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THE WHITE HOUSE

WASHINGTON

July 20, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

L WILLIAM SEIDMAN
BRENT SCOWCROFT

FROM:

JAMES E. CONNOR *JEC*

SUBJECT:

Questionable Payments Legislation

The President has reviewed your memorandum of July 19th on the above subject and has approved

Option 3: Reporting and Limited Disclosure -- With discretionary safeguards in relation to interests of foreign policy and judicial process.

Please follow-up with the appropriate action.

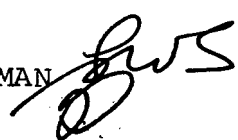
cc: Dick Cheney

THE WHITE HOUSE

WASHINGTON

July 19, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN 
BRENT SCOWCROFT

SUBJECT: Questionable Payments Legislation

On June 10 you approved accelerating U.S. efforts to obtain an international agreement on questionable payments, Administration endorsement of the Hills bill, and undertaking a legislative initiative in the form of "disclosure" legislation.

A memorandum from Secretary Richardson, Chairman of the Task Force on Questionable Corporate Payments Abroad, on the details of the legislative initiative you requested is attached at Tab A.

Secretary Richardson's memorandum summarizes the legislation and reports that interagency agreement has been reached on all aspects of the legislation except for the issue of whether and under what conditions reports made to the Department of Commerce regarding corporate payments abroad would be made available to the public.

Secretary Richardson's memorandum records the positions taken by the agencies represented on the Task Force. A memorandum from Deputy Secretary of State Robinson further outlining the rationale for the position taken by the State Department is attached at Tab B.

Secretary Richardson's memorandum has been reviewed by your White House advisers who have the following comments and recommendations:

White House Counsel's Office

Support Option 3. A memorandum from Ed Schmults is attached at Tab C. Philip Buchen concurs with this view.

James M. Cannon

Option 3.

John O. Marsh	Option 2
Max Friedersdorf	No Comment
Brent Scowcroft	Option 1
L. William Seidman	I recommend combining both Options 2 and 3. In some cases withholding the recipients name may not be enough to cover foreign policy or other needs for non-disclosure.

THE SECRETARY OF COMMERCE

WASHINGTON, D.C. 20230

July 16, 1976

MEMORANDUM FOR THE PRESIDENT

FROM : ELLIOT L. RICHARDSON
SECRETARY OF COMMERCE



SUBJECT: QUESTIONABLE PAYMENTS LEGISLATION

In your public statement of June 14, you directed the Task Force, in part, as follows:

We must take additional legislative steps to improve the deterrent effect of United States law. I have therefore directed the Task Force to develop a specific legislative initiative which would require reporting and disclosure of payments by U.S.-controlled corporations made with the intent of influencing, directly or indirectly, the conduct of foreign government officials. In order that the Congress will have time to enact this legislation in this session, I have instructed the Task Force to proceed with the drafting of detailed specifications as quickly as possible.

The Task Force and its staff have been able to resolve all but one of the issues posed in the process of developing legislation to implement your directive. This memorandum informs you of issues resolved by the Task Force and seeks your decision on the single remaining issue. Resolution of the one remaining issue will allow the transmission of the Administration's proposed legislation promptly upon the return of the Congress.

Issues Resolved by the Task Force

In addition to the basic decisions which you have already made, the Task Force has made the following subsidiary decisions with regard to specifications for the proposed legislation:

- o The Department of Commerce would administer the reporting program. (This would not supersede existing SEC authority and reporting requirements.)
- o Direct payments to government officials, political contributions, and agents' fees would all be required to be reported when such are made in connection with a sale to or contract with a foreign government or in connection with an official action of a foreign government which can yield a specific commercial benefit to the payor. (Allowable classes of exceptions to this rule would be specified by regulation as noted below.)
- o The Secretary of Commerce would issue rules and regulations detailing reporting requirements. These rules and regulations (as opposed to the legislation itself) would cover such issues as the threshold amount above which reports of payments must be made; the scope of record keeping to be required; and the exclusion of certain routine and bona fide payments from the reporting requirements.
- o Reporting requirements would apply to all U.S. individuals and business entities and through them to controlled foreign affiliates or subsidiaries. The latter are defined as those which are at least 50 percent beneficially owned, directly or indirectly, by a U.S. citizen or business entity.
- o Reporting of the name of the recipient of a reportable payment will be required.
- o Criminal penalties for failure to report or for misrepresentation would be consistent with those proposed by the Administration in its omnibus criminal code reform legislation, S.1.

- o Although the Administration (and you, directly) support the "Hills bill," it will not be incorporated in the legislation which we propose.

Issue for Presidential Decision

The issue on which the Task Force has not reached consensus is whether, and under what conditions, reports made to the Department of Commerce regarding corporate payments abroad would be made available to the public.

Since the proposed Administration legislation would not alter ongoing SEC disclosure requirements, this issue must be viewed in light of these requirements. The SEC requires that regulated companies periodically report "material" questionable or illegal payments. The SEC has defined this requirement rather broadly to include, for example, payments, regardless of size, which reflect on "quality of management" as well as payments traditionally understood to be material. It has not, as a general proposition, required reporting of names of recipients. Required reports become public documents upon filing with the SEC.

The following four options for the treatment of "reporting and disclosure" in the proposed Administration legislation are presented for your review and decision.

OPTION (1): REPORTING ONLY--NO DIRECT PUBLIC DISCLOSURE

Under this alternative, reports would be submitted to the Commerce Department. They would be made available immediately to Justice, State and IRS, and to the SEC if the filer is subject to SEC jurisdiction. Reports would be kept confidential in accord with Section 1905 of Title 18, U.S. Code. Subject to appropriate arrangements to assure confidentiality, reports would be transmitted to Committees of the Congress having relevant legislative jurisdiction. Reports would not be made available to the public.

Arguments in Favor

- o The reporting requirement itself would constitute a deterrent to improper payments, and public disclosure of payment reports would have only a marginal additional value as a deterrent.
- o To the extent that deterrence fails, this approach would avoid the potential damage to U.S. foreign relations which could result from the unilateral disclosure of the names of foreign officials by the U.S.; and it would, in all cases, protect confidential business information from public disclosure.

Arguments Against

- o The President and the Chairman of the Task Force have stated publicly that the Administration's legislative initiative would include "reporting and disclosure" of reports on the grounds that disclosure would have the greatest deterrent effect. To backtrack would undercut the credibility of the Administration's initiative.
- o Arguably, adequate protection of sensitive information can be achieved without a permanent and absolute ban on public disclosure. (See options 2, 3 and 4 below.)

OPTION (2): REPORTING AND LIMITED DISCLOSURE--WITH BLANKET SAFEGUARD IN RELATION TO NAMES OF RECIPIENTS

Under this alternative, reports would be submitted to the Commerce Department and would be made available to other agencies and Congressional Committees as in option (1). They would be kept confidential for one year--after which they would be made available for public inspection except for the names of foreign recipients of payments, whose names would remain confidential. (As noted above, names of recipients are not now ordinarily reported to, or required to be disclosed by, the SEC.)

Arguments in Favor

- o This option would provide greater deterrence of improper payments--while allowing maximum protection of foreign policy interests in the non-unilateral-disclosure of names of foreign recipients.
- o Because the prohibition against disclosure of recipients is blanket, it is less subject to charges of "cover up" than if it were a discretionary prohibition.

Arguments Against

- o This approach does not promise to deter extortion as fully as would an approach which made names of recipients public.
- o Disclosure of payments (without names of recipients) would inevitably cause pressure for release of names--and would provide a basis for charges of complicity in a "cover up."

OPTION (3): REPORTING AND LIMITED DISCLOSURE--WITH DISCRETIONARY SAFEGUARDS IN RELATION TO INTERESTS OF FOREIGN POLICY AND JUDICIAL PROCESS

Under this alternative, reports would be submitted to the Commerce Department and would be made available to other agencies and Congressional Committees as in option (1). They would be kept confidential for one year--after which they would be made available for public inspection unless, in a given case, (a) a specific determination were made by the Secretary of State that foreign policy interests dictated against public disclosure, or (b) a specific determination were made by the Attorney General that the status of an ongoing criminal investigation or prosecution dictated against public disclosure through other than conventional judicial processes.

Arguments in Favor

- o This option would provide greater deterrence of improper payments, while allowing protection of foreign policy concerns. The one year lag would provide time to work out possible foreign policy problems. Business proprietary concerns would also be protected in considerable measure by the one year lag. They would be protected further by the Secretary's authority to exempt from reporting, by regulation, "classes and patterns of payments not inconsistent with the purposes of the Act"--including most "regular" agents' fees.
- o A portion of the information at issue would be disclosed regularly as a result of SEC requirements. It would therefore be difficult and inconsistent to defend the argument that payment reports submitted to the Secretary of Commerce should be kept confidential permanently.

Arguments Against

- o Some proprietary information--that not adequately protected by the one year lag--would be disclosed. Further, some firms may be subjected to unfair allegations based upon the fact of disclosure, even though the legislation, by design, would require reporting of proper as well as improper payments.
- o In order to avoid foreign relations problems which could not adequately be addressed during the year in which information is kept confidential, the Secretary of State might be required to withhold information--making him vulnerable to charges of a "cover up."

OPTION (4): REPORTING AND FULL DISCLOSURE (AFTER ONE YEAR--
SUBJECT ONLY TO LIMITS RE JUDICIAL PROCESS)

Under this alternative, reports would be submitted and made available to other agencies and Congressional Committees as in option (1). They would be kept confidential for one year--after which they would be made available for public inspection unless a specific determination were made by the Attorney General that the status of an ongoing criminal investigation or prosecution dictated against public disclosure through other than conventional judicial processes.

Arguments in Favor

- o This approach would have the greatest deterrent effect.
- o It would constitute the most credible and forceful "disclosure" approach which the Administration could adopt and would minimize allegations of government complicity in "cover-ups."

Arguments Against

- o To the extent that deterrence fails, it would allow public disclosure of information potentially damaging to U.S. foreign relations; and it would allow disclosure of proprietary information not adequately protected by regulation and by the one year lag.
- o It would (as in the case of options 2 and 3) subject some firms to unfair allegations--to the extent that all disclosed payments may be wrongly construed as "improper."

RECOMMENDATIONS:

Option (1): Reporting Only--No Direct Public Disclosure^{1/}

This option is favored by: State, Treasury, STR,
Brent Scowcroft

Approve

Disapprove

Option (2): Reporting and Limited Disclosure--With
Blanket Safeguard in Relation to Names
of Recipients

This option is favored by: Defense, CIEP, Jack Marsh,
Bill Seidman*

Approve

Disapprove

Option (3): Reporting and Limited Disclosure--With
Discretionary Safeguards in Relation to
Interests of Foreign Policy and Judicial
Process

This option is favored by: Commerce,^{2/} Justice,^{2/}
Office of Legal Counsel, Jim Cannon, Bill Seidman*

Approve

Disapprove

Option (4): Reporting and Full Disclosure (After One
Year--Subject Only to Limits Re Judicial
Process)

This option is favored by: See footnotes 1/
and 2/

Approve

Disapprove

1/ STR notes: "If it is determined that the Presidnet has made a commitment to public disclosure through earlier public statements, then my recommendation would be Option (4)."

2/ If in the light of a Presidential decision in favor of disclosure of names of recipients, State would then prefer Option (4), Commerce and Justice would also prefer (4).

* Seidman recommends combining both Options 2 and 3. In some cases withholding the recipients name may not be enough to cover foreign policy or other needs for non-disclosure.

TAB B



THE DEPUTY SECRETARY OF STATE
WASHINGTON

July 17, 1976

MEMORANDUM FOR: THE PRESIDENT
From: Charles W. Robinson *ck*
Subject: Questionable Payments Legislation

Secretary Richardson has submitted to you a memorandum, on behalf of the Task Force on Questionable Corporate payments, requesting your decision concerning the extent to which information concerning foreign payments to be made available to the Government under the Administration's proposed legislation should be made available to the public. The memorandum presents four options. The Department of State supports Option 1, under which reports made to the Department of Commerce would be made available to the responsible federal agencies and to Congressional committees and foreign governments under appropriate safeguards. Under this option, the reports would not be made available to the public.

In view of the important foreign relations implications of your decision, we have asked for this opportunity to explain our position to you. The Department of State is deeply concerned about the problem of illicit payments by U.S. companies to foreign officials. These payments, and their premature disclosure by U.S. agencies, have damaged the reputation of U.S. business abroad and have caused serious political problems for foreign governments with close ties to the United States. Accordingly, we agree that strong action needs to be taken to discourage such activities and to restore confidence in the free-enterprise system. However, in our view the most appropriate solution lies in the international agreement that you have supported. Pending such agreement, we support appropriate unilateral measures such as the effective regulatory action being taken by the

SEC, IRS, and other federal agencies. We believe that additional legislation to enhance the deterrent effect of U.S. law should be fashioned to avoid unnecessary injury to U.S. foreign relations.

Publication by the United States Government of reports of payments received by foreign officials could grievously damage U.S. interests in friendly foreign countries. The investigations currently being conducted by committees of Congress and the SEC have already had serious negative impact in Japan, Italy, The Netherlands and other friendly countries. We do not see that it is in the interest of the United States to extend and institutionalize this process. Moreover, the proposed Administration bill calls for disclosure to the Government of a broad range of domestic and foreign payments which are not necessarily improper. Publication of this information could prejudice U.S. commercial interests abroad.

Accordingly, we believe that legislation which calls for reports to the Department of Commerce and appropriate disclosure to the enforcement agencies, Congressional committees and foreign governments would fully satisfy the requirements of the position which you announced in your statement on June 14, 1976.

THE WHITE HOUSE
WASHINGTON

July 14, 1976

MEMORANDUM FOR: ROGER PORTER
FROM: ED SCHMULTS *Ees*
SUBJECT: Questionable Corporate
 Payments Legislation

I would like to be recorded as favoring Option 3 in the July 14 draft of Secretary Richardson's memorandum for the President on questionable corporate payments legislation.

It seems to me that disclosure -- in the true sense of the word -- is an essential element of the President's proposal and that to provide for only reporting to the government would place the Administration in an intolerable position vis-a-vis public perception.

If Commerce proposes reasonable regulations as to the threshold amount reportable and the exclusions of bona fide routine payments, disclosure and foreign policy problems, as well as the paperwork burden, will be almost non-existent because few if any questionable payments will be made by American businessmen. If others have this view, I think the President should be made aware of it.