The original documents are located in Box 22, folder "Mass Transit - Labor Protective Agreements: Meeting with the President, Secretary Coleman and Secretary Usery, August 2, 1976 (2)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

DECISION

July 9, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES CANNON

SUBJECT: Report and Recommendations of Secretaries Usery and Coleman for Improving Procedures Under Section 13(c) of the Urban Mass Transportation Act of 1964, as Amended

BACKGROUND:

As you know, section 13(c) of the 1964 UMTA Act (Amended) requires that before any Federal assistance for Mass Transit is granted, the Secretary of Labor must certify that "fair and equitable" arrangements have been made for transit employees "adversely affected" by the grant.

Although the intent of this provision of the law was sound, many believe the procedures have been manipulated so that, even where there is no "adverse" effect on workers, the process is used to win higher wages and increased fringe benefits: if transit operators do not agree to these terms, the unions will not approve the certification, DOL will not certify under 13(c), and UMTA funds will not flow. Transit operators, city and county officials, and UMTA heads have consistently expressed dissatisfaction with Section 13(c), and complaints from localities, documented as far back as 1967, have become more vehement in recent months.

On June 2, 1976, you reviewed a May 28, 1976, memorandum (attached at Tab B) describing the history of the 13(c) problem and directed Bill Coleman and Bill Usery to try to reach agreement on specific proposals for improving the 13(c) process.

SUMMARY OF RECENT DEVELOPMENTS:

After extensive discussions and lengthy exchanges of written as well as oral views, DOL and DOT reached agreement on two of the five proposals you made: (1) granting a single certification for a single Federal grant, and (2) publication of regulations or guidelines. There was disagreement on three proposals: (1) Establishing that certain catagories of grants have no adverse impact, and giving a "negative declaration" that, since no such impact is likely to occur, the 13(c) certification process is unnecessary; (2) setting time limits for the DOL decision process; and (3) granting a single multi-year certification for projects which result from a single, UMTA grant decision. Their joint paper is attached at Tab A.

Secretaries Usery and Coleman have requested a meeting with you to discuss this question. We have shared with some of your senior advisers the respective positions of the two Departments; their views are noted below.

I recommend that you approve a meeting with the two Secretaries at your earliest convenience.

APPROVE MEETING_____ DISAPPROVE MEETING_____

ISSUES:

1. NEGATIVE DECLARATION WITH CHANGED BURDEN OF PROOF.

   Pursuant to your decision on June 3d, you proposed that DOT and DOL could establish categories of capital and operating assistance grants that historically have had minimal, if any, adverse impact on transit employees. Such categories would include bus and rail car purchases which result in no reduction in fleet size. In such cases, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

This would shift the present burden of proof from local transit operators (to prove that the Federal dollars will not harm employees) to the unions (to prove that there is an adverse impact.)

A review procedure could also be provided whereby an employee or union could also ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of "adverse impact."

OPTIONS:

(a) Department of Labor Position.

The Department of Labor questions the legality of this "negative declaration," and objects to it from a national policy standpoint as well. They argue that the recommended national model agreement for 13(c) certification, negotiated a year ago, would be abrogated by such a procedure. Further, shifting the present burden of proof from the operators (to prove there is no adverse impact) to unions and employees (to prove there is such adverse impact) would be unfair, and might increase the delays already present in DOL 13(c) certifications.

(b) Department of Transportation Position.

While DOT urges that 13(c) requires certification only where employees are actually "adversely affected," Bill Coleman offers a compromise: limit the certification procedures to standard operating or revenue sharing type grants. DOT could require that any such operating assistance funding include a warranty by the transit district that no "adverse impact" will result, together with a promise to redress any such grievance if it shows up later.

(c) Compromise Position.

The DOL-DOT dispute may be a matter of semantics. Rather than calling this procedure a "negative declaration," a category could be established called "standardized approvals." In recurring grants, the Secretary of Labor on his own initiative, could require that certain Labor protections be guaranteed in the granting contract,

without the need for the collective bargaining process. DOL did just this on a recent demonstration project grant for the lower east side of Manhattan, approval dated June 4.

On this issue, your advisors recommend _____.

(a) DOL position_____.

(b) DOT position_____.

(c) Compromise position_____.

2. SET TIME LIMITS

You urged the two Departments to cut the red tape in the 13(c) process by setting time limits for the negotiation of agreements.

OPTIONS

(a) Department of Labor Position

The Department of Labor argues that the 13(c) process has usually worked well without time limits but agrees that a limited category of reasonable time frames should be established.

(b) Department of Transportation Position

DOT disagrees that the 13(c) process has worked basically well without time limits. DOT urges that time limits be set on a case by case basis in all cases where DOT indicates that there is a significant possibility of funding.

On this issue, your advisors recommend _____.

(a) DOL position_____.

(b) DOT position_____.

3. MULTI-YEAR CERTIFICATIONS

You asked the two Departments to consider granting multi-year certifications for projects which result from a single UMTA grant decision.

OPTIONS:

(a) Department of Labor Position

DOL agrees that multi-year certifications would be useful so long as the parties agree to their use. They would limit such certifications to particular projects involving multi-year funding unless, through collective bargaining, the parties agree to broader protections.

(b) Department of Transportation Position

DOT urges that the proposed procedure is merely a piggy-back or recertification procedure based on existing agreements already collectively bargained between the parties. It should apply to three categories of repetitive grants:

(1) Grants for normal equipment replacement;

(2) Grants for maintenance carried out over a period of years, such as repairs on rights-of-way;

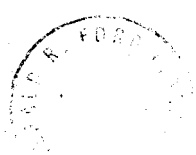
(3) Grants for specified multi-year programs on identifiable projects.

DOT urges that labor protections, once certified by DOL, should continue to apply to subsequent capital grants that have basically the same impact.

On this issue, your advisors recommend _____.

(a) DOL position_____.

(b) DOT position_____.



4. SINGLE CERTIFICATIONS FOR SINGLE GRANT

DOL and DOT agree that this should be done, so long as there is no change in the scope of the project.

On this issue your advisors recommend _____.

AGREE_____ DISAGREE_____

5. PROMULGATE AND PUBLISH REGULATIONS

The two Departments basically agree that guidelines for the 13(c) process, not formal regulations, should be published. Although clear rules are needed formal regulations would be complex and might serve only to institutionalize the defects in the 13(c) process which are already thorns in the sides of local officials.

(a) Department of Labor Position

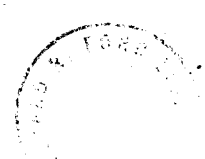
DOL recommends the deferral of formal rule making until the two Departments can consult with those affected by 13(c).

(b) Department of Transportation Position

DOT urges that simple guidelines, rather than lengthy regulations, be published, and that this be done quickly. DOT questions the need for further delays or consultations, since all affected parties have been making their views known for over 8 years. (Simple guidelines could be published in 60 days.)

On this issue your advisors recommend _____.

AGREE_____ DISAGREE_____



U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

JUN 25 1976

MEMORANDUM FOR: THE HONORABLE JAMES CANNON
Assistant to the President
for Domestic Affairs

FROM: W.J. USERY, JR.
Secretary of Labor

WILLIAM T. COLEMAN, JR.
Secretary of Transportation

This is in response to your memorandum of June 3 transmitting the President's direction that we address five specific proposals relating to the administration of Section 13(c) of the Urban Mass Transportation Act of 1964. The positions of the two Departments on each of these five proposals are set forth in the attachment. We have also attached some tabular background material.

In view of the potentially controversial nature of some of these recommendations, we request an opportunity to meet jointly with the President to discuss these issues prior to his making any decisions.

Attachment

6/25/76

MEMORANDUM ON SECTION 13(c)

1. NEGATIVE DECLARATION WITH CHANGED BURDEN OF PROOF

Proposal from June 3 Memorandum:

"Establish categories of capital grants that historically have had minimal, if any, adverse impact on transit employees. Such categories might include bus and rail car purchases which result in no reduction in fleet size. In such cases, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

This procedure would shift the present burden of proof of adverse impact from local transit operators to the unions or the employees.

Provide a review procedure whereby an employee or union could ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of 'adverse impact.'"

Department of Labor Position:

The Department of Labor questions the legality of establishing categories of UMTA assistance where prior certification under 13(c) would no longer be required. The statute states that each "...contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements." The Solicitor of Labor has advised that implementation of a negative declaration procedure would be inconsistent with the statute and legislative history. His opinion letter is attached at Tab A.

The Department of Labor also objects from a policy standpoint to the proposed negative declaration procedure. Establishing categories of projects where individual certifications would not be required would abrogate the national model agreement which was negotiated only this past July to be effective through September, 1977. This agreement, negotiated among representatives of the American Public Transit Association and of the national transportation unions, set forth a recommended model set of protective conditions for application in individual 13(c) agreements relating to operating assistance. A separate memorandum from Lewis M. Gill (Tab B), who mediated this agreement, sets forth the understanding of the parties that, while use of this agreement was to be encouraged, existing Labor Department case-handling procedures

including individual project notice and sign-off were to continue. Existing case-handling procedures were to stay in effect for capital, operating or demonstration projects not covered by the agreement. This agreement has served as the basis for approximately 85 percent of Labor Department certifications for covered operating assistance projects during 1976. Any unilateral change in procedures by the Labor Department would contravene the agreement of the parties.

Secondly, the proposed negative declaration procedure would shift to individual employees or their unions the burden of establishing adverse impact resulting from Federal assistance. This would be a radical change from current procedure, since the common practice under existing agreements is to place the burden of proof upon the employer. It would be very difficult, if not impossible, for employees to meet this burden, since proof of causality requires familiarity with information peculiarly within the knowledge of the applicant. This shifted burden would detract substantially from the current level of employee protections, and would in our view be inconsistent with the purposes of the statute.

Given a major administrative change of this type, we would anticipate that unions and individual employees would frequently file claims of adverse impact. This would trigger a formal review procedure, possibly including public hearings requiring DOL inquiry into the specifics of individual employee's cases. This process could substantially delay the DOL certifications and require a major increase in DOL staff to handle the workload. It would also create a burdensome two-step process for the parties: an administrative hearing on adverse impact, then possible grievance proceedings to determine remedies. Further, as the DOL made determinations regarding adverse impact, a body of case law would develop which could affect labor and management's own decisions under grievance procedures in existing collective bargaining arrangements. The end result would be to create yet another area where a Federal agency would be issuing decisions with a potentially substantial impact on public and private sector activity.

Department of Transportation Position:

The Department of Transportation considers this a viable, desirable procedure, and believes that it is allowable within the law.

As a matter of law, Section 13(c) does not require protective arrangements in each and every contract for assistance, but rather only in situations where employees would be adversely "affected by such assistance." There are classes of projects which do not

adversely affect employees, and the Secretary of Labor has ample administrative authority to so hold. This was, in fact, the way the provision was administered in 1965. Opinion of counsel is attached at Tab C.

While we support the application of the negative declaration approach to a range of projects as the June 3 memorandum suggests (and we have been assured that the omission of operating assistance from that proposal in your memorandum was an oversight), we could accept limiting its use to a single category of operating assistance projects. These would be grants where funds are provided in the nature of general purpose operating assistance or revenue sharing, and where the term "project" has no particular identity but is identified as a certain proportion of the total sum of money needed to operate an entire system. In such cases, adverse impacts seem inconceivable and the Secretary of Transportation should be able to make grants without a 13(c) certification. Further, the Secretary of Transportation should require that there be included in UMTA operating assistance funding contracts a warranty by the grantee of no adverse impact, together with a commitment by such grantee to provide redress under Section 13(c) upon any subsequent showing of actual adverse impact.

As to the burden of proof problem, while it is difficult for either party to show that an alleged harm does or does not relate to the presence of Federal funds which are comingled in the operator's budget, it certainly seems more equitable for the party who is charging he has been harmed to have to make that showing. A shift in the burden of proof to labor should not increase the filing of claims, but should rather cut down on any filing of frivolous charges. Once a claim is filed, the Labor Department will have to make a finding no matter which party has the burden of proof, so there is no basis for arguing that this proposal will cause administrative problems.

The presence of a negotiated national model agreement does not alter the desirability of moving to a negative declaration approach. That agreement expires in 1977 and was, at best, only a guideline; the American Public Transit Association (APTA) was not negotiating as the bargaining representative of transit authorities and never pretended to be binding them. Moreover, the national model agreement is itself causing substantial problems and perpetuates an unnecessary collective bargaining procedure in a situation where that is unnecessary. APTA has now proposed a very different 13(c) procedure affecting operating assistance, so the Department of Labor would not be abrogating the agreement on its own motion. There is an increasing number of requests for changes in 13(c) administration from every level of government; see, for example, communications from the Governor of Massachusetts and the National Association of Counties (NACO) at Tab D.

2. SET TIME LIMITS

Proposal from June 3 Memorandum:

"DOL could set time limits for the negotiation of agreements, after which the Secretary of Labor could make his own determination of what arrangements constituted 'fair and equitable' protection. DOL could provide conditional certifications so that UMTA funds could flow before critical deadlines were reached (end of the fiscal year, or exhaustion of local operating funds)."

Department of Labor Position:

The Department of Labor recognizes the advantages of establishing reasonable time frames for negotiations regarding protective arrangements in certain project situations. The Department objects, however, to standardized time limits that would apply automatically to all projects within a given category. The circumstances of individual grants and the protective arrangements that may be required vary considerably, even within a particular category of grant. The length of time required for both parties acting in good faith to negotiate an agreement on protective terms varies accordingly. Unless used selectively, time limits could thus cut short the bargaining process before agreement has been reached, even in cases where lack of certification is not delaying grant approval. In addition, in many cases such time limits will provide an incentive for one or both parties not to bargain in good faith, given the prospect that a particular level of protections would be imposed by the Department of Labor at a certain point. Rigid time limits would therefore operate, in our view, to undercut the philosophy of the statute to encourage local collective bargaining. This philosophy is quite clearly stated in the legislative history. The House Committee Report on the Urban Mass Transportation Act of 1964 explicitly stated that "specific conditions for worker protection will normally be the product of local bargaining and negotiation."

There are cases where time limits are advisable, and the Department of Labor will apply them on a flexible basis. We will ask the Department of Transportation to identify those high-priority projects where timely resolution of 13(c) issues is crucial to the administration of the mass transportation assistance program. These projects will be given expedited processing by the Department of Labor, including the setting of time limits on negotiations where we consider appropriate. We anticipate that such time limits will be infrequently imposed, since the 13(c) process has usually worked well without such limits in the past. In the great majority

of cases, certification occurs before UMTA is ready to approve the grant. Further, as labor, management and the Department of Labor have gained more experience under the program, the average processing time for 13(c) certifications has decreased substantially. Despite a tripling in case load since Fiscal Year 1974, average case processing time has been reduced from 3.5 months to 2.5 months.

Department of Transportation Position:

The position of the Department of Labor is not adequately responsive to the problem or to the White House proposal. It would make time limits the exception rather than the rule. The Department of Transportation agrees that time limits can reasonably vary with the type of grant involved, and if necessary with local conditions. But time limits should be set, on a case by case basis, in all cases where we indicate that there is a significant possibility of funding. In addition, we support the concept of an expedited processing track for those projects which DOT indicates to DOL have a high priority.

We cannot agree that the 13(c) process has worked well without time limits in the past. Average processing time is deceptive as a measure, since it lumps the difficult situations in with routine grants. In fact, the unconstrained procedures currently followed by DOL have resulted in the documented feeling by grantees that they are in an uneven bargaining position, and a perception that unions have a veto over transit grants.

Nor would the introduction of time limits defy the legislative history. That legislative history makes clear that the Secretary of Labor is not expected to be guided solely by a devotion to collective bargaining. For example, the 1963 Report of the Senate Committee on Banking and Currency on S.6 states:

> "The Committee expects that the Secretary of Labor in addition to providing the Administrator with technical assistance will assume responsibility for developing criteria as to the types of provisions that may be considered as necessary to insure that workers' interests are adequately protected against the kinds of adverse effects that may reasonably be anticipated in different types of situations."

Further, 12 years of experience in the program have resulted in rather standard arrangements, making the risk of injustice owing to a time constraint minimal.

Some procedural hedge against the possibility of failure to bargain in good faith seems appropriate. That can easily be accomplished by providing that any party seeking a direct certification by the Labor Department after expiration of the time period should have to make a showing that it has sought to bargain in good faith.

3. MULTI-YEAR CERTIFICATIONS

Proposal from June 3 Memorandum:

"Instead of having each grant of Federal dollars give rise to a new 13(c) agreement, DOL could establish a policy of granting multi-year certifications which would be good for all grants made within a specific period of time subject to review based upon the union or an employee showing 'adverse impact.'"

Department of Labor Position:

The proposal calls for a certification for a particular authority for a specified period, presumably to cover all forms of operating, capital or demonstration assistance from UMTA. The Department of Labor believes that where the parties agree to their use, multi-year certifications can be a useful mechanism for improved administration of Section 13(c), particularly for the operating assistance grant program. In fact, the model agreement, which covers a period of three fiscal years, was a positive step in this direction. Multi-year, and multi-project, arrangements are also frequently negotiated between the parties under the capital grant program. Increased utilization of such agreements can and will be encouraged by the Department of Labor.

The Department of Labor would limit such certifications, however, to particular identifiable projects involving multi-year funding unless the applicant and employee representatives were to agree to a broader protective arrangement. For the government to impose protective arrangements negotiated in one set of circumstances in a different set of circumstances runs counter to the basic premise of the statute that employee protections in individual cases be determined by collective bargaining. Project circumstances inevitably differ as a result of routine and recurring technological, operational and organizational changes. It is difficult, if not impossible, to predict what type of protections might be appropriate in the context of a particular operating, capital or demonstration project.

Any such change in the Secretary of Labor's current certification practices would be inconsistent with the procedures agreed to and jointly recommended to him by the parties to the model agreement. Furthermore, since the proposed procedure contemplates an administrative mechanism for review of union or employee claims of adverse impact, a cumbersome administrative procedure could arise, presenting the same problems discussed under Issue No. 1.

Department of Transportation Position:

The procedure the Department proposes would be better described as "recertifications based on existing agreements." In the case of certain categories of grants which are routine and/or repetitive in nature, the Secretary of Labor should provide automatic certification based upon the application to that grant of any pre-existing Section 13(c) agreement previously agreed to by the parties for a grant of that type. Such certification should be routinely made unless the grantee or any affected employee shows cause within a reasonable period of time as to why some new protective arrangements need to be considered.

This procedure should apply to at least the following categories of grants:

(a) capital grants for purchase or renovation of vehicles (including buses, railcars, or other vehicles) based on a normal equipment replacement or maintenance cycle, not resulting in a contraction of service levels;

(b) capital grants for refurbishing of rights-of-way, building, or other real property where the maintenance activity is closely similar to that carried out over a period of years;

(c) grants pursuant to specified multi-year programs of identifiable projects.

The model agreement is irrelevant in the context of this DOT proposal since that proposal deals only with capital grants while the model agreement dealt only with operating assistance.

More in point, it can be argued that even though a grant might have the same content and impact from year to year, the circumstances within which the parties might bargain on protective arrangements can change over time so that annual collective bargaining cannot be precluded. However, the Department of

Transportation does not feel that the law intended to permit or require an upward ratcheting of protective arrangements year after year even though the content or impact of the grant assistance does not vary. Once adequate protections have been certified, they should continue to apply to subsequent grants that have basically the same impact.

4. SINGLE CERTIFICATION FOR SINGLE GRANT

Proposal from June 3 Memorandum:

"Only a single certification should be required for a given project, even if such a project is funded through several successive grants or grant amendments."

Department of Labor Position:

The Department of Labor agrees that a single certification is feasible for a given project which may be funded through several successive grants or grant amendments as long as there is no change in the scope of the project. Such a practice is in fact utilized at present.

The Department of Labor will develop appropriate procedures as outlined in our position on Issue No. 5.

Department of Transportation Position:

Concur.

5. PROMULGATE AND PUBLISH REGULATIONS

Proposal from June 3 Memorandum:

"To assist all parties in participating in the 13(c) process, simple published regulations should be available."

Department of Labor Position:

The Department of Labor will prepare and publish appropriate guidance for interested parties with respect to the orderly and timely administration of Section 13(c). While the Department is of the view that published regulations are appropriate, it may be advisable to defer initiating the formal rulemaking process until the Department has had further opportunity to confer with the Department of Transportation and with management and labor regarding

their current differences over the administration of the 13(c) program. The Department of Labor plans to convene the standing committee contemplated in paragraph 9 of the Gill memorandum to assist in this consultative process.

Department of Transportation Position:

The Department of Transportation concurs but would urge that simple guidelines, rather than lengthy regulations issued through a formal rulemaking, would be a better way to proceed.

THE WHITE HOUSE

WASHINGTON

DECISION

May 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES CANNON

SUBJECT: POLICY OPTIONS FOR IMPROVING PROCEDURES UNDER SECTION 13(c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

BACKGROUND:

Section 13(c) of the 1964 UMTA Act (Amended) requires that before any Federal assistance is granted, The Secretary of Labor must certify that "fair and equitable" arrangements have been made for transit employees "affected" by the grant. There are no published regulations governing 13(c). The presumption has developed that each and every grant of Federal dollars "affects" transit employees, and DOL has adopted a procedure whereby localities' applications for UMTA funds are forwarded directly to transit union representatives in the geographical area requesting funds. The unions and the transit operators then engage in collective bargaining to arrive at protective arrangements which the Secretary of Labor can certify as "fair and equitable." Union rules generally then require that the agreement be subject to the approval of the International Union. For this reason, DOL almost never certifies an agreement unless the International has approved it - but it can do so. UMTA may not make a grant until the DOL certification is obtained.

Transit operators, city and county officials, and UMTA heads have consistently expressed dissatisfaction with Section 13(c), and complaints from localities, documented as far back as 1967, have become more vehement in recent months. The principal complaint is that unions use the 13(c) requirement and management's need for the UMTA funds to indirectly raise bargaining issues unrelated to the UMTA grant. This feeling is not well documented, but then it is not the kind of matter which lends itself to documentation.

In 1974, an informal DOL-DOT task force was established to examine 13(c) procedures and make recommendations. At the staff level an impasse soon occurred and there was little result except for an increased tendency on the part of each Department to blame the other for any problems in the 13(c) process.

Within recent weeks we have heard of Section 13(c) problems in such diverse locations as Omaha and Lincoln, Nebraska; Los Angeles, California; Albuquerque, New Mexico; Nassau County, New York; and Ocean County, New Jersey. In some instances we have been able to help expedite the process through Domestic Council inquiries.

On March 9, 1976, the Board of the Southern California Rapid Transit District "reluctantly" approved a 13(c) agreement citing "economic duress."

On March 30, 1976, the Board of the National Association of Counties passed a resolution requesting a thorough Federal review of 13(c) procedures which were found to "allow labor organizations to hold hostage needed UMTA grants;" and "make management of transit operations in an orderly, efficient and cost effective manner impossible."

A current draft GAO Report, being made at the request of Senator John Tower, will include the following results of interviews with 12 local grantees on 13(c) effects. Eight of the 12 feel DOL procedures put them in an uneven bargaining position with the unions; none of 26 unions contacted felt they were in an uneven relationship.

CURRENT ADMINISTRATION ACTIONS:

On March 24, 1976, Jim Connor requested DOL and DOT to prepare a joint memorandum outlining 13(c) problems and possible Administration solutions. The Departments, unable to agree, have submitted separate papers. (At Tab A: DOT's submissions of April 8, 1976, and May 28, 1976; at Tab B: DOL's submissions of April 7, 1976 and April 21, 1976.)

In mid-April the Domestic Council convened a meeting of the Administrator of UMTA and the Counselor to the Secretary of Labor in an effort to achieve some agreement on steps which could be taken. After an hour or more of discussion, it was apparent that representatives of the two Departments could not even agree on the issues to be discussed or the facts surrounding the implementation of 13(c). The meeting did lead to the second series of memoranda from the two Secretaries and at least some clarification of the issues.

Our discussions with all levels of the two Departments, including the two Secretaries, have been frequent and extensive but I do not believe Bill Coleman and Bill Usery have ever discussed the matter with each other.

In early May the Domestic Council convened separate meetings with leading transit management representatives and with the local government groups (National Association of Counties, etc.) to get first hand descriptions of their perception of the problems with the implementation of 13(c).

Since last fall there have also been numerous contacts with interested local officals, such as Pete Schabarum who serves on the Board of the Southern California Rapid Transit District.

Transit management and local government officials have expressed considerable pleasure at our willingness to look into the 13(c) process but also some concern at the slow progress they perceive us to be making.

DISCUSSION:

Although some critics of Section 13(c) would like us to assault its philosophic underpinnings, legislative change is clearly unattainable and probably undesirable. The root of most of the problem, in any event, is not Section 13(c) but the way it has been implemented.

There is little dispute that workers who are adversely affected by the grant of Federal money should be recompensed. The grants themselves, however, should not be the vehicles for escalation of wages and benefits.

Because DOL and DOT have basically not worked together on this issue, we have been unable to define specific proposed Administration action. We have, however, identified several steps which we believe can and should be taken.

RECOMMENDATIONS:

I recommend that you instruct Secretaries Usery and Coleman to address the specific proposals which follow and, within one week, to submit final, joint recommendations to you for decision.

AGREE_____ DISAGREE_____

I recommend that the specific proposals to be addressed include:

1. Simplification of procedures under existing law. For example:

   -- SET TIME LIMITS

      DOL could set time limits for the negotiation of agreements, after which the Secretary of Labor could make his own determination of what arrangements constituted "fair and equitable" protection. DOL could provide conditional certifications so that UMTA funds could flow before critical deadlines were reached (end of the fiscal year, or exhaustion of local operating funds).

   -- MULTI-YEAR CERTIFICATIONS

      Instead of having each grant of Federal dollars give rise to a new 13(c) agreement (often more than one per year per city) DOL could establish a policy of granting multi-year certifications which would be good for all grants made within a specific period of time (three years) subject to review based upon the union or an employee showing "adverse impact."

   -- SINGLE CERTIFICATION FOR SINGLE GRANT

      Only a single certification should be required for a given capital project, even if such a project is funded through several successive grants or grant amendments. (This would be the case for a new rapid transit system, where UMTA makes a multi-year commitment of funds and liquidates that commitment over time with a series of annual grants. Under present practice each such annual grant requires a separate 13(c) agreement, collectively bargained and certified.)

-- NEGATIVE DECLARATIONS WITH CHANGED BURDEN OF PROOF

DOT and DOL could establish categories of capital grants that historically have had minimal, if any, adverse impact on transit employees. Such categories would include bus and rail car purchases which result in no reduction in fleet size. In such cases, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

This would shift the present burden of proof from local transit operators (to prove that the Federal dollars will not harm employees) to the unions (to prove that there is an adverse impact.)

A review procedure could be provided whereby an employee or union could ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of "adverse impact."

AGREE _____ DISAGREE _____

2. Promulgate and Publish Regulations

Regulations were drafted in 1974 and 1975 but never finalized. Such guidelines would assist all parties in participating in the 13(c) process.

AGREE _____ DISAGREE _____

3. I recommend that the Domestic Council be charged with co-ordinating this effort.

AGREE _____ DISAGREE _____

THE WHITE HOUSE

WASHINGTON

July 26, 1976

MEETING WITH SECRETARIES COLEMAN AND USERY

Tuesday, July 27, 1976
The Oval Office
4:00 p.m. (30 minutes)

From: Jim Cannon FOR JIM CANNON

I. PURPOSE

You approved a meeting requested by Secretaries Usery and Coleman to discuss regulatory reforms and improvements in the Administration of labor protective arrangements under Section 13(c) of the Urban Mass Transit Act of 1964 (as amended).

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

A. Background

The Departments of Labor and Transportation have agreed on one of the proposals you made to simplify the 13(c) process: granting single certifications for single Federal grants. They reached partial agreement on your recommendation that written 13(c) rules should be promulgated, but disagreed on when and how. They disagreed on the remaining three proposals. The decision memorandum of July 16 is attached at Tab A.

Secretaries Usery and Coleman have not met to discuss 13(c). Bill Usery believes he should inform you personally of some of the complications for Labor posed by these proposals. Both Secretaries wish this meeting with you prior to finalizing decisions on 13(c).

B. Participants

DOL: Secretary Usery
Michael Moskow, Under-Secretary

DOT: Secretary Coleman
Robert Patricelli, Urban Mass Transit Administrator

Domestic Council: James M. Cannon
Arthur Quern
David Lissy (Labor)
Judith Hope (Transportation)

C. Press Plan

No press coverage.

Talking Points

1. I know you have all worked very hard on this 13(c) issue, and I want to thank you for your time and thoughtful recommendations. As you know, this issue is very important to everyone involved with public transportation -- the cities, the transit operators, and the employees.

2. The five proposals I asked you to consider attempt to simplify this process for everyone.

3. I was glad to see that you reached agreement on one of the proposals, and partial agreement on another. These are important steps in the right direction.

4. Jim (Cannon), how would you like to proceed on the issues which are in dispute?

5. Again, I want you to know how much I appreciate your hard work on this issue, and your coming over to share your views on it with me today.

Background Guidance

1. You may wish to congratulate Bill Coleman on:

   (a) The favorable front page coverage in the New York Times last Thursday, July 22, announcing $340 million in transit aid to seven U.S. cities.

(b) Remaining firm on the Denver transit grant decision; Denver is now going our way, and planning expanded bus services with UMTA help.

THE WHITE HOUSE DECISION

WASHINGTON

July 15, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES CANNON

SUBJECT: Report and Recommendations of Secretaries Usery and Coleman for Improving Procedures Under Section 13(c) of the Urban Mass Transportation Act of 1964, as Amended

BACKGROUND:

As you know section 13(c) of the 1964 UMTA Act (Amended) requires that before any Federal assistance for Mass Transit is granted, the Secretary of Labor must certify that "fair and equitable" arrangements have been made for transit employees "adversely affected" by the grant.

Although the intent of this provision of the law was sound, many believe the procedures have been manipulated so that, even where there is no "adverse" effect on workers, the process is used to win higher wages and increased fringe benefits: if transit operators do not agree to these terms, the unions will not approve the certification, DOL will not certify under 13(c), and UMTA funds will not flow. Transit operators, city and county officials, and UMTA heads have consistently expressed dissatisfaction with Section 13(c), and complaints from localities, documented as far back as 1967, have become more vehement in recent months.

The National Conference of Governors, the National Association of Counties and the National League of Cities have all gone on record in recent weeks urging changes in the 13(c) process similar to those put forward by the Department of Transportation.

On June 2, 1976, you reviewed a May 28, 1976, memorandum (attached at Tab B) describing the history of the 13(c) problem and directed Bill Coleman and Bill Usery to try to reach agreement on specific proposals for improving the 13(c) process.

SUMMARY OF RECENT DEVELOPMENTS:

After extensive discussions and lengthy exchanges of written as well as oral views, DOL and DOT reached agreement on two of the five proposals you made: (1) granting a single certification for a single Federal grant, and (2) publication of regulations or guidelines. There was disagreement on three proposals: (1) Establishing that certain catagories of grants have no adverse impact, and giving a "negative declaration" that, since no such impact is likely to occur, the 13(c) certification process is unnecessary; (2) setting time limits for the DOL decision process; and (3) granting a single multi-year certification for projects which result from a single, UMTA grant decision. Their joint paper is attached at Tab A.

We have shared with some of your senior advisers the respective positions of the two Departments; their views are noted below.

ISSUES:

1. NEGATIVE DECLARATION WITH CHANGED BURDEN OF PROOF.

Pursuant to your decision on June 3d, you proposed that DOT and DOL could establish categories of capital and operating assistance grants that historically have had minimal, if any, adverse impact on transit employees. Such categories would include bus and rail car purchases which result in no reduction in fleet size. In such cases, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

This would shift the present burden of proof from local transit operators (to prove that the Federal dollars will not harm employees) to the unions (to prove that there is an adverse impact.)

A review procedure could also be provided whereby an employee or union could also ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of "adverse impact."

OPTIONS:

(a) Department of Labor Position.

The Department of Labor questions the legality of this "negative declaration," and objects to it from

a national policy standpoint as well. They argue that the recommended national model agreement for 13(c) certification, negotiated a year ago, would be abrogated by such a procedure. Further, shifting the present burden of proof from the operators (to prove there is no adverse impact) to unions and employees (to prove there is such adverse impact) would be unfair, and might increase the delays already present in DOL 13(c) certifications.

(b) Department of Transportation Position.

While DOT urges that 13(c) requires certification only where employees are actually "adversely affected," Bill Coleman offers a compromise: limit the certification procedures to standard operating or revenue sharing type grants. DOT could require that any such operating assistance funding include a warranty by the transit district that no "adverse impact" will result, together with a promise to redress any such grievance if it shows up later.

(c) Compromise Position.

Rather than calling this procedure a "negative declaration," a category could be established called "standardized approvals." In recurring grants, the Secretary of Labor on his own initiative, could require that certain Labor protections be guaranteed in the granting contract, without the need for the collective bargaining process. DOL did just this on a recent demonstration project grant for the lower east side of Manhattan, approval dated June 4.

On this issue, your advisors recommend as follows: Buchen (Schmults), Freidersdorf, Hartmann, OMB, Marsh, and Cannon support the compromise position. Greenspan favors (legislative) repeal of 13(c), at least for grants involving operating expenses and capital grants for the purchase or repair of equipment. If that is not feasible, he supports the initial DOT position: negative declarations for all UMTA grants. Seidman recommends further arbitration between the two Departments to achieve consensus.

(a) DOL position_____.

(b) DOT position_____.

(c) Compromise position_____.

(d) Further discussion between DOL and DOT_____.

2. SET TIME LIMITS

You urged the two Departments to cut the red tape in the 13(c) process by setting time limits for the negotiation of agreements.

OPTIONS

(a) Department of Labor Position

The Department of Labor argues that the 13(c) process has usually worked well without time limits but agrees that a limited category of reasonable time frames should be established.

(b) Department of Transportation Position

DOT disagrees that the 13(c) process has worked basically well without time limits. DOT urges that time limits be set on a case by case basis in all cases where DOT indicates that there is a significant possibility of funding.

On this issue, your advisors recommend as follows: Buchen (Schmults), Freidersdorf, and Hartmann recommend the DOT position; Greenspan and Marsh recommend the DOL position; Seidman, Cannon and OMB recommend that DOL and DOT continue to seek a joint solution; if that is not possible, OMB recommends the DOT position. (I believe that if the other issues are resolved as recommended, this issue will become less important.)

(a) DOL position_____.

(b) DOT position_____.

(c) Continued discussion_____.

3. MULTI-YEAR CERTIFICATIONS

You asked the two Departments to consider granting multi-year certifications for projects which result from a single UMTA grant decision.

OPTIONS:

(a) Department of Labor Position

DOL agrees that multi-year certifications would be useful so long as the parties agree to their use. They would limit such certifications to particular projects involving multi-year funding unless, through collective bargaining, the parties agree to broader protections.

(b) Department of Transportation Position

DOT urges that the proposed procedure is merely a piggy-back or recertification procedure based on existing agreements already collectively bargained between the parties. It should apply to three categories of repetitive grants:

(1) Grants for normal equipment replacement;

(2) Grants for maintenance carried out over a period of years, such as repairs on rights-of-way;

(3) Grants for specified multi-year programs on identifiable projects.

DOT urges that labor protections, once certified by DOL, should continue to apply to subsequent capital grants that have basically the same impact.

On this issue, your advisors recommend as follows: Buchen (Schmults), Friedersdorf, Greenspan, Hartmann, OMB, Marsh and Cannon recommend the DOT position. Seidman recommends continued discussion between DOL and DOT.

(a) DOL position_____.

(b) DOT position_____.

(c) More DOL-DOT discussion_____.

4. SINGLE CERTIFICATIONS FOR SINGLE GRANT

DOL and DOT agree that this should be done, so long as there is no change in the scope of the project.

On this issue your advisors unanimously recommend that you agree with the proposal.

AGREE_____ DISAGREE_____

5. PROMULGATE AND PUBLISH REGULATIONS

The two Departments basically agree that guidelines for the 13(c) process, not formal regulations, should be published. Although clear rules are needed, formal regulations would be complex and might serve only to institutionalize the defects in the 13(c) process which are already thorns in the sides of local officials.

(a) Department of Labor Position

DOL recommends the deferral of formal rule making until the two Departments can consult with those affected by 13(c).

(b) Department of Transportation Position

DOT urges that simple guidelines, rather than lengthy regulations, be published, and that this be done quickly. DOT questions the need for further delays or consultations, since all affected parties have been making their views known for over 8 years. (Simple guidelines could be published in 60 days.)

On this issue your advisors unanimously recommend that simple guidelines, not complex regulations, can and should be issued within 60 days and that the 2 Departments should consult together to achieve this.

AGREE_____ DISAGREE_____

Secretaries Usery and Coleman have requested a meeting with you to discuss this question.

Hartmann and Cannon recommend: approve meeting. Buchen (Schmults), Freidersdorf, Greenspan, OMB and Marsh express no opinion on holding a meeting. Seidman recommends that, to conserve scarce Presidential time, you direct me to arbitrate the issues and, if resolution remains impossible, to advise you on decision of these issues.

THE WHITE HOUSE

WASHINGTON

July 27, 1976

MEMORANDUM FOR: JIM CANNON

FROM: JUDITH RICHARDS HOPE

SUBJEC T: 13(c) Briefing Paper

Attached is the correct tab for the briefing paper for todays meeting with the President.

Attachment

THE WHITE HOUSE DECISION

WASHINGTON

July 16, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Report and Recommendations of Secretaries Usery and Coleman for Improving Procedures Under Section 13(c) of the Urban Mass Transportation Act of 1964, as Amended

SUMMARY OF ISSUE

The fundamental issue is whether to continue existing Federal procedures that impose higher labor costs on transit operators and on city and county governments; or whether to simplify these procedures and thereby alienate certain employees of transit operators and the unions which represent them.

BACKGROUND

Section 13(c) of the 1964 UMTA Act (Amended) requires that before any Federal assistance for Mass Transit is granted, the Secretary of Labor must certify that "fair and equitable" arrangements have been made for transit employees "adversely affected" by the grant.

Although the intent of this provision of the law was sound, many believe the procedures have been manipulated so that, even where there is no "adverse" effect on workers, the process is used to win higher wages and increased fringe benefits; if transit operators do not agree to these terms, the unions will not approve the certification, DOL will not certify under 13(c), and UMTA funds will not flow. Transit operators, city and county officials and UMTA heads have consistently expressed dissatisfaction with Section 13(c), and complaints from localities, documented as far back as 1967, have become more vehement in recent months.

The National Conference of Governors, the National Association of Counties and the National League of Cities have all gone on record in recent weeks urging changes in the 13(c) process similar to those put forward by the Department of Transportation.

On June 2, 1976, you reviewed a May 28, 1976 memorandum (attached at Tab B) describing the history of the 13(c) problem and directed Bill Coleman and Bill Usery to try to reach agreement on specific proposals for improving the 13(c) process.

SUMMARY OF RECENT DEVELOPMENTS

After extensive discussions and lengthy exchange of written as well as oral views, Mike Moskow, for Department of Labor, and Robert Patricelli, Administrator of UMTA, reached agreement on one of the five proposals you made, partial agreement on another, and no agreement on the remaining three proposals. (The joint paper is attached at Tab A).

Secretary Usery and Secretary Coleman have not met to discuss or attempt to resolve these issues. Secretary Usery told me today that he believes no useful purpose would be served in an Usery-Coleman meeting at this time. Usery believes he should talk with you personally about some of the implications to Labor of these issues.

The issue on which Department of Labor and Department of Transportation agree is the granting of a single certificate for a single Federal grant.

The issue on which there is partial agreement is publication of regulations or guidelines.

The issues on which there is major disagreement are these:

ISSUES TO BE RESOLVED

1. NEGATIVE DECLARATION WITH CHANGED BURDEN OF PROOF.

Pursuant to your decision on June 3, you proposed that DOT and DOL could establish categories of capital and operating assistance grants that historically have had minimal, if any, adverse impact on transit employees. Such categories would include bus and rail car purchases which result in no reduction in fleet size. In such cases, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

This would shift the present burden of proof from local transit operators (to prove that the Federal dollars will not harm employees) to the unions (to prove that there is an adverse impact.)

A review procedure could also be provided whereby an employee or union could also ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of "adverse impact."

OPTIONS:

(a) Department of Labor Position

The Department of Labor questions the legality of this "negative declaration," and objects to it from a national policy standpoint as well. They argue that the recommended national model agreement for 13(c) certification, negotiated a year ago under the auspices of Secretary Dunlop, would be abrogated by such a procedure. Further, shifting the present burden of proof from the operators (to prove there is no adverse impact) to unions and employees (to prove there is such adverse impact) would be unfair, and might increase the delays already present in DOL 13(c) certifications.

(b) Department of Transportation Position

While DOT urges that 13(c) requires certification only where employees are actually "adversely affected," Bill Coleman offers a compromise: limit the certification procedures to standard operating or revenue sharing type grants. DOT could require that any such operating assistance funding include a warranty by the transit district that no "adverse impact" will result, together with a promise to redress any such grievance if it shows up later.

(c) Compromise Position

Rather than calling this procedure a "negative declaration," a category could be established called "standardized approvals." In recurring grants, the Secretary of Labor on his own initiative, could require that certain Labor protections be guaranteed in the granting contract, without the need for the collective bargaining process. DOL did just this on a recent demonstration project grant for the lower east side of Manahattan, approved June 4.

_____DOL Position: Supported by none.

_____DOT Position: Supported by none.

_____Compromise Position: Supported by Buchen (Schmults), Friedersdorf, Hartmann, OMB, Marsh, Seidman, and Cannon.

Greenspan favors (legislative) repeal of 13(c), at least for grants involving operating expense and capital grants for the purchase or repair of equipment. If that is not feasible, he supports the initial DOT position: negative declarations for all UMTA grants.

2. SET TIME LIMITS

You urged the two Departments to cut the red tape in the 13(c) process by setting time limits for the negotiation of agreements.

OPTIONS:

(a) Department of Labor Position

The Department of Labor argues that the 13(c) process has usually worked well without time limits but agrees that a limited category of reasonable time frames should be established.

(b) Department of Transportation Position

DOT disagrees that the 13(c) process has worked basically well without time limits. DOT urges that time limits be set on a case-by-case basis in all cases where DOT indicates that there is a significant possibility of funding.

_____DOL Position: Supported by Greenspan and Marsh.

_____DOT Position: Supported by Buchen (Schmults), Friedersdorf, Hartmann, Seidman and Cannon.

3. MULTI-YEAR CERTIFICATIONS

You asked the two Departments to consider granting multi-year certifications for projects which result from a single UMTA grant decision.

OPTIONS:

(a) Department of Labor Position

DOL agrees that multi-year certifications would be useful so long as the parties agree to their use. They would limit such certifications to particular projects involving multi-year funding unless, through collective bargaining, the parties agree to broader protections.

(b) Department of Transportation Position

DOT urges that the proposed procedure is merely a piggy-back or recertification procedure based on existing agreements already collectively bargained between the parties. It should apply to three categories of repetitive grants:

(1) Grants for normal equipment replacement;

(2) Grants for maintenance carried out over a period of years, such as repairs on rights-of-way;

(3) Grants for specified multi-year programs on identifiable projects.

DOT urges that labor protections, once certified by DOL, should continue to apply to subsequent capital grants that have basically the same impact.

_____DOL Position: Supported by none.

_____DOT Position: Supported by Buchen (Schmults), Friedersdorf, Greenspan, Hartmann, OMB, Marsh, Seidman and Cannon.

4. PROMULGATE AND PUBLISH REGULATIONS

The two Departments basically agree that guidelines for the 13(c) process, not formal regulations, should be published. Although clear rules are needed, formal regulations would be complex and might serve only to institutionalize the defects in the 13(c) process which are already thorns in the sides of local officials.

(a) Department of Labor Position

DOL recommends the deferral of formal rule-making until the two Departments can consult with those affected by 13(c).

(b) Department of Transportation Position

DOT urges that simple guidelines, rather than lengthy regulations, be published, and that this be done quickly. DOT questions the need for further delays or consultations, since all affected parties have been making their views known for over 8 years. (Simple guidelines could be published in 60 days.)

_____DOL Position: Supported by none.

_____DOT Position: Supported unanimously by all your advisors. They recommend that the two Departments should consult together to achieve this.

REQUEST FOR MEETING

Secretaries Usery and Coleman have requested a meeting with you to discuss this question.

_____Approve Meeting: Supported by Hartmann, Seidman, and Cannon.

_____Disapprove Meeting.

Buchen (Schmults), Friedersdorf, Greenspan, OMB and Marsh express no opinion on holding a meeting.

THE WHITE HOUSE

WASHINGTON

July 28, 1976

MEMORANDUM FOR: JIM CANNON

FROM: JUDITH RICHARDS HOPE

SUBJECT: 13(c) Meeting with Secretaries Usery and Coleman -- Monday, August 2, 1976, The Oval Office

After preliminary remarks, the President will ask you to direct this meeting. Of the five specific proposals that the President asked the Secretaries to consider, there is agreement on one, partial agreement on another, and disagreement on the remaining three.

I believe DOL's basic position will be that what is proposed is a retreat from COLLECTIVE BARGAINING. DOT's basic position will be that they propose regulatory reform of a governmental process that has gone astray over the 12 years since the first mass transit legislation was passed (1964).

Bill Coleman has the better side of the issues, particularly in view of the loud and justifiable complaints from state and local officials and transit operators across the country.

I suggest, therefore, that you ask Bill Usery to begin by discussing his basic reasons for opposing most of the President's 13(c) proposals. He will raise questions of strong Union opposition and perceptions by workers that the Administration is against them and against the principle of collective bargaining. NOTE: Bill Usery ran the 13(c) program for DOL for nearly two years, and is an architect of its current structure.

Bill Coleman's response will probably be an attack on the DOL assumption that all UMTA grants must trigger the collective bargaining process. When passed, 13(c) was supposed to come in to play only when local employees were "adversely affected" by Federal grants, not each time a grant is made.

NOTE: The 13(c) concept was "borrowed" from Amtrak railroad legislation: Federal dollars used to shore up rails often cause the relocation of workers from one state to the next, the laying off of workers on bankrupt railroads, and other severe and "adverse" impacts. National protections and standards for a nationwide system were the result.

In the transit situation, however, there is no nationwide system, yet 13(c) has begun to set nationwide transit wages. Albuquerque's recent 1 1/2 year-long 13(c) negotiation covered provisos from New York, Texas, and California. Further, Federal money has served to: expand transit systems (going broke under private ownership), increase the number of jobs, and raise wages. Nevertheless, grants for operating assistance (in the nature of special revenue sharing) have become occasions for collective bargaining to increase wages and benefits, on the erroneous theory that there is "adverse" impact.

If there is time or need, there can be a discussion of the specific unresolved issues. I suggest the following order.

1. Negative Declaration/Warranty. This is the toughest issue, and the most basic.

   Presently, there is virtually no way for transit officials to avoid the annual 13(c) bloodletting because they are faced with the impossible burden of proving that a grant of Federal money will not adversly affect their employees.

   This proposal would shift the burden to the employees, to prove they were harmed, with a grievance procedure set up.

2. Multi-year 13(c) certifications. Often moneys from one UMTA grant decision go out over a period of years. There should be a piggyback of the 13(c) certifications, not a re-negotiation process each year.

3. Setting time limits for the DOL 13(c) certification process. Transit and city officials who need the Federal dollars to continue operations should not be forced to cave in to union demands a day or two before the end of the fiscal year.

   Example: Los Angeles Rapid Transit District (RTD) this year ok'd the union's demands under protest, at the 11th hour, claiming "economic duress."

4. Promulgate Guidelines. One reason the 13(c) process is thought arbitrary is that there have never been any written guidelines.

   DOT and DOL agree this should be done, but disagree on when (DOL would postpone) and what (DOL: formal rulemaking, versus DOT: simple guidelines, do-able in 30-60 days.)

If the President announces any decisions at the meeting, we should end with the two secretaries agreeing on the next steps to be taken to implement the decisions.

cc: Jim Cavanaugh
Art Quern
David Lissy

[ca. 7/29/76]

THE WHITE HOUSE
WASHINGTON

On letter of McCollister's
of July 29, Moe said
David is talking to
Usery + Moscow
+ will follow up
with them.

[ca. 7/29/76]

THE WHITE HOUSE
WASHINGTON

Nancy in Friedersdorf's office called and would like a copy of our response back to McCollister's letter of July 29.

Moe is to get back to us on who has the action.

(over)

This came from Aug. 2
mtg w/ Pres., Coleman,
& Usery - in bottom
drawer.

JOHN Y. McCOLLISTER
SECOND DISTRICT, NEBRASKA

WASHINGTON OFFICE:
217 CANNON OFFICE BUILDING
202-225-4155

DISTRICT OFFICE:
FEDERAL BUILDING
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102
402-221-3251

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES

July 29, 1976

Honorable William J. Usery, Secretary
Department of Labor
200 Constitution Avenue
Washington, D. C. 20210

Dear Mr. Secretary:

This letter is a follow-up to previous communications we have had regarding the Department of Labor's certification responsibilities under Section 13(C) of the Urban Mass Transportation Act as specifically applied to a grant application submitted by Metro Area Transit (MAT) which serves the Omaha-Council Bluffs metropolitan area. As you will recall, MAT submitted its grant application for operating assistance under the provisions of UMTA in December, 1975. It was advised in March, 1976, that the application did not meet a set of requirements the Department of Labor was utilizing to determine compliance with Section 13(C). After intensive negotiations between all parties, an interim solution was agreed to whereby MAT received certification on 1975 funds (approximately $1 million) and agreed to a 60-day moratorium on its 1976 application.

The 1975 monies have been disbursed and the 60-day period has expired. I have now been advised that the matter is before you. I am enclosing a copy of the position paper submitted by Metro Area Transit pursuant to a request from Assistant Secretary Bernard DeLury. While I see no need to reiterate all the issues surrounding this case, I would like to take this opportunity to underscore some of the major points I hope you will consider as you review the positions of all parties and finalize your decision.

After months of working with officials of MAT and the Department of Labor on this issue, I return again to the legislative intent of Section 13(C). As is clearly stated in the original report of the House Committee on Banking and Currency, dated April 9, 1963: "The Committee wishes to point out that, subject to the basic standards set forth in the bill, specific conditions for worker protection will normally be the product of local bargaining and negotiation" (emphasis added). This statement was reaffirmed during floor debate on the bill. It is a statement in which I am sure you concur.

Mr. Secretary, I believe that adherence to the principle that employee protection agreements are best arrived at through local bargaining and negotiation leads to the conclusion that Metro Area Transit's 13(C) agreement is indeed valid and that certification of the application should be granted at the earliest possible date. I base this judgment on these factors:

1. The existing 13(C) agreement has previously been certified by the Secretary of Labor as being "fair and equitable." On the basis of that agreement, MAT has applied for and received approximately $10 million in Federal assistance.

2. The existing 13(C) agreement, approved in July, 1975, was signed by all parties, including the affected unions. That agreement is effective through June 30, 1977.

3. To quote directly from MAT's position paper: "In the absence of amendatory legislation or a change in local standards of protective arrangements which guarantee against a worsening of employees' position, it would seem highly improbable that what once were certified to be fair and equitable arrangements have dissipated to such a state that they can no longer be considered as such."

4. The Nebraska Court of Industrial Relations to which this case was referred ruled: "The Court has no problem in declaring that there is a valid and subsisting collective bargaining agreement between the parties, including the present 13(C) agreement...."

Therefore, Mr. Secretary, I urge you to give MAT's position your earnest and favorable consideration. The transit authority has met the requirements of the law in the past. Unless there is new evidence to indicate that its employee protection arrangements are no longer "fair and equitable", and thus, not in compliance with the law, then I see no reason for the Department to deny certification.

Thank you for your attention to this matter. I would be happy to discuss it further should it be necessary.

Sincerely,

JOHN Y. McCOLLISTER
Member of Congress

JYM/hag

Enclosure

Jim-
I'd be grateful for your personal attention to this. It's critical to our mutual interest. Really appreciate your help! John

METRO AREA TRANSIT

ADMINISTRATIVE OFFICE (402) 341-7560
CUSTOMER SERVICE 341-0800

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July 23, 1976

Honorable Bernard DeLury
Assistant Secretary of Labor
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

RE: Transit Authority of the City of Omaha
Grant No. NE-05-4003
Operating Assistance - 1976

Dear Mr. LeLury:

By carbon copy of your letter to Mr. H. A. Goldstein, dated June 11, 1976, the Transit Authority of the City of Omaha was requested to submit a "statement of position" with respect to the issues surrounding the 13(c) requirements of the 1964 UMTA Act as amended. This letter is responsive to said request.

The Transit Authority of the City of Omaha feels no need to regenerate the history of the development of the issues which have brought us to the need for a "position statement." We feel that all parties concerned are well aware of what has transpired.

The Transit Authority of the City of Omaha has previously and clearly stated their "position." In spite of a highly vacillating position by the union, the Transit Authority of the City of Omaha has maintained a single, consistent position with regard to these issues. In our correspondence to Mr. Fasser, dated March 19, 1976, we stated as follows:

POSITION OF AUTHORITY

> We have fair and equitable protective arrangements which satisfy the requirements of Section 13(c) of the Act, as amended, evidenced by the existing 13(c) agreement as incorporated in our collective bargaining agreements. In executing the collective bargaining agreements the unions have confirmed that position and estopped themselves from now asserting otherwise. In view of this, we see no need for prior contract with TWU. We request that the Secretary of Labor determine that we are in compliance with Section 13(c) and certify our grant application.

Subsequently, and as a result of a position assumed by the union that the inclusion of the local 13(c) agreement into the local collective bargaining agreement was not binding on the parties, the Transit Authority of the City of Omaha instituted an action in The Nebraska Court of Industrial Relations for a declaration of the rights of the parties

under their collective bargaining agreement. On June 18, 1976, The Nebraska Court of Industrial Relations issued its Memorandum and Order in the above referenced action (attached and transmitted herewith). The Memorandum and Order specifically held that. . .there is a valid and subsisting collective bargaining agreement between the parties, including the present 13(c) agreement. . .thus confirming our position as hereinabove set forth.

No such court action was required for Local #554, which also represents employees of the Transit Authority of the City of Omaha, to acknowledge that fair and equitable arrangements have been made. In fact, negotiation with Local #554 on our new collective bargaining agreement effective 7/1/76 has resulted in complete acceptance and a continuation of an identical 13(c) agreement.

The Transit Authority of the City of Omaha may be somewhat unique in that we have, through the local collective bargaining process, included the 13(c) in our collective bargaining agreement. The State of Nebraska is unique in that it provides judicially for the resolution of industrial disputes pertaining to public employees. The Transit Authority of the City of Omaha elected to institute action in the Court of Industrial Relations since we recognize that it was not within the purview of the Secretary of the Department of Labor to interpret collective bargaining agreements.

However, the Transit Authority of the City of Omaha does recognize the responsibility of the Secretary to determine "fair and equitable arrangements" within the spirit and intent of Section 13(c) of the Act. Evidently the TWU had previously recognized this responsibility, for our present 13(c) agreement states:

> WHEREAS, Section 3(c) and 13(c) of the Act require as a condition of any assistance thereunder that fair and equitable arrangements be made as determined by the Secretary of Labor "to protect the interest of employees affected by such assistance;" and
>
> WHEREAS, the parties hereto now desire to assist the Secretary of Labor by agreeing upon such arrangements to protect the interests of employees, represented by the union as will be fair and equitable;

While the union has refused to accept the binding effect of our 13(c) agreement, the Nebraska Court of Industrial Relations Decision now requires acceptance. Therefore, the sole issue before the Secretary of Labor on this matter becomes:

> Based upon an agreement between the Transit Authority of the City of Omaha and TWU that fair and equitable arrangements have been agreed to, do such arrangements satisfy the requirements of the Act?

It is, of course, for the Secretary of Labor to determine whether fair and equitable arrangements exist. However, in the absence of amendatory legislation or a change in local standards of protective arrangements which guarantee against a worsening of employees' position, it would seem highly improbable that what once were certified to be fair and equitable arrangements have disipated to such a state that they can no longer be considered as such.

IN SUMMARY:

1. The existing 13(c) agreement has been previously certified by the Secretary of Labor as providing for fair and equitable arrangements.

2. The Nebraska Court of Industrial Relations has decided that there is a valid and subsisting collective bargaining agreement, including the 13(c) agreement.

3. The TWU through the validity of the bargaining and 13(c) agreements has agreed (albeit involuntarily) that fair and equitable arrangements have been provided for.

4. There has been no amendatory legislation pertaining to 13(c) requirements.

5. There have been no changes in local conditions which have lessened the validity or adequacy of the existing protective arrangements.

6. Local #554 has agreed to the existing 13(c) agreement as recently as July 1, 1976.

Therefore, based on the above, we conclude that measured against any reasonable standard, the levels of employee protection provided under the existing 13(c) agreement, adequately and appropriately satisfy the statutory requirements.

Accordingly, we request the Secretary of Labor to take the appropriate actions to finalize our certification of the instant application.

Sincerely,

J T Erdman

J. T. Erdman
Executive Director

JTE/glm

cc: Congressman John Y. McCollister

for call list:

call John

8/3

JOHN Y. McCOLLISTER
SECOND DISTRICT, NEBRASKA

WASHINGTON OFFICE:
217 CANNON OFFICE BUILDING
202-225-4155

DISTRICT OFFICE:
FEDERAL BUILDING
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102
402-221-3251

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES

June 11, 1976

Mr. Max Friedersdorf
Assistant to the President
for Legislative Affairs
The White House
Washington, D. C.

JUN 12 1976

Dear Max:

Per our conversation of June 9th, I am forwarding the background material you requested. Specifically, the problem focuses on Section 13 (C) requirements of the Urban Mass Transportation Act and certification by the Department of Labor on grant applications submitted by transit authorities for operating assistance. The law states that as a condition for obtaining Federal funds under UMTA, prospective grantees must have "fair and equitable" employee protection agreements which are to be certified by the Secretary of Labor.

Problems have arisen in the past several months over the Department of Labor's interpretation of Section 13 (C) and its procedures for determining compliance. These problems are being experienced by transit authorities across the country. I became involved when in March, 1976, officials of the Metro Area Transit Authority (MAT) which serves the Omaha-Council Bluffs metropolitan area contacted me. They discovered that approval of their grant application was being withheld because the Department of Labor refused to certify the application. I am enclosing a copy of a letter MAT sent to the Department of Labor which outlines their position and the facts in this specific instance.

To briefly review the case, MAT was advised in March that its 13 (C) Labor Agreement which had been negotiated in July, 1975 (and was previously acceptable to the Department in previous grant applications) was no longer satisfactory because it was not patterned after a "Model Agreement" the Department was now utilizing to determine compliance. The so-called "Model Agreement" was negotiated in July, 1975 (at the same time MAT completed its negotiations on a 13 (C) agreement) between former Secretary of Labor John Dunlop and representatives of the American Public Transit Association and the transit labor unions. Despite protestations to the contrary, it has become apparent that the Department of Labor is using the "Model Agreement" as the basis for determining compliance with Section 13 (C). Those transit authorities which have submitted 13 (C) agreements which differ from the provisions in the "Model Agreement" have found their applications withheld until they relented and agreed to the provisions in the "Model Agreement" or slight modifications thereto. In short, the "Model Agreement" has been used as a standard for determining compliance with Section 13 (C); yet, at no time was it ever submitted to normal rule-making procedures.

In Omaha's case, we were able to reach an interim solution whereby certification was granted to 1975 funds (approximately $1 million) while 1976 funds ($1.8 million) have been withheld pending a resolution of differences relating to the "Model Agreement." The release of the 1975 funds avoided a shut-down of MAT's operations. Again, I refer you to MAT's letter to the Department of Labor which provides you with the legal basis upon which the transit authority rests its case. I would add that MAT has recently filed in the Nebraska Court of Industrial Relations for a judicial ruling as to the validity of its 1975 labor contract which includes its 13(C) agreement. The affected union, Transport Workers Union (TWU) has asked the Secretary of Labor to resolve the matter. It is expected the Secretary will withhold any judgment until court action has been completed.

Naturally, my interest in this issue was sparked by the problems Omaha was experiencing. After several months of working on this matter, however, I can say without doubt that others across the nation have or will soon experience similar difficulties. The circumstances and legal positions of transit authorities may vary, but the central problem remains: The Department of Labor's use of the "Model Agreement." The implications of a nationwide "Model Agreement" are disturbing. It presents serious questions for those of us interested in preserving the principle that employer-employee agreements should be worked out in local collective bargaining situations. The "Model Agreement" is contrary to that principle.

I have raised these concerns directly with Secretary Usery. I am enclosing a copy of a letter I wrote him on April 7, 1976, as well as a copy of his response. I find it unsatisfactory in several regards.

First, the Secretary maintains that negotiations for the "Model Agreement" were initiated by the industry through the American Public Transit Association. I have been advised by officials of MAT that the initiative and effort to develop the "Model Agreement" were closely aligned with several major urban properties who used the APTA organization to accomplish their goals. The APTA negotiating team consisted of representatives of New York, Baltimore, Cleveland and San Francisco--hardly a representative group. Further, I'm told that the "Model Agreement" was approved by APTA by a vote of 3-2. That's hardly the basis upon which the Department of Labor can maintain that the "Model Agreement" is representative of industry. In addition, APTA rejects the idea that the "Model Agreement" should be a uniform standard. APTA recently wrote Secretaries Usery and Coleman:

> "A uniform approach seems to ignore or make light of the complexities of the local problems facing the various transit properties. Few transit properties are faced with similar sets of circumstances. Obviously there are varying local funding considerations, different geographic factors, separate and distinct operating considerations, unique local collective bargaining considerations, as well as different existing 13(C) Agreements. For some the model agreement fits well into the transit property's overall picture, but for others numerous details and considerations such as those mentioned above, must come into play. It is clear that a uniform approach, while of great aid to many, is not in the best interests to all."

Second, the Secretary's letter states "the intent of the Congress was that specific protective arrangements, if possible, should be developed through local negotiations and bargaining." I agree. Yet, upon receipt of grant applications the Department routinely forwards them to the International office of the Union, not the local office. Is such action following the "intent" of Congress?"

Third, the Secretary maintains that over 50 applications have been certified on the basis of the "Model Agreement." He does not mention how many of the 50 were in such a dire financial situation that they were coerced into signing the Agreement. I intend to find out. He also neglects to point out that some 230 properties have not signed on the basis of the "Model Agreement." This in spite of the fact that the new legislation allowing for operating assistance has been in effect for 18 months.

And fourth, in any event, I believe it is mandatory that the Department of Labor publish and make available to every transit authority the procedures which it follows in determining compliance. That is not now the case. Secondly, if it is determined that some uniform standards are necessary and beneficial to all parties in determining compliance, (I am not sure this is necessary) those standards should be submitted to normal rule-making procedures thereby allowing every transit authority in the country to have an opportunity for input.

As you see, the issues involved in the Section 13 (C) debate are long and complicated. The only comfort I find is that a lot of Conservatives pointed to these very problems when the legislation was first considered in 1963. Unfortunately, their warnings were ignored. It is my intent to pursue this matter vigorously, for I do not believe the Department of Labor is following the intent of Congress by its adherence to the "Model Agreement." That is the reason I am calling this matter to the attention of the White House. I will be in touch with you soon after you have had an opportunity to review the information I have provided.

Sincerely,

JOHN Y. McCOLLISTER
Member of Congress

JYM/hsm

7/22

CHRIS:

ATTACHED IS THE ORIGINAL OF WHAT WE RECEIVED. AS YOU CAN SEE THE ORIGINAL LETTER TO FRIEDERSDORF IS NOT HERE - IT LOOKS LIKE HIS OFFICE MUST HAVE KEPT THE ORIGINAL

MOE

June 15, 1976

Dear John:

Your letter concerning the problem encountered in the Urban Mass Transit Act requirements and certification has been received.

The specific detail and extensive background material you have provided will be particularly helpful in trying to resolve this situation, hopefully to your satisfaction.

Mr. David Lissy of the White House Domestic Council staff who has responsibility in the areas involved has been in contact with you following our conversation and David will be seeking to alleviate the problem.

I am forwarding a copy of your letter to David for his perusal and please be assured that we will give our full attention and effort in seeking a solution to this problem.

Meanwhile, with kindest regards,

Sincerely yours,

Max L. Friedersdorf
Assistant to the President

Honorable John Y. McCollister
House of Representatives
Washington, D.C. 20515

MLF:jg

bcc: David Lissy - For draft response and action
Judy Berg-Hansen - FYI

JOHN Y. MCCOLLISTER
SECOND DISTRICT, NEBRASKA

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

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SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES

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The White House
Washington, D. C.

JUN 12 1976

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As you see, the issues involved in the Section 13 (C) debate are long and complicated. The only comfort I find is that a lot of Conservatives pointed to these very problems when the legislation was first considered in 1963. Unfortunately, their warnings were ignored. It is my intent to pursue this matter vigorously, for I do not believe the Department of Labor is following the intent of Congress by its adherence to the "Model Agreement." That is the reason I am calling this matter to the attention of the White House. I will be in touch with you soon after you have had an opportunity to review the information I have provided.

Sincerely,

JOHN Y. McCOLLISTER
Member of Congress

JYM/hsm

METRO AREA TRANSIT

ADMINISTRATIVE OFFICE (402) 341
CUSTOMER SERVICE 341-0800

AUTHORITY BOARD
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ROBERT F. BRENNAN

OWNED BY THE TRANSIT AUTHORITY CITY OF OMAHA

March 19, 1976

MAR 22 1976

Mr. Paul J. Fasser
Assistant Secretary for Labor/Management Relations
200 Constitution Avenue, N. W.
Washington, D. C. 20210

Dear Mr. Fasser:

Under provisions of Nebraska law, The Transit Authority of the City of Omaha was created by ordinance of the City Council of the City of Omaha in May, 1972. Prior to the creation of The Transit Authority of the City of Omaha (The Authority) the cities of Council Bluffs, Iowa, and Omaha, Nebraska, at the urging of UMTA, agreed to the creation of a single transit authority which would serve the entire metropolitan area. It was also agreed that the City of Omaha would accept responsibility for the subsequent creation of the Authority, federal grant applications and negotiation with the private transit companies and their respective unions.

In Council Bluffs, public transportation was being provided by City Transit Lines, Inc. whose employees were represented by the General Drivers and Helpers Union, Teamsters Local #554. In Omaha, public transportation was being provided by Omaha Transit Company, whose employees were represented by the Transport Workers Union of America, Local #223.

On May 9, 1972, negotiations between the City of Omaha and the two unions (Teamsters and TWU) culminated in the signing of a separate "13-C agreement" between the City of Omaha and each of the unions. As provided for in each of the 13-C agreements, The Authority, as the successor of the City of Omaha, accepted responsibility for full performance of the obligations contained therein. Within the normal collective bargaining process, in 1973, the aforementioned 13-C agreement was included and by reference made a part of the labor agreement with TWU, International and local, effective July 1, 1973. Effective July 1, 1974, an identical 13-C agreement was included and by reference made a part of the labor agreement with the Teamsters local #554. The inclusion of the 13-C agreement in our labor agreement with TWU Internatic and local #223, was reaffirmed in our latest labor agreement effective from July 1, 1975, through and including June 30, 1977.

In support of the above, both unions acknowledged the existence and validity of the 13-C agreement as evidenced by their original sign-off and subsequent sign-offs on other grants and grant amendments so as to receive the benefits to be derived therefi

i.e., during the spring of 1972, the City of Omaha made application for UMTA capital funds to provide the financial resources required to acquire City Transit Lines, Inc. Omaha Transit Co, and for a one-year capital improvement program. After the creation of The Authority, that grant responsibility was transferred by UMTA from the City of Omaha to The Authority. In the intervening period, additional grants have been appro by UMTA and certified by the Department of Labor so that approximately 10 million dol in federal funds have been supplied to The Authority.

On December 12, 1975, under provisions of the 1964 UMTA Act, as amended in 1974, The Authority submitted a grant application to UMTA for federal operating assistance. Th grant application requested operating funds for calendar year 1975 in the amount of $1,098,494 and funds for calendar year 1976 in the amount of $1,830,825. Since sub- mitting the above grant application, The Authority has maintained frequent contacts w the Section 5 Division of UMTA in an attempt to stay abreast of the progress and stat of grant approval.

On January 20, 1976, we were contacted by Mr. Mark Lehner of your staff, who request an additional copy of our grant application for the purpose of review prior to requir certification.

During January of 1976, because of what we believed to be a temporary cash flow probl The Authority was forced to borrow $250,000 to maintain operations. This money is du and payable and shall be paid within the week of April 10.

During the first week in March, in the face of a continued worsening of our financial position, The Authority established their grant approval status with UMTA and was in- formed that basic grant approval had been achieved. We were also informed that 13-C certification from the Department of Labor had not been received. Based on this info mation, we initiated contact with Mr. Larry Yud of your staff in an effort to determi the status of the Department of Labor 13-C certification for our grant. We were info by Mr. Yud that his office was having difficulty finding a copy of our grant applicat It took approximately a week, based on another call by the Authority to Mr. Yud, to determine that our grant application had been located but he had not received any com from the International office of TWU.

Subsequent calls during the second week of March produced the following information:

The International union was demanding that The Authority sign off on the model 13-C (per Mr. Yud).

The Authority informed the Department of Labor that our existing 13-C agreement is incorporated into the labor agreement with TWU and is binding on the parties thereto. (The Teamsters, local #554, had signed off on the basis of the existing 13-C agreement in our labor agreement.)

The International office of TWU would investigate and if the 13-C was in the labor agreement, they would sign off (per Mr. Yud). Mr. Yud suggested a meeting in his office, to which The Authority agreed.

A letter signed by Mr. Yud transmitting the above information was sent to us on March 12, 1976.

On the afternoon of March 12, we were contacted by Mr. Yud who informed us that the letter was partially incorrect and that the International TWU had changed its position. The International stated, through Mr. Yud, that since the 13-C agreement was only mentioned as a "whereas" in our labor agreement, it was not binding and therefore they demanded the model 13-C agreement sign-off by The Authority.

We informed Mr. Yud at that time that we held to the position that the 13-C as incorporated in the labor agreement was binding on the signatories.

Mr. Malcom Goldstein, attorney for the International TWU, indicated to Mr. Yud that no meeting between the International, The Authority and the Department of Labor representatives was desired or appropriate (per Mr. Yud).

Mr. Yud informed The Authority that he was requesting that both The Authority and the International present their respective positions in writing to Mr. Paul Fasser.

As a result of our critical financial position, an emergency meeting of the Board of Directors of The Authority was held at 8:30 a.m., March 16, 1976, at which time this entire matter was discussed in an open, public meeting. The Board, by unanimous vot passed a resolution directing that the model 13-C agreement not be entered into and further directed the staff to exhaust all administrative remedies available in procurement of grant approval prior to taking any further action. More specifically, t staff was directed to utilize, as requested by Mr. Yud, the case handing process of the Department of Labor and present a position paper to Mr. Paul Fasser, Assistant Secretary for Labor/Management Relations.

In compliance with the directive of the Board of Directors and the request of Mr. Yu we are presenting this position paper for your review and action.

Position of The Authority

We have fair and equitable protective arrangements which satisfy the requirements of Section 13-C of the Act, as amended, evidenced by the existing 13-C agreement as incorporated in our collective bargaining agreements. In executing the collective bargaining agreements the unions have confirmed that position and estopped themselves from now asserting otherwise. In view of this, we see no need for prior contact with TWU. We request that the Secretary of Labor determine that we are in compliance with Section 13-C and certify our grant application.

It is our hope that this position paper conveys to the Secretary of Labor the urgenc of our circumstances. It is also our hope that the acute financial situation that

exists in the Omaha-Council Bluffs metropolitan area will serve to expedite the Secretary's certification of our grant application. An evaluation of our present financial circumstances indicates that based on projected cash flows and in the absence of federal financial assistance, The Authority will be forced to cease operations as of the week ending April 10. We are in need of a determination from the Secretary of Labor on or before March 26, 1976, in order that The Authority can meet its obligations to the public and its 360 employees and attempt to lessen the disruptive impact of a shutdown of mass transit in this metropolitan community.

Sincerely,

Fred H. Thoma

Fred H. Thoma, Chairman
Transit Authority of the City of Omaha Board

J T Erdman

J. T. Erdman
Executive Director

JTE/glc

cc: Mr. Larry Yud
Mr. Stanley Feinsod, UMTA
Congressman John Y. McCollister

JOHN Y. McCOLLISTER
SECOND DISTRICT, NEBRASKA

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Congress of the United States
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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES

April 7, 1976

Honorable William J. Usery, Secretary
Department of Labor
Department of Labor Building
200 Constitution Avenue
Washington, D. C. 20210

Dear Mr. Secretary:

On March 17, 1976, I wrote you in regard to a problem facing the Metro Area Transit Authority (MAT) which provides public transportation to the citizens of the Omaha-Council Bluffs metropolitan area. MAT's application for Federal operating assistance under the provisions of the Urban Mass Transportation Act was being withheld because the Department of Labor refused to certify its Section 13 (C) Labor Agreement. Officials of the Transit Authority were advised that their 13 (C) Agreement was not patterned after a "Model Agreement" the Department was now utilizing to determine compliance with Section 13 (c) of the Urban Mass Transportation Act.

I refer you to that letter and its enclosures for a more detailed explanation of the situation as it relates to the Transit Authority. After more than a week of intense negotiations, an interim solution was agreed to by the affected parties so that MAT's application for 1975 funds could be approved with the stipulation that the parties "meet and confer as to the applicability of the Model Agreement for operating assistance in 1976 for a period of not to exceed 60 days."

I am pleased that the Department was able to reach this interim solution. It means that the Transit Authority can continue providing much needed service to the Omaha-Council Bluffs region. An impending shut-down of the system due to financial constraints was averted. While I am greatly relieved by this interim solution, I cannot help but be concerned about the long-range implications of the Department of Labor's position throughout these negotiations. Those implications are indeed disturbing. Their impact stretches far beyond the borders served by Metro Area Transit. Therefore, I am prompted to write this letter to you.

Quite frankly, Mr. Secretary, I am puzzled as to why this situation developed in the first place. In May, 1972 the City of Omaha completed negotiations with affected unions on a 13 (C) Labor Agreement. That agreement became incorporated into the collective bargaining agreement negotiated by the successor and assigned Metro Transit Authority and the unions beginning in 1973. It was reaffirmed by all parties in 1974 and 1975 with the latter agreement being effective through June 30, 1977. I reiterate that <u>all</u> parties, including the affected unions, signed the agreements. They were

also valid in the eyes of the Department of Labor which certified grant applications to the Transit Authority in the amount of approximately $10 million. It was not until the Transit Authority applied for operating assistance under the terms of the 1974 Amendments to the Urban Mass Transportation Act that it received notice of possible conflict between their 13 (C) Agreement and the new "Model Agreement."

It is my understanding that your predecessor, Mr. John Dunlop, worked out the details of the so-called "Model Agreement" with representatives of the American Public Transit Association and the International offices of the affected unions. Those negotiations occurred at the same time MAT was completing its negotiations for a new labor contract which included its 13 (C) agreement. I think you can see my concern that MAT's application for 1975 and 1976 funding should have ever been disputed by the Department of Labor in view of the time frame by which these two agreements were negotiated. I am sure these issues will be raised during the next 60 days. I believe, however, there are more serious questions deserving of your attention.

At this point, I do not intend to dispute the original language of Section 13 (C). I would remind you only that a number of Congressmen and Senators raised serious questions as to the meaning and possible interpretation of this section during debate of the 1964 law. From my reading of the legislative history, however, I find no mention of the need for a "Model Agreement" to determine compliance. In fact, the House Committee on Banking and Currency's report, dated April 9, 1963, states quite clearly the Committee's intention: "The Committee wishes to point out that, subject to the basic standards set forth in the bill, specific conditions for worker protection will normally be the product of local bargaining and negotiation." I have no quarrel with this interpretation of the law. Yet, we now find in the instance of Metro Area Transit and other communities throughout the nation, that applications for Federal operating assistance are being withheld because of the Department of Labor's adoption of the "Model Agreement." I think this situation prompts questions which the Department should be called upon to answer.

1. Why is there a need for a "Model Agreement?"

Prior to 1975, the Department of Labor was determining compliance on the basis of agreements negotiated at the local level. It seems to me that if employee protection arrangements are acceptable at the local level, they should not be disputed at the national level.

2. Who decided which parties should be included in the negotiations that led to the signing of the "Model Agreement?"

I know, for example, that Metro Area Transit never became a signatory to the "Model Agreement." Nor, was it ever asked by the American Public Transit Association to contribute to the negotiations. It was never given the impression that this "Model Agreement" would have a binding impact on its labor negotiations. In fact, the opposite impression was given.

3. My reading of the law would indicate that the 13 (C) certification requirement is the sole responsibility of the Secretary of Labor. Why, then, does the Department routinely send employee protective agreements to the International Unions prior to determining compliance? This simply adds unnecessary delay and harassment to the situation. In the instance of Metro Area Transit, the International Union office is requiring the local union to reverse its previous position wherein it signed a 13 (C) agreement as part of the 1975 labor contract. A representative of the International Union also signed that contract.

4. Why was the Model Agreement never submitted to normal rule-making procedures?

It seems to me that the Model Agreement is being used by the Department as a standard for compliance rather than a model which would imply room for modification to meet local situations. If this is the case, then I think it is important for us to know why the Model Agreement was never subjected to normal rule-making procedures allowing for publication in the Federal Register and appropriate review and comment by the public?

Mr. Secretary, I am deeply disturbed by this entire situation. I, therefore, earnestly solicit your response to the above questions at your earliest convenience. As the so-called "Model Agreement" was negotiated by your predecessor, I think it would be to your distinct advantage to initiate a thorough study and review of the procedures which led to the adoption of the "Model Agreement", the applicability of this agreement, and the procedures your department follows in determining 13 (C) compliance.

During the negotiations which produced the interim solution for Metro Area Transit, I heard one of my constituents describe the situation as follows: "It seems that the Department of Labor is dictating terms to MAT, and the New York Labor Unions are dictating to local labor officials what they should agree to." During my efforts to resolve this conflict, I confess that I came to the same unsettling conclusion. I do not believe it is your intention as a representative of this Administration to adhere to such a policy. Moreover, I seriously question whether the Congress ever intended the department to adhere to such practices when it approved Section 13 (C). That is an issue I intend to pursue pending a response from you to my questions.

I should also like to request an appointment at your earliest convenience so that we might discuss this situation at length. The ramifications for Nebraska and the Nation are too serious to allow for delay or inaction. Thank you for your attention, and I look forward to your response.

Sincerely,

JOHN Y. McCOLLISTER
Member of Congress

JYM/hsg

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

MAY 17 1976

Honorable John Y. McCollister
House of Representatives
Washington, D. C. 20515

Dear Congressman McCollister:

This is in response to your letter dated April 7, 1976, concerning the Department of Labor's administration of the employee protective provisions contained in Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. In your letter, you raise a number of questions concerning our practices and procedures in carrying out our responsibilities under Section 13(c), particularly as they involve the so-called "model" agreement negotiated by the American Public Transit Association and various transit employee labor organizations. You raise these questions particularly in the context of recent applications for operating assistance grants under the Act filed by the Transit Authority of the City of Omaha, Nebraska.

Before responding to your specific questions on the model agreement, I would like to place that agreement in its proper perspective as it appears that there are a number of misconceptions about it. At the outset, I would point out that the model agreement is a voluntary arrangement that resulted from an industry-initiated effort. The agreement was executed on July 23, 1975, by representatives of the American Public Transit Association whose membership carries some 90+ percent of the nation's transit riders and six national union or union affiliated organizations representing the great majority of transit industry employees. The Department of Labor encouraged and actively assisted the parties in their effort to reach this agreement. We also encourage its utilization in connection with specific operating assistance grant applications. However, the model agreement is not binding on non-signatories. It remains discretionary with local involved parties as to whether they are willing to adopt the model agreement as the vehicle for development of the protective terms and conditions and also

discretionary with the Secretary of Labor as to how he will certify applications where local parties do not reach agreement. Although the model agreement has served as the basis for certification of the majority of operating assistance grants over the last few months, a number of grants have been certified on other arrangements.

To turn now to the specific questions you have raised, as follows:

"1. Why is there a need for a 'Model Agreement'?"

The National Mass Transportation Assistance Act of 1974 amended the Urban Mass Transportation Act to provide for a formula grant program under which Federal grant funds could be utilized for the first time for the subsidization of operating expenses. This created a novel project situation for application of the statutory employee protection requirements which had previously been applied only to capital and demonstration project situations. Also, a very large increase in the number of projects requiring certification was anticipated under the new program. At the same time, the industry was desirous of achieving some stability in the level of employee protective benefits. It was generally felt that individual applicants were at a serious disadvantage in employee protective arrangement negotiations and that this allowed the unions involved to continually increase the level of protective benefits from one project situation to another.

The model agreement resulted from these circumstances. That agreement has proved very useful to a great number of applicants for assistance under the Act. Since its development, over 50 operating assistance applications have been certified on the basis of the model agreement.

"2. Who decided which parties should be included in the negotiations that led to the signing of the 'Model Agreement'?"

As I stated above, the negotiations for the model agreement were initiated by the industry through the American Public Transit Association. Those representatives approached those unions whose members comprised a majority of the industry's employees. When the Department of Labor's assistance was sought by the parties in the final stages of their effort to reach an agreement, the Department worked with the representatives who had been involved up to that time.

"3. Why...does the Department routinely send employee protective agreements to the International Union prior to determining compliance?"

I agree that "the 13(c) certification requirement is the sole responsibility of the Secretary of Labor." However, as your letter notes elsewhere, the intent of the Congress was that specific protective arrangements, if possible, should be developed through local negotiations and bargaining. This reliance on the process of bargaining between appropriate parties on behalf of the applicant and affected employees requires that the Department of Labor utilize procedures which allow and promote that end. Thus, when we receive applications referred to us by the Department of Transportation together with a request for the certification required in the Act, we initiate steps, through the national union organizations representing affected employees in each case, to begin the development of appropriate protective arrangements. Copies of the project descriptions are forwarded to those national union organizations to allow the development of positions on protective terms and conditions. The national unions in turn refer these matters to their involved local unions which follow through on the negotiations, although most of the unions involved in the 13(c) program utilize national level legal and other staff support in connection with these negotiations. With respect to the Omaha grant situation, and I will comment more on that below, the Transport Workers Union spokesman was Mr. Malcolm Goldstein of the law firm of O'Donnell and Schwartz located in New York. Mr. Goldstein has represented all TWU locals in Section 13(c) matters over the past few years. In the instant Omaha case, we have no reason to believe that he is not validly expressing and advancing the position of TWU local 223 which represents the employees of the Transit Authority of the City of Omaha.

"4. Why was the Model Agreement never submitted to normal rulemaking procedures?"

The model agreement does not constitute rule-making and it would not be appropriate for the Department of Labor to adopt rule-making procedures with regard to it.

I would now like to review the Omaha grant situation from our perspective. Applications for operating assistance grants for Calendar Years 1975 and 1976 were received by the Department of Labor on January 5, 1976. In accordance with our normal procedures we subsequently referred copies

of the applications to the International Brotherhood of Teamsters and Transport Workers Union and requested their views with respect to appropriate protective terms and conditions. It subsequently developed that the Authority took the position that the terms and conditions contained in a 13(c) agreement originally executed on May 9, 1972, in connection with a previous grant, should be made applicable to the then pending operating assistance projects. The Teamsters union took an identical position. The Transport Workers Union, on the other hand, took the position that the model agreement was the more appropriate basis for certification.

Representatives of the Department of Labor had numerous conversations with Authority and union representatives in an effort to achieve a resolution to this dispute. These efforts were very strained however because the Authority's position was that the union had already agreed to apply the May 9, 1972 agreement to the operating assistance applications. The Authority pointed to the fact that the 13(c) agreement was attached to its current collective bargaining agreement, signed on October 31, 1975, and effective to June 30, 1977, as evidence of this agreement. The union, however, contended to the contrary, and argued that the mere attachment of a previous 13(c) agreement to the collective bargaining agreement, and reference thereto in a whereas clause, in no way constituted a commitment or agreement by the union to those protective terms and conditions for all future grant situations.

The Secretary of Labor has no jurisdiction over local collective bargaining agreements. However, in this case the dispute between the Authority and the TWU as to the nature and extent of their commitments resulting from their local collectively bargained working agreement impinged on their respective positions with respect to the appropriate Section 13(c) employee protective terms and conditions. It was in this context that representatives from the Department of Labor had to work in attempting to clear the way for project certification.

All parties involved cooperated in that certification effort and by letter dated March 26, 1976, copy enclosed, the Department of Labor made the certification required in the Act as a condition to final grant approval. The certification provided a means by which operating assistance funds requested for calendar year 1975 could be made available immediately.

A procedure is set forth in the certification for the timely development of protective terms and conditions for application to operating assistance grant funds for calendar year 1976.

We compliment all parties involved for their willingness to work with representatives of the Department of Labor in the development of this solution which provides for a fair and equitable method of resolving their differences without allowing those differences to impede the flow of needed funds to Omaha.

It has been repeatedly claimed that the lack of the Department of Labor's certification of the Omaha operating assistance grant application delayed transmittal of those funds to Omaha. However, at the time we made the certification we were advised that, notwithstanding that certification, the Urban Mass Transportation Administration was not in position to approve the grant because of problems involving statutory requirements other than those relating to employee protections. We now understand that the grant was eventually made some three weeks after our certification.

I will be glad to provide you with any additional information you may desire concerning this matter.

Sincerely,

W. J. USERY JR.

Secretary of Labor

Enclosure

american public transit association

o. r. stokes
executive director

william j. ronan, *chairman*
stanley h. gates, jr., *president*
paul j. kole, *secretary-treasurer*
vice presidents
richard d. buck
joe v. garvey
p. j. giacoma
jack r. gilstr
f. norman
james c. mcconr

May 28, 1976

Honorable W. J. Usery, Jr.
Secretary
U. S. Department of Labor
Labor Building
200 Constitution Avenue, N. W.
Washington, D. C. 20210

Honorable William T. Coleman, Jr.
Secretary
Department of Transportation
Nassif Building
400 7th Street, S. W.
Washington, D. C. 20590

Re: 13(c) Labor Protective Provisions
of the Urban Mass Transportation Act

Dear Sirs:

The American Public Transit Association (APTA) has completed a careful and thorough review of the present administrative procedures utilized in implementing the requirements set forth in Section 13(c) of the Urban Mass Transportation Act of 1964 as amended, 49 U.S.C. Section 1601 et seq. (the"Act").

Accordingly, we have determined that the present procedures with respect to 13(c) certification are totally inadequate, burdensome, and unduly time consuming, notwithstanding the adoption of the National Model Agreement negotiated by and between APTA and various labor organizations. Indeed, the present procedures are heavily balanced in favor of the unions' considerations with little more than cursory consideration being given to the problems facing the particular transit property.

More often than not, and in an alarmingly increasing number of circumstances, the issues raised do not touch upon the question of whether the employee protections are fair and equitable but instead involve determinations by the union as to whether they have enough leverage in dealing with the particular transit property. Clearly, this was not intended by the framers of the Act.

APTA has learned that many of its members have existing fully integrated 13(c) Agreements, applicable to both capital projects and operating assistance. Nevertheless, many unions have

insisted upon ever increasing levels of protections, without offering any concrete reasons or explanations therefor. Indeed, we have learned that even in circumstances where a transit property has been willing to sign the National Agreement, some unions are insisting that even this is inadequate, again without focusing on the question of whether the levels of protections are unfair or inadequate. We respectfully submit that activity such as this clearly flies in the face of the language, spirit and intent of the Act. As a result of the above abuses, and others like them, our membership very often is faced with bearing the burdens and pressures of uncertainty not only as to whether UMTA funds will be forthcoming in time, but indeed whether UMTA funds will be forthcoming at all.

It was hoped by many that the execution of the National Model 13(c) Agreement would ameliorate the procedural problems that traditionally have been present. Unfortunately, this has not occurred. The problems are just as severe. The only significant difference is that the crises are spaced intermittently throughout the year, due to the particular local funding problems, rather than all coming at once at the end of the fiscal year. A uniform approach seems to ignore or make light of the complexities of the local problems facing the various transit properties. Few transit properties are faced with similar sets of circumstances. Obviously there are varying local funding considerations, different geographic factors, separate and distinct operating considerations, unique local collective bargaining considerations, as well as different existing 13(c) Agreements. For some the model agreement fits well into the transit property's overall picture, but for others numerous details and considerations such as those mentioned above, must come into play. It is clear that a uniform approach, while of great aid to many, is not in the best interests to all.

Accordingly, to prevent these abuses, to provide for more orderly and timely certifications, to alleviate the uncertainties presently facing the transit properties, and to take into consideration the complexities of the various local issues, we respectfully request that UMTA and/or DOL implement administrative changes immediately establishing a more orderly and simplified procedure for automatic and/or semi-automatic 13(c) certification, as long as the particular transit property already has in force a valid and binding 13(c) Agreement. (We also respectfully request that this be done with a view toward UMTA and/or DOL ultimately issuing formal guidelines and/or regulations regarding 13(c) certification.) Thus, unless an interested party can affirmatively demonstrate the need for a change in said prior agreement, certification should issue. We submit the following suggestions:

1. Certain capital grants (such as equipment purchase grants) and operating grants that are designed as routine by UMTA should receive automatic certification as long as the transit property already has an existing valid and binding 13(c) Agreement. UMTA should compile a list of examples of what it considers to be such routine grant

2. With all other grant applications the following procedure should be implemented:

a. The applicant should be required to submit its final application including the applicant's negative declaration that the use of the funds will not result in the dismissal or displacement of employees, and an additional declaration that if a dismissal or displacement should nevertheless occur, it will abide by its existing 13(c) Agreement to the local union or unions 10 days prior to filing the application with UMTA.

b. After the filing with UMTA, 13(c) certification should be automatic after thirty (30) days unless one of the interested parties petitions the Secretary of Labor that there is sufficient cause to reopen the matter and sets forth in said petition the reasons for believing sufficient cause to exist, carefully defining the issue(s) in dispute.

c. Even if a party were to so petition the Secretary, certification ought not to be held up. Instead, provisional certification should be granted with notice to the parties to attempt to resolve the defined issues, but under a strict time limit of thirty (30) days within which to reach agreement or reach an impasse. If, after 30 days, the parties have reached an impasse, the Secretary of Labor and the Secretary of Transportation then should utilize their discretionary powers by implementing the processes of hearings, fact-finding, mediation and conciliation, arbitration and recommendation in order to resolve the defined issue(s). Then the Secretarys' determination, or that of their designee, on the specific issue(s) in dispute shall be deemed final and binding.

We believe that the above procedures are fair and equitable to all interested parties. Thus, we respectfully request that UMTA and DOL promulgate and immediately implement such regulations.

Very truly yours,

By B. R. Stokes
Executive Director
American Public Transit Association

BRS:ef

cc: Bernard DeLury, Assistant Secretary for Labor Management Relations
Robert E. Patricelli, Administrator, UMTA
Dan V. Maroney, President, Amalgamated Transit Union
Matthew Guinan, President, Transit Workers Union
William Hickey, Esq., Mulholland, Hickey and Lyman
Earle Putnam, Esq., Amalgamated Transit Union
William G. Mahoney, Esq., Highwaw, Mahoney, Friedman
Malcolm Goldstein, Esq., O'Donnel & Schwartz
William Skutt, Brotherhood of Railroad Engineers
Judith Hope, Associate Director, Domestic Council

Cannon file

THE WHITE HOUSE

WASHINGTON

July 30, 1976

MEETING WITH SECRETARIES COLEMAN AND USERY

Monday, August 2, 1976
11:00 a.m. (30 minutes)
The Oval Office

From: Jim Cannon

I. PURPOSE

Secretaries Usery and Coleman have requested a meeting to discuss decisions on improving the administration of labor protective arrangements under Section 13(c) of the Urban Mass Transit Act.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

A. Background: Earlier this year you directed the Secretaries of Labor and Transportation to review and reach agreement on the operation of the 13(c) program. The Departments have agreed to simplify the 13(c) process by granting single certifications for single Federal grants. They have reached partial agreement on your recommendation that written 13(c) rules should be promulgated, but disagreed on when and how. They disagreed on the remaining three proposals. Accordingly we prepared a decision memo for you to resolve the outstanding issues, which you did on July 16 (Tab A).

At that time you also agreed to meet with Secretaries Usery and Coleman. We have not informed the Secretaries of your decisions on 13(c), pending this meeting. We anticipate that Secretary Coleman will strongly support your decisions and that Secretary Usery will feel that it will gravely impair his ability to work with the unions.

B. Participants: Secretary Usery
Secretary Coleman
Jim Cannon

C. Press Plan: To be announced.

III. TALKING POINTS

1. I know you have all worked very hard on this 13(c). This issue is important to everyone involved with public transportation--the cities, the transit operators, and the employees.

2. The five proposals I asked you to consider attempt to simplify this process for everyone.

3. I was glad to see that you reached agreement on one of the proposals, and partial agreement on another. These are important steps in the right direction.

4. Jim (Cannon), how would you like to proceed on the issues which are in dispute?

13(c) file

THE WHITE HOUSE

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cc: Lissy
Hope

THE WHITE HOUSE

WASHINGTON

August 13, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON

FROM: JIM CONNOR JEC

SUBJECT: Section 13(c) of the Urban Mass Transit Act of 1964

Confirming phone call to your office earlier today, the President reviewed your memorandum of August 12 and approved your recommendation to give Secretary Usery and Secretary Coleman an additional five days, until Saturday, August 21, 1976, to complete the resolution of the four basic points on which they felt they had agreed.

Please follow-up with appropriate action.

cc: Dick Cheney

THE WHITE HOUSE

WASHINGTON

DECISION

August 12, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Section 13(c) of the Urban Mass Transit Act of 1964

Secretary Usery informed me today that because he spent five full days on the rubber strike, he could not meet your deadline of August 16 with the report he and Secretary Coleman were to give you on the resolution of 13(c).

I will talk next week with Secretary Usery and Secretary Coleman and attempt to complete the resolution of the four basic points on which they felt they had agreed.

With respect to the remaining issue, negative declaration, it will not be determined until September when certain studies, mentioned by Secretary Usery, have been completed.

I propose we give them an additional five days, that is, until Saturday, August 21, 1976. Then if you approve, I will inform them that if it is not settled by that date, you will decide the issue.

Approve Disapprove _____

THE WHITE HOUSE
WASHINGTON

JMC:

David Lissy felt that we should extend the deadline to Aug. 23, rather than Aug. 21.

cameron

THE WHITE HOUSE

WASHINGTON

August 14, 1976

MEMORANDUM FOR THE HONORABLE WILLIAM T. COLEMAN
SECRETARY OF THE DEPARTMENT OF TRANSPORTATION

THE HONORABLE WILLIAM J. USERY
SECRETARY OF THE DEPARTMENT OF LABOR

FROM: JIM CANNON

SUBJECT: Section 13(c) of the Urban Mass Transit Act

The President has approved an extension of time for the joint memorandum you are to submit indicating how you will implement decisions on the four issues you agreed upon in your meeting with the President. Your joint memorandum is now due August 21, and no further extensions will be granted.

This memorandum need not cover the Negative Declaration issue since it was agreed resolution of that issue would await completion of the several studies already underway.

Please