Source Review (Stolpe/CEQ; Jordan) – CEQ convened a senior policy group meeting to discuss next steps following the recent DC Circuit Court decision vacating the Administration's Clean Air Act New Source Review (NSR) Equipment Replacement Provision (ERP). As a standard step, they will request an en banc review of the panel decision. They will also continue work to finalize two more NSR rulemakings (commonly called "CAIR NSR and the "debottlenecking and aggregation" rules), and are continuing to assess what other avenues we can pursue to regain ground lost in the court decision. The President's National Energy Plan called on EPA to recommend changes to the NSR permitting program that would eliminate regulatory barriers to factory and utility plant upgrades. The ERP was one of the recommended changes -- it clarifies the exemption under NSR for routine plant maintenance.*
- OCS (Epifani/NEC; Katz)
- OIRA EO (Yanes/OMB; Katz)
- Online Pharmacies (Ho/DPC; Jordan) – On 3/22, DPC convened a meeting between HHS/FDA and DOJ/DEA in an ongoing attempt to resolve differences between the agencies on the proposed regulation of online pharmacies. In response to a request from the last meeting in February, DOJ drafted a proposed bill limited to the prescription of controlled substances via the Internet. HHS will next prepare a written response to the DOJ draft bill in the hopes of narrowing the set of policy differences. OLA and HHS-OLA continue to express concerns that moving forward with an online pharmacy regulation bill could open the reimportation and Part D extension debates.
- *Part D (Ramthun/NEC; Katz) – An AARP spokesman said 3/27 the group was prepared to spend "several million dollars" on print and radio ads in 44 cities in advance of the May 15 deadline for seniors to enroll in the drug program without a penalty.*
- Port Security (Baker/HSC; Jordan)
- Postal Reform (Sharp/DPC; Jordan)
- Potassium Iodide/KI (Kaplan/OMB; Katz) – A dispute exists regarding an HHS guidance to stockpile sufficient KI for distribution to populations within 20 miles of a nuclear facility (current practice is 10 miles). HSC/HHS believes proceeding with the guidance document is consistent with the law and previous policy decisions. NRC, DOE, NEC and OSTP believe expanding KI stockpiling is an inefficient and ineffective way to protect populations, and that new unnecessary regulatory burdens will hamper the approval of new nuclear plants. OIRA circulated draft compromise language to HSC, OVP, NEC and OSTP for sign-off before sending to the agencies on 3/23. If the Agencies are uncomfortable with the compromise language, McMillin will host a Deputies meeting to resolve.
- Prisons (Ho/DPC; Jordan) – Following on a briefing given several weeks ago to WHC arranged by Senator Talent's office, representatives from the US Probation offices in St. Louis and Charlotte briefed staff on 3/16 from DPC, DOJ, DOL, and COS on a remarkable prisoner reentry initiative launched in those districts. The program includes employment and education programs and has demonstrated success in reducing unemployment and recidivism among ex-offenders. DPC will continue to work where appropriate with the probation office to assist in expanding the program and coordinating it with national DOJ prisoner reentry initiatives. The group will be holding a national conference in St. Louis April 11-13.

- RESPA (Streeter/DPC; Jordan) – On 2/27, DPC held a PCC meeting with HUD on their recommendation for moving forward with a RESPA rule. The PCC helped HUD refine its proposal and DPC is following up with HUD on several specific aspects so that we can have a deputies meeting on this next week. HUD is recommending a modified proposal from a 2004 rule that it proposed and subsequently pulled among much negative attention. Their current proposal would drop packaging (i.e., with which homebuyers would get one single price for all of their loan and closing costs that they could shop around among other lenders and brokers), the main source of contention and savings to consumers with the previous version. It would continue the proposed modified Good Faith Estimate form that makes costs to the homebuyer more transparent, more easily traceable to the HUD-1 form signed a closing, with a requirement that final costs not deviate too far from the original estimate. HUD is currently drafting up examples of the Good Faith Estimate proposals and will come to deputies with a recommendation on how narrow the tolerance should be.
- Science (Hays/OSTP; Katz)
- Smallpox (Venkayya/HSC; Katz)
- Steroids (Ho/DPC; Jordan)
- Stem Cells/Bioethics (Levin/DPC; Jordan)
- Strengthening America's Community Initiative (Streeter/DPC; Jordan)
- TANF (Streeter/DPC; Jordan)
- Tax Reconciliation (Kupfer/NEC; Katz)
- Tax Reform (Kupfer/NEC; Katz)
- *Telecom (Russell/OSTP; Katz) - The House Energy and Commerce Committee has scheduled a hearing on a draft telecommunications bill for 3/30. The draft was released on 3/27 by Speaker Hastert and Chairman Barton. The legislation would allow telecom companies to get a national franchise to provide video services. Such a franchise would allow them to enter into the pay-TV business faster than if they had to negotiate individual franchises with municipalities. In addition, under the draft bill: 1) cable companies would be eligible for the same national franchise as soon as competitors enter the market for video services in competition with them; and 2) the FCC existing voluntary net neutrality principles, which ensure the rights of consumers to reach any legal website or service on the Internet, are codified.*
- *Telecom Calling Card (Russell/OSTP; Katz) - In 2003, AT&T petitioned the FCC, requesting that it should be exempt from paying into the Universal Service Fund (USF) for its pre-paid calling services, which included several variants that AT&T claimed were "enhanced" services (also known as information services). By rule, information services are exempt from USF. In February 2005, under Chairman Powell, the FCC rejected AT&T's petition, and the Commission applied its decision retroactively. (AT&T had not been paying into USF since 1999). Martin, then a Commissioner, as well as Commissioners Copps and Aldestein voted with Powell on this item. At the same time, the FCC initiated a broader rulemaking to address comprehensively the appropriate regulatory regime for all enhanced calling cards, including two other variations of AT&T's prepaid card. This week, the FCC likely will approve a decision requiring all pre-paid "enhanced" calling card providers to pay into USF. The USF defrays the cost of telephone service in "high cost" rural areas and is currently a 10.9% charge on all long distance revenues. Pre-paid cards are sold by retailers such as Wal-Mart and used predominately by lower income customers as well as service men and women and their families. To address the concern of military service men and women, the FCC will exempt those calls used by military personnel from having to pay into USF. The FCC estimates that the*

*"enhanced" pre-paid calling service market was approximately \$4-\$5B in 2005. Over 80% of the total revenue of this market, however, is likely international traffic and would be exempt from USF.*

- *Texas Supplemental (Streeter/DPC; McMillin) – As of 3/14, the House appropriators are looking at a conference strategy for TX on the supplemental. OLA has been working to block ideas such as moving to a 90/10 cost share on debris removal for TX, and Powell's office went over the housing numbers with the Speaker's staff on Monday, 3/13, to demonstrate that TX's housing damage estimates are far higher than the evidence supports. OLA has quietly indicated sympathy for additional education funds should that prove necessary, but that we were not communicating anything final on that front.*
- *Title IX (Wilson/DPC; Jordan) – The National Journal published a story (3/25) stating that the Department of Education and the National Science Foundation are considering extending enforcement of Title IX beyond college athletic programs and into academics, particularly math, science, and engineering where women are typically underrepresented. DPC and other EOP offices have fielded several concerns from outside groups and Congressional members (including Speaker Hastert) about this policy direction. DPC has communicated its concerns to the Department about any potential plans to expand Title IX enforcement in the academic arena.*
- *Trade Enforcement (Shirzad/NSC; Katz) – Grassley and Baucus introduced today (3/29) their China trade enforcement and currency bill as an alternative to the Schumer-Graham bill. The bill aims to: 1) strengthen antidumping rules (to ensure that new shippers of subject merchandise pay their bills); 2) improve enforcement; 3) establish reporting requirements on the enforcement of our trade laws, and 4) require Treasury to address currency imbalances or what the bill refers to as "misalignments" (i.e., looking at factors such as trade imbalances in their currency report). At a news conference announcing the legislation this afternoon, Grassley said "Sen. Baucus and I hope our bill will offer an outlet for the frustration of many of our colleagues over trading partners that don't meet their obligations." But both senators said that regardless of the fate of the Schumer-Graham bill, they will seek to move their legislation ahead. The Grassley-Baucus bill was introduced on the eve of a Finance Committee hearing on China, at which Treasury U/S Adams, Deputy USTR Bhatia, and Commerce U/S Lavin will testify. Schumer and Graham announced the postponement of the vote on their bill to 9/29 after meeting with Treasury Secretary Snow today, noting that they would introduce the legislation if progress was not made.*
- *Tricare (Leggitt/DPC; Katz)*
- *UAE FTA (Shirzad/NSC; Katz)*
- *Vietnam Veterans Memorial Visitors' Center (Boling/CEQ; Jordan) – CEQ is working with the National Capital Planning Commission, the National Park Service, and the Vietnam Veterans Memorial Foundation to facilitate the completion of an environmental analysis for location of the Vietnam Veterans Memorial Visitors' Center and to further the process for completion of the NCPC site decision under the Commemorative Works Act. CEQ has informed Hill staff of the status of this work in support of the National Capital Planning Commission's public process for approving additions to the National Mall.*
- *WH Conference on Aging (Leggitt/DPC; Katz)*
- *WTO (Shirzad/NEC; Katz) – European Commission officials informed USTR's general counsel on 3/27 that the EU Member States approved bringing a WTO case against China challenging discriminatory tariffs applied on imported auto parts. EU Trade Commissioner Mandelson, however, still has not given final approval to the EU joining us in filing this case. Mandelson is*

*traveling in South America, and USTR is still waiting for word on Mandelson's position. A call has been scheduled for Wednesday morning. If Mandelson's approval is communicated to us on 3/30, USTR believes we will be able to file the case at the WTO on Thursday while still providing the Chinese government with adequate advance notification of our intended action.*

- Wetlands (Copeland/CEQ; Jordan)
- Yucca (Epifani/NEC; Katz) – As of 3/16, the Deputies had resolved all issues related to the proposed Yucca Mountain legislation, except whether the legislation should authorize the Department of Energy (DOE) to proceed with temporary storage of spent nuclear fuel from commercial reactors without first obtaining a Nuclear Regulatory Commission (NRC) license. On 3/17, Deputies agreed that the proposed legislation should require DOE to obtain NRC approval before engaging in temporary storage. NEC has prepared a memo for our office outlining the communications and political challenges of this approach before proceeding and sent McMillin the memo on 3/23. Deputies recommend submitting the legislation to the Hill. The tentative plan is to pre-brief the Hill this week and have Secretary Bodman give a speech to unveil the proposal on 4/4. The nuclear energy industry CEOs are in town this week, meeting with Barton and Domenici.

## POLICY TIME – MARCH/APRIL 2006

SUN	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT
26	27 2:20-3:05 DPC: Competitiveness Update (45 min)*	28 1:05-1:35 DPC: Postal Reform (30 min)*	29 NO TIME	30 NO TIME	31 NO TIME	1
2	3 NO TIME	4 2:10-2:55 NEC: Energy Update (45 min)*	5 NO TIME	6 3:15-4:00 NEC: Katrina Periodic Update (45 min)*	7 NO TIME	8
9	10 2:00-2:45 NEC: Economic Update (45 min)	11 NO TIME	12 3:00-3:45 NEC/NSC: <i>WTO (45 min) tent.</i>	13 1:05-1:50 NEC/NSC: <i>China (45 min)* tent.</i>	14 NO TIME	15
16	17 TBD NEC: Health Update (45 min)*	18 TBD Rove (45 min)	19 NO TIME	20 TBD Rove (45 min)	21 NO TIME	22
16	17 TBD	18 TBD	19 TBD	20 TBD	21 TBD	22

3/28/06

**Possible April Policy Times: AMT; Endangered Species Act; Flood Insurance Reform; Medicaid Comm; Voting Rights Act  
Regular Reports: Competitiveness, Energy, and Health; Economic Update (every 5 weeks); Katrina Update (every 3 weeks)**

\* Indicates Cabinet Member Attendance

## Working Group Calendar

### WORKING GROUP CALENDAR

Monday, March 27 <sup>th</sup>	Tuesday, March 28 <sup>th</sup>	Wednesday, March 29 <sup>th</sup>	Thursday, March 30 <sup>th</sup>	Friday, March 31 <sup>st</sup>
<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p> <p><b>10:00 NEC: Weekly American Energy Initiative Action Team (JK)</b></p> <p><b>11:00 NEC: Weekly Health Care Action Team (JK)</b></p> <p>12:00 DPC: Meeting on FAA financing proposal – PCC (MJ)</p> <p>2:00 DPC: Meeting on Aviation Foreign Investment – PCC (MJ)</p> <p><b>2:30 NEC: Weekly Entitlement Action Team (JK)</b></p> <p>3:15 NEC: Principals Meeting on Katrina (SM)</p> <p><b>3:30 DPC: Weekly ACI Action Team Meeting (MJ)</b></p> <p>4:00 DPC: Meeting on Health Issues – PCC (JK)</p> <p>5:30 NEC: Principals Meeting on Tax Reconciliation (JK)</p>	<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p> <p>9:15 DPC: Weekly DOT Call – PCC (MJ)</p> <p>10:30 NSC: Meeting on the Internet – PCC (JK)</p> <p>3:00 Comm: Meeting on Avian Flu Communications (JK)</p> <p>3:00 DPC: Weekly ED Call – PCC (MJ)</p> <p>5:30 DPC: Weekly DOJ Call – PCC (MJ)</p> <p>6:15 NEC: Principals Meeting on Katrina (SM)</p>	<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p> <p>9:00 NEC: Principals Meeting on Katrina Flood Maps (SM)</p> <p>10:00 DPC: Deputies Meeting on ESA Reform (MJ)</p> <p>11:00 DPC: Weekly Conf Call w/ DOL (MJ)</p>	<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p> <p>10:00 DPC: Weekly Call w/ HHS (JK)</p> <p>3:30 NEC: Weekly Medicare Meeting – PCC (JK)</p> <p>4:00 NEC: Weekly Medicaid Meeting – PCC (JK)</p>	<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p>

## Working Group Calendar

Monday, April 3 <sup>rd</sup>	Tuesday, April 4 <sup>th</sup>	Wednesday, April 5 <sup>th</sup>	Thursday, April 6 <sup>th</sup>	Friday, April 7 <sup>th</sup>
<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p> <p><b>9:30 NEC: Weekly American Energy Initiative Action Team (JK)</b></p> <p><b>11:00 NEC: Weekly Health Care Action Team (JK)</b></p> <p>12:00 DPC: Meeting on FAA financing proposal – PCC (MJ)</p> <p>2:00 DPC: Meeting on Aviation Foreign Investment – PCC (MJ)</p> <p><b>2:30 NEC: Weekly Entitlement Action Team (JK)</b></p> <p><b>3:30 DPC: Weekly ACI Action Team Meeting (MJ)</b></p>	<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p> <p>9:15 DPC: Weekly DOT Call – PCC (MJ)</p> <p>3:00 DPC: Weekly ED Call – PCC (MJ)</p> <p>5:30 DPC: Weekly DOJ Call – PCC (MJ)</p>	<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p> <p>10:00 DPC: Deputies Meeting on ESA Reform (MJ)</p> <p>11:00 DPC: Weekly Conf Call w/ DOL (MJ)</p>	<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p> <p>10:00 DPC: Weekly Call w/ HHS (JK)</p> <p>3:30 NEC: Weekly Medicare Meeting – PCC (JK)</p> <p>4:00 NEC: Weekly Medicaid Meeting – PCC (JK)</p>	<p><b>8:00 OLA: Daily Immigration Legislative Update (MJ)</b></p>

OFFICE OF CABINET LIAISON



CABINET MEMBER SCHEDULE

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WEDNESDAY 03/29/2006

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**Secretary Jackson**

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**Secretary Leavitt**

b(6)
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**Secretary Spellings**

12:00pm – 1:00pm	WH Mess	Lunch with Cathie Martin, Communications
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THURSDAY 03/30/2006

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No Events Scheduled.

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FRIDAY 03/31/2006

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No Events Scheduled.

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MONDAY 04/03/2006

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**Secretary Mineta**

2:00pm – 4:00pm	Room 164	Office Time
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**Secretary Bodman**

2:30pm – 3:00pm	Room 174	Meeting with Dr. Lazear
3:00pm – 3:30pm	1FL/WW	Meeting with Steve Hadley

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TUESDAY 04/04/2006

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**Secretary Jackson**

9:30am – 11:30am	Room 164	Office Time
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## Secretary Johanns

4:00pm – 4:45pm

**CL Conf Room**

Kitchen Cabinet Meeting

### *Participants:*

#### White House

Jim Connaughton, CEQ

Neil Patel, OVP

Barry Jackson, Senior Advisor's Office

David Anderson, OMB

Megan Hauck, OLA

Peter Rowan, OLA

Michael Sommers, NEC

Greg Schildwachter, CEQ

#### USDA

Chuck Conner, Deputy Secretary

Dale Moore, CoS

Drew DeBerry, DCoS

Beth Johnson, DCoS

Terri Teuber, Director Of Communications