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THE WHITE HOUSE
WASHINGTON

*filed
11/16/76*

On 12/2/76 spoke to Don Hider of
OMB ---- OMB concurs that the
memorandum should not go to
President now --- there might be
need for the memo to go in again but
later on when the legal problems
are worked out.

Trudy Fry

THE WHITE HOUSE

WASHINGTON

November 22, 1976

MEMORANDUM FOR: JIM CONNOR
THROUGH: ED SCHMULTS  BK
FROM: BOBBIE GREENE KILBERG
SUBJECT: Further Comments on Lynn Memo 11/16/76
re: Public Service Jobs Funding

As a followup to our November 18 memo, the Counsel's Office has obtained a legal opinion from the Office of Legal Counsel at Justice (Tab A) on the question of whether the Administration is required to continue utilizing the formula distribution provisions of Title VI of CETA or can instead utilize a sponsor-by-sponsor need basis approach.

Nino Scalia, Assistant Attorney General, Office of Legal Counsel, has concluded that the funds appropriated under the Joint Resolution for Title VI activities must be allotted among prime sponsors according to the statutory formula provided by 29 U.S.C. § 963.

We have given a copy of Justice's memorandum to Dan McGurk. Dan reports that in a budget meeting with the President on Saturday, the issue of Title VI was discussed and that the President decided as follows: (1) to commit funding only through March 31 rather than through a full year; and (2) to leave the decision on the formula versus sponsor-by-sponsor need basis approach to OMB to be based on Justice's legal opinion. McGurk has indicated that OMB will follow the formula approach due to Justice's memorandum and we agree with him that it is not necessary to bring this matter to the President's attention again.

Attachment

cc: Dan McGurk

Department of Justice
Washington, D.C. 20530

NOV 22 1976

MEMORANDUM FOR MRS. BARBARA KILBERG
Associate Counsel to the President
Executive Office Building

We have been asked for our opinion concerning the proper interpretation of Pub. L. 94-473, October 11, 1976, insofar as that Joint Resolution makes continuing appropriations to support activities under title VI of the Comprehensive Employment and Training Act, 29 U.S.C. §§961-969.

The Joint Resolution appropriates:

Such amounts as may be necessary for continuing the following activities . . . which were conducted in the fiscal year 1976 or the period ending September 30, 1976, but at a rate for operations not in excess of the current rate:

. . . .

activities under title VI of the Comprehensive Employment and Training Act . . .

The House Report concerning the Joint Resolution states:

The resolution would provide for the continuation of 260,000 public service jobs under title VI of the Comprehensive Employment and Training Act The Committee wishes to make clear that the intention is to maintain the level of 260,000 title VI jobs and that sufficient funds should be obligated by the Labor Department as soon as possible to ensure that there are no layoffs (H.R. Rep. No. 94-1678, 94th Cong., 2d Sess. 2 [1976]).

Title VI of CETA provides a detailed formula for the allotment of title VI funds among "prime sponsors" -- essentially various units of state and local governments -- based in part upon various measures of unemployment in such states and localities. 29 U.S.C. §963. As we understand the matter, use of the allocation formula at the present time may result in a different distribution pattern than that which prevailed when the current title VI jobs were created. The result of this changed distribution may be to create additional job opportunities in some areas and to cause layoffs in others, assuming funding at a level necessary to maintain approximately 260,000 jobs. 1/

The question presented is whether funds appropriated under the Joint Resolution for title VI "activities" must be allotted among prime sponsors according to the statutory formula provided by 29 U.S.C. §963 or whether such funds should be allotted to the prime sponsors currently employing title VI jobholders in such amounts as may be necessary to avert layoffs, notwithstanding the fact that such distribution would be in disregard of the statutory formula.

The argument in favor of the latter interpretation rests upon the fact that the Joint Resolution appropriates funds for the "activities" under title VI and not for the title VI program itself. Such "activities," it is asserted, consist of the state and local projects now approved and operating, accounting for the employment of approximately 260,000 persons at the time the Joint Resolution was adopted. Thus, the argument runs, the Joint Resolution requires that the funds appropriated be distributed so as to keep these particular projects in operation, rather than pursuant to the allotment formula. In support of this view, reliance is placed upon the House Report's statement of intent "to ensure that there are no layoffs."

1/ Under the allotment formula, the Secretary of Labor may apply up to 10% of the funds appropriated to support title VI activities as he deems appropriate, and 29 U.S.C. §963(b) directs the Secretary to use such discretionary funds so as to avoid or reduce layoffs. Thus, the allotment scheme itself contains substantial means for cushioning against layoffs.

While the issue is assuredly not as clear as one would desire, it seems to us that this view cannot be accepted. To distribute title VI funds in such a fashion as automatically to continue existing state and local projects is to ignore the allotment formula clearly set forth in 29 U.S.C. §963. It is well established law that repeal by implication is not favored, Silver v. New York Stock Exchange, 373 U.S. 341, 357 (1963); U.S. v. Border Co., 308 U.S. 188, 198 (1939), and that interpretation of appropriation measures in such a fashion as to amend substantive statutes is likewise disfavored, see United States v. Vulte, 233 U.S. 509, 514-15 (1914). Of course such an interpretation would be unavoidable if the two provisions were irreconcilable. In fact, however, there is no necessary conflict between them. The use of the word "activities" rather than "program" in the appropriation does not seem to us to have the enormous legislative import suggested above. The terminology is applied uniformly to the nine statutory programs and two Presidential commissions covered by the appropriation, and appears primarily intended to exclude initiation of new types of activity which, with respect to at least some of these programs and commissions, were authorized but not funded during the prior fiscal year. See section 106 of the Joint Resolution. If the word "activities" means only existing projects with respect to title VI, it would have to be given a similarly limited interpretation with respect to the other programs which this appropriation covers -- including, for example, the entirety the Higher Education Act. It seems to us extremely unlikely that the Executive Branch could operate under such an interpretation, or that the Congress intended it.

Our view on this matter is reenforced by our understanding of the purpose of a "continuing appropriation" such as Public Law 94-473, which is merely to maintain the status quo until the Congress has an opportunity to devote lengthier attention to the issue. The status quo in the present case includes an allotment formula among the states, the type of provision which is assuredly the subject of intense legislative discussion and negotiation. To set this aside in a provision for continuing appropriations would seem to us extraordinary.

The language in the House Committee Report is, if accepted literally, contrary to the position we have taken. It seems to us, however, it was not meant literally, and that it must be taken to be at least somewhat elliptical. There is no way, under any interpretation of the Joint Resolution, that the funds appropriated could "ensure that there are no lay-offs." Even if the September 1976 level of funding were continued for each state and local project, inflation alone might require some retrenchment. In our view, then, the sentence in question must be regarded as either an optimistic expression of what the Committee hoped to achieve or -- perhaps more likely -- an abbreviated expression of what it had actually done. That is to say, if the following language shown in brackets were understood at the end of the quoted sentence, it would be entirely accurate (and it cannot be entirely accurate except as so expanded): "The Committee wishes to make clear that the intention is to maintain the level of 260,000 title VI jobs and that sufficient funds should be obligated by the Labor Department as soon as possible to ensure that there are no layoffs [by reason of any delay]."

We may note in connection with this issue of legislative history that nowhere else is there any indication of an intent to preserve particular jobs. The House Committee Report, supra, and the debates in both Houses speak of continuing a particular level of employment under title VI. See 122 Cong. Rec. H. 11144 (daily ed.) (statement of Chairman Mahon); id. H. 11144 (statement of Cong. Flood); id. S. 1731 (statement of Chairman McClellan). This can readily be done through use of the allotment formula.

Finally, we have considered a proposed alternative interpretation which would seek to give effect both to the literal language of the House Committee Report and to the allotment requirement of 29 U.S.C. §963, by enabling the allotments to be made at whatever level is necessary to assure that no state receives less than its current funding. This suggestion, however, only avoids conflict with 29 U.S.C. §963 at the expense of disregarding the language of the Joint

Resolution itself, which requires "a rate for operations not in excess of the current rate." We see no way of bringing the suggested resolution within this language.

For the reasons set forth above, we are of the opinion that Pub. L. 94-473 should be interpreted to permit the distribution of funds under title VI at the current rate according to the allotment limitations set forth in 29 U.S.C. §963.

A handwritten signature in cursive script, appearing to read "Antonin Scalia".

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

THE WHITE HOUSE
WASHINGTON

TO: BOB LINDER

FROM: TRUDY FRY

The attached is sent to you for review before it is forwarded to the President.

I am presently staffing.

A handwritten signature in dark ink, appearing to be 'TRUDY FRY', located in the bottom right corner of the page.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

NOV 16 1976

DECISION

MEMORANDUM FOR: THE PRESIDENT
FROM: James T. Lynn
SUBJECT: Public Service Jobs Funding

Issue

How should CETA Title VI be funded under the Continuing Resolution?

Background

Public Law 94-444, which you signed on October 1, authorizes "such sums" appropriations for CETA Title VI in 1977. No appropriation was enacted, but the program was explicitly included in the Continuing Resolution.

In the 1977 Budget you had requested a phase out by the end of 1977. During negotiations on the authorization bill in September you requested that the Secretary of Labor inform the Conference Committee that you would sign a bill extending Title VI at the current level (estimated to be about 260,000 jobs) as long as hires for vacancies were limited to the long term unemployed.

The authorization statute sets the "current level" as the level in each sponsor's program as of June 30, 1976. The intent was to establish a fixed base, but the Department is now accepting adjustments to sponsor June 30 reports on a case-by-case appeal basis. The June 30 figures are important not only for setting the base but also for determining how many jobs must be filled with the long-term unemployed, and how much project activity (vs. regular public jobs) a sponsor must undertake with whatever funds he receives.

The 1977 Continuing Resolution explicitly provides authority to the Labor Department to seek a warrant for funding the 260,000 level up to March 31, and might be interpreted to provide authority to seek funding now for the full year. Unused funds available from previous appropriations will suffice for most sponsors to January 31, but layoffs are threatened in a number of areas before then.

The Department has requested immediate approval to seek \$1.6 billion for full year Title VI funding, using the statute's formula approach for distribution. The Department would accept seeking one quarter of the amount now, as long as the commitment to full-year funding was made clear.

The first decision you must reach is whether or not you want to make a commitment now to fund CETA Title VI through 1977 and at some level in 1978. Further, a decision is needed on the use of the formula approach or the sponsor by sponsor approach.

Alternatives

- #1. Commit to full-year funding under the Continuing Resolution; \$1.6 billion using the formula approach. (Labor request)
- #2. Do not commit now to full-year funding; seek only enough to carry the current level to March 31 on a sponsor-by-sponsor need basis (\$300 million). If a full-year funding decision is reached, use the need basis, which reduces the \$1.6 billion total for the year by \$350 million.

Discussion

Alternative #1. Full-year funding commitment.

Pro

- The Department requests the full amount because: "(1) it will allow prime sponsors to plan their programs through the remainder of the fiscal year; and (2) it will preempt to some extent, the position of proponents of program expansion, since funding of current public service jobs levels will not be an issue through the coming year."
- The Department further states that failure to commit to full-year funding creates "operational problems including the credibility of the system, inability to plan beyond March 1977, and the addition of another grant cycle" after March 31.

- Use of the formula is more consistent with Congressional desires and will provide a good defense against inevitable complaints of under-funding in some areas.

Con

- The Department's approach requires a commitment to 1977 full-year funding (and to a minimum 1978 phase out cost of \$1.1 billion), before unemployment projections are more firm or other initial decisions are made on budget levels for 1977 and 1978. It is premature to make a commitment of this magnitude.
- Even a full year commitment to the 260,000 is unlikely to deter proponents of increases; the 1977 Concurrent Budget Resolution provides for funding a 500,000 job level.
- The extra \$350 million is too high a price to pay for reduced Congressional and special interest group pressure.

Alternative #2. No full-year commitment now; fund only thru March 31; use the need basis approach.

Pro

- Preserves options for 1977 and 1978 until later in the Budget review process when the broader policy context is clearer.
- Should the final decision for 1977 be continuation of current levels, use of the formula could cost \$350 million more than the sponsor-by-sponsor need basis.

Con

- Causes the administrative problems and uncertainties cited by Labor.
- Special interest groups and Congressman are aware of the Labor/OMB disagreement on this issue and are pressuring Labor to follow the full-year formula approach. They will react sharply to anything less.

-- Since the Continuing Resolution might be interpreted to permit the full-year funding, seeking a lesser amount could bring charges of impoundment. Pressure would very quickly be brought on GAO to report the lower warrant request as an undisclosed deferral.

Recommendation

The Department of Labor recommends Alternative #1 as more consistent with the intent of Congress and causing the fewest administrative problems.

OMB recommends Alternative #2 as long as decisions on the future of the program and on broader fiscal and economic policy issues have not been made. In any case, OMB recommends the use of the non-formula approach in distributing funds to limit costs.

Decision

Alternative #1 _____

Alternative #2 _____

Other _____

STAFFING

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: November 18, 1976

Time:

FOR ACTION:

Phil Buchen Bill Seidman
 Jim Cannon
 Alan Greenspan
 Max Friedersdorf
 Jack Marsh

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: Thursday, November 18, 1976 Time: 3:00 P.M.

SUBJECT: James T. Lynn memo, 11/16/76 re
Public Service Jobs Funding.

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

Jack Marsh - #2 alternate
 Greenspan - #2 - see comments
 Seidman - agree with OMB - #2
 Buchen - has problems (see memo)
 Cannon - #1 with comments
 Friedersdorf - defer to Marsh

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

November 18, 1976

MEMORANDUM FOR: ED SCHMULTS
FROM: BOBBIE KILBERG *Bobbie*
SUBJECT: Lynn Memo 11/16/76 re Public
Service Jobs Funding

Suggested response:

As a policy matter, the Counsel's Office does not have a preference between the Labor Department's proposed Alternative #1 and OMB's proposed Alternative #2.

As a legal matter, however, there may be a problem with the part of OMB's proposal that recommends the use of a non-formula, sponsor-by-sponsor need basis approach. According to the Solicitor's Office of Labor, neither the statutory extension nor the continuing resolution amended or eliminated the formula distribution provisions of Title VI, and it is the tentative opinion of the Solicitor's Office that only a very weak case can be made for use of a non-formula approach. However, the Solicitor's Office does agree that there is legal support for OMB's recommendation to only seek enough funding to carry the current level to March 31.

We have asked the Solicitor's Office for a memorandum on its legal position on the formula vs. non-formula issue by tomorrow, November 19. We could then submit that memorandum to the Office of Legal Counsel at Justice for its comments, if that is desired.

OK
11/18
Ed Schmults

MEMORANDUM
OF CALL

TO:

T

YOU WERE CALLED BY— YOU WERE VISITED BY—

Bobbie Kelleg

OF (Organization)

PLEASE CALL → PHONE NO. _____
CODE/EXT. _____

WILL CALL AGAIN IS WAITING TO SEE YOU

RETURNED YOUR CALL WISHES AN APPOINTMENT

MESSAGE

*Does not want to be
excluded from
Comments on public jobs
service member --
has legal problems.*

RECEIVED BY	DATE	TIME

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: November 17, 1976

Time:

FOR ACTION:

Phil Buchen Bill Seidman

Jim Cannon

Alan Greenspan

Max Friedersdorf

Jack Marsh

FROM THE STAFF SECRETARY

cc (for information):

576 NOV 17 11 9 56

DUE: Date: Thursday, November 18, 1976 Time: 3:00 P.M.

SUBJECT: James T. Lynn memo, 11/16/76 re
Public Service Jobs Funding.

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Since the Secretary of Labor, with the President's approval, indicated that the Administration supported a full year extension of Title VI, it would seem that the Budget should reflect full year funding of the program.

Therefore I support Alternative 1.



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

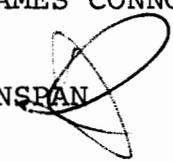
If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

11701
Jim Connor
For the President

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

November 18, 1976

MEMORANDUM FOR JAMES CONNOR

FROM: ALAN GREENSPAN 

This is in response to your request for my comments on James T. Lynn's draft memo to the President of 11/16/76 on Public Service Jobs Funding. I recommend that the President select alternative #2, that there be no commitment made at this time to full-year, full-level funding.

It would be helpful if the memo indicated that research over the last few years suggests that by now the 260,000 PSE jobs funded by CETA Title VI, enacted in December 1974, are nearly all replacements for State and local government jobs that would have existed in any case. Since maintaining the current program has little job creating impact, and since State and local government budgets are far stronger now than when the program was enacted, there is little reason for maintaining the current level of the program.

**MEMORANDUM
OF CALL**

TO: T

YOU WERE CALLED BY— YOU WERE VISITED BY—

OF (Organization)

Hullian
Seidman

PLEASE CALL → PHONE NO. CODE/EXT. _____

WILL CALL AGAIN IS WAITING TO SEE YOU

RETURNED YOUR CALL WISHES AN APPOINTMENT

MESSAGE

re: public service
jobs memo
"agree with OMB"

RECEIVED BY

S.

DATE

11/18

TIME

4:08

STANDARD FORM 63

REVISED AUGUST 1967

GSA FPMR (41 CFR) 101-11.6

GPO : 1969-048-16-80341-1 332-389

63-108

**MEMORANDUM
OF CALL**

TO:

T

YOU WERE CALLED BY— YOU WERE VISITED BY—

Lillian

OF (Organization)

Seidman

PLEASE CALL \rightarrow PHONE NO. CODE/EXT. _____

WILL CALL AGAIN IS WAITING TO SEE YOU

RETURNED YOUR CALL WISHES AN APPOINTMENT

MESSAGE

*re: public service
jobs memo
"agree with OMB"*

RECEIVED BY

S.

DATE

11/18

TIME

4:08

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: November 17, 1976

Time:

FOR ACTION:

Phil Buchen

Jim Cannon

Alan Greenspan

Max Friedersdorf

Jack Marsh

FROM THE STAFF SECRETARY

Bill Seidman

cc (for information):

DUE: Date: Thursday, November 18, 1976

Time: 3:00 P.M.

SUBJECT: James T. Lynn memo, 11/16/76 re
Public Service Jobs Funding.

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

*Agree with
OMB.*

gws

*Placed in
4:09 pm 11/18/76*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President