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MEETING WITH PRESIDENT AND EPB
MEMBERS

Thursday, June 3, 1976
Cabinet Room (45 minutes)
9:15 a.m.
Re: Tax Legislation and
Unemployment

THE WHITE HOUSE

WASHINGTON

June 2, 1976

MEETING WITH ECONOMIC POLICY BOARD
EXECUTIVE COMMITTEE

June 3, 1976

9:15 a.m.

Cabinet Room

From: L. William Seidman *LWS*

I. PURPOSE

- A. To discuss Administration policy on unemployment legislation.
- B. To discuss the Administration's response to Congressional tax legislation.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

- A. Background: During the summer you may have to sign or veto as many as five major "job creation" bills which require outlays over the Administration budget. The unemployment situation and what position the Administration should take on "job creation" legislation has received extensive discussion at EPB Executive Committee meetings. A memorandum which seeks your guidance on the Administration's position on the first of the jobs bills likely to reach you, the public service jobs extension bill, is attached at Tab A.

The Senate Finance Committee has virtually completed markup of the tax bill. The markup produced a highly complicated and disjointed bill that is currently being analyzed by the Treasury. The Congressional Budget Resolution ignored the "dollar for dollar" principle that you proposed October 6, 1975, that the Congress adopted in a Declaration of Policy on December 23, 1975, and that you confirmed in the 1977 Budget. These actions raise a number of issues for your consideration which are outlined in a memorandum attached at Tab B.



- B. Participants: William E. Simon, Alan Greenspan, W.J. Usery, Jr., Arthur F. Burns, Paul H. O'Neill, James M. Cannon, John O. Marsh, Max Friedersdorf, Roger B. Porter.
- C. Press Plan: White House Press Corps Photo Opportunity.

III. AGENDA

A. Unemployment Legislation

Secretary Usery will review alternatives for Administration policy on unemployment legislation.

B. Tax Legislation

Secretary Simon will review recent Congressional action on tax legislation and alternative Administration responses.



THE WHITE HOUSE

WASHINGTON

June 2, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN *LWS*

SUBJECT: Administration Policy on Unemployment
Legislation

During the summer you may have to sign or veto as many as five major "job creation" bills which require outlays over the Administration's budget. During the month of June you must also finalize your policy on the related issue of overall Federal spending and extension of the tax reduction. This memorandum seeks your guidance on the Administration's position on the first of these jobs bills likely to reach you, H.R. 12987, the Emergency Job Program Extension Act of 1976, in the context of the other potential "job creation" legislation.

General Approach

Two general approaches to guide formulation of the Administration's position on "job creation" legislation have been extensively discussed by the EPB Executive Committee. One approach would maintain our position of continuing to resist additional spending on the grounds that the best way to achieve sustained, noninflationary growth is to reduce the rate of increase in Government spending and the size of the Federal deficit and to permit more money to remain in private hands. Alternatively, we could use this opportunity to support one or more bills specifically designed to reduce unemployment in recognition of the fact that despite the strength of the recovery, unemployment is still high.

Since March 1975, employment has increased by 3.3 million and is now over one million above the pre-recession peak in the summer of 1974. Despite the encouraging employment figures, the unemployment rate is 7.5 percent, in part because of the extremely high labor participation rate which reached an all-time high last month. During the coming year we project an unemployment level of over 6 million at a time when public service employment and temporary unemployment insurance programs are phasing out.



Despite the strength of the recovery, congressional interest in additional unemployment legislation remains strong, as evidenced by the number of "job creation" bills currently receiving serious consideration in the Congress.

POTENTIAL UNEMPLOYMENT LEGISLATION

The new congressional budget procedures permit a more certain assessment of possible initiatives through the balance of the year than has been possible in earlier years. Under the new rules (barring a waiver), authorization bills must be reported by May 15 in order to be considered for the upcoming fiscal year. Ambiguous language in the budget resolution and conflicting opinions among staff members make it difficult to estimate with precision the intended size of the public works and PSE programs. However, it appears that the budget resolution contains sufficient flexibility to fund any of the following bills, but not all of them.

Public Works and Countercyclical Revenue Sharing

Conference Committee consideration of public works legislation is scheduled to commence around June 9. Floor action could come the following week. The House version (H.R. 12972) contains authorizations for FY 1977 of \$2.5 billion over the budget. The Senate bill (S.3201) authorizes \$3.9 billion in various public works activities and, like H.R. 5247 which you successfully vetoed in February of this year, it also contains a \$1.4 billion countercyclical revenue sharing provision. The Senate bill contains unemployment triggers; the House bill does not. It is expected that a bill similar to H.R. 5247 will emerge from conference and be passed by both houses.

Supplemental Community Development Act (Griffin-Brown Bill)

You endorsed the approach of the Griffin-Brown bill last February when you vetoed H.R. 5247. There has been no congressional action on the bill. Its major provisions have been incorporated in Section 19 of H.R. 12945, the Housing Authorization Act, which was passed by the House on May 26. The Senate counterpart to H.R. 12945, however, does not include the Griffin-Brown provision. It is unclear whether the Griffin-Brown provision will survive a conference.



Young Adults Conservation Corps

H.R. 10138 passed by the House on May 25 is designed to employ persons aged 19-23 in conservation and related projects and would be similar to and essentially part of the existing Youth Conservation Corps administered by the Departments of the Interior and Agriculture. It would give preference to youth in high unemployment areas (six percent and over) and would provide 100,000 to 500,000 man-years of employment each year for the next 5 years at a total cost of \$9.15 billion. Under the provisions of the House bill, no individual could receive employment in the program for longer than 12 months.

Hearings are scheduled on a similar bill, S. 2630, by the Senate Interior Committee. There is a possibility that a bill will be reported by the Senate Interior Committee and passed by the Senate prior to the July 2 recess. Senate consideration would require a waiver of the budget rules.

Humphrey-Hawkins

Floor action was expected in the House in early June, although it now appears efforts at rewriting the bill will delay floor action. Senate action could be completed between the July and August recesses so it is possible that a bill could be passed prior to the scheduled October 2 adjournment.

The bill's sponsors reportedly are reconsidering the level of the unemployment target, the wage level prescribed for "employer of last resort" programs, and the absence of anti-inflation measures. The bill does not require outlays in FY 1977 but will undoubtedly mandate national economic planning.

Republican Alternative to Humphrey-Hawkins (Esch-Kemp)

The Administration has been working quietly with Congressmen Esch and Kemp in their effort to develop a Republican alternative which they intend to introduce. A draft bill containing several initiatives already proposed by the Administration has been prepared. Congressmen Esch and Kemp are finalizing some additional initiatives which they plan to incorporate in the bill.

Public Service Employment

The Senate version of H.R. 12987 is a marked improvement over the House version of the Public Service Employment bill. Administration support would make adoption of the Senate version in



conference more likely and could keep total outlays below the maximum contemplated in the congressional concurrent resolution.

The Senate version would authorize extension of the Emergency Public Service Program under Title VI of the Comprehensive Employment and Training Act (CETA) through the end of FY 1977. The bill contains no specific funding figure, but the Committee report specifies a job level of 520,000 (double the present program) and \$3.5 billion over the \$1 billion already scheduled to be spent in FY 1977. This sum, \$4.5 billion, is the full amount of the budget resolution. To prevent an abrupt layoff of present participants on January 31, 1977, a FY 1977 budget supplement of about \$700 million for phase-out is needed. The net outlay increase of the Senate bill is therefore about \$2.8 billion if all of the money in the budget resolution is utilized.

The Senate provisions extend funding of the 260,000 public service employment jobs and add funding for specific projects limited to 1 year in duration. Any vacancies in existing PSE slots can be filled only in project related activities. Employment above the 260,000 existing jobs would generally be restricted to individuals in low income families (\$6,700 per year) who either have exhausted their unemployment insurance benefits, have been unemployed for more than 15 weeks (whether or not they are eligible for unemployment insurance), or are currently benefiting from AFDC programs. In addition, the Secretary of Labor would be given greater flexibility to undertake demonstration programs and to reallocate funds geographically.

The House bill also expands the PSE program but lacks provisions limiting the new positions. The House will almost certainly insist on an increase in the current 260,000 PSE jobs and is also likely to oppose the restrictions on eligibility for these new PSE positions in the Senate bill. Senate staffers believe that the number of additional PSE jobs is negotiable and that the prospect of Administration support for some increase could help secure House support for the Senate restrictions on eligibility for these jobs.

OPTIONS

Three options have been considered by the EPB Executive Committee.

Option 1: Oppose any extension of Public Service Employment authority or funding increase beyond levels required to phase out the current program.

Advantages:

- o Opposition to a continued or expanded PSE program is consistent with the objective of seeking to reduce the growth in Federal spending with primary reliance on job creation in the private sector.
- o There is serious question, due to the "displacement rate," regarding the actual impact on employment of additional public service jobs.

Disadvantages:

- o Administration support for the Senate version at this time could be decisive in restricting the size of the proposed increase in PSE jobs and in limiting additional PSE jobs to the long term unemployed.

Option 2: Continue negotiations to influence the scope and structure of the public service employment extension bill with the understanding that you will support the bill if it incorporates the Senate Committee's restrictions on beneficiaries and if the authorization is considerably less than the maximum funding level in the House bill.

Advantages:

- o Working to shape this bill and later supporting it serves as a specific program to address the problem of the long-term unemployed for the remainder of the recovery.
- o Expanding PSE involves less delay in actual job creation than many alternative forms of direct Federal action. The Senate restrictions are likely to reduce rehiring of laid-off Government employees which has been a principal reason for opposing PSE.
- o Additional PSE outlays forestalls a potential termination problem and expands an existing program rather than creating an entirely new one. The actual size of the appropriation could be left to later negotiation in conjunction with tax cut considerations.

Disadvantages:

- o The restriction of public service jobs to the long-term unemployed only applies to net additions to the existing 260,000 jobs that would be extended in the bill.
- o Negotiating on this bill represents a reversal of your opposition to additional spending bills and emphasis on tax reductions rather than outlays to stimulate employment.
- o Authorizing negotiations on this bill may encourage other congressional efforts to press for still further "job creation" legislation.

Option 3: Oppose the legislation extending the PSE authority but actively explore the possibility of supporting one of the other "job creation" initiatives.

Advantages:

- o Other initiatives such as the Supplemental Community Block Grants, the Young Adults Conservation Corps, or the Esch-Kemp bill may offer the opportunity of supporting additional legislation that is more in keeping with your philosophy.

The minority in the Congress feel very strongly that some alternative to Humphrey-Hawkins is needed and desire your support, although not necessarily for the PSE extension legislation.

Disadvantages:

- o Most of the other alternative "job creation" legislation entails higher authorization levels than the PSE bill.
- The Esch-Kemp and Humphrey-Hawkins bills are still in a state of flux at this time but would likely have a smaller impact on the deficit in FY 1977 than the PSE extension bill. However, both could have substantial effects in later years.
- o Even if the Administration decides to support one of the other "job creation" initiatives, the passage of some sort of PSE bill is still likely.

*for writing
to high
Kemp
area.*

Decision

Option 1 _____ Oppose any extension of Public Service Employment authority or funding increase beyond levels required to phase out the current program.

Supported by: Treasury, CEA, OMB

Option 2 _____ Continue negotiations to influence the scope and structure of the Public Service Employment Extension Bill with the understanding that you will support the bill if it incorporates the Senate Committee's restrictions on beneficiaries and if the authorization is considerably less than the maximum funding level in the House bill.

Supported by: Labor*

Option 3 _____ Oppose the legislation extending the PSE authority but actively explore the possibility of supporting one of the other "job creation" initiatives.

Supported by: Commerce, Cannon

*I favor Option 2. Continuing a hard line against job creation programs would be inconsistent with what the Administration has already endorsed. The President endorsed the principle of the Griffin-Brown bill when he vetoed H.R. 5247 public works legislation last February. More importantly, as emergency public service employment and unemployment insurance phase out, the Administration is left without a constructive policy to deal with the longer-term unemployment problem. Now that our anti-recession policy has been successful, moving towards a new initiative to assist the long term unemployed is an appropriate act of Presidential leadership. (W.J. Usery)

THE WHITE HOUSE

WASHINGTON

June 2, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN *LWS*

SUBJECT: Administration Response to Congressional
Tax Legislation

The Senate Finance Committee has virtually completed markup of the tax bill (H. R. 10612). The House bill, as marked up by the Finance Committee, is a mixture of some very desirable features, some extremely undesirable features, and a great quantity of other features ranging from simple provisions which are neutral from a policy standpoint to provisions which add complexity to the Internal Revenue Code with doubtful justification from a policy standpoint. Unfortunately, some of the desirable features are so interlaced with undesirable features that it will be difficult to separate them.

Until the Committee concludes its action (many effective dates for certain tax provisions will be determined at a June 4 Committee meeting), revenue estimates cannot be made on the bill the Committee will report out. Following the conclusion of the Senate Finance Committee's action on the bill, a decision memorandum will be prepared to obtain your guidance on Senate floor and possible conference committee strategy. Senate floor debate is presently scheduled to commence June 9 or 10 and extend through June 18. The mixture of desirable and undesirable provisions in the bill are illustrated at Tab A.

The bill, as marked up by the Senate Finance Committee, is both complicated and disjointed. During the afternoon of May 27, 65 miscellaneous amendments were considered by the Committee. During some of the session, only two Senators were present. The differences between the House and Senate versions of the bill are so great, not only on subjects considered by the House but on new subjects added by the Finance Committee, that a thoughtful and rational resolution of the differences is unlikely to emerge from the conference committee in time for passage of a bill by both houses by the end of June. The multitude of amendments



will doubtlessly be increased still further when the bill is considered on the Senate floor. Senate liberals have announced their intention to attempt many floor amendments. Thus, if there is a bill by the end of June, it will necessarily be one that is ill-considered in many significant respects unless its provisions are confined to tax reductions alone and possibly a very few other selected noncontroversial subjects.

The Congressional budget reduction calls for tax reform measures to raise \$2 billion. It seems likely that the final tax measure to emerge from the Congress will only meet that goal through legislative chicanery. For example, the Senate Finance Committee bill does not contain tax reform measures raising anything like \$2 billion, but they raise net revenues by allowing certain tax cuts to expire on June 30, 1977. If this provision survives final passage, the Congress may be accused of merely deferring a tax increase until after the election.

So far, the Congress has ignored the "dollar for dollar" principle that you proposed October 6, 1975, and that you confirmed in the 1977 budget. That principle, though qualified, was also adopted by the Congress in a Declaration of Policy (attached at Tab B), when, after your successful veto of a full year tax cut extension, they passed a 6-month extension on December 23, 1975.

Your dollar for dollar principle stated that any tax cut from 1974 levels should be accompanied by an equal outlay cut from \$423 billion -- our October estimate of the FY 1977 outlay level if no programs were cut and if certain congressional initiatives materialized. The Congressional Budget Resolution provides for a budget ceiling of \$413 billion or a \$10 billion reduction. It also provides for a simple tax cut extension costing approximately \$17 billion on a full year basis, offset by \$2 billion in tax reform, for a net tax reduction of \$15 billion. Hence, there is a \$5 billion discrepancy between your dollar for dollar principle and the Congressional Budget Resolution. To reconcile the two, either outlays would have to be held to \$408 billion or the net tax cut from 1974 levels would have to be lowered from \$15 billion to \$10 billion. Since the current tax level is about \$17 billion below 1974 levels, the latter implies tax increases on June 30, including those resulting from tax reform, of \$7 billion.

The actions of the Congress therefore raise a number of issues for your consideration.

Issue 1: Should you make a strong statement this week attacking the Congressional Budget Resolution and the evolving tax legislation?

Option 1: Issue a statement this week attacking congressional actions on tax legislation.

A summary of points that might be included in such a statement is attached at Tab C.

Advantages in issuing a statement:

- o The Congress is clearly vulnerable. They have rejected your call for a deeper tax cut and your dollar for dollar principle even though earlier they gave it a qualified endorsement.
- o A statement would also help reinforce your position of favoring tax reductions as opposed to the congressional preference for increased spending.

Option 2: Do not issue a statement on congressional action on tax legislation.

Advantages in not issuing a statement:

- o The most effective attack on the Congress would utilize your dollar for dollar principle. However, events since the October 6 speech have made that principle murky. In particular, we have requested a number of budget supplementals which should theoretically reduce our proposed tax cut according to our dollar for dollar principle. In addition, the Congress has failed to accept certain savings which have already raised 1977 outlays. These two factors have raised our current estimate of outlays close to \$397 billion, and that total is growing constantly. In other words, our proposed deeper tax cut should be reduced by over \$2 billion if we are to adhere strictly to the dollar for dollar principle. However, changing economic conditions are constantly altering our estimates of outlays and receipts, thus lending further ambiguity to the dollar for dollar concept.
- o A vigorous attack would create a mood of confrontation with the Congress which may hamper our ability to bargain effectively on the many undesirable provisions now contained in the House and Senate versions of the tax bill.

- o A rigid stance now could also make it more difficult to bargain flexibly on bills such as public service employment which exceed your budget.

Decision

Option 1 _____ Issue a statement this week attacking congressional action on tax legislation

Supported by: OMB

Option 2 _____ Do not issue a statement on congressional action on tax legislation

Supported by: Treasury, Commerce, Labor, Cannon,

Issue 2: What stance should you take regarding a simple tax cut extension?

Thus far, you have maintained a flexible stance, stating that you will not decide whether to sign or veto a tax cut extension until the detailed bill is presented to you. Your statement on this issue at the press briefing on the Budget is attached at Tab D. Assuming that you wish to maintain this stand and that you do not wish to give a sign or veto signal now, this issue does not have to be decided until the Congress completes, or more nearly completes, its work on the tax bill. Therefore, the options below are presented only for your preliminary consideration. It should be noted that even if you are willing to accept a tax cut extension, the tax bill may contain so many undesirable "tax reform" provisions that a veto is called for. Obviously, this issue cannot be decided now.

Option 1. Acquiesce in the tax cut extension and drop the dollar for dollar concept, stating that you will judiciously use the veto to curb the rate of growth of outlays but do not state an outlay target.

- o As noted above, the dollar for dollar concept has become terribly ambiguous.
- o This option would continue to allow the promise of a deeper tax cut if spending can be curbed sufficiently, while the elimination of the dollar for dollar concept would allow much more flexibility regarding the timing and the design of the deeper tax cut.

Disadvantages:

- o By dropping the dollar for dollar concept, you may be accused of inconsistency and a lack of leadership.
- o This may be interpreted by the Congress as a weak stance and make it harder to sustain vetoes on spending bills.

Option 2: Acquiesce in a tax cut extension but retain the dollar for dollar concept and attempt at least to achieve an implied outlay ceiling of about \$408 billion. (The exact target would depend on the revenue loss in the tax measures ultimately enacted.) You would state that a deeper tax cut is possible if outlays are kept below \$408 billion.

Advantages:

- o Demonstrates flexibility on the tax cut issue while maintaining a commitment to the dollar for dollar concept.

Disadvantages:

- o Setting a specific outlay target ignores the ambiguities now afflicting the dollar for dollar concept.
- o Many of the outlay savings recommended in the Budget require affirmative action by the Congress in restructuring programs. It may be unrealistic to believe that your spending target could be achieved solely by using vetoes.

Option 3: Veto a tax cut extension.

Advantages:

- o Demonstrates the strongest possible determination to achieve fiscal prudence.

Disadvantages:

- o It is unrealistic to expect that a veto that would raise taxes to 1974 levels could be sustained.
- o A veto battle over the tax cut extension immediately before the current law expires would generate uncertainty for consumers and businesses.

Issue 3: Should we encourage Republicans to offer a floor amendment to the tax bill which would provide your deeper tax cut while directing the Budget Committees to amend their resolution by adopting those outlay reductions in your Budget that are still possible?

Option 1: Encourage Republicans to offer a floor amendment to the tax bill which would provide your deeper tax cut while directing the Budget Committees to amend their resolution by adopting those outlay reductions in your Budget that are still possible.

Advantages:

- o Securing a vote would again force the Congress to directly and visibly address your proposal for reduced Federal spending and a lower tax burden, thus helping keep alive a key political issue.
- o If successful, reduced Federal outlays and taxes would benefit your effort to reduce the long-term rate of increase in Federal spending.

Option 2: Make no effort to seek a floor vote on your deeper tax cut proposal.

Advantages:

- o It may be difficult to keep a united front on the effort to secure a vote since some Republicans do not support certain elements of our Budget, e. g., the payroll tax increases.
- o We could be accused, albeit unfairly, of trying to sabotage the new Congressional Budget procedures.
- o There is a danger that this legislative maneuver could result in passage of deeper tax cuts without compensating spending reductions.

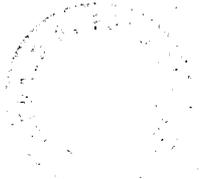
Decision

Option 1 _____ Encourage Republicans to offer a floor amendment to the tax bill which would provide your deeper tax cut while directing the Budget Committees to amend their resolution by adopting those outlay reductions in your Budget that are still possible.

Supported by: OMB, CEA, Cannon, Treasury

Option 2 _____ Make no effort to seek a floor vote on your deeper tax cut proposal.

Supported by: Commerce



A



Mixture of Desirable and Undesirable Provisions of Tax Reform Bill

The Senate Finance Committee markup of the House-passed Tax Reform Bill (H.R. 10612) contains a mixture of desirable and undesirable provisions. The following is a brief summary of the major provisions of the Bill as of May 27, 1976. The Finance Committee is scheduled to meet again on June 4 to determine the effective dates and to consider possible additional amendments.

1. Tax Shelters and Minimum Tax

By and large the Finance Committee's tax shelter and minimum tax provisions are a disappointment.

-- The Administration's limitation on artificial accounting losses ("LAL") proposal (which the House had accepted) was abandoned.

-- The Administration's minimum taxable income ("MTI") proposal (which the House has not accepted) was considered but effectively rejected in favor of a modification of the present law add-on minimum tax (which we generally oppose).

-- A series of "at risk" limitations was applied to farm losses, equipment leasing transactions, oil and gas activities, and to motion pictures tax shelters. We are generally opposed to "at risk" limitations which have the effect of limiting the amount of losses a taxpayer may deduct to the extent of his capital at risk (thus, nonrecourse financing is not taken into account). It should be noted, however, that the Finance Committee's "at risk" provisions are far less strict than those of the House Bill.

While the minimum tax adopted by the Finance Committee is a watered-down version of the House Bill minimum tax, it raises in Fiscal 1977 approximately the same amount of revenues (slightly over \$900 million.) It does so, however, by imposing the tax on a far greater number of taxpayers (approximately 540,000 versus 130,000 under the House Bill).

The Finance Committee's actions with respect to tax shelters and the minimum tax are likely to encounter strong opposition on the Senate floor. Senator Kennedy and a number of liberals will be pushing the Administration-endorsed LAL provisions and the House Bill version of the minimum tax.

The Finance Committee deleted an undesirable House Bill provision which would have imposed a limitation on the deductibility of investment and personal interest. Instead, the Committee

decided to treat the excess of investment interest over investment income as a item of tax preference subject to the minimum tax.

2. Business Tax Provisions

The Committee's principal actions in the business tax area are:

--Make permanent the increase in the investment tax credit to 10 percent (supported by the Administration) and provide an additional 2 percent credit if the employer contributes an equivalent amount to an employee stock ownership plan (ESOP). Treasury had tacitly gone along with a 2 percent tax credit ESOP for electric utilities in order to induce the adoption of the Administration's 6-point utility package (recommended by the Labor Management Committee) and in order to induce the adoption of the Administration's proposal for Broadened Stock Ownership Plans (BSOPs). The Finance Committee extended the 2 percent tax credit ESOP across the board but did nothing with respect to the utility package and did not adopt the BSOP proposal.

--Extend through 1978 the carryover of investment tax credits that would otherwise expire in 1976.

--Make investment tax credit for new investments refundable at the end of the credit carryover period (7 years) if not previously utilized.

--Reduce permanently the tax rate on the first \$50,000 of corporate income to 20 percent of the first \$25,000 (previously taxed at 22 percent) and 22 percent of the second \$25,000 (previously taxed at 48 percent).

--Provide an option to elect an 8-year net operating loss carryforward in place of the present law 3-year carryback and 5-year carryforward.

--Accept, and somewhat expand, the provision in the House Bill dealing with the publishing industry which the Administration has opposed. Such provision would permit individual publishers and authors to follow their own tax accounting practices until new regulations are promulgated.

--The Administration's job creation incentive proposal (rapid amortization for qualifying plants and equipment) was rejected without a formal vote.

3. Capital Gains and Losses and Maximum Tax on Investment Income.

The provisions of the Senate bill dealing with capital gains and losses are also objectionable. The Senate did not adopt the extension of the capital gains holding period to one year nor did it increase the usability of capital losses against ordinary income to \$4,000. Both of these provisions had been in the House bill. In addition, the Finance Committee did not accept the Administration's proposal to adopt a decreasing sliding scale for the includability of capital gains for assets held for more than five years.

The Committee extended 50 percent maximum tax on earned income to investment income as well, if it does not exceed \$100,000 or the amount of the taxpayer's earned income.

4. Foreign Provisions

The benefit to exporters of the DISC provisions has been cut back by both the House bill and the Senate Finance Committee. The Administration favors continuation of DISC in its present form, but certainly it is better to have it as cut back than to lose it entirely--a hazard confronting it on the Senate floor under attack which is likely to come from Senator Kennedy and others.

The Administration favored repeal of the withholding tax on interest and dividends paid to foreign investors in order to give our businesses access to foreign capital markets on a competitive basis with other seekers of capital. The House rejected the repeal, but the Finance Committee approved repeal of the withholding of tax on interest payments but not on dividend payments.

An extremely undesirable feature is the Ribicoff proposal adopted by the Finance Committee to deny benefits (a) of the foreign tax credit, (b) of deferral of tax on unrepatriated earnings of controlled foreign corporations, and (c) of DISC tax deferrals to companies who participate in the Arab boycott of Israel. Purely as a matter of tax policy, the Ribicoff antiboycott proposal is highly offensive. Both Treasury and State spoke strongly in opposition to it at the markup session.

Another undesirable feature is the Byrd proposal adopted by the Finance Committee to deny the benefits of the foreign tax credit, deferral and DISC to companies which pay bribes. The Byrd proposal goes far beyond that and is very bad tax policy.

5. Energy Provisions

The provisions in the Senate Finance bill relating to energy are numerous and almost uniformly objectionable. The recycling tax credit for metals, textiles, paper and glass has been consistently opposed by the Administration but is included in the Senate Finance bill. Similarly, the Committee included objectionable tax credits for both business and residential solar and geothermal energy equipment, business and commercial insulation expenditures, residential heat pumps, conversion of waste to solid fuel, oil shale equipment, coal slurry pipelines, equipment for underground coal mines and the conversion of organic material into certain fuels. Even with regard to the home insulation credit which the Administration favored, the Senate Finance bill goes beyond the Administration's proposal in amount and scope. Finally, the Senate Finance bill creates exemptions from certain excise taxes which the Administration opposes.

"Revenue Adjustment Act of 1975"

Section 1A. DECLARATION OF POLICY

- (a) Congress is determined to continue the tax reduction for the first 6 months of 1976 in order to assure continued economic recovery.
- (b) Congress is also determined to continue to control spending levels in order to reduce the national deficit.
- (c) Congress reaffirms its commitments to the procedures established by the Congressional Budget and Impoundment Control Act of 1974 under which it has already established a binding spending ceiling for the fiscal year 1976.
- (d) If the Congress adopts a continuation of the tax reduction provided by this Act beyond June 30, 1976, and if economic conditions warrant doing so, Congress shall provide, through the procedures in the Budget Act, for reductions in the level of spending in the fiscal year 1977 below what would otherwise occur, equal to any additional reduction in taxes (from the 1974 tax rate levels) provided for the fiscal year 1977: PROVIDED, HOWEVER, That nothing shall preclude the right of the Congress to pass a budget resolution containing a higher or lower expenditure figure if the Congress concludes that this is warranted by economic conditions or unforeseen circumstances.

CALL OF THE HOUSE

Mr. NEDZI. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond:

(Roll No. 826)

Addabbo	Hastings	Reuss
Budillo	Hebert	Rhodes
Beard, Tenn.	Recller, Mass.	Risenhoover
Bell	Rinshaw	Roe
Bingham	Holland	Rosenthal
Bonker	Horton	Rostenkowski
Brown, Calif.	Jarmen	Runnels
Burton, John	Johnson, Calif.	St Germain
Carney	Jones, Okla.	Schauer
Chappell	Kerth	Schroeder
Clay	Linness	Shuster
Conyers	Landrum	Sikes
Daniels, N.J.	Leggett	Skubitz
Davis	McCloskey	Stark
Diggs	Macdonald	Steelman
Dingell	Melcher	Stetger, Ariz.
Dwinn	Mikva	Stephens
Edwards, Calif.	Mineta	Stuckey
Erlenborn	Montgomery	Sullivan
Esch	Mosher	Symington
Ehlerman	Moss	Talcott
Evins, Tenn.	Mottl	Teague
Foley	Murphy, N.Y.	Thompson
Ford, Mich.	Myers, Ind.	Udall
Fraser	Nichols	Vander Veen
Fugua	Ottlinger	Waxman
Gaydos	Patman, Tex.	Wilson, C. H.
Gibbons	Pepper	Wilson, Tex.
Gillman	Poage	Winn
Hanley	Preyer	Yates
Harrington	Pritchard	Yatron
Harsha	Randall	Young, Alaska

The SPEAKER. On this rolloall 338 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Sparrow, one of its clerks.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2718) entitled "An act to improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing, and for other purposes."

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

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tation of the vessel, *Eruja Mar*, as a vessel of the United States with coastwise privileges; S. 1699. An act to amend the Pennsylvania Avenue Development Corporation Act of 1972 (Public Law 92-578), as amended; and

S. 1941. An act to increase the protection afforded animals in transit and to assure the humane treatment of animals, and for other purposes.

PERSONAL STATEMENT

Mr. PATMAN. Mr. Speaker, I desire to have my presence recorded on the last two quorum calls. I was here and recorded my presence, but I am recorded on only one of them.

SENATE AMENDMENTS ON H.R. 9968, AMENDING SECTION 103 OF INTERNAL REVENUE CODE

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and take from the Speaker's desk the bill (H.R. 9968) to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities, with the Senate amendments thereto, and concur in the Senate amendments with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert: Page 1, strike out all after line 4, over to and including line 10 on page 2 of the Senate engrossed amendments, and insert:

SEC. 1A. DECLARATION OF POLICY.

(a) Congress is determined to continue the tax reduction for the first 6 months of 1976 in order to assure continued economic recovery.

(b) Congress is also determined to continue to control spending levels in order to reduce the national deficit.

(c) Congress reaffirms its commitments to the procedures established by the Congressional Budget and Impoundment Control Act of 1974 under which it has already established a binding spending ceiling for the fiscal year 1976.

(d) If the Congress adopts a continuation of the tax reduction provided by this Act beyond June 30, 1976, and if economic conditions warrant doing so, Congress shall provide, through the procedures in the Budget Act, for reductions in the level of spending in the fiscal year 1977 below what would otherwise occur, equal to any additional reduction in taxes (from the 1974 tax rate levels) provided for the fiscal year 1977; *Provided, however,* That nothing shall preclude the right of the Congress to pass a budget resolution containing a higher or lower expenditure figure if the Congress concludes that this is warranted by economic conditions or unforeseen circumstances.

Resolved, That the House agree to the amendment of the Senate to the title of the bill.

The Clerk read the title of the bill. The SPEAKER. Is a second demanded? Mr. STEIGER of Wisconsin. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Oregon is recognized for 40 minutes.

Mr. ULLMAN. Mr. Speaker, let me explain briefly what the situation is. As the Members know, we passed the tax reduction, and it was vetoed, and we failed to override the veto.

The Senate took exactly the same bill we passed, with no changes whatsoever insofar as the tax features are concerned, and added a very short amendment that gives some assurance that we would attempt to offset future tax reductions with expenditure reductions.

We have carefully examined that amendment. We have found that it would not meet, as it was written, with the approval of the members of the committee on this side in the House. We did however agree to the basic substance, and so we have redrafted the Senate amendment after consultation with the leadership, extensive consultation, I might say, and after extensive consultation with the majority members of both the Ways and Means Committee and Budget Committee and with the Speaker being in touch with the President by telephone. We were also in touch with Senator Long and the people on the Senate side.

We have come up with substitute language which, according to our best tax people, makes no substantive changes in what the Senate has passed and sent over here and which the President had agreed to.

At the present moment I must say that the President has been given this full information. He has the text. He is studying it. I cannot conceive that he would not approve of it because substantively it does the same thing as the amendment he had previously agreed to.

But let me read it to the Members, and I know the Members all have copies. It begins:

Congress is determined to continue the tax reduction for the first 6 months of 1976 in order to assure continued economic recovery.

I do not think anybody here can contest that. That is the most important reason we are passing the bill, and it is just a statement of the purpose as to why we are passing the bill. I cannot see anything that would cause anybody to be concerned about that language.

The second paragraph says:

Congress is also determined to continue to control spending levels in order to reduce the national deficit.

I do not think anybody here would object to that language. I think everybody here would want to be associated with that language.

Then the third paragraph says:

Congress reaffirms its commitments to the procedures established by the Congressional Budget and Impoundment Control Act of 1974 under which it has already established a binding spending ceiling for the fiscal year 1976.

I do not think anybody here could object to that in any manner, shape, or form. That is exactly what we have done. We have established our spending ceiling under the act.

The next paragraph goes on, and this is the one that contains the same basic procedural formula that was adopted by the Senate and agreed to by the President. Substantively, we think we made no changes in it; but there have been slight adjustments in phraseology. It reads:



If the Congress adopts a continuation of the tax reduction provided by this Act beyond June 30, 1976, and if economic conditions warrant doing so, Congress shall provide, through the procedures in the Budget Act, for reductions in the level of spending in the fiscal year 1977 below what would otherwise occur, equal to any additional reduction in taxes (from the 1974 tax rate levels) provided for the fiscal year 1977.

Then the final proviso:

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That proviso was lifted almost entirely, with one minor change, from the language in the Senate bill that was approved by the President.

Now, Mr. Speaker, we have had this matter before us for a long, long time. I had been prepared to go home, having done all that we could possibly do, and tell the people that Congress simply had exhausted its remedies and there was no way to keep in place the tax reductions in January. I think most of the Members on this side were resigned to that same attitude and ready to go home and take that position.

Mr. Speaker, last night there was a movement over on the Senate side following a meeting, a leadership meeting. The Speaker and Senator MANSFIELD and the Senate leaders came over. They started a movement to try and work out some kind of compromise language that the President would accept. That resulted then this morning that the Senate confirmed that action and passed the bill with the amendment and sent it over here.

So I say that this language that we have worked out does not violate in any way the basic principles and purposes and procedures that were set forth in the Senate language that was approved by the President.

Mr. Speaker, I strongly urge that all of us vote overwhelmingly, both Democrats and Republicans, and accept this language, send the bill down. I cannot conceive that the President would not sign it.

Before I conclude, I want to say that I understand that both the Senate and the President have had trouble with some of the changes that we have made in the Senate language in our policy statement. I want to say that the changes are not intended to be substantive, and I do not believe they are. Let me go through some of them with you.

For example, I understand that some object to adding the language "and if economic conditions warrant doing so" at the beginning of the third paragraph. I would like to point out that this phrase is almost the same as that provided in the proviso at the end of the third paragraph. There, it is indicated that nothing would preclude the right of Congress to change the expenditure figure if this is warranted by economic conditions. As far as I am concerned—and I speak as chairman of the committee—this means nothing more by adding that material at the beginning of the paragraph. Therefore,

it really is simply a redundant statement. However, some of the House Members felt that it was important to have this phrase appear up above to be sure that no one misunderstood that there was a condition that if economic conditions change, the commitment specified might have to be modified.

I know, also, that there are some that think that the omission of this word "changing" in front of economic conditions at the end of the third paragraph had some significance. I do not believe that there is any substantive effect occurring from this omission. I believe that it is clear that the economic conditions existing today do not warrant departing from the commitments specified, and I believe that it is only if economic conditions were to change that this would be true.

Also, I know of no other circumstances at this time which would require a change from this commitment. Of course other circumstances which are unforeseen at the present time may ultimately require such change.

I understand, also, that some question has arisen where we made reference to "additional reduction in taxes." It was the intention of all of us to refer to any reduction in taxes which occurs after June 30, 1976, even though it is the same amount of reduction which is already provided for in the period up to June 30, 1976. In other words, an extension of the existing tax reduction beyond June 30, 1976, would give rise to the requirement of an equal reduction in spending to offset a tax reduction.

The determination to control spending is, in my opinion, a determination which the Congress shares with the President. I know of his interest in reducing the national deficit, and I can assure him that Congress shares this determination with him, and that the statements we are making in this tax bill reinforce that determination.

Mr. Speaker, I yield to my distinguished colleague in this effort, the chairman of the Budget Committee, the gentleman from Washington (Mr. ADAMS).

Mr. ADAMS: Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I want to state that I support the remarks of the chairman of the Committee on Ways and Means and to indicate that during the course of this day the President has indicated that he wanted to compromise his differences that he had stated in the past and the Senate had done so. We are trying to reach such an accommodation. I think in doing this, we have done so.

Mr. Speaker, the Senate amendment has been redrafted to meet the procedures of the Budget Control Act. The House under the Budget Control Act will be examining any stimulus by tax reduction, the terms of the stimulus, with the economic programs that require spending. We have done this in the past, but we have affirmed it in this particular language, so the President and the Nation know we will be doing it in the future.

Please notice that the Senate had sent over and had requested that there be

no flat money ceiling figure there. I agree with that, because we have established a ceiling already for the fiscal year 1976 and we will establish a ceiling for fiscal year 1977, as provided under the Budget Act and as affirmed in this resolution.

So that I hope the Members, both Republicans and Democrats, will vote for the amendment as introduced by the chairman of the Ways and Means Committee so that we may send this to the President, and I am very hopeful that we will have this matter behind us.

Mr. ULLMAN, Mr. Speaker, I reserve the balance of my time.

Mr. STEIGER of Wisconsin, Mr. Speaker, I yield such time as she may consume to the gentlewoman from Nebraska (Mrs. SMITH).

(Mrs. SMITH of Nebraska asked and was given permission to revise and extend her remarks.)

Mrs. SMITH of Nebraska, Mr. Speaker, I would like to add my voice in strong support of the tax reduction—spending limitation compromise reached this afternoon.

The agreement reached is highly responsible, taking, as it does, the best of both sides of this lengthy dispute. Taxes will continue to be collected at reduced levels as a stimulant to bring us out of an unpleasant recession, yet the spending limitation being put into effect will prevent the reduction in revenue from fueling another round of cruel inflation. This is sound policy, and is a policy that will benefit both individuals and the Nation as a whole.

Mr. STEIGER of Wisconsin, Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. FREY).

(Mr. FREY asked and was given permission to revise and extend his remarks.)

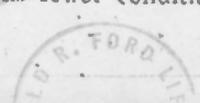
Mr. FREY, Mr. Speaker, today is an important day in the history of our Nation. For the first time in years we have recognized the principle that you cannot have it all; that if we are to cut taxes, we must reduce spending on a dollar-for-dollar basis. For the first time there is hope that our Nation will not go the way of New York City. There is also hope because a small but effective group of Congressmen, both Republican and Democratic, put what is right in front of what is politically wise.

Hopefully, people will no longer be bought with their own money. Hopefully, we can move toward a balanced budget and fiscal sanity. Hopefully, the country will return to a philosophy of "We the people" recognizing both rights and responsibilities. It is long overdue.

Mr. STEIGER of Wisconsin, Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Pennsylvania (Mr. SCHNEEBELI).

(Mr. SCHNEEBELI asked and was given permission to revise and extend his remarks.)

Mr. SCHNEEBELI, Mr. Speaker, the Members on this side much prefer the Senate version of this approach to the problem. It is a lot more specific and has fewer conditions. We like some of



CALL OF THE HOUSE

Mr. NEDZI. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond:

	[Roll No. 826]	
Addabbo	Hastings	Reuss
Badillo	Hebert	Rhodes
Beard, Tenn.	Heckler, Mass.	Risenhoover
Bell	Kinshaw	Roe
Bingham	Holland	Rosenthal
Bonker	Horton	Rostenkowski
Brown, Calif.	Jarmen	Runnels
Burton, John	Johnson, Calif.	St Germain
Carney	Jones, Okla.	Scheuer
Chappell	Karh	Schroeder
Clay	Kindness	Shuster
Conyers	Landrum	Sikes
Daniels, N.J.	Leggett	Skubitz
Davis	McCloskey	Stark
Diggs	Macdonald	Steelman
Dingell	Melcher	Steiger, Ariz.
Drinan	Mikva	Stephens
Edwards, Calif.	Mineta	Stuckey
Erlenborn	Montgomery	Sullivan
Esch	Mosher	Symington
Eshleman	Moss	Talcott
Evins, Tenn.	Mottl	Teague
Foley	Murphy, N.Y.	Thompson
Ford, Mich.	Myers, Ind.	Udall
Fraser	Nichols	Vander Veem
Fuqua	Ottlinger	Waxman
Gaydos	Patman, Tex.	Wilson, C. H.
Gibbons	Pepper	Wilson, Tex.
Gilman	Poage	Winn
Hanley	Preyer	Yates
Harrington	Pritchard	Yatron
Harsha	Randall	Young, Alaska

The SPEAKER. On this rollcall 338 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

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Mr. Speaker, I yield to my distinguished colleague in this effort, the chairman of the Budget Committee, the gentleman from Washington (Mr. ADAMS).

Mr. ADAMS: Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I want to state that I support the remarks of the chairman of the Committee on Ways and Means and to indicate that during the course of this day the President has indicated that he wanted to compromise his differences that he had stated in the past and the Senate had done so. We are trying to reach such an accommodation. I think in doing this, we have done so.

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no flat money ceiling figure there. I agree with that, because we have established a ceiling already for the fiscal year 1976 and we will establish a ceiling for fiscal year 1977, as provided under the Budget Act and as affirmed in this resolution.

So that I hope the Members, both Republicans and Democrats, will vote for the amendment as introduced by the chairman of the Ways and Means Committee so that we may send this to the President, and I am very hopeful that we will have this matter behind us.

Mr. ULLMAN. Mr. Speaker, I reserve the balance of my time.

Mr. STEIGER of Wisconsin. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Nebraska (Mrs. SMITH).

(Mrs. SMITH of Nebraska asked and was given permission to revise and extend her remarks.)

Mrs. SMITH of Nebraska. Mr. Speaker, I would like to add my voice in strong support of the tax reduction-spending limitation compromise reached this afternoon.

The agreement reached is highly responsible, taking, as it does, the best of both sides of this lengthy dispute. Taxes will continue to be collected at reduced levels as a stimulant to bring us out of an unpleasant recession, yet the spending limitation being put into effect will prevent the reduction in revenue from fueling another round of cruel inflation. This is sound policy, and is a policy that will benefit both individuals and the Nation as a whole.

Mr. STEIGER of Wisconsin. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. FREY).

(Mr. FREY asked and was given permission to revise and extend his remarks.)

Mr. FREY. Mr. Speaker, today is an important day in the history of our Nation. For the first time in years we have recognized the principle that you cannot have it all; that if we are to cut taxes, we must reduce spending on a dollar-for-dollar basis. For the first time there is hope that our Nation will not go the way of New York City. There is also hope because a small but effective group of Congressmen, both Republican and Democratic, put what is right in front of what is politically wise.

Hopefully, people will no longer be bought with their own money. Hopefully, we can move towards a balanced budget and fiscal sanity. Hopefully, the country will return to a philosophy of "We the people" recognizing both rights and responsibilities. It is long overdue.

Mr. STEIGER of Wisconsin. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Pennsylvania (Mr. SCHNEEBELI).

(Mr. SCHNEEBELI asked and was given permission to revise and extend his remarks.)

Mr. SCHNEEBELI. Mr. Speaker, the Members on this side much prefer the Senate version of this approach to the problem. It is a lot more specific and has fewer conditions. We like some of



C



Points That Might be Included in a Statement
Attacking Congressional Actions on Tax Legislation

- o The Congress has rejected your proposed reforms of government programs that would save money and make the programs more rational. By their action they have prevented the American people from enjoying a tax cut which would yield the family of four earning \$15,000 an extra \$227 per year.

- o In December the Congress accepted your principle that a tax cut extension would only be provided for a full year if spending could be curbed significantly. Their Budget Resolution rejects this principle. Granted they left themselves a loophole. They said that they would not follow the principle if dropping it was "warranted by economic conditions" or "unforeseen circumstances." But now that the economic recovery is progressing more rapidly than most expected in December, it is fair to ask the Congress what there is in the economic conditions that warrants dropping the principle. What "unforeseen circumstances" have occurred?

- o It could be noted that the Senate Finance Committee has not only rejected your request for a deeper tax cut, they have even rejected their own Budget Resolution's call for \$2 billion of tax reform. They only meet the Budget Resolution's revenue target by setting the stage for a tax increase after June 30, 1977.



D



Question and Answer From
Presidential Budget Briefing
January 20, 1976

* * * *

QUESTION: Mr. President, only a month or two ago you were quite insistent that Congress commit itself to a specific spending ceiling as a precondition of any tax cut, yet last night when you proposed your additional \$10 billion tax cut you made no mention of a requirement for such a spending ceiling. Could you explain?

THE PRESIDENT: I think if you will re-read the message you will find that I do say, or did say, rather in that message that if we restrain Federal spending we can have a tax reduction on a dollar-for-dollar basis. I cannot remember the page, but it is in the message that I read to the Congress last night.

QUESTION: Well, yes, sir, but I take it you are no longer insisting on the specific ceiling approved by Congress as a precondition to that extra \$10 billion.

THE PRESIDENT: Well, we say that the ceiling is \$394.2. Now, there are uncertainties that take place as we move along and we have 5-1/2 months before July 1, 1976. So there has to be some flexibility. I have picked the ceiling. I have said



that we can, with that ceiling, as of today, have a \$10 billion additional tax reduction over that which Congress has approved. We will have to wait and see how economic conditions develop in the coming months, but the concept of dollar for dollar was set forth in the message last night.

* * *



THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN
BRENT SCOWCROFT

SUBJECT: Questionable Corporate Payments Abroad

This memorandum seeks your guidance regarding whether or not to propose a legislative initiative, to supplement the unilateral and multilateral initiatives already taken by the Administration, in our attempt to address the "questionable payments" problem.

Current Analysis of the Problem

The Task Force on Questionable Corporate Payments Abroad has received briefings by the IRS, the Department of Justice, the Department of Defense and the SEC. The Task Force staff has held preliminary consultations with businessmen, congressional staff, legal experts, academicians and other informed individuals and groups.

It is clear, on the basis of information already at hand, that there is a "questionable payments problem." A significant number of America's major corporations, in their dealings with foreign governments, have engaged in practices which violated ethical and in some cases legal standards of both the United States and foreign countries. To carry out these practices, certain American corporations have falsified records, lied to auditors, and used off-the-books "slush" funds. In some cases, improper foreign payments have been unlawfully deducted as ordinary and necessary business expenses for U.S. income tax purposes. The problem is actually a set of problems, often inter-related, but distinguishable as follows:

- o The problem of "petty corruption." "Grease" or "facilitating" payments are a business requirement in a number of countries where they are often accepted as a perquisite of an underpaid civil service.
- o The problem of "competitive necessity." It is frequently argued that American firms are required to bribe in order to meet foreign competition, and in fact, foreign companies do sometimes make payments with the knowledge of their governments. The SEC has concluded, however, that little



if any business would be lost if U.S. firms were to stop these practices. In a number of cases, payments have been made to gain an advantage over other U.S. manufacturers.

- o The problem of extortion. In some instances, improper payments have been extorted from U.S. companies by corrupt officials or agents purporting to speak for such officials.
- o The problem of adverse effect on foreign relations. Public disclosure of information and allegations regarding past practices has had adverse impact on the political and social fabric of countries friendly to the United States and has, thereby, adversely affected U.S. foreign relations.
- o The problem of adverse impact on multinational corporations (MNC's). Exposure of the questionable payments problem has increased concern that MNC's are unaccountable to national legal constraints and that they have the capacity to conduct independent foreign policy including the suborning of host country political and governmental processes. Such enterprises are an important part of the American economy and offer substantial opportunities for developing nations. The U.S. interest in a healthy international economic order is importantly dependent upon the international acceptability of MNC's.
- o The problem of eroding confidence in "free" institutions. Most fundamentally, the uncovering of these improper past practices, as a result of Watergate and subsequent executive and congressional investigations, has eroded confidence in corporate responsibility and in democratic and capitalist institutions generally.

Delineation of the precise dimensions of the questionable payments problem must await further investigation by the SEC, by the IRS, whose review of the problem is in its initial stages, and by the Department of Justice. Nevertheless, the nature of the problem in its presently visible dimensions is sufficient to justify not only the remedial measures already under way but also serious consideration of additional measures.

Issues and Options

Three issues are presented for your consideration. In considering these issues it is important to note that:

1. Existing Administration initiatives will continue to be pursued regardless of the resolution of these issues.
2. If any legislative initiative is proposed now, it would simply be outlined in an appropriate Presidential speech



or release. Specific drafting and resolution of related detailed issues would remain for further development by the Task Force.

3. Whether or not a new legislative initiative is proposed, the possibility of further initiatives in other areas, e.g., administrative guidelines with regard to the behavior of U.S. government employees, or a special foreign policy initiative to gain greater international cooperation would remain under review.

Issue 1: Should the Administration undertake a legislative initiative at this time?

The Task Force is divided on the question of whether there is a need for a legislative initiative or whether we should concentrate on accelerating efforts to obtain international agreement on questionable payments.

Option A: Undertake a legislative initiative at this time.

Alternative legislative initiatives are outlined in Issue 2.

Advantages:

- o There is a need for clarification of current law. Although SEC Chairman Hills testified that "we do have adequate tools to correct the problem once it is found," it is in fact not entirely clear that the SEC has adequate authority to compel public disclosure of those questionable payments which are not "material" as conventionally defined.
- o There is a substantive question as to the adequacy of current law. The Internal Revenue Code reaches only those transactions in which a questionable payment is improperly deducted as a business expense, and in no way constrains a corporation which does not seek the tax benefit of such deductions. SEC's authority applies only to issuers of securities, and does not reach certain significant U.S. firms doing international business. Since SEC authority as currently applied does not require disclosure of the names of recipients, it may not be a fully effective deterrent of extortion. A summary of the applicability of relevant current U.S. law is attached at Tab A.
- o Since there is skepticism regarding the seriousness of the Administration in its quest for remedies, there is a need to act in a way that is publicly perceived as posi-



tive. The Task Force has been criticized for its failure to have independent full-time staff, its mandate to report "before the end of the current calendar year," its alleged "stalling," etc. Continued disclosure will compound the problems of public skepticism and Congressional pressure. Secretary Richardson has promised Senator Proxmire a response with respect to his bill by June 10, and Senator Church will soon be holding hearings on his newly introduced bill.

- o A legislative initiative would provide an effective means to restore public confidence and to reduce cynicism with respect to business.
- o It is in the long-term interest of the United States to allay concerns regarding the accountability of multinational business enterprises. Unilateral legislative action could improve the standing of the U.S. and U.S.-based firms within the international community.

Disadvantages:

- o The U.S. Government has taken steps to curtail illicit payments by U.S. firms under current legal authorities. There is a broad consensus in the business community and enforcement agencies that the disclosure being required by SEC and IRS, as well as publicity resulting from Congressional inquiries, has modified the behavior of U.S. firms abroad. The steps that have been taken by DOD and State, and that will be taken pursuant to the new Security Assistance Act, will eliminate illicit payments from the sensitive sector of military sales.
- o Legislative proposals at this time may be premature. Additional time and analysis is required for a more complete definition of the true dimensions of the problem. Unilateral legislative action might undercut our bargaining position in international negotiations.
- o U.S. regulation of payments by U.S. firms abroad could potentially cause serious damage to U.S. foreign relations because it involves U.S. authorities in the examination of the conduct of foreign officials in their own countries. Disclosures in the United States of alleged corruption abroad could threaten leaders and institutions in friendly foreign countries. General disclosure legislation would tend to expand and institutionalize this process. When deterrence fails and disclosure results, U.S. interests abroad could be seriously damaged.



- o Unilateral legislative action by the United States might cause a substantial competitive handicap to American corporations leading to a loss of business, jobs, etc.
- o A legislative initiative is not the only means available to counter skepticism and to help restore confidence. An alternative course would be to defend more vigorously the adequacy of the current Administration approach -- and to supplement it with a visible effort to accelerate the progress of international negotiations. The current Administration approach is summarized at Tab B.

Option B. Accelerate U.S. efforts to obtain an international agreement on questionable payments. Do not propose any new legislation at this time.

In March the United States made a proposal in the United Nations for negotiation of an international agreement to curb illicit payments. In presenting this proposal, the United States outlined a number of principles on which we felt the agreement should be based, including the following: (1) the agreement would apply equally to those who offer or make improper payments and to those who request or accept them; (2) importing governments would agree to establish clear guidelines concerning the use of agents and to establish appropriate criminal penalties for defined corrupt practices by enterprises and officials in their territories; and (3) uniform provisions for disclosure by enterprises, agents, and government officials of political contributions, gifts, and payments made in connection with covered transactions. We expect that a group of experts will be formed this summer to undertake the negotiation of the agreement.

An intensification of our efforts to obtain such an agreement might include the following steps:

1. Major policy statements by you and members of the Task Force to convey the Administration's determination to reach a workable international agreement on bribery;
2. Renewal of approaches to foreign governments through our embassies abroad to generate additional support for our initiative; and
3. Preparation of an interim report -- which you would make available to Congress in a few weeks -- setting forth the accomplishments of the Task Force to date and outlining the Administration's proposed plan of action with respect to the international agreement.

Advantages:

- o This approach would provide time for more careful consideration of what kind of additional disclosure legislation, if any, is needed.
- o This approach does not foreclose the possibility of subsequently proposing additional legislation. Indeed, a result of the international negotiations may be that we would need to propose some sort of new disclosure requirements, but such a proposal would be made in accordance with the terms of the international agreement and parallel actions by other countries.
- o There is a risk that many countries might use unilateral U.S. action as an excuse for avoiding taking effective action on their own.

Disadvantages:

- o This approach may be perceived politically as a smoke screen for Administration unwillingness to take effective action on the questionable payments problem.
- o Negotiation of an international agreement may take up to 2 years to complete. There would likely be few immediate results from this approach.
- o There is a possibility that it may prove impossible to negotiate successfully such an agreement.

Decision

Option A _____ Undertake a legislative initiative at this time.

Supported by: Commerce, Justice, the Special Representative for Trade Negotiations, Counsel's Office

Option B _____ Accelerate U.S. efforts to obtain an international agreement on questionable payments. Do not propose any new legislation at this time.

Supported by: State, Treasury, Defense, Marsh, Friedersdorf

If you approve undertaking a legislative initiative at this time, the Task Force is divided on what form the legislative initiative should take.



Issue 2: What form should a legislative initiative take?

The Senate Banking and Urban Affairs Committee has scheduled a June 22 markup session for "questionable payments" legislation. Three principal legislative proposals are currently pending in the Congress. A summary of their principal provisions is attached at Tab C.

The "Proxmire bill" requires disclosure to the SEC of all payments above \$1,000 made in connection with business with foreign governments, and "criminalizes" payments made to influence actions of foreign officials.

The "Church bill" requires annual disclosure to the SEC of certain corporate payments abroad (including "commercial" as well as "official" payments) without imposing criminal sanctions for acts done abroad, and also contains a number of other provisions creating private rights of action for damages, and mandating certain internal, corporate reforms.

The "Hills bill" would force increased internal accountability within SEC-regulated corporations by making it a criminal offense to keep false books or to lie to auditors.

The Proxmire and Church bills have substantial defects. The Task Force does not recommend support of either. Consideration of whether the Administration should endorse the Hills bill is presented in Issue 3.

Option A. Propose a form of "disclosure" legislation.

A Presidential initiative for "disclosure" legislation might take the following form: It would require reporting of all payments in excess of some fixed amount made directly or indirectly to any person employed by or representing a foreign government and to any foreign political party or candidate for foreign political office in connection with obtaining or maintaining business with, or influencing the conduct of, a foreign government. These reports would be required to be made to some Executive Branch Department and not to the SEC. The State Department would have discretion to relay reports of these payments to the foreign government(s) affected and these reports would be publicly disclosed after an appropriate interval. Criminal and civil penalties would be set for willful or negligent failure to report. (Deliberate misrepresentation in such reports would be covered by current criminal law, 18 USC Section 1001.) The requirement of such reports would apply to all American business entities and their controlled foreign subsidiaries and agents. Penalties for failure to report would apply only to American parent corporations and their officers.

The State Department, which opposes a legislative initiative, has suggested that if you decide to propose a legislative initiative it should be narrower than the disclosure approach outlined above. The State Department approach would require U.S. firms doing business abroad to report to a single, designated agency of the Executive Branch all payments made to foreign officials, directly or indirectly, in connection with business dealings with foreign governments. The reports would be made available to other interested agencies of the United States government and would also be made available, upon request, to committees of Congress which need the information for legislative purposes as well as to foreign governments under the procedures developed in the Lockheed case. Public disclosure would only be made in those cases where agency or congressional processes required it.

If you decide to propose some form of disclosure legislation, a supplementary options paper will be prepared promptly to resolve the issues which distinguish the State Department approach from the broader disclosure approach and to resolve the remaining issues of detail, e.g., definitions of "controlled foreign subsidiaries and agents," minimum payment levels above which reporting would be required, etc.

Advantages

- o Disclosure legislation should help build public confidence in the accountability and responsibility of MNCs without requiring the degree of extra-territorial enforcement implied by unilateral "criminalization."
- o More systematic reporting and disclosure, including the name of "payees," would provide more effective protection for U.S. business from extortion or other improper pressures that would result from disclosure of a payment to their own government as well as public disclosure of their names in the United States. Virtually all foreign governments have statutes forbidding official corruption.
- o An initiative limited to disclosure legislation avoids the difficult problems of defining bribery or determining whether certain transactions are bribery or distortion which would be entailed in any criminalization legislation.



Disadvantages:

- o To the extent that deterrence fails and disclosure results, it could pose foreign policy problems by aggravating relations between the United States and certain countries.
- o Disclosure could constitute a substantial additional paperwork burden on American corporations. Moreover, various ambiguities would be involved in the case of some payments and disclosure might unjustly implicate legitimate intermediaries.
- o It may be argued that a disclosure approach is unwieldy and does not go far enough -- that criminalization of certain foreign payments should be required, that "bribery" is "wrong"; and that our law ought to reflect that moral judgment.

Option B. Propose legislation which would criminalize corrupt payments to certain foreign officials.

The Task Force has considered a wide range of possible criminalization initiatives. The Attorney General has proposed for your consideration legislation that would apply only to bribes of officials in foreign countries that (a) have appropriate laws prescribing domestic bribery (the State Department advises that virtually all nations already have such laws); and (b) have bilateral enforcement agreements with the United States similar to those being concluded with various nations in connection with the Lockheed matter. A draft statute is attached at Tab D.

Advantages:

- o This proposal would facilitate cooperation by counterpart law enforcement agencies and would avoid involvement of United States law enforcement where there is not a foreign commitment to enforcement of its own laws.
- o The bilateral agreement and foreign law requirement of the proposed statute would help minimize any possible adverse impact on the competitive position of American multinational corporations; entry into an agreement would evince the foreign nation's intention to enforce its corrupt practices laws, particularly against its own officials.



- o Unlike a disclosure provision, this proposal would not create additional and burdensome reporting requirements for American multinational corporations, nor would a new bureaucracy have to be created within any Executive department or agency to implement the statute.

Disadvantages

- o This proposal would have force only in relation to countries willing to enter into bilateral enforcement agreements. And it is conceivable that exactly those countries which are least inclined to enforce bribery statutes--and most problematic in this respect--would fail to enter such bilateral agreements.
- o For countries unwilling to enter enforcement agreements, this approach--as distinguished from the disclosure approach--would fail to deter extortion.
- o Such an initiative would be inherently difficult to enforce because it would pose definitional problems--such as distinguishing between corrupt payments on the one hand and legitimate political contributions and fees on the other.

Decision

Option A _____ Propose a form of "disclosure" legislation.

Supported by: Commerce¹ State² Counsel's Office³
STR⁴

Option B _____ Propose legislation which would criminalize corrupt payments to certain foreign officials.

Supported by: Justice⁵ Treasury, Marsh

¹ A memorandum outlining Secretary Richardson's views and specifications for a reporting and disclosure bill is attached at Tab E.

² A memorandum from Deputy Secretary of State Robinson is at Tab F.

³ A memorandum from Ed Schmults is at Tab G.

⁴ A memorandum from Ambassador Dent is at Tab H.

⁵ A memorandum from the Attorney General is at Tab D.



Issue 3: Should the Administration endorse the Hills bill?

The Hills bill would require SEC-regulated firms to devise and maintain internal accounting controls intended to improve accountability while criminalizing falsification of associated books, records, accounts or documents and criminalizing the making of false or misleading statements to an accountant in connection with an issuer's audit. The bill does not criminalize bribery, and it does not reach non-SEC-regulated firms. Even with the proposed new authority, disclosure requirements would remain linked to a determination of "materiality" from the perspective of investors (as viewed by management, auditors and the SEC).

It is important to remember that the Hills bill is a limited legislative initiative. Since Senator Proxmire has indicated he will incorporate the Hills approach in his bill, it could not be claimed as a Presidential initiative, even though it would be viewed as a positive Administration action.

Recommendation: That you endorse the Hills bill.

Approve _____ Supported by:

Disapprove _____ Supported by:

