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Emergency Funds Sought to Recall Rail Work Crews

By Stephen M. Aug
Washington Star Staff Writer

Legislation was expected

commuter rail lines, among others.

The measure also in-

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Braggini RR meeting

4/14/75

Fair break in the Regulatory area

$ 100 mil ~~[illegible]~~ tax on diesel fuel

user charges on trucks
more than waterway

Nominate group on Transportation

ICC withhold increases on
forest products or autos

New Reg attitude R of way —
obstacles to elimination

need to speed up reg process

ICC

~~[illegible] [illegible]~~
Rock Island is ~~[illegible]~~ [illegible] [illegible]

GERALD R. FORD LIBRARY

Has to be a better way

Need ways get new capital

Reform of tax legislation -

With fuel to revitalized industry

that can compete in open market.

you need —

P 1) Regulatory Process

P 2) "in general - our Home -. Gov ch - gone up in operation."

Bro - Exec Branch understands - RR has got to convince Congress to support new initiatives

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Braggini - last yr 'Bri' loaded up w/ pro-labor, no good

P - will labor cooperate

Hyler - yes

Q. Don't have money to buy cars & haul coal

Coleman - Can further 10% of freeze - beam roadbed too slow -

Nationalizing worked — at Presidents oppose it.

Fishbein Going to put subsidy now into NE RRs & money will never be paid back

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P expect vote ~~[illegible]~~ in 2 weeks reconciliation on RR –

Main problem conference House & Senate their money has to be there for the things, in urgent way, and production of your problem –

P. Trying put good people on SEC – men w/ good experience

R Couldn't wrong to expect SEC to get good people

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ICC could do it
under existing statutes

new Rail Reorg Act – labor
is unfavorable

Productivity Commission —
RR and Steel —
models of good labor —
mgmt relationships

1 [illegible].

Will labor a gradually
or can — to get
~~sometimes~~ up there —
~~then~~ work together

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worth Congress to get

something passed —

before I can

justify recommending w

approving the plan,

Can't sew up

P – 1975 – is critical year

for RR — most imp

for you to be on

Hill then running

railroads —

when we finish this effort, got

to be a total effort

GERALD R. FORD LIBRARY

Can't be continuation
of same old programs

P Energy closely related

Can't differ further in energy
or
other critical areas
at home & abroad

P - That's the way it's going to be

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 15 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: National Railroad Program

Last week, on April 11, I informed you of my concern for the desperate plight of the nation's railroads, the effect of that situation on the rest of the economy, and the pressures building in Congress for a solution -- even if that solution involved partial nationalization. I also proposed, in broad terms, a program for dealing with this situation. A copy of my April 11 memorandum to you is attached.

We need your decision at this time in two areas: (1) the rail regulatory modernization, financial aid and restructuring bill (Railroad Revitalization and Energy Transportation Act) is now ready to go except for two unresolved issues which are discussed in Part A; and (2) the Emergency Rail Rehabilitation Program, which is discussed in Part B.

I believe it important that we arrive at decisions in these two areas now so that we may immediately start on the road to solutions to the railroad problems and it is particularly important to introduce our regulatory bill (RRETA) to Congress at this optimum time. We understand that the Senate Commerce Committee is planning to hold hearings next week on an Emergency Railroad Rehabilitation Program. I believe the Administration should have a positive program initiative of its own to respond to the Congressional proposal. Otherwise, we will have to testify against a proposal which we believe has great merit.

While these deal with the overall railroad problem it is, of course, also essential that we deal with the Northeast rail restructuring problem. By the 26th of this month, the Economic Policy Board Task Group on Northeast Rail Restructuring, of which I am Chairman, will present you with its specific recommendations.

ORIGINAL SIGNED BY

William T. Coleman, Jr.

Attachments

ASSOCIATION OF

AMERICAN RAILROADS

AMERICAN RAILROADS BUILDING · WASHINGTON, D. C. 20036 · 202/293-4016

CARL V. LYON
Senior Vice President

April 11, 1975

Mr. John W. Barnum
Deputy Secretary
Department of Transportation
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Mr. Barnum:

You asked me to provide you with as much information as possible about the ability of railroads to participate in a program of federal financial assistance for the acquisition of new equipment and construction of roadway and other facilities projects. Your more specific request was for an assessment of the dollar magnitude of railroad participation under alternative proposals for financial assistance. Those which we discussed were:

(a) A straight loan guarantee;

(b) A loan guarantee with an interest subsidy for the entire interest or for interest graduated for individual railroads based upon the railroad's rate of return;

(c) Federal Financial Bank loans at 1/4 percent in excess of the cost of funds to the government;

(d) Loan guarantees covering principal plus an additional amount to use in meeting interest payments.

This inquiry is directly related to information furnished by AAR President Ailes to Secretary Brinegar in a letter dated November 6, 1973, a copy of which is attached for your convenient reference. The observations and assertions set forth in that letter are still realistic. While the estimated expenditures may need some revision as a result of the passage of more than a year, the adjustments would not be significant and the examples still represent good illustrations of the manner in which such a program would affect and be utilized by individual railroads.

Pursuant to the ICC Order in Ex Parte No. 305, railroads are required to report quarterly the amount of capital improvement projects which have been delayed by lack of funds. The September 30, 1974, report showed a need for almost $4.3 billion to cover delayed capital improvements in both road and equipment. This does not include an additional $2.8 billion in deferred maintenance of roadway, structures and equipment.

The AAR Economics and Finance Department made a survey in the Fall of 1974 seeking estimates of capital expenditures which would be made in the five-year period, 1974-1978, if requisite funds were available. The survey indicated that annual expenditures would be $1.1 billion for roadway and structures and $2.2 billion for equipment, totaling $3.3 billion per year. Again, these figures are strictly capital investments and include nothing for deferred maintenance.

With those background data in mind, I have inquired by telephone of a small but representative group of railroads the extent to which they might participate in federal assistance programs of the kinds described above. Practically all were unable to be precise in estimating what the dollar level of participation, if any, might be under the various alternatives. This is so because of the numerous related considerations that have to be taken into account with each capital outlay. By all odds the primary consideration is the railroad's ability to attract adequate earnings to service the additional debt. For the most part, therefore, the following information is general and inconclusive, but it nevertheless may be useful to you in assessing the relative usefulness of the alternatives.

(a) Loan guarantees:

Between 30 and 40 percent of those surveyed indicated they would and could make use of federal loan guarantees to finance programs which would not otherwise be undertaken. Virtually all of those projects would be for roadway and facilities rather than equipment. Some railroads that would not participate are those who most desperately need and desire to undertake badly needed capital projects. The major problem for them is not merely an inability to obtain the money but an inability to provide for the necessary repayment requirements given the current depressed earnings situation with which they are confronted. Most carriers can obtain necessary equipment financing by conventional means because of the time honored value of the equipment as its own security. The advantage to a carrier of a loan guarantee for equipment acquisition is primarily the extent to which the guarantee reduces the interest rate on the loan. Added guarantee fees payable to the Secretary (under the proposed bills) and the administrative burden in obtaining the guarantee erode that advantage. Railroads indicating they would use loan guarantees all stress that their participation assumes that onerous conditions would not be imposed. If managements are hampered by such restrictive loan conditions as restrictions against payment of dividends, restrictions against investing in non-railroad enterprises and burdensome labor protective conditions, it is likely that some who would otherwise participate would decide against it. There is some indication that loan guarantees have become less valuable than heretofore. This is evidenced by problems one railroad encountered in rolling over some loan guarantees under Title V of the Interstate Commerce Act.

(b) A loan guarantee with an interest subsidy:

Seventy-five percent of the carriers surveyed indicated that their expenditures for capital improvement would be significantly enlarged if the federal loan guarantee is coupled with an interest subsidy. To the extent that interest is subsidized a railroad could obviously handle the fixed charges associated with a capital program much more easily. As in the case of straight loan guarantees, it is difficult to quantify the amount of increased investment which would be undertaken as a result of subsidized interest rates. To the extent the subsidy reduces or eliminates debt service until the date of maturity, it would be highly desirable in that a railroad would not be faced with payments until after the project is completed and its benefits are being received. Also subsidization of interest should make certain individual projects more feasible since the rate of return associated with them would increase. For varying reasons, at least two railroads expressed opposition to the concept of a graduated interest subsidy based upon rate of return or other evidence of profitability. An alternative suggested by one railroad would be a reduced interest rate (such as two percent) on all projects commenced within an abbreviated period, such as eighteen months, with a continuing authorization of loan guarantees with slightly depressed interest rates (i. e., $6\frac{1}{2}$ to 8 percent) subsequent to the eighteen month period. This would stimulate railroads to move promptly into capital programs which might otherwise be scheduled over a longer period of time. It would also have the advantage of providing immediate stimulus to the economy.

(c) Federal Financial Bank loans at 1/4 percent in excess of the cost to the Government:

It is estimated that between 60 and 75 percent of the carriers surveyed would engage in larger capital programs as a result of loans by the Federal Financial Bank than anticipated without assistance. It is difficult to quantify the extent of such use except that it would be higher than under a straight loan guarantee program and lower than an interest subsidy program. It would obviously eliminate the need to find a private lending source and result in a lower interest rate. It would, however, continue the basic problem of the most needy railroads in servicing the loan and paying off the principal.

(d) Loan guarantees covering principal plus an additional amount to use in meeting interest payments:

Responses with respect to this proposal are more inconclusive than the others. Use of a provision of this kind would probably not appreciably exceed use of straight loan guarantees. One railroad, however, expressed a particular interest in any plan which would delay payments on debt service at least until the improvements started to pay off.

Improvement of the railroads is vital to the Nation's energy effort. Practically all observers agree that the Nation must and will find ways to rely more heavily upon our coal resources. The Project Independence Study and others recognize that this will require greater reliance upon the railroads, calling upon them for considerably higher traffic volumes as coal production increases. Analyses of individual railroads confirms these observations and capital projects are already specifically under review to meet expected demand. One railroad, for example, is faced with the need for capital ($30 million) to construct a new line to bring coal out of a new coal field under development. It must also substantially rehabilitate a five hundred mile segment of its line to move the coal to its destination at a cost of around $100 million. Railroads are recognized to have a distinct advantage over their principal competitors, the motor carriers, in terms of energy efficiency. While the precise measure of the advantage may be subject to argument, studies that have been made support the general conclusion that railroads consume at least one-third less fuel than trucks in competitive service. Unquestionably, many of the projects that would be undertaken with the use of federal financial assistance will make it possible for railroads to retain traffic for energy-efficient carriage and improve service to attract more traffic as well. The improvements would also make it so railroad could operate at maximum energy efficiency -- some operations are now performe at less than optimum energy efficiency due to the condition of facilities. As indicated in Mr. Ailes' earlier letter, some of the projects contemplated are for electrification with high potential for greater energy efficiency and an opportunity to convert from oil consumption to coal.

It cannot be overemphasized that the essential, continuing, immediate and long-range problem is the need to increase earnings. Capital improvements definitely improve that ability. But the basic economic problems which have made it so railroads have had to defer capital improvement programs must be corrected if the industry is to survive as a private enterprise. National transportation policy must be revised so as to eliminate the inequitable regulatory and promotional policies of the federal and state governments which make it impossible for railroads to compete on fair terms with their competition. So long as railroad rate structures have to be maintained at levels to enable competition with other modes that are not subject to regulation or who receive substantial benefits from public expenditures with inadequate or no user charges, earnings in the railroad industry will not be adequate to support the needed capital investment programs, with or without loan guarantees. The problem is not only the immediate concern of obtaining capital, but obtaining adequate earnings to pay for it.

Sincerely,

Enclosure

ASSOCIATION OF
AMERICAN RAILROADS
AMERICAN RAILROADS BUILDING · WASHINGTON, D. C. 20036

STEPHEN AILES
President and Chief Executive Officer

November 6, 1973

Honorable Claude S. Brinegar
Secretary
U. S. Department of Transportation
Washington, D. C. 20590

Dear Mr. Secretary:

We have been gathering information from the principal railroads regarding desirable improvement projects which could be financed under guaranteed loans but which the roads are unable to carry forward under present conditions because capital funds are unavailable at reasonable cost.

We are finding that, as you might expect, the railroads generally fall into one or another of three financial categories. There are a few which have sufficient earning power or sufficiently strong parent companies to be able to obtain requisite funds for their capital programs from internal sources or through borrowing under conventional financing. There is another group whose earning power and resources are so greatly impaired that they would be unable to undertake needed improvements even with guaranteed loans, since without substantial restructuring of their operations they would be unable to offer reasonable assurance of ability to repay the borrowed funds.

Most of the railroads fall between the extremes. These railroads can find capital to finance equipment purchases, (albeit at high interest rates in the case of some of the weaker roads) because the equipment itself can serve as security for the debt, but they have great difficulty raising money for roadway projects even though the mortgages on roadway property generally secure amounts much less than present market value of the property.

The essence of this problem is two-fold. One factor is that most railroad mortgages include "after acquired" clauses which have the effect of extending the coverage of these debt instruments to property acquired after their issuance and thereby prevent issuance of separate securities to cover the cost of new improvement projects. The other problem is that even though present value of road property is generally much greater than the debt it has been mortgaged to secure, investors are not interested in taking second mortgages from railroads.

Government guarantees would substantially relieve such problems and thus would permit the roads to carry out improvement projects which have a high potential for more efficient operation and better service. Projects of this kind are largely self-liquidating and help to generate additional net earnings to support other improvements. Moreover, because railroads in the United States operate as a system, service improvements on any railroad tend to benefit all others, so that a program of government guarantees would be beneficial even to those railroads who cannot use it or do not need it.

Our survey of principal railroads representing 84 percent of the industry finds that 13 of these roads are able to list economically desirable projects totalling $3.5 billion which are being deferred for lack of funds and which could be progressed or moved closer to implementation if funds could be borrowed on reasonable terms. Some of the areas of expenditure are shown below:

	(millions)
New or modernized yards	$392
Track improvements	840
Electrification (2 roads)	323
Signalling and communications	219
Mechanical facilities	208
Equipment (in addition to presently-fundable programs):	
Locomotives	330
Freight cars	780

For example, a small Eastern road would restructure a yard at a cost of $2.2 million and save $1 million, or 45 percent, annually. An expenditure of $246,000 for a car cleaning facility would save $275,000 annually -- a return of 112 percent.

A southern district road reports that its locomotive shop facilities which were built for steam locomotives 50 to 100 years ago "are nearly disintegrated and must be replaced if the locomotives are to be maintained." The same railroad's car repair facilities are not properly equipped to handle modern cars. "Most facilities have no shelter from the elements, resulting in poor maintenance, poor morale and problems in finding men to work under these unacceptable conditions."

Another southern road has capital projects totalling $354 million under consideration, including $96 million for new or modernized yards,

$60 million for track work, $45 million for bridges and trestles, $27 million for new signalling and $15 million for shops.

Another would consider spending $96 million for electrification of a line for improved service and reliability, and $50 million for other roadway projects which would provide substantial economies as well as better service.

A Western road foresees a 20 percent annual return on expenditures of $95 million for modernized yard facilities, a similar return on CTC systems costing $85 million, a return of 15 percent on $13 million needed to rebuild and strengthen bridges, a 43 percent return on $44 million cost of new lines, and a 12 percent return on $45 million of needed rail replacements.

Another Western road has $402 million in needed projects which will be inhibited by scarcity and/or cost of capital funds. Still another has a list of projects totalling $93 million which carry return of 15 percent or more. The list goes on and on.

No one regards additional borrowing power as a panacea for railroad financial problems. Clearly the great need of the industry is for more net income. But capital improvements are a principal route to greater earning power, and I am confident that the roads would move quickly to take advantage of a system of government loan guarantees provided that it is free of unreasonable restrictions on corporate management. Such a program would be beneficial to the entire industry and to the shippers they serve.

Sincerely,

Stephen Ailes

Railroad Revitalization and Energy Transportation Act (RRETA)

Background

The Railroad Revitalization and Energy Transportation Act has been designed to deal with two major parts of the railroad problem. The Act would modernize government regulations under which the railroads operate and would provide for consolidation and streamlining of the national rail system utilizing financial incentives and bypass of the ICC regulatory impediments to rail restructuring.

It is important to release the RRETA very soon because of the urgent need for regulatory modernization and financial assistance throughout the industry and particularly in the crisis-stricken Northeast, and because the timing for introduction in Congress is now optimum. The Surface Transportation Act (STA), which contained many of the proposals of the RRETA, passed the House overwhelmingly in December and we want to maintain the momentum it generated.

The RRETA, which we have been working on for several months, is now ready to be submitted to Congress except for two issues which remain unresolved. These two unresolved issues are the extent of railroad financial aid, and which Executive Branch agencies should control the restructuring process. This paper seeks your decision on these issues.

Issue A: Should there be an interest subsidy as part of the railroad financial aid package?

There is agreement within the Executive Branch that the RRETA should provide loan guarantees, under the control of the Secretary of Transportation, to railroads to finance rationalizing and streamlining facilities. It would allow financing at the low Federal Financing Bank rate and would allow flexible financing arrangements such as deferral of interest payments. The $2 billion loan guarantee authority in the bill is already a part of your budget proposals.

The financial aid proposal serves a twofold objective: (1) providing the railroads access to the private capital market for funds to rehabilitate and improve the essential portions of the national rail system, and (2) incorporating an incentive to the industry to consolidate and restructure duplicate trackage, yards, terminals, and other facilities, under the control of the Secretary of Transportation, to produce over time a viable and more efficient national rail system.

<u>Option 1:</u> Provides $2 billion in Federally guaranteed loans.

<u>Option 2:</u> Provides $2 billion in Federally guaranteed loans with provision that the Secretary could agree to pay up to half of the interest cost on the loans. For example, if the entire $2 billion were loaned out and the interest on government guaranteed loans were 8 percent, the Secretary of Transportation would be able to subsidize up to $80 million in annual interest payments.

Discussion

As a condition for granting a loan guarantee, the Secretary could require applicant railroads to enter into agreements for joint use of tracks, terminals, and other facilities and for purchase or sale of other assets and for mergers. To gain an interest subsidy the applicant railroads would be required to agree to perform restructuring specified by the Secretary. Such agreements would not be subject to ICC approval, but the Secretary would be required to hold a hearing before approving such an agreement. In addition, the Secretary could not approve an agreement unless it achieved the intended transportation objective in the least anticompetitive way.

It is realized that interest subsidies are not normally desired. However, in this case the interest subsidies would be directly tied to industry restructuring, would have large leverage on the amount of restructuring and modernization which could be stimulated, and in fact provide a key incentive for the restructuring. It is therefore believed that an exception should be made to the general rule against interest subsidies.

Reasons for choosing Option 2 are the following:

(1) Loan guarantees without incentive interest subsidies will not be used as extensively by the rail industry, and hence the restructuring objectives of the program would not be achieved to the extent we would like.

(2) Interest subsidy is the minimum assistance required to move toward a restructured national rail system and arrest the further financial decline of the industry which could lead to eventual nationalization of the entire system.

(3) An interest subsidy is needed to achieve the strong industry support we desire to achieve enactment of the entire bill, including the much needed regulatory modernization parts. Without the interest subsidy, the financial aid package may be described by railroad management and labor alike as inadequate to meet their needs.

The principal arguments against Option 2 are that it requires more Federal money and that it creates a new spending program. It conflicts with your policy that the Administration introduce no new spending programs at this time.

Recommendation

The Department of Transportation strongly recommends Option 2 because it would give the Secretary of Transportation the necessary tools to achieve the objectives of the program which Option 1, without the interest subsidy, would not do.

Decision

Option 1: Without interest subsidy ______________

Option 2: With interest subsidy ______________

Issue B: Should the Attorney General's concurrence be required on restructuring (such as agreements for joint use of tracks, terminals and other facilities, and purchase or sale of assets and mergers) carried out under the financial aid program?

At present the ICC approves restructuring and Department of Justice concurrence is not required. However, the ICC process is not flexible enough and has not permitted the needed restructuring. A prime example of the deficiency is the 12-year Rock Island merger case which is not yet finalized.

There is agreement within the Executive Branch that a bypass of the ICC is necessary in order to reach the objective of allowing and providing an incentive for necessary railroad restructuring. The Secretary would have authority to approve restructuring carried out under the financial aid program.

Option 1: Department of Justice concurrence (and approval) would be required.

Option 2: Consultation with the Department of Justice, but not approval of Department of Justice, would be required.

Discussion

Reasons for favoring Option 1 are that it is DOJ's job to oversee the competitive structure of American industries. They are the experts in antitrust matters, are impartial to all industries, and are best able to apply consistent antitrust policy to all industries. There should be no exception made to this for the rail industry.

Reasons for favoring Option 2 are that the competitive environment in the railroad industry must be restructured to achieve a long-run viable and efficient railroad system. DOJ's traditional attitude has been to resist almost all reductions in the number of competitors, or in the amount of competition, and this is simply not appropriate for the railroad industry at this time. The railroads are a special case and railroad restructuring should not be treated with the normal DOJ antitrust philosophy. Thus, requiring DOJ approval would reduce the flexibility required and add additional unnecessary delay in the restructuring process. DOJ approval of competitive restructuring is not now required in cases before the ICC and there is no reason to add it as we move the restructuring authority under loan agreements from the ICC to the Secretary of Transportation. In any event, if the Attorney General had a significant disagreement with the Secretary's decision in a major case, he could elevate the issue to the Cabinet level for ultimate decision.

Recommendation

The Department of Transportation recommends Option 2 because it provides the required flexibility to achieve the objectives of the program. It is our understanding that the Attorney General recommends Option 1.

Decision

Option 1: With DOJ concurrence required ______________

Option 2: With DOJ consultation, but approval by DOJ not required ______________

An Emergency Railroad Rehabilitation Program

The Need for a Program

We estimate that the railroad industry will have the largest quarterly deficit in rail history during the first quarter of this year. Net rail operating income which was $170 million during the first quarter of last year is estimated to show a loss of approximately $100 million for the industry this year.

This sharp drop-off in earnings comes after decades during which the rate-of-return on investment has been around 3%. Because of this chronically low rate-of-return, the industry has not been able, from either self-generated funds or outside funds, to put in place the required investment in new plant or equipment or even to maintain existing plant and equipment at acceptable standards. The deferred maintenance in the industry is presently estimated to range between $5.5 billion and $7.5 billion.

As a result of the sharp drop-off in earnings experienced during the current economic downturn, the industry has reduced its employment from 516,000 during the first quarter of 1974 to 495,000 this year. The railroads currently estimate that they will have 35,000 fewer maintenance-of-way employees this year during the height of the maintenance season as compared to last year. Maintenance-of-way is traditionally one of the first categories cut back in order to conserve cash. The end result of this cutback will be a further decline in the physical plant of the industry and its operating capability. This occurs in an industry whose physical plant is in dilapadated condition. Accidents and derailments have nearly doubled since 1967. We do not have precise measures nor can we project the effect of the industry, shippers, and safe operating conditions of the increase in deferred maintenance which will occur. However, with a further sharp increase in deferred maintenance, we may soon have an industry which does not meet the Nation's basic transportation requirements.

Current estimates are that 81% of mainline tracks are used to carry some portion of the 400 million tons of coal hauled by the railroad industry each year. If Project Independence goals are to be met by 1985, the railroad industry will need to almost double the amount of coal hauled. Actual ton miles of coal hauled by rail, however, could triple due to the change in origin from eastern coal to low sulpher western coal. The result would be that coal could move over approximately 90% of the railroad mainline network. Therefore, a healthy railroad industry is a key ingredient to meet our national objectives -- continued economic growth and energy independence. We firmly believe an emergency, remedial program is needed.

Description of the Program

We have developed a program which has the following objectives:

1. To provide temporary but immediate financial assistance to halt the deterioration in the physical plant of the industry -- the primary emphasis of the program would be to rehabilitate and maintain mainline routes and terminals;

2. To place a first priority in restoring the mainline routes and terminals which handle the predominant amount of coal and other energy resources; and

3. To create job opportunities in the industry for rehiring of furloughed railroad employees as well as new employees (there will also be an impact in the allied industries).

Generally, there is agreement within the Executive Branch that a program along these lines has great merit. This view is shared in the Congress, which appears to be moving rapidly to enacting such a program. The disagreement in the Executive Branch is on timing of submitting a proposal to the Congress and how to accommodate the program within the President's overall budget guidelines.

Funding and Timing of Options

The Department had originally proposed a $3 billion 27-month program or alternatively a $1.2 billion 15-month program. The programs were identical during the first 15 months. The $1.2 billion program -- unlike the $3 billion level -- assumes that no specific employment stimulus will be required during FY 1977. These proposals would have required an exception from the President's policy of initiating no specific spending programs which added to the $60 billion projected deficit.

In order to be more consistent with the President's budget policy, the following additional options have been developed:

1. Rescind existing highway program contract authority by approximately $1.2 billion from the approximate $9.1 billion currently deferred;

2. Reduce the currently planned highway program obligations by FY 1975 by $1.2 billion;

3. Develop a longer range mechanism of funding railroad projects out of the highway program levels; or

4. Delay submission of this program at this time pending development of a more comprehensive railroad package but submit the RRETA immediately.

Option 1 - The Rescission of Existing Highway Contract Authority

Currently, we have proposed that Congress defer ("impound") $9.1 billion of existing highway program contract authority. It is extremely unlikely that the Congress will concur in this, indeed the Senate is rapidly moving toward a resolution of disapproval. This would make the $9.1 billion available to the States immediately for obligation. This step could lead to obligation levels significantly over the President's $5.2 billion budget obligation level during FY 1976 and the $1.3 billion for the transition quarter. States are capable of obligating most of the $9.1 billion during FY 1976 and the transition quarter.

The rescission of $1.2 billion would reduce Federal expenditures during FY 1976 and the transition quarter by about $350 million, assuming the Congress acts, as anticipated, to disapprove our proposed deferral. This, however, does not fully offset the anticipated increase in Federal expenditures resulting from the Emergency Rail Rehabilitation Program which is expected to be about $500-$700 million during this period. However, the remaining budget impact of between $150 million and $350 million would be offset by reduced unemployment insurance expenditures ($150 million) and increased tax revenues ($100 million). Therefore, on a full cost and revenue basis, this option would have little or no budget impact.

This option would permit the Administration to take credit for meeting the critical needs of the railroad industry by reprogramming funds from lower priority highway programs. This option would put the burden on Congress to consider such a trade-off rather than simply adding additional amounts as the Commerce Committees are planning to do. It would run into definite political opposition, especially from the highway lobby.

This is the option recommended by the Department of Transportation.

Option 2 - The Reduction of the Planned Level of Obligations for the Highway Program in FY 1976

The FY 1976 budget proposes a $5.2 billion highway obligation level. The Administration could propose to reduce this by $1.2 billion to accommodate the new railroad program. This is a "real" option only if one assumes that the Congress will go along with the continued deferral of $9.1 billion of contract authority, a very unlikely situation from all of our Congressional readings. In that case, the reduced highway program would save $350 million in expenditures. Again, this alone does not fully offset the budget impact of the new rail program; however, the reduction in unemployment insurance and the increase in taxes would offset most, if not all, of the program costs.

On the negative side, this option suffers from the lack of credibility it will have in the Congress. We already face heavy criticism of the current highway program levels included in the budget. The $5.2 billion highway program proposed by the Administration for FY 1976 compares to $6.6 billion available in FY 1975 and $6.4 billion authorized for FY 1976. By comparison, if our highway deferral proposal is disapproved by Congress, then the States may well.obligate $7.0-$7.5 billion. Therefore, the Department of Transportation does not consider this as a viable option.

Option 3 - Develop a Longer Range Program for Divesting Highway Funds for Rail Projects

The proposed Administration highway bill for this year includes a provision to make railroad facilities an eligible category of expenditures from the highway program. This provision could be made more attractive to the States by giving the Secretary authority to forgive State matching requirements as well as to provide additional highway fund allocations to States using highway funds for rail projects. This option is consistent with our efforts to expand the users of the Highway Trust Fund and giving States greater flexibility in making capital investment decisions.

On the other hand, we do not envision this as meeting the urgent and immediate needs of the railroad industry. The impact of this proposal would take time to implement. It leaves much of the discretion to States, who, no matter what the economic incentives, will need time to implement the program. The competition for State highway funds is so intense that few rail projects will be initiated even given strong economic incentives to initiate such projects. The Department of Transportation supports this proposal in concept except for some of the proposed incentives which we wish to examine more closely. However, the Department does not consider this an effective solution to the railroad industry's present needs.

Option 4 - Delay Submission of the Emergency Program but Submit RRETA Now

This Emergency Railroad Rehabilitation Program is seen as an interim and temporary measure. It is intended to set stage and complement the longer term financial assistance program being developed. Nevertheless, in the absence of the longer term program, the proposal makes a substantial commitment of resources.

OMB believes that a longer term proposal should be developed rapidly so that it is available prior to submittal of the final plan being prepared by the United States Railway Association for restructuring the bankrupt railroads in the Northeast and Midwest. In that context, OMB believes the overall commitment being made to railroads can be best assessed. The submission of the RRETA to Congress now, provided that it contained some attractive financing provisions, would allow the Administration to have at least one positive rail proposal before the Congress as it considers the Emergency Railroad Rehabilitation Program next week.

Recommendation

The Department of Transportation strongly recommends Option 1. Of the other options, the Secretary finds No. 4 as the only one with merit.

Decision

Option 1 -- With highway program rescission. ______

Option 2 -- But reduce highway program obligations. ______

Option 3 -- Develop longer term program. ______

Option 4 -- Delay submission of emergency program, but submit RRETA now. ______

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 11 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: The Crisis of the Nation's Railroads

Mr. President, as your principal advisor on transportation matters, I feel compelled to convey to you my sense of the desperate plight of the Nation's railroads. The state of the rail industry today not only endangers any prospect of economic growth in this country but also imperils our important national objective of energy independence. There is a growing mood in Congress that the only answer to the crisis of the railroads is some form of nationalization. I believe that a private sector solution is possible -- if we move quickly. There is an urgent need for action. Therefore, I respectfully urge you to undertake a dramatic, coordinated program to revitalize the Nation's private enterprise railroad system.

The crisis of the American railroad industry presents this Administration not only with a grave problem but also with a great opportunity. If you can put into effect, Mr. President, a program to save the railroads, it will have an historic significance equal to that of any other endeavor upon the domestic scene. From a political standpoint, I believe it provides an unparallelled opportunity for the Administration to seize the initiative from Congress.

The Importance of the Railroad Industry

For more than a century the railroads have been the backbone of this Nation's transportation system. Even after years of decline, railroads still carry 38 percent of all freight (in ton miles), easily exceeding the 23 percent transported by motor carrier and the 16 percent moved via inland waterway. Railroads carry 70 percent of the automobiles produced in this country, 66 percent of the food, 78 percent of the lumber and wood, 60 percent of the chemicals, 60 percent of the primary metal products, and 71 percent of the pulp and paper. If the Nation is to realize its economic growth potential during the remainder of the twentieth century, the railroads must be in a condition to move quickly and safely significantly increased freight volumes.

Moreover, a healthy railroad industry is crucial to the energy needs of this country. The railroads must play the predominant role in supplying the Nation with coal during the remainder of this century. The railroad industry transports 70 percent of the coal produced in this country, a task involving approximately 81 percent of its mainline network. Your Project Independence, to make the Nation self-sufficient in energy, envisions a doubling of domestic coal production by 1985. To meet this goal, railroads will be required to double their coal-carrying capacity. Actual ton miles of coal carried by rail, however, must triple due to changes in origin from eastern coal to low-sulphur western coal. This would necessitate coal shipments over 90 percent of the railroad mainline network. Greatly improved railroad service is, therefore, essential to the development and use of coal for energy. In addition, rail transportation is the most energy efficient of all the modes, both freight and passenger. With regard to freight transportation, our research indicates that railways are significantly more energy efficient than trucks, their ubiquitous competitor, or airlines, and slightly more efficient than even barge movement. As for passenger service, our research indicates that railroads, when properly utilized, are substantially more energy efficient than either autos or airlines in moving passengers and are approached in efficiency only by intercity bus. In summation, a healthy, progressive, strengthened railroad system is absolutely essential to our national objective of energy independence.

<u>The Problem Facing the Railroad Industry</u>

Given the paramount importance of the railways in both the past and future of this country, it has been alarming for me, during my first month on the job, to discover the dilapidated state of the railroad industry. The facts are startling. Over one half of the present rail track in the country is unfit for high-speed operations. It is not uncommon for train operations on mainline tracks to be limited to speeds of 10 to 20 miles per hour. Accidents and derailments have nearly doubled since 1967. Because of outdated equipment and methods and the resultant inefficiency, a typical freight car moves loaded only 23 days a year. It is becoming increasingly apparent that the rail industry, as presently constituted, will be manifestly unable either to support the traffic our economy generates or to meet the challenge of increased coal carriage which energy independence demands.

For many years now the income generated by the American railroads has been insufficient to meet the requirements of plant maintenance and rehabilitation, and with rates of return of 3 percent or less, funds from outside sources are virtually unavailable. The deferred maintenance in the industry is now estimated to range as high as $7.5 billion. Although the problems of railroads are most severe in the Northeast and Midwest (where eight carriers are bankrupt), numerous other railroads, especially the so-called Granger roads that operate in the Plains states, are in precarious financial condition. The massive problems of the railroad industry are most recently aggravated by the largest quarterly deficit in rail history. Today the United States is confronted with the grim reality that a major breakdown of our rail freight system is a distinct possibility.

It is important that the underlying causes of the railroad problem be clearly understood. A great deal of the discussion on this subject is focused on the poor condition of mainline track and on the bankruptcies. These are symptoms but not the underlying causes of railroad difficulty. The principal factors underlying railroad difficulty are: (1) Redundant facilities and excess competition; (2) Outmoded regulation; (3) Archaic work rules; (4) Lack of capital to finance rehabilitation; and (5) Preferential treatment of other modes.

Perhaps the principal factor underlying railroad problems is the redundancy of plant and the excess competition which exists within the industry. This is especially true in the Northeast and Midwest and, as a result, these are the areas where railroad problems are the worst. There are simply more facilities of all types -- yards, mainline tracks, and branch lines -- than are required to provide economical and efficient service. In many instances, two or more railroads compete for traffic sufficient only for the survival of one carrier.

Secondly, slow and cumbersome regulatory procedures impede responses to competition and changes in market conditions and at times result in traffic being handled at non-compensatory rates. These procedures also have created a serious impediment to needed restructuring. Regulation that was necessary when it was enacted decades ago is simply unresponsive to today's needs. This inflexibility stemming from Interstate Commerce Commission procedures and rules is a major deterrent to railroad efficiency and viability. For instance, after 12 years, the attempt to restructure the Rock Island Railroad through merger with other carriers is still incomplete.

Third, the existing work rules in the industry are a major obstacle to achievement of economic potential in the railroad system. Archaic arrangements regarding the size of the crews that man trains and providing for crew payment on an illogical basis weigh heavily upon the industry and severely limit productivity.

Fourth, lack of capital and the resultant deferred maintenance has caused widespread deterioration of mainline track and other parts of the railroads' physical plant. Clearly there is a need to rehabilitate the essential portions of the industry's physical plant -- but that rehabilitation will be effective in revitalizing the railroads only if the burdens of redundant facilities, regulatory constraints, and costly work rules are also alleviated.

Finally, there has been, over the years, preferential treatment of the other transportation modes by the Federal Government. Only the railroads (with the exception of the pipeline companies) own their own rights-of-way and have to carry the fixed charges of ownership and maintenance of this extensive plant.

The Congressional Reaction

There is a great deal of pressure building in Congress for a solution to the railroad problem, and there is growing feeling on the Hill that the only answer lies in some form of nationalization. Faced with the prospect of continuing crises and the necessity of providing more and more Federal money, there is an understandable desire to ensure that the American public receives something in return for its heavy investment. In the absence of a constructive alternative, Congress may indeed turn to nationalization. Senators Hartke and Weicker have introduced legislation to nationalize the railroad rights-of-way, as has Senator Humphrey, and Brock Adams, a leading spokesman on rail matters in the House, has publicly stated that serious consideration should be given to such a proposal. Privately, many other Congressmen and Senators are saying that the only solution to rail industry problems lies in nationalization. In any event, Congress has already seized upon the obvious problem of deteriorating track and roadbed as an interim means of improving the railroad situation as well as an opportunity to take the political initiative. Senator Randolph intends to introduce a bill to provide for a $1 billion program for upgrading rail rights-of-way. Congressman Heinz and Senator Buckley have each introduced separate bills to spend $2.5 billion and $2.0 billion, respectively, to upgrade deteriorating trackage through employment programs.

It is highly unfortunate that Congress has been allowed to take the initiative on the railroads. It is even more unfortunate that some solutions receiving serious consideration in Congress are excessively expensive, inappropriate responses to the real problem, and bad for the country. The Congressional proposal of nationalization of the industry, or, at least, of the rights-of-way, would mean not only an injection of unnecessary Federal control into another area of our national life but also unnecessary rehabilitation and maintenance expenditures on excess railroad plant. Total physical rehabilitation of the existing rail system is not only prohibitively expensive but also undesirable. What is needed is a major rationalization of the rail facilities of the country and an elimination of redundant capacity through mergers and joint use of facilities. Only the components of a rationalized rail plant should be rehabilitated. Moreover, rehabilitation of track will be of little benefit to the railroads or to the Nation unless the other difficulties of the railroads can be overcome as well. A track rehabilitation program should only be commenced as a part of a broader program to overcome other industry problems such as regulatory restraints and work rules.

A Program to Rebuild the Railroad Industry

The Department of Transportation has a comprehensive program which I believe will assure the United States of a viable private enterprise rail system capable of meeting the commerce and energy needs of this country. Moreover, it provides the Administration with the means of seizing the political initiative. The program involves: (1) A consolidation and streamlining of the national rail system utilizing financial incentives and relief from impediments to rail mergers and joint use of facilities; (2) Removal of a number of outmoded and inequitable regulations on railroads; (3) As an important first step to nationwide rail consolidation, the forging of a successful conclusion to the current Northeastern rail restructuring process in a form consistent with the national program of consolidation; (4) Measures to reduce preferential treatment of competing modes and; (5) Recognition of the indispensability of rail passenger service in certain corridors and the public (and Congressional) demand for such service in other areas.

Implementation of the Program

The cost of rehabilitating even the streamlined rail plant that I have proposed will be high. On the other hand, I am keenly aware, Mr. President, of your dedication to fiscal responsibility. Therefore, the Department of Transportation has already developed two concrete legislative proposals which will not only take great strides in furthering the program I have outlined but also be consonant with your opposition to any new spending programs.

First, we have proposed a bill called the Rail Revitalization and Energy Transportation Act of 1975 to provide $2 billion in loan guarantees to railroads to finance the rationalization and streamlining facilities. The $2 billion in the bill is already a part of your budget proposals, and the proposal is awaiting White House approval. As a condition of receiving assistance, the Secretary of Transportation will be able to require railroads to enter into agreements for the joint use of tracks, terminals, and other facilities and to enter into agreements for mergers to further rationalize the rail system. The proposed bill also provides significant regulatory reform by amending the Interstate Commerce Act to permit increased pricing flexibility, to expedite rate-making procedures, to outlaw anti-competitive rate bureau practices, and to improve the procedures for dealing with intrastate rates.

Second, I have proposed a $1.2 billion Emergency Railroad Rehabilitation Program to attack forthwith the accelerating deterioration of the railroad physical plant. The proposal carries with it significant immediate benefits for employment in the country. The money for this bill could, as one alternative, come from rescinding $1.2 billion of the $9.1 billion for highways currently being impounded. As a result, it would not increase Federal funding authorizations but rather reallocate funds from lower priority to higher priority transportation programs. I believe that public reaction, except for the die-hard supporters of expanded highway programs, would be positive. This proposal also is awaiting White House approval. The primary emphasis of the proposal is to rehabilitate and maintain mainline routes and major terminals that will be included in any restructured and streamlined railroad system. This legislation will significantly assist the Nation's energy goals by giving priority to those projects which will aid in the movement of coal.

The financial assistance provided through the proposed Rail revitalization and Energy Transportation Act and the Emergency Railroad Rehabilitation Program, coupled with the regulatory reform contained in the former, will provide the foundation for a viable private enterprise railroad industry. Moreover, these two legislative proposals will announce the Administration's determination to deal with urgent national problems even while simultaneously maintaining a commitment to fiscal responsibility. At the least, the Emergency Railroad Rehabilitation option of using highway money would put pressure on Congress to consider trade-offs rather than add-ons to the budget as the means for financing the railroad programs it is considering.

In conclusion, Mr. President, I believe that the two legislative proposals I have outlined are important initial steps in constructing a comprehensive program to save the American railroads. Of course, it is also essential that we deal appropriately with the Northeast rail restructuring problem. By the 26th of this month, the Economic Policy Board Task Group on Northeast Rail Restructuring, of which I am Chairman, will present you with its specific recommendations.

SIGNED BY
WILLIAM T. COLEMAN, JR.

William T. Coleman, Jr.

April 17, 1975

D R A F T

P - Phil

MEMORANDUM FOR THE PRESIDENT

FROM :

SUBJECT : REVITALIZATION OF THE RAILROADS

BACKGROUND

We understand your basic policy position to be:

--A viable railroad system is vital to the United States.

--You are unalterably opposed to nationalization.

TRANSPORTATION DEPARTMENT PROPOSALS

The basic major elements of Secretary Coleman's proposal are:

1) A $2 billion program in loan guarantee to the railroad to revitalize their capital assets -- $200 million of which could be paid for interest.

2) A plan to by-pass the ICC in certain cases involving mergers, joint use of track,

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 17, 1975

MEMORANDUM TO: Mr. James M. Cannon, Executive Director, Domestic Council

SUBJECT: Rail Legislative Initiative

In response to your request, this memorandum delineates the current status and outstanding issues regarding the Administration's rail legislative initiative.

Areas of agreement within the Administration

1. President should transmit major rail proposal in very near future to capture the initiative on this visible, pressing issue and because it is essential to both the national energy program and the health of the economy that the railroads be revitalized.

2. Legislative initiative should include both regulatory reform and financial assistance.

3. The regulatory reform proposal will include expanded rail rate flexibility, reduction in present anti-trust immunity of rail rate bureaus, and the elimination of discriminatory State taxation.

4. The financial assistance program will have a minimum of $2B in Federal loan guarantees and will be used to stimulate rationalization of the current U. S. railroad system.

5. A direct Federal grant program to prevent further significant deterioration in the condition of key rail lines has merit.

6. Current time-consuming ICC regulatory procedures regarding rail merger and consolidations are a major obstacle to needed restructuring and a pressing need exists to obtain expedited action on rail restructuring proposals.

Questions yet to be resolved within the Administration

1. Relationship between Department of Justice and the Secretary of Transportation in the approval of rail mergers

-- Agreement exists on the need for some by-pass of ICC for restructuring proposals involving Federal financial assistance.

-- DOT recommends that authority to approve such transactions be lodged in DOT and that DOT be required to consult with Justice prior to merger approval.

-- Justice Department (DOJ) recommends that DOJ be given joint approval power with DOT.

2. Extent to which the $2B loan guarantee financial assistance program will provide additional incentives to secure meaningful railroad support and participation in the program.

-- Agreement exists that financial assistance package must be sufficiently attractive to gain railroad participation and the resultant system rationalization.

-- To achieve this full participation, DOT recommends providing a full range of options, including subsidizing part of the loan interest rate and deferring debt service payments.

-- OMB apparently believes Federal bank financing is sufficient incentive. DOT believes more flexibility is necessary and desirable.

3. Timing and financing of emergency rail rehabilitation grant program.

-- DOT has proposed $1.2B, 15-month program to help stabilize deteriorating rail roadbed, as well as to generate employment in productive tasks. Effective rail system is needed for energy transportation, particularly coal.

-- To help offset budget impact of above program, DOT has proposed to rescind concurrently approximately $1.2B in existing highway program funds.

Timing:

-- OMB believes the transmittal of any such proposal should be deferred until the Administration transmits a policy recommendation regarding the PSP and the entire NE rail program. Reasons for OMB approach include their view that the proposal should be put in the context of the NE question and a full rail policy in order to maximize the effectiveness of the funds. OMB also points to the delay that may well occur anyway in Congressional enactment of the rail rehabilitation proposal.

-- DOT believes a proposal is needed now to prevent adverse deterioration in rail roadbed. Given that the Administration proposal regarding the NE rail problem may well call for a substantially reduced NE rail network -- a politically explosive issue -- we believe it would be advantageous for the President to have a positive nationwide program including rail rehabilitation grants on the Hill before submitting our proposals on the Northeast and Midwest. I believe my 4/11/75 memorandum to the President outlines the essential ingredients of a multifaceted, comprehensive approach to the national railroad problem.

Financing:

-- DOT believes this program is consistent with the President's budgetary policy, given the Project Independence requirement that the railroads have a substantially increasing amount of coal each year.

-- Furthermore, DOT believes the highway rescission approach could reduce the budget impact and show Presidential leadership in shifting budget resources from low priority to high priority activities.

-- OMB believes rescission is not politically feasible and may jeopardize the Administration's highway proposal.

In view of OMB's final point, we would recommend approval of the rescission approach only after an assessment by the White House Congressional Affairs Office of whether this approach would seriously jeopardize the new highway bill.

I believe the issues have been thoroughly discussed between the Department and the Executive Office of the President, and we now need expeditious decisions to permit an Administration rail initiative to go forward in the very near future.

Bill

William T. Coleman, Jr.

THE WHITE HOUSE

WASHINGTON

April 29, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON [handwritten initials] AND BILL SEIDMAN LWS

SUBJECT: Railroad Revitalization Act

The purpose of this memorandum is to get your decision on the three outstanding items proposed by Secretary Coleman for inclusion in your railroad bills.

These outstanding items are discussed in our April 24 memorandum to you and are further modified here as specified in the decisions on the April 25 memo (Tab A).

The outstanding issues are:

a) Should an interest subsidy be a part of the loan program?

b) Should a direct grant to railroads be included within the $2 billion loan program?

c) ICC - Bypass.

The outstanding questions are:

1) Should the already announced $2 billion loan program include provision for payment of interest on the loans?

OPTIONS:

a) Include a provision which enables DOT to pay, under certain conditions, up to one-half of the interest costs on any loans.

Support: Coleman.

Oppose : Simon, Dunlop, Seidman, Lynn, Cannon.

Approve ____________ Disapprove ____________

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b) Provide for DOT to defer payment of the interest costs in certain specified cases such as when a restructuring or reorganization is clearly in the national interest and such restructuring could not be accomplished without an initial interest rate less than the going rate.

This proposal would also include authority for the loans to be accomplished through the Federal Financing Bank. Use of the bank automatically provides the borrower with a considerable interest break.

Support: Simon, Dunlop, Lynn, Cannon.

Oppose: Coleman.

Approve________Disapprove________

2) Should you propose additional (beyond the $2 billion loan guarantee program) railroad aid to provide emergency rehabilitation?

OPTIONS:

a) Permit a portion of the already budgeted $2 billion loan guarantee program (approximately $600 million) to be used for direct grants at the Secretary's discretion to any railroad involved in restructuring. This would be a new spending program, the justification for which would depend on the energy exception.

Support: Coleman.

Oppose: Simon, Lynn, Cannon, Seidman.

Approve________Disapprove________

b) The $2 billion loan program should remain as originally proposed; that is, not include a grant program.

Support: Simon, Lynn.

Oppose: Coleman.

Approve________Disapprove________

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3) What procedures should govern authority to bypass normal ICC procedures in cases where the Secretary determines assistance is in the public interest?

> Compromise (between Justice and DOT) bypass provision that forces the ICC to act on the Secretary's restructuring within 6 months. (See Tab B for draft proposal.)

Support: Levi, Coleman, Dunlop, Cannon, Hills, Seidman.

Oppose : None.

Approve ______________ Disapprove ______________

TAB A

THE WHITE HOUSE

WASHINGTON

April 25, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON
BILL SEIDMAN

FROM: JERRY H. JONES

SUBJECT: Railroads (Emergency Railroad Revitalization Act)

Your memorandum to the President of April 24 on the above subject has been reviewed and the following decisions were approved:

> Decision #1 -- The Secretary of Transportation should be given the authority to condition, where appropriate, loan guarantees and interest subsidies (if authorized) upon successful completion of a railroad restructuring plan (e.g. a merger).
>
> Decision #2 -- The railroad legislation should not be submitted to the Hill until an administrative plan has been formulated giving the Secretary of Transportation the authority to "trigger" either a bypass of the ICC or the use of an expedited newly created regulatory process.
>
> It is unanimously recommended that you direct the formation of a drafting committee with representatives of your Counsel's Office, DOT, the Attorney General, OMB and the Domestic Council to submit such a plan for your approval no later than May 4.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld

THE WHITE HOUSE

WASHINGTON

DECISION

April 24, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON AND BILL SEIDMAN

SUBJECT: RAILROADS (EMERGENCY RAILROAD REVITALIZATION ACT)

I. PURPOSE

At your economic meeting tomorrow, Secretary Coleman will seek your decisions on proposed administration legislation designed to help the railroads.

The general issues are:

- Should you submit railroad legislation limited to

    1) regulatory reform; and,
    2) $2 billion in loan guarantee;

    Or, should all or any of the following be included

    A) ICC by-pass authority;
    B) interest subsidy;
    C) additional $1.2 billion in emergency aid?

- What additional legislation and programs will be required to solve the overall railroad problem?

II. BACKGROUND

The Nation's economy depends on a functioning U. S. railroad system. Unfortunately, over one-half of the trackage in the country is unfit for high-speed operations and accidents and derailments have nearly doubled since 1967.

Eight Northeast and Midwest railroads are bankrupt (including the Penn Central), the so-called Granger roads in the Plains States are in precarious condition; average rates of return are extremely low; and, we have just had the largest quarterly deficit in rail history.

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This very serious financial condition has led to a nationwide deferred maintenance problem which will cost between $5 and $10 billion to remedy.

Current and proposed Federal activity is concentrated in four general areas:

- efforts to help the bankrupt railroads of the Northeast and Midwest through the Regional Rail Reorganization Act of 1973;

- financial assistance for all railroads to buy rolling stock and to improve the roadbeds and other capital investments (through direct grants and loan guarantees);

- regulatory reform; and,

- emergency programs of grants and loans for specific railroads (including those in bankruptcy) to overcome the current unemployment, energy and cash flow problems.

There is a strong sense in Congress that something needs to be done to help the railroads, but that there is a danger that the government will end up pouring massive Federal funds into the railroads without solving the problems.

See Tab A for additional background information and Congressional situation.

III. ISSUES AND ALTERNATIVES

You are committed to sending Congress your Railroad Revitalization and Energy Transportation Act consisting of regulatory reform and $2 billion for loan guarantees.

Secretary Coleman has asked you to add interest subsidy, ICC by-pass authority and $1.2 billion in additional aid (which he calls the "Emergency Railroad Rehabilitation Program").

One of the reasons for decision now is that hearings begin on the railroad rehabilitation issue in the Senate Commerce Committee on May 1.

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In addition to this proposed program, other very significant railroad issues will be coming to you for decision. For example:

- the financial problems of the utilities may require some form of government refinancing and additional railroad aid may be required in the energy independence context.

- many in Congress want to attack our current unemployment problem by creating railroad jobs with Federal grants.

See Tab B for a memorandum from Secretary Coleman on the issues presented.

The following are the specific decisions required at this time:

FIRST ISSUE - <u>Should an Interest Subsidy be Added to the Loan Guarantee Program?</u>

Secretary Coleman recommends that an interest subsidy be included as a component of the $2 billion loan program. This added financial incentive might also enable railroads who are in such bad financial condition that they cannot apply for a loan without a loan subsidy to take advantage of the program. Under this proposal, the Secretary could agree to pay up to one-half of the interest costs on the loans. This program would cost up to $80 million a year for each of the 20 years.

ALTERNATIVES

1. Propose an interest subsidy program as a part of the $2 billion loan guarantee proposal.

   Pro: Would create a highly leveraged program which, when tied to the ICC by-pass provision, permits the Executive wide latitude in restructuring the railroads of loan applicants.

   Con: There are other Federal loan guarantee programs which have proponents arguing for interest subsidy. It could be argued that this is a new spending program.

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2. Permit some form of interest payment, or deferred payment, under an existing mechanism but avoid a direct interest subsidy. (This could involve the Secretary allowing railroads to finance their loan under the Federal Financing Bank or defer interest payments in the initial years.)

   Pro: This essentially accomplishes the objectives of the proposal by Secretary Coleman for interest subsidy without the obvious precedent of an interest subsidy program.

   Con: This alternative for direct interest subsidy would likely be perceived as such among the special interest groups who would argue for equal treatment for their loan guarantee programs.

3. Provide no interest subsidy but state that we recognize that some railroads will have a problem participating under the loans and that we will study the issue and propose remedial legislation, if required.

   Pro: Avoids all the problems of interest subsidy and candidly admits that additional Federal action will likely be required.

   Con: Results in the Congress taking the initiative and, therefore, may result in a worse bill than the Secretary's proposal.

<u>DECISIONS</u>

1. Propose an interest subsidy program as a part of the $2 billion loan guarantee proposal.

   Approve ____________ Disapprove ____________

2. Permit some form of an indirect interest payment but avoid a direct interest subsidy.

   Approve ____________ Disapprove ____________

3. Provide no interest subsidy but recognize the problem and leave options open for a possible later proposal involving an interest subsidy.

   Approve ____________ Disapprove ____________

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SECOND ISSUE - Additional (not in your FY 76 budget) Railroad Aid to Provide Emergency Rehabilitation.

Secretary Coleman has recommended a $1.2 billion, 15-month program to help stabilize the deteriorating rail roadbed, as well as generate employment in productive tasks. The proposal involves additional loan guarantees and direct grants.

All railroads would be eligible to participate.

The program is in addition to the $2 billion loan guarantee program described above.

No one questions the need for additional Federal support for the railroads beyond the $2 billion loan guarantee, regulatory reform and efforts to salvage the bankrupt railroads in the Northeast and Midwest. The issue is whether this new program proposal is the proper response at this time and in this form.

We do not have any firm analysis on the extent to which the railroad problem is impacting our energy objectives. Therefore, we do not have a firm recommendation at this time on the extent to which the Federal Government should assist the railroads primarily for energy reasons.

ALTERNATIVES

1. Include additional funding (approximately $1.2 billion) over and above the $2 billion loan guarantee.

   Pro: This will help prevent deterioration of the railroad roadbeds and make your railroad bill a major new initiative.

   It will tend to preempt other legislation being proposed in Congress to link the railroad and unemployment problems by providing emergency grants for railroad jobs.

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Con: We should not send up legislation beyond that to which we are already committed until we have a better understanding of the total railroad problem and its relationship to other railroad initiatives.

Such a grant program will not really help unemployment in the short term.

There are difficult issues involved in giving taxpayers' funds to solvent railroads

There would be potential labor problems depending on whether force account or contract labor is used.

2. If you decide in favor of the new Railroad Rehabilitation Program, the only way to justify it under your "no new spending program" decision is by relating it to energy.

A way of explaining the impact of this on your "no new spending" decision would be to state that the $1.2 billion will be offset against funds you have asked the Congress to rescind from the Highway Trust Fund.

Accordingly, if you decide to go with the new program, it can be explained as having energy impact and is thus an energy exception.

3. Provide up to $600 million in grants within the $2 billion funding level already established.

This is the amount of grants in the Senate's Emergency Employment Appropriation Act, reported out of Committee on April 22. Would leave $1.4 billion in loan guarantees.

Use of grants would be restricted to bankrupt railroads and a limited number of special purposes designated by the Secretary (e.g., as incentive for merger or joint use of track).

Pro: Would have same basic benefits as Alternative 1 (prevent deterioration, preempt other legislation), while avoiding some of the drawbacks. For example, it would pinpoint

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the assistance where needed most -- on bankrupts. Avoids most of the problem of giving taxpayers' funds to solvent railroads. There is already a precedent for funding bankrupt lines.

Con: It could be argued that the $600 million in grants would violate your policy of no new spending programs.

DECISIONS

1. Include additional funding (approximately $1.2 billion) over and above the $2 billion loan guarantee.

   Approve __________ Disapprove __________

2. If you approve number 1 above, justify the program addition by relating it to "energy independence."

   Approve __________ Disapprove __________

3. Provide up to $600 million of program grants within the $2 billion loan program.

   Approve __________ Disapprove __________

Some of your advisers believe that the railroad issue must be considered in total and that an intensive examination of alternative approaches such as the controlled transfer system discussed briefly in Tab B should first be completed.

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THIRD ISSUE - "By-Pass" or Reform Existing ICC Authority Over Railroad Restructuring When Federal Financial Assistance Is Offered.

There is general agreement within the Executive Branch that the railroads are in serious need of restructuring to eliminate excess capacity. The problem is the cumbersome regulatory procedures administered by the ICC. Efforts to restructure through merger or various cooperative agreements in the past have failed, in part, due to the length of time involved in getting ICC approval.

The Secretary of Transportation proposes that the ICC be "bypassed" wherever a railroad restructuring proposal approved by the DOT also requires federal financial assistance. Thus, the Secretary would impose a restructuring plan (merger or other cooperative agreement) as a condition to his grant of a loan guarantee or interest subsidy and the ICC would have little or no authority to approve or disapprove such restructuring plan. Instead, the approval procedures would be moved, by legislation to the DOT which would conduct appropriate, but more expeditious, hearings.

Secretary Coleman feels strongly that the impetus for restructuring reform needs additional Federal financial assistance such as the "interest subsidy" discussed elsewhere.

The ICC would retain authority in all railroad restructuring that did not require Federal financial assistance.

The Attorney General raises these issues:

1. Should the Secretary of Transportation, who creates a railroad restructuring plan as a condition of a loan guarantee or interest subsidy, also have the authority to resolve all third party (shippers, competitors, public representatives) complaints about that plan.

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2. He states that basic questions ("not mechanical details") have not been resolved as to how regulatory action can be expedited and still protect the legitimate interests of third parties in an expedited hearing procedure with fast judicial review.

3. Finally, he strongly states that before any legislation is sent to the Hill, decisions must be made on which he wishes to be heard, as to the appropriate relationship between the Secretary and the Attorney General. Specifically, what type of consultation or concurrence from the Attorney General will be required? He states that, at the least, the Attorney General must be required to give specific reasons in writing to backup his advice <u>or</u> consent.

All your advisers agree that your railroad legislation should not be submitted without proposals for effective reform of the ICC or for bypassing the ICC.

The legislative office believes there may be a better chance to drastically reform the ICC with a "super" new hearing panel than to give ICC control over railroad restructuring (where Federally financed) to DOT.

The Counsel's office agrees that <u>existing</u> ICC procedures must be bypassed as a condition for granting loan guarantees or interest subsidies and that the Secretary of Transportation should have the authority to "trigger" the bypass procedures but believes that both the Attorney General and the Secretary must clarify their positions before a decision can be made as to whether the bypass should be to:

(i) the DOT;
(ii) an expedited "super" ICC hearing panel; or
(iii) a separate agency.

<u>Decision #1</u>

The Secretary of Transportation should be given the authority to condition, where appropriate, loan guarantees and interest subsidies (if authorized) upon the successful completion of a railroad restructuring plan (e.g. a merger).

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Pro: all the reasons set forth above which suggest that such inducements are necessary to preserve a privately operated rail system.

Con: the use of federal financial assistance to foster mergers between privately owned companies is anti-competitive and bad public policy.

Favor: DOT, OMB, Domestic Council, and Counsel's Office.

Oppose: No one

_______APPROVE _______DISAPPROVE

<u>Decision #2</u>

The railroad legislation should not be submitted to the Hill until an administrative plan has been formulated giving the Secretary of Transportation the authority to "trigger" either a bypass of the ICC or the use of an expedited newly created regulatory process.

All your advisers agree that such a plan must be formulated except the Attorney General who reserves judgment, and Secretary Coleman insists that the "plan" be formulated within one week.

It is unanimously recommended that you direct the formation of a drafting committee with representatives of your Counsel's Office, DOT, the Attorney General, OMB and the Domestic Council to submit such a plan for your approval no later than May 4.

_______APPROVE _______DISAPPROVE

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1. Condition of the Railroads and Statement of the Problem

The American railroads are essential to the nation's economy and are in danger of collapsing. Most freight is transported by the railroads (38% of ton-miles transported) and many basic products and commodities rely nearly exclusively on the railroads. For example, they transport 70% of the coal produced, utilizing 81% of the nation's mainline tracks.

Over one-half of the trackage in the country is unfit for highspeed operations. For safety reasons, trains are operating under Federal "slow orders" on nearly 50% of their tracks and at speed under 10 miles per hour for 20% of the tracks. Accidents and derailments have nearly doubled since 1967. Because of inefficient equipment and operating methods, a typical freight car moves loaded only 23 days a year.

The railroads are in very poor financial condition. Eight Northeast and Midwest railroads are bankrupt (including Penn Central), the so-called Granger roads in the Plains States are in precarious financial condition; average, industry-wide rates of return are 3% or less; and, they just had the largest quarterly deficit in rail history. Among the principal factors that have caused this dismal financial condition are:

A) Outdated government regulation,
B) Archaic work rules,
C) Government subsidies to competing modes (such as barges and motor carriers).

These difficulties have resulted in the critical problem of redundant rail facilities and excess competition. The magnitude of this problem is most clearly demonstrated by the severe physical deterioration in the rail industry. Recently, expenditures on track maintenance have fallen short of the amount needed by $1 billion per year.

This has led to a deferred maintenance problem which will cost between $5 - 10 billion to remedy. There is widespread sentiment in the rail industry and Congress that the Federal government should pay for a major part of this expense. The deferred maintenance problem is concentrated mostly in the Northeast and Granger states. Thus, a sound solution to the Northeast bankruptcy problem should go a long way toward achieving a nationwide solution.

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2. Current Situation

Based on the history of government involvement in the railroad problem over the last several years, it is perhaps easiest to view the current situation in four categories of existing or proposed Federal involvement:

A) Efforts to help the seven bankrupt railroads in the Northeast and Midwest -- through the Rail Reorganizational Act of 1973 and the attempts to create Conrail;

B) Financial assistance for all railroads to buy rolling stock and to improve the roadbeds and other capital investments (through direct grants and loan guarantees);

C) Regulatory reform; and,

D) Emergency programs of grants and loans for specific railroads (including those in bankruptcy) to overcome the current unemployment, energy and cash flow problems.

These efforts and this memorandum do not consider the Federal involvement in rail passenger service. Essentially, AMTRAK and the Federal efforts to upgrade the Northeast corridor are being dealt with separately.

Briefly, the following is a snapshot of where we are in each of the above categories.

-- Bankrupt Railroads. For the past year, the U. S. Railway Association (USRA) has been designing a new rail system for the Northeast, to be owned and run by a new private corporation, the Consolidated Rail Corporation (ConRail). Two months ago, USRA published its preliminary plan, indicating that ConRail would require $3 billion in Federal financin and would be federally controlled for at least 10 years. The Administration is aiming to develop a position on this plan by early May. An interagency task group has been established by the Economic Policy Board, under Secretary Coleman's leadership, to explore various alternatives to USRA's plan. This should result in an Administration legislative proposal, including both financing provisions and technical amendments to the Regional Rail Reorganiza Act. USRA will submit its final plan to Congress by July 26.

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-- Capital Assistance. There have been a host of proposals ranging from Federal purchase of the railroad rights-of-way to modest loans for the railroads designed to permit all the railroads to upgrade their capital plants. The Administration approach has been to offer $2 billion loan guarantee program which we attached to our regulatory reform proposal several years ago. These loans would be used by any U. S. railroad wherever located and regardless of their financial condition.

-- Regulatory Reform. The proposed bill will: permit increased pricing flexibility; expedite rate-making procedures; outlaw anti-competitive rate bureau practices; and improve the procedures for dealing with interstate rail rates. In addition, the bill will outlaw discriminatory taxation of the rail industry.

-- Emergency Programs. Most of the one-shot emergency railroad programs have been designed to cope with the unemployment problem. There are a host of specific proposals before Congress, including a $700 million railroad employment proposal that has been agreed to by the senior members of the Senate Appropriations Committee. Most of these bills are ad hoc and provide grants and loans to be used by the railroads as a means of putting more track maintenance people to work. They are not designed to deal comprehensively with the overall railroad problem and it is not clear how they fit into other pieces of the solution.

3. Congressional Response

As indicated in the foregoing section, Congress is groping with the overall railroad problem. There is a strong sense in Congress that something needs to be done and that there is a great danger that the government will end up pouring massive Federal funds into the railroads without satisfactory protection of its investment or ever coming to grips with the root causes of the railroad problem The range of solutions which have been suggested cover the whole spectrum from nationalization to doing nothing. For example, Senators Hartke and Weicker have introduced legislation to nationalize the railroads rights-of-way and Senator Randolph has submitted a bill to provide $ billion to upgrade the tracks.

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Senate Appropriations Committee has included $700M for Railroad Improvement and Employment in the $6B Emergency Unemployment Supplemental which will be reported out of committee April 23. The Senate Commerce Committee is expected to have authorization hearings on the rail improvement proposal the week of May 1 and Senate action is expected by mid May. Similar rapid action by the House is expected. Senators McClellan, Bayh, Randolph and Hartke strongly support the $700M proposed ($600M in grants and $100M in loans).

It is clear that Congress has not yet taken a look at the entire railroad problem comprehensively covering the near-term employment and cash flow problems along with the long-term bankruptcy and rights-of-way maintenance issues. More distressingly, there is a strong likelihood that Congress will pass ad hoc emergency grant and loan programs without the necessary regulatory reform.

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April 23, 1975

MEMORANDUM FOR ALAN GREENSPAN

FROM: James C. Miller III

SUBJECT: USRA's PSP and The Need for an Intensive Examination of an Alternative Approach

Background

On February 26, 1975, the United States Railway Association (USRA) issued its Preliminary System Plan (PSP) for restructurin the seven bankrupt railroads in the Midwest and Northeast region Under the PSP, portions of the bankrupt system would be transfer to the Norfolk and Western (N&W) and Chessie system; the rest, minus some light density lines, would be consolidated into a government-sponsored ConRail system. Although ConRail is projected by USRA to generate positive net income by 1978, neede investments for rehabilitation will cause a negative cash flow for 12 to 14 years. USRA estimates that $3 billion in Federal government assistance will be needed during this period.

After hearing comments from the Administration, the ICC, and other interested parties, USRA will submit its Final System Plan (FSP) on July 26, 1975. Unless at least one House of Congr passes a resolution rejecting the FSP, it becomes effective on September 26, 1975. According to best information, USRA plans no significant modifications in the PSP.

This memorandum highlights the frailities of the PSP and recommends an intensive examination of controlled transfer of the bankrupt properties to solvent rail carriers prior to the Administration's adoption of a position on the PSP. The controlled transfer alternative has not been seriously considere mainly because of alleged political infeasibility. The stakes, however, are high. The PSP is likely to involve much higher fiscal support than now envisioned and eventually produce a set of economic and political circumstances leading directly to the nationalization of the system. Controlled transfer appea to be the only viable alternative.

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Major Defects of the PSP

1. Although the PSP calls for a competitive three-carrier system in the region, the amount of competitive service surviving under the PSP could be significantly less than exists today.

2. ConRail would not be viable:

   a) Projections of annual revenue increases of $200 million are unlikely to be realized because traffic growth and rate increases would not be forthcoming at assumed rates.

   b) Rehabilitation costs are underestimated; most analyst believe that the $3 billion estimate is overly optimi

   c) ConRail management is an unknown; it cannot be relied upon to bring about $100 million in cost reductions from increased efficiency, as USRA has assumed.

3. Given the current negative cash flow of $30-100 million, a likely result of the plan is the granting of an annual subsidy of $0.5 to $1.5 billion. In the end this would lead to Federal ownership, since ConRail would be obtaini its capital and part of its operating subsidy from the Federal budget.

The Preferred Alternative (Controlled Transfer)

1. The objective should be to merge the profitable parts of Penn Central system with solvent lines in order to create a viable private sector transportation system characteriz by a number of competing rail carriers. However, none of research and policy analysis to date has addressed the problem of specifying those mergers which would secure these ends. (USRA rejected this alternative because it perceived (erroneously) little interest on the part of solvent carriers in purchasing portions of the region's rail system.)

2. There are, however, several promising options:

   a) Merger of the four western lines to Chicago and St. Lo with: (i) N&W, (ii) Chessie, (iii) "Pennsylvania", and (iv) "Central". By demerging the Penn Central and providing some subsidies for roadbed and capital improvements to the demerged parts, they could be made attractive.

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b) Merger of the profitable links in the Penn Central and Erie Lakawanna into the N&W and Chessie. This leaves only two carriers, since ConRail would be le with the dregs of the Penn Central (50% of the trackage, at least).

c) Selling off anything anyone wants to buy. Some purc would be other lines, others would be new railroads

3. Advantages and disadvantages:

a) The principles are correct:

(i) Each of the proposed mergers reduce the potenti for governmental support and hidden subsidy;

(ii) Such mergers reduce the likelihood of outright nationalization of the region's rail system five from now; and

(iii) The first option, along with deregulation, make possible effective intermodal competition for b freight between regions of the country.

b) There are operational difficulties:

(i) None of these options have been thoroughly investigated and the time frame for a decision on this matter is extremely short. There has been considerable interest in controlled transfe by solvent Midwest, Western, and Southern lines, although this interest has been dampened by USRA negative response. Work would have to be done by DOT, Treasury, OMB, and CEA to establish at l the basis for possible transactions before offer any of these options for inclusion in the FSP or proposing them directly to Congress.

(ii) There are political problems. ConRail would be left with the hopeless lines and the need to go Congress for an annual subsidy. On the whole, t is less palatable to legislators than is the cro subsidy implicit in the PSP.

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TAB B

1AB

DECLARATION OF POLICY

(a) FINDINGS.--The Congress finds and declares that--

(1) Rails are a vital national asset and essential to the commerce and defense of the country.

(2) Preservation of a viable private sector rail industry is in the national interest.

(3) There is a significant and uneconomic duplication of rail facilities in the United States, including main line track and branch line track.

(4) This excessive duplication interferes with the efficiency and economic health of the rail industry.

(5) The time, expense and delay associated with proceedings under the Interstate Commerce Act for consideration of proposals for consolidation of facilities and joint use of facilities has been an obstacle to removing excess and duplicative rail plant capacity.

(6) A vital need exists to streamline this country's rail plant and remove duplicative facilities.

(7) A clear need exists to expedite the consideration of proposals which have the effect of eliminating excessive duplication of facilities.

(8) Preservation of an effective level of competition in the marketplace for transportation is in the national interest.

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(b) PURPOSES.--It is therefore declared to be the purpose of Congress in this Act to provide for--

(1) An efficient, economical, viable private sector rail system.

(2) Greater efficiency of the rail system through elimination of duplicative facilities and rationalization of the existing rail plant.

(3) Prompt and fair consideration of voluntary agreements to achieve those objectives.

(4) The maintenance of an effective level of competition in transportation.

(5) Federal financial assistance to the railroad industry.

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(a) As a condition for receiving financial assistance pursuant to this section, the Secretary may require an applicant to enter into an agreement with another applicant or with another railroad with respect to merger, consolidation, control, joint use of tracks, terminals, or other facilities, or the acquisition or sale of assets. This section does not confer authority upon the Secretary to require non-applicants to enter into an agreement with an applicant.

(b) The Secretary shall publish regulations in accordance with 5 U.S.C. 533 to establish the procedures for applying for Federal assistance pursuant to this Act and the information and data which must be submitted by each applicant.

(c) If an application is made and the Secretary determines to condition the granting of financial assistance upon an agreement for restructuring, the Secretary shall provide reasonable notice in the Federal Register of the application and the proposed agreement. In addition, the Secretary shall provide reasonable written notice to the Attorney General of the United States and to each Governor of a state in which an applicant or proposed party to the agreement operates. The Attorney General shall review the proposed agreement and shall advise the Secretary in writing of his views of the agreement. The Secretary shall provide an opportunity to any interested person to submit written comments and shall provide an opportunity for an informal oral hearing regarding the proposed agreement.

(d) The Secretary shall review the written and oral comments. He shall then give notice in the Federal Register of any changes in the proposed agreement which he has made after review of the comments and shall provide an opportunity to the public to comment on the changes.

(e) The Secretary and the Commission shall adminster the provisions of this Act in light of the declaration and purposes of this Act and shall find a proposed transaction is in the public interest if the efficiency gains substantially outweigh any adverse effects on competition; provided that the proposed transaction shall be determined to be the least anti-competitive alternative available.

(f) After completing the procedures called for in the preceding paragraphs, the Secretary shall make a determination whether the proposed agreement is in the public interest and consistent with this Act. If the Secretary makes an affirmative determination, he shall so certify his findings, the basis therefor, and the proposed agreement in writing to the Interstate Commerce Commission. The Secretary may not certify any agreement unless it provides labor protection at least equal to the protection afforded by section 5(2)(f) of the Interstate Commerce Act.

(g) If the Secretary so certifies in accordance with subsection (f), the Interstate Commerce Commission shall consider the Secretary's findings and the agreement pursuant to section 5(2) of the Interstate Commerce Act, except as hereafter provided. The Commission must complete any hearings it deems necessary within 120 days of the receipt of the certification and must render a final decision within 180 days of the receipt of the certification, unless the Secretary provides in the certification for longer time periods. Any hearings deemed necessary shall be held directly before a panel of the Commissioners of the Interstate Commerce Commission. Notwithstanding the provisions of section 5(2), the Commission shall not disapprove or modify an agreement unless the Commission finds there is clear and convincing evidence the agreement is not in the public interest as defined in subsection (e). The protestants to such an agreement shall have the burden to prove that such a certified agreement is not in the public interest.

(h) If the Commission shall fail to render a decision under this Act within the required time period, the Commission shall certify to the Secretary the proceedings before the Commission within 3 days of the end of its period for decision. Subject to the concurrence of the Attorney General, the Secretary shall review all material and information he deems relevant and may withdraw, modify, or approve the proposed agreement accordingly. Agreements approved by the

Secretary pursuant to this subsection (h) shall be deemed final and lawful and shall not be subject to section 5(2) of the Interstate Commerce Act. ~~Findings~~ Final Decisions of the Secretary pursuant to this subsection may be appealed only to the Circuit Court of Appeals for the District of Columbia and may not be held contrary to this Act unless it is found that there is clear and convincing evidence that the Secretary's approval is not in the public interest or is without observance of the procedure required by this Act.

(i) Agreements approved pursuant to this section shall not be subject to the operation of the antitrust laws and any other restraints, limitations, and prohibitions of law, Federal, state or municipal.

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THE WHITE HOUSE

WASHINGTON

April 30, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES M. CANNON
L. WILLIAM SEIDMAN

SUBJECT: RAILROAD REVITALIZATION ACT

Your note of April 30 asked our reaction to the possibility of giving the Secretary of Transportation both (a) the right to subsidize up to one-half of the interest on guaranteed loans; and (b) the right to guarantee deferred interest loans including loans through the Federal Financing Bank.

The approval of subsidizing interest on loans--Option 1 (a)--is believed undesirable because:

(1) It constitutes a new spending program.

(2) It could increase the 1976 deficit by $60 million as well as entailing similar budget outlays in succeeding years.

(3) It represents a bad precedent and could encourage interest subsidies in other programs.

certainly

The arguments for approving an interest subsidy are:

(1) The Secretary of Transportation believes it will make possible loans that otherwise would not be made.

(2) It gives the Secretary of Transportation greater flexibility in dealing with the railroads.

1A Not to Recommend it. But Adm willing to consider it

Recommendation

1B OK

It is the recommendation of Messrs. Simon, Lynn, Dunlop, Cannon, and Seidman that only guaranteed deferred interest loans--Option 1(b)--be approved.

REC
JAN
CENTRAL

THE WHITE HOUSE

WASHINGTON

April 30, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: BILL SEIDMAN
JIM CANNON

FROM: JERRY H. JONES

SUBJECT: Railroad Revitalization Act

Your memorandum to the President of April 29 on the above subject has been reviewed and the following was noted:

1) Should the already announced $2 billion loan program include provision for payment of interest on the loans?

The following notation was made:

-- Seems to me on #1 (a) and (b) one could argue that Sec. of DOT should have both authorities. The availability of such flexibility would give him option to meet the different problems that are bound to arise.

Reaction?

2) Should you propose additional (beyond the $2 billion loan guarantee program) railroad aid to provide emergency rehabilitation?

a) Permit a portion of the already budgeted $2 billion loan guarantee program (approximately $600 million) to be used for direct grants at the Secretary's discretion to any railroad involved in restructuring. Disapprove.

b) The $2 billion loan program should remain as originally proposed; that is, not include a grant program. Approve.

3) What procedures should govern authority to bypass normal ICC procedures in cases where the Secretary determines assistance is in the public interest?

Compromise (between Justice and DOT) bypass provision that forces the ICC to act on the Secretary's restructuring within 6 months. Approve.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld

THE WHITE HOUSE

WASHINGTON

April 30, 1975

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L. WILLIAM SEIDMAN

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The arguments for approving an interest subsidy are:

(1) The Secretary of Transportation believes it will make possible loans that otherwise would not be made.

(2) It gives the Secretary of Transportation greater flexibility in dealing with the railroads.

Recommendation

It is the recommendation of Messrs. Simon, Lynn, Dunlop, Cannon, and Seidman that only guaranteed deferred interest loans--Option 1(b)--be approved.