THE WHITE HOUSE

WASHINGTON

May 26, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: S. 653 - Foundation for the Advancement of Military Medicine Act

Counsel's Office has reviewed the above-referenced enrolled bill. We agree with the Department of Justice that the bill as enacted is unconstitutional because of the composition and method of appointment of the contemplated Council of Directors. In light of the fact that our concerns have been communicated to Congress and in light of the commitments in the draft signing statement that these concerns will be addressed in future corrective legislation, it would appear that if the bill is signed we would have done all that can be done to preserve our constitutional arguments and minimize the precedential significance of this bill.

I feel it is, however, somewhat unrealistic to expect Congress to pass such corrective legislation should this bill become law. The "better government" approach would be to disapprove the bill and await passage and submission of a corrected version. While we do not view as sufficient the reason given by the Office of Management and Budget for the President to sign the bill -- to wit, "the fact that Justice in its initial review of the bill pronounced it constitutional and on that basis the Administration supported its enactment" -- the decision whether to approve the bill is a political one. The long-range legal impact on the constitutional power of the Executive would appear to be minimal.

FFF:JGR:aw 5/26/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

May 26, 1983

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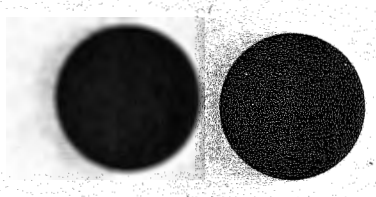
FFF:JGR:aw 5/26/83

cc: FFFielding
JGRoberts
Subj.
Chron

ID # 125252 CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /



Name of Correspondent: Richard G. Darman

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: S. 653 - Foundation for the Advancement of Military Medicine Act

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
W Holland		ORIGINATOR	831052 6			/ /
CW AT 18		Referral Note: D	831052 6			S 831052 6
		Referral Note:	/ /			/ /
		Referral Note:	/ /			/ /
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		Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

MAY 26

Document No: 125252SS

WHITE HOUSE STAFFING MEMORANDUM

DATE: May 26th ACTION/CONCURRENCE/COMMENT DUE BY: 5:30 p.m. TODAY

SUBJECT: S. 653 - FOUNDATION FOR THE ADVANCEMENT OF MILITARY MEDICINE ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	✓	☐
MEESE	☐	✓	HARPER	✓	☐
BAKER	☐	✓	JENKINS	☐	☐
DEAVER	☐	✓	MURPHY	☐	☐
STOCKMAN	☐	☐	ROLLINS	✓	☐
CLARK	✓	☐	WHITTLESEY	✓	☐
DARMAN	☐P	✓SS	WILLIAMSON	✓	☐
DUBERSTEIN	✓	☐	VON DAMM	☐	☐
FELDSTEIN	☐	☐	BRADY/SPEAKES	✓	☐
FIELDING	✓	☐	ROGERS	☐	☐
FULLER	✓	☐	_____	☐	☐

Remarks:

Please provide any comments/recommendations by 5:30 p.m. today.

Note: Also, please note that OMB has submitted a draft signing statement, and Justice a draft veto statement. Please provide appropriate edits, if any.

Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:

SS

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

1983 MAY 26 PM 1:34

MAY 26 1983

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 653 - Foundation for the Advancement of Military Medicine Act of 1983
Sponsors - Senator Jackson (D) Washington and 6 others

Last Day for Action

May 28, 1983 - Saturday

Purpose

Establishes a Foundation for the Advancement of Military Medicine.

Agency Recommendations

Office of Management and Budget	Approval (Signing Statement attached)
Department of Defense	Approval
Office of Personnel Management	Approval
Department of Health and Human Services	No objection (Informal)
Department of Justice	Disapproval (Veto Message attached)

Discussion

S. 653 would establish the Foundation for the Advancement of Military Medicine, a nonprofit, charitable corporation designed to enhance the programs of the Uniformed Services University of the Health Sciences. The Uniformed Services University, a component of the Department of Defense, trains medical officers for the Uniformed Services and provides continuing education for military members of the health professions. The Foundation, which would solicit funds from a variety of sources including contracts and grants, would (1) participate in cooperative medical research and education projects with the Uniformed Services University; (2) serve as a focal point for the interchange between military and civilian medical personnel, and (3) encourage the participation of medical and other biomedical sciences in the work of the Foundation.

12

The enrolled bill would authorize the Board of Regents of the Uniformed Services University to contract with the Foundation and other nonprofit entities in the areas of medical research and education, to provide support services to the Foundation, and to enter into agreements with the Foundation or other nonprofit entities for the services of scientists and other personnel. The basic purpose underlying the Foundation, as the Senate Armed Services Committee report notes, would be to obtain funds and other types of assistance from nongovernmental sources and channel them through the Foundation to the University.

Activities of the Foundation would be subject to the oversight of a Council of Directors to be composed of the Chairmen and ranking minority members of the House and Senate Armed Services Committees and the Dean of the Uniformed Services University, all serving as ex officio members, and four additional persons to be appointed by the ex officio members. S. 653 explicitly states that the Foundation "shall not for any purpose be an agency or instrumentality of the United States Government." It would also prohibit any Federal employee from being an employee of the Foundation.

The Administration has previously supported enactment of S. 653. In fact, Defense prepared a draft report to the Senate Armed Services Committee which it submitted to OMB for review and coordination. At that time, the report was circulated to Justice and other agencies for review on an expedited basis. All agencies agreed with the substance of the report, which strongly supported S. 653, and it was cleared for transmittal to the Hill. Notwithstanding its earlier review and concurrence, Justice has reconsidered its position and has now determined that the Council of Directors and its relationship with the Uniformed Services University violate the Separation of Powers provisions of the Constitution. Accordingly, it recommends veto.

As stated in the Senate Armed Services Committee Report on S. 653, the composition of the Council is designed to ensure "that the Congress will remain involved in the purposes, direction and supervision of the Foundation." Justice notes in its enrolled bill views letter that the Constitution requires that once a law is enacted it must be enforced or interpreted by either the Executive or the Judicial branch. Allowing the Congress to appoint the officers who carry out the legal responsibilities of the Foundation and remain involved in its direction and supervision, rather than reserving for the President the right to appoint its members, constitutes a violation of the principle of the Separation of Powers.

Justice also notes that the function of directing and supervising the Foundation constitutes the holding of an Office of the United States, the exercise of which by Members of Congress violates the Constitution.

Finally, Justice notes that the assertion in the bill that the Foundation "is not an agency or instrumentality of the United States Government" is not sufficient to negate the fact that the Foundation is to be directed and supervised by the Congress.

Given the Administration's earlier support of this bill, it is particularly unfortunate that the constitutional issues contained in S. 653 were not presented to Congress before the bill reached you for action. We share Justice's concern that endorsement of the appointment clause violations of S. 653 could undermine ongoing efforts by the Administration to have similar provisions in other, more significant legislation eliminated. In particular, the Administration has attempted to have similar unconstitutional provisions deleted from the pending State Department authorization bill, which provides for the establishment of the National Endowment for Democracy. Justice, working with OMB, State, USIA, and NSC, has prepared a constitutional alternative which has been provided to Congressman Fascell, who is designated by name in the bill as the interim Chairman of the National Endowment for Democracy.

Given the fact that Justice in its initial review of the bill pronounced it constitutional and on that basis the Administration supported its enactment, we recommend approval of the enrolled bill. However, in signing S. 653, we recommend that you express concern regarding the unconstitutional provisions of the bill and urge the Congress to work with the Administration to enact promptly legislation which will eliminate the constitutional problem. We have talked with the sponsors of the bill and they have agreed to work with the Administration to give full and fair consideration to legislative changes that will address the constitutional concerns.

Attached for your consideration is a draft signing statement.

The enrolled bill passed the Senate by voice vote and the House by a vote of 295 to 0.

David A. Stockman

Attachments

STATEMENT BY THE PRESIDENT

I have signed today S. 653, 98th Congress, 1st Session, "To amend title 10, United States Code, to establish a Foundation for the Advancement of Military Medicine, and for other purposes."

The bill establishes a Foundation to perform a variety of functions that are within the scope of those vested by statute in Uniformed Services University of the Health Sciences. Although not mentioned in the bill's statement of purposes, the Senate Committee report indicates that the Foundation would be designed primarily to receive gifts, grants, and legacies from private sources and channel them to the University, and thus to further the University's teaching, research, and services without additional government expenditures. I am in full sympathy with this worthy purpose behind the bill.

The bill provides, however, that of the nine members of the Council of Directors, the governing body of the Foundation, four ex officio members of the Council are to be Members of Congress and the four operating members of the Council are in effect to be appointed by the Congressional members.

The Attorney General has advised me that this reservation by Congress of the power to appoint the officers who are to discharge the legal responsibilities of the Foundation with the intent to remain involved in the direction and supervision of the Foundation constitutes a violation of the principle of the Separation of Powers. The Separation of Powers requires that after a statute has been enacted by the legislature it may be enforced or interpreted only by the Executive or Judicial branches.

I fully support proper effort to shift to the private sector some of those functions and funding methods which are now being performed by the Government. However, this valid and worthy objective should be carried forward consistent with the principle of the Separation of Powers under our Constitution. In this regard, the sponsors of the legislation have agreed to work with the Administration to give full and fair consideration to legislative changes that will address our constitutional concerns. Accordingly, with this understanding, I have approved S. 653.

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 20, 1983

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

In compliance with your request, this Department has examined a facsimile of the enrolled bill, S. 653, 98th Cong., 1st Sess., "The Foundation for the Advancement of Military Medicine Act of 1983." Because we believe the bill to be an unconstitutional abridgment of the principle of separation of powers, we recommend against Executive approval of the bill.

The bill would establish the Foundation for the Advancement of Military Medicine (the "Foundation") to contract with the Uniformed Services University of the Health Sciences (a military medical school established by 10 U.S.C. § 2112) (the "University") to "carry out medical research and education projects," to "serve as a focus for the interchange between military and civilian personnel," and to encourage cooperation between military and civilian medicine -- in short, to perform functions that are within the scope of the authority vested by statute in the University. See 10 U.S.C. §§ 2112-2117. Although not mentioned in the statement of purposes in the bill, the primary purpose underlying creation of the Foundation, as evidenced by the Senate Committee report, was to obtain funds and other types of assistance from nongovernmental sources and channel them to the University. S. Rep. No. 39, 98th Cong., 1st Sess. 2, 3, 7 (1983). As the Senate Committee report states, the Foundation would be patterned after the American Registry of Pathology (Registry) (10 U.S.C. § 177), which provides similar functions with respect to the Armed Forces Institute of Pathology. 10 U.S.C. § 176. S. Rep. No. 39, 98th Cong., 1st Sess. 2, 7 (1983). The bill recites that, like the Registry, the Foundation would "not for any purpose be an Agency or instrumentality of the United States Government." 10 U.S.C. § 178(a), as added by § 2(a) of the bill.

The Foundation, however, would differ in one significant aspect from the Registry. While 10 U.S.C. § 177 does not provide for congressional participation in the composition and selection of the Registry's governing board, 10 U.S.C. § 178(a), as added by § 2(a) of the bill, would provide specifically:

(C)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the 'Council') composed of --

(A) the Chairman and ranking minority members of the Committee on Armed Services of the Senate and the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,

(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and

(C) four members appointed by the ex officio members of the Council designated in clauses (A) and (B).

The Foundation thus would be governed by a Council of nine members, consisting of five ex officio members, four of whom would be Members of Congress. The five ex officio members would then appoint the other four members of the Council. The purpose of this provision is, as evidenced by the Senate Committee report, to ensure "that the Congress will remain involved in the purposes, direction and supervision of the Foundation." S. Rep. No. 39, 98th Cong., 1st Sess. 2 (1983).

The exercise of direction and supervision over the Foundation by a branch of the Federal Government plainly negates the statutory assertion that the Foundation would not be an agency or instrumentality of the United States Government. Reciting the verbal incantation that an entity is not an agency of the United States does not ipso facto validate that conclusion if the entity meets the traditional tests for determining whether an entity is an agency of the United States. Moreover, to place this exercise of direction and supervision in Members of Congress and persons appointed by them violates the doctrine of the separation of powers, which, as James Madison observed during the First Session of the First Congress, is the most sacred principle of our Constitution, 1 Annals of Cong. 581 (1789), and which the Supreme Court most recently termed the basic structural doctrine of the Constitution. Northern Pipeline Construction Co. v. Marathon Pipeline Company, ___ U.S. ___, 102 S.Ct. 2858, 2864-66 (1982). One of the elements of that doctrine is, as James Madison also observed, that once Congress enacts a statute "the legislative power ceases" except, of course, by the exercise of plenary legislation subject to the President's veto. After a bill has

become law, it must be enforced or interpreted by one of the other branches. The Framers of our Constitution believed that "[t]here can be no liberty where the legislative and executive power are united in the same person, or body of magistrates. . . . The Federalist No. 47, (Madison, quoting Montesquieu). Accordingly, if the Government of the United States is to be involved at all in the direction, supervision or management of the Foundation, those functions would have to be carried out by Executive officers who must be appointed as provided for in Article II, § 2, cl. 2 of the Constitution, and who may not be designated in legislation or appointed by Members of Congress. Buckley v. Valeo, 424 U.S. 1, 126, 141 (1976). Moreover, the function of directing and supervising the Foundation would constitute the holding of an Office under the United States, the exercise of which by Members of Congress would violate the command of Art. I, § 6, cl. 2 of the Constitution.

Finally, the Congressional direction and supervision which, in effect, makes the Foundation an arm of Congress, would not be limited to the Foundation itself. Since it is a function of the Foundation to channel private funds to the Uniformed Services University of the Health Sciences, the Foundation could, by the exercise of its economic power, control the administration and policies of the Uniformed Services University which constitutes a part of the Executive branch.*/ This again would constitute a violation of the doctrine of separation of powers.

It may well be asserted that this bill would represent only minor encroachments on the principle of the separation of powers, and that major responsibility would not be transferred by it from the President to the Congress. However, we return again to Madison who reminded his fellow citizens nearly two hundred years ago:

> "[I]t is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freedom of America did not wait till usurped power had strengthened itself by exercise, and entangled the

*/ We realize that Congress generally has the power of the purse. That power, however, has to be exercised by appropriate legislation which is subject to the Presidential veto; here the power would be vested in the Chairmen and ranking minority members of two Congressional committees.

question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it." James Madison, A Memorial and Remonstrance, Addressed to the General Assembly of the Commonwealth of Virginia (1785).

The mechanisms established by this proposed legislation could be employed to transfer other kinds of governmental authority from the President to members of Congress. We believe that defense of the Presidency itself requires disapproval of this legislation.

For the above reasons, the Department of Justice recommends against Executive approval of the bill.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

To the United States Senate:

I have withheld my approval from S. 653, 98th Cong., 1st Sess., "To amend title 10, United States Code, to establish a Foundation for the Advancement of Military Medicine, and for other purposes."

The bill would establish a Foundation to perform a variety of functions that are within the scope of those vested by statute in the Uniformed Services University of the Health Sciences. Although not mentioned in the bill's statement of purposes, the Senate Committee report indicates that the Foundation was primarily designed to receive gifts, grants, and legacies from private sources and channel them to the University, and thus to further the University's teaching, research, and services without additional government expenditures. I am in full sympathy with this worthy purpose behind the bill.

The bill provides, however, that of the nine members of the Council of Directors, the governing body of the Foundation, four ex officio members of the Council would be Members of Congress and the four operating members of the Council would, in effect, be appointed by the Congressional members. The purpose of this composition of the Council is, as stated in the report of the Senate Committee on Armed Services, to ensure "that the Congress will remain involved in the purposes, direction and supervision of the Foundation."

The Attorney General has advised me that this reservation by Congress of the power to appoint the officers who would discharge the legal responsibilities of the Foundation and to remain involved in the direction and supervision of the Foundation constitutes a serious violation of the principle of the Separation of Powers, which as James Madison, the

Father of our Constitution, stated during the First Session of the First Congress, is the most sacred principle of our Constitution. The Separation of Powers requires that after a statute has been enacted by the legislature it may be enforced or interpreted only by the Executive or Judicial branches. As James Madison, quoting Montesquieu, stated: "'[t]here can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates.'" The Federalist, No. 47. A bill which is designed to ensure that Congress will remain directly involved in the purposes, direction and supervision of a body created by legislation, and thereby in the execution of the law, constitutes a clear violation of that principle.

It might be argued that this bill constitutes only a minor infraction of the principle of the Separation of Powers. But here I must quote again from James Madison, this time from his Memorial and Remonstrance, Addressed to the General Assembly of the Commonwealth of Virginia:

> "[I]t is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freedom of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it."

I fully support proper effort to shift to the private sector some of those functions and fundings methods which are now being performed by the Government. However, this valid

and worthy objective may not provide justification for the selection of an improper mechanism.

It is my hope that I shall have in the near future the opportunity to approve legislation analogous to S. 653, which does not contain the unconstitutional provision.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 27, 1983

STATEMENT BY THE PRESIDENT

I have signed today S. 653, which amends title 10, United States Code, to establish a Foundation for the Advancement of Military Medicine, and for other purposes.

The bill establishes a Foundation to perform a variety of functions that are within the scope of those vested by statute in Uniformed Services University of the Health Sciences. Although not mentioned in the bill's statement of purposes, the Senate Committee report indicates that the Foundation would be designed primarily to receive gifts, grants, and legacies from private sources and channel them to the University, and thus to further the University's teaching, research, and services without additional government expenditures. I am in full sympathy with this worthy purpose behind the bill.

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I fully support proper effort to shift to the private sector some of those functions and funding methods which are now being performed by the Government. However, this valid and worthy objective should be carried forward consistent with the principle of the Separation of Powers under our Constitution. In this regard, the sponsors of the legislation have agreed to give full and fair consideration to constitutional concerns. Accordingly, with this understanding, I have approved S. 653.

# # # # #

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill H.R. 2681 -- Amendments of the Securities Exchange Act of 1934

Richard Darman has requested comments by close of business Friday, June 3 on the above-referenced enrolled bill. The bill would amend the Securities Exchange Act of 1934 to:

- permit SEC members and employees to accept travel and related expenses from non-government sources for attending securities-related meetings and conferences,
- authorize SEC "fellows" to accept relocation expenses from their former employers (as White House fellows may do under a similar exception to the conflicts laws),
- establish SEC fees at a uniform rate of 1/50 of 1% of the value of a proposed transaction,
- require independent securities dealers to belong to a registered dealer association (the National Association of Securities Dealers is the only such entity), and
- provide that an individual is not ineligible to serve on the Municipal Securities Rulemaking Board simply because the insurance company he represents is part of a holding company with a securities-related affiliate.

These amendments were requested by the SEC, and the SEC and OMB recommend approval. OPM and Commerce do not object, Treasury has no comment, and Justice defers. I am not entirely comfortable with the ad hoc exception to the conflicts rules established in the first provision, since the arguments in support of it prove too much and would justify abandoning the general rules as readily as creating an exception. I also share the concern informally expressed by Justice that the securities dealer provision will establish NASD as a monopoly with the potential for abuse. None of these qualms rise to a level that would counsel Presidential disapproval, however, and I have accordingly prepared a no objection memorandum for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

June 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

ORIGINAL SIGNED BY F.F.F.

SUBJECT: Enrolled Bill H.R. 2681 -- Amendments of the Securities Exchange Act of 1934

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

FFF:JGR:aw 6/3/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2681 -- Amendments of the Securities Exchange Act of 1934

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

FFF:JGR:aw 6/3/83

cc: FFFielding
JGRoberts
Subj.
Chron

ID # 125347 CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Richard G. Darman

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Enrolled Bill H.R. 2681 -- Amendments of the Securities Exchange Act of 1934

ROUTE TO: | **ACTION** | **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CWHolland	ORIGINATOR	831061 02			1 1
	Referral Note:				
CWAT 18	D	831061 02		S	831061 03
	Referral Note:				
		1 1			1 1
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		1 1			1 1
	Referral Note:				
		1 1			1 1
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ACTION CODES:
A - Appropriate Action
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DISPOSITION CODES:
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C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

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Document No. 125347 SS

WHITE HOUSE STAFFING MEMORANDUM

DATE: June 1, 1983 ACTION/CONCURRENCE/COMMENT DUE BY: COB FRIDAY June 3, 1983

SUBJECT: Enrolled Bill H.R. 2681 -- Amendments of the Securities Exchange Act of 1934

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☑	☐
MEESE	☐	☑	HARPER	☐	☐
BAKER	☐	☑	HERRINGTON	☐	☐
DEAVER	☐	☑	JENKINS	☐	☐
STOCKMAN	☐	☐	MURPHY	☐	☐
CLARK	☐	☐	ROLLINS	☐	☐
DARMAN	☐P	☑SS	VERSTANDIG	☐	☐
DUBERSTEIN	☑	☐	WHITTLESEY	☐	☐
FELDSTEIN	☑	☐	BRADY/SPEAKES	☐	☑
FIELDING	☑	☐	ROGERS	☐	☐
FULLER	☑	☐	_____	☐	☐

REMARKS:

Please forward comments on this enrolled bill by close of business Friday, June 3.

Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

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

JUN - 1983

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2681 - Amendments of the Securities Exchange Act of 1934
Sponsors - Rep. Dingell (D) Michigan and three others

Last Day for Action

June 7, 1983 - Tuesday

Purpose

Amends the Securities Exchange Act of 1934.

Agency Recommendations

Office of Management and Budget	Approval
Securities and Exchange Commission	Approval (Informally)
Department of Commerce	No objection
Office of Personnel Management	No objection
Department of Justice	Defers
Department of the Treasury	No comment

Discussion

H.R. 2681 amends the Securities Exchange Act in several respects. These amendments, which were sought by the Securities and Exchange Commission (SEC), are summarized and discussed below.

Reimbursement for expenses incurred in attending meetings and conferences

According to the report of the House Committee on Energy and Commerce on H.R. 2681, proper administration of the Federal securities laws depends in part on an informed securities industry. One way to help insure an informed industry is to encourage members and employees of the SEC to attend securities-related meetings and conferences. Funds available to the SEC for travel and related expenses are limited, however, and

current interpretations of Federal conflict of interest statutes severely restrict the circumstances under which SEC members and employees may accept reimbursement from non-Federal sources for expenses incurred in attending securities-related meetings and conferences.

The enrolled bill authorizes the SEC to accept payment or reimbursement, in cash or in-kind, from non-Federal organizations for travel and related expenses incurred by members and employees of the SEC in attending meetings and conferences concerning functions or activities of the SEC. The Office of Personnel Management has expressed concern about the potential for the misuse of this authority. We note, however, that H.R. 2681 will require the SEC to promulgate regulations to guard against conflicts of interest in the operation of the program.

SEC "fellows" expenses

The SEC currently runs two "fellows" programs, one for accountants and one for attorneys. Participants in the fellows programs are required to sever all ties with former private sector employers before joining the SEC and are subject to all Federal conflict of interest rules.

Until 1978, it was customary practice for former private sector employers of SEC fellows to pay the fellows' expenses incurred in relocating to Washington, D.C. In 1978, however, the Justice Department determined that this practice ran afoul of the Federal conflict of interest statute. Congress amended the conflict of interest statute in 1979 to permit former employers of White House and Presidential fellows to pay the fellows' actual relocation expenses to Washington, D.C. This amendment was not made applicable to the SEC fellows program, however.

H.R. 2681 will allow former employers of SEC fellows to pay actual expenses incurred by SEC fellows in relocating to Washington, D.C. According to the committee report, this amendment is intended to assist the SEC in recruiting the most qualified candidates for participation in the fellows program.

SEC fee equalization

The fees that the SEC charges for the registration of securities vary. For some transactions, the SEC is authorized by statute to charge up to 1/50 of 1% of the value of a particular transaction. For other transactions, involving comparable amounts of paperwork, the SEC is not authorized to levy a fee. The enrolled bill equalizes all the SEC's processing fees at 1/50 of 1%. As a result of this provision, the Treasury could receive up to $7.4 million a year.

Elimination of "SECO" program

Under present law, most (i.e., 88%) of the dealers in over-the-counter securities are subject to self-regulation through membership in the National Association of Securities Dealers (NASD). Dealers who have chosen not to join the NASD are regulated directly by the SEC in the so-called "SECO" ("SEC only") program. In order to increase self-regulation and reduce administrative burdens on the SEC, H.R. 2681 would generally make it unlawful for a broker or dealer to deal in securities unless the broker or dealer is a member of a securities association registered with the SEC. (NASD is the only association so registered.) The SEC would be authorized to waive this requirement in appropriate circumstances.

This amendment would have the effect of terminating the SECO program, resulting in administrative savings to the SEC of about $435,000. Loss of fees paid by SECO participants to the Treasury will generally offset the savings to the SEC.

Informally, Justice has indicated concern that elimination of the SECO program could have an anticompetitive effect since securities dealers will be able to register with only one organization, NASD, in order to deal legally in securities. Justice acknowledges, however, that there is nothing in existing law or the enrolled bill to prevent the formation of another securities organization if conditions should so dictate. Also, as stated in a colloquy on the House floor, the SEC will continue to exercise its oversight of the NASD.

Representation on the Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board was established in 1975 to prescribe rules for the registration and regulation of municipal securities dealers. The Board's membership is comprised of fifteen representatives of securities firms, banks, and the public. Of the five public members, none may be associated with any broker or dealer in municipal securities.

The enrolled bill clarifies present law governing membership on the Board to allow a representative of an insurance company -- who might not otherwise qualify because the insurer is part of a holding company that also has a securities-related affiliate -- to sit on the Board. The amendment is intended to ensure that all representatives of the investment community have an opportunity to take part in the work of the Board.

* * * * *

H.R. 2681 passed the House by a vote of 361 - 63. It passed the Senate by voice vote.

(Signed) James M. Frey

Assistant Director for
Legislative Reference

Enclosures

Ninety-eighth Congress of the United States of Ameri

AT THE FIRST SESSION

Begun and held at the City of Washington on Monday, the third day of January, one thousand nine hundred and eighty-three

An Act

To make certain amendments to sections 4, 13, 14, 15, and 15B of the Securities Exchange Act of 1934.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end thereof the following new subsections:

"(c) Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

"(d) Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.".

SEC. 2. (a) Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end thereof the following new paragraph:

"(3) At the time of filing such statement as the Commission may require by rule pursuant to paragraph (1) of this subsection, the person making the filing shall pay to the Commission a fee of 1/50 of 1 per centum of the value of securities proposed to be purchased. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to any securities issued in connection with the proposed transaction under section 6(b) of the Securities Act of 1933, or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this paragraph.".

(b) Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end thereof the following new subsection:

"(g)(1)(A) At the time of filing such preliminary proxy solicitation material as the Commission may require by rule pursuant to subsection (a) of this section that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the

assets of a company, the person making such filing, other than a company registered under the Investment Company Act of 1940, shall pay to the Commission the following fees:

"(i) for preliminary proxy solicitation material involving an acquisition, merger, or consolidation, if there is a proposed payment of cash or transfer of securities or property to shareholders, a fee of 1/50 of 1 per centum of such proposed payment, or of the value of such securities or other property proposed to be transferred; and

"(ii) for preliminary proxy solicitation material involving a proposed sale or other disposition of substantially all of the assets of a company, a fee of 1/50 of 1 per centum of the cash or of the value of any securities or other property proposed to be received upon such sale or disposition.

"(B) The fee imposed under subparagraph (A) shall be reduced with respect to securities in an amount equal to any fee paid to the Commission with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection. Where two or more companies involved in an acquisition, merger, consolidation, sale, or other disposition of substantially all the assets of a company must file such proxy material with the Commission, each shall pay a proportionate share of such fee.

"(2) At the time of filing such preliminary information statement as the Commission may require by rule pursuant to subsection (c) of this section, the issuer shall pay to the Commission the same fee as required for preliminary proxy solicitation material under paragraph (1) of this subsection.

"(3) At the time of filing such statement as the Commission may require by rule pursuant to subsection (d)(1) of this section, the person making the filing shall pay to the Commission a fee of 1/50 of 1 per centum of the aggregate amount of cash or of the value of securities or other property proposed to be offered. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection.

"(4) Notwithstanding any other provision of law, the Commission may impose fees, charges, or prices for matters not involving any acquisition, merger, consolidation sale, or other disposition of assets described in this subsection, as authorized by section 9701 of title 31, United States Code, or otherwise.".

SEC. 3. (a) Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended—

(1) by striking out paragraph (8) and inserting in lieu thereof the following:

"(8) It shall be unlawful for any broker or dealer required to register pursuant to this title to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section

15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member."; and

(2) by striking out paragraph (9) and inserting in lieu thereof the following:

"(9) The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order."

(b) The amendments made by subsection (a) shall become effective six months after the date of enactment of this Act.

SEC. 4. (a) Section 15B(b)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)(1)) is amended by inserting immediately after "securities dealer" the following: "(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)".

(b) Section 15B(b)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)(2)(B)) is amended by inserting immediately after "broker, dealer, or municipal securities dealer" the following: "(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release June 7, 1983

The President has signed H.R. 2681 which amends the Securities Exchange Act of 1934.

###

THE WHITE HOUSE

Office of the Press Secretary

FOR RELEASE AT 10:00 A.M. EDT June 22, 1983

STATEMENT BY THE PRESIDENT

I'm delighted today to take the first step toward what will be for all Americans a proud and joyous moment: the celebration of the 25th anniversary of Alaska's statehood. Alaska was admitted to the Union on January 3, 1959; then, as now, Alaska was a treasure house of natural resources and a State of undisturbed vistas and incomparable beauty.

In many ways, the story of Alaska and her people is America's story, the struggle of courageous men and women with a wild and bounteous frontier. Today the State of Alaska reminds us of this rich heritage and our own continuing efforts toward developing a Nation while seeking to preserve its irreplaceable beauty and resources.

The resolution which I am signing speaks of Alaska's material wealth. It notes that Alaska provides one-eighth of the Nation's gold, one-fifth of its oil production and two-fifths of its harvested fish. Alaska possesses ten of the sixteen vital materials needed for the Nation's security and all of this has resulted in the national treasury collecting $3 for every $1 of Federal money that is spent in this rich and vital State.

As the resolution notes, the United States has reaped economic rewards from Alaska many times greater than its original $7 million investment. But Alaska's contribution to our Nation goes far beyond this. All Americans benefit from the commitment and courage, the vitality and frontier spirit of the people of Alaska. Alaskans and Alaska remain an inspiration to all Americans and a reminder of the richness, diversity, and beauty of America's heritage.

Today, with the sponsors of this resolution, Senators Stevens and Murkowski and Congressman Young, I call on all Americans and all levels of government to join with me in celebrating Alaska Statehood Day with appropriate ceremonies and recognition.

# # #

(The President signed S.J. Res. 42, in the presence of the Alaska Delegation, designating January 4, 1984 as the 25th Anniversary of Alaska's Statehood.)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Administration Position on H.R. 2053 -- "Air Travelers Security Act" (Anderson) [Senate Version: S. 746 (Warner)]

Richard Darman has asked for comments by 5:00 p.m. today on a proposed letter from David Stockman expressing the Administration's opposition to H.R. 2053. This bill would overturn the CAB's recent decision withdrawing antitrust immunity from the exclusivity clause in the airline-ticket agent conference agreements. Those agreements establish the various means for ticketing by travel agents, transfer of funds to the airlines, and so on. The agreements require the airlines to sell tickets only through travel agents "accredited" by the conference. Last December the CAB upheld the bulk of the conference agreements, but did not approve the exclusivity clause, thereby subjecting it to antitrust challenge. The American Society of Travel Agents has succeeded in having a bill to overturn the decision introduced, and the Administration has been asked for its views.

The draft letter from Stockman opposes the bill and the exclusivity clause it would protect as anti-competitive. The letter notes that the asserted benefits of the other provisions in the conference agreements may be preserved without the anti-competitive exclusivity clause. I see no legal objections. The proposed position is fully consistent with the Administration de-regulation drive.

Attachment

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING FFF/RAA
COUNSEL TO THE PRESIDENT

SUBJECT: Administration Position on H.R. 2053 --
"Air Travelers Security Act" (Anderson)
[Senate Version: S. 746 (Warner)]

Counsel's Office has reviewed the proposed Administration position on H.R. 2053, and finds no objection to it from a legal perspective.

FFF:JGR:aw 6/28/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Administration Position on H.R. 2053 --
"Air Travelers Security Act" (Anderson)
[Senate Version: S. 746 (Warner)]

Counsel's Office has reviewed the proposed Administration position on H.R. 2053, and finds no objection to it from a legal perspective.

FFF:JGR:aw 6/28/83

cc: FFFielding
JGRoberts
Subj.
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Richard G. DARMAN

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Administration Position on H.R. 2053 - "Air Travelers Security Act" (Anderson) [Senate Version: S. 746 (Warner)]

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU	011	ORIGINATOR	83/06/28			/ /
		Referral Note:				
CUAT	18	D	83/06/28		S	83/06/28 5:00pm
		Referral Note:				
			/ /			/ /
		Referral Note:				
			/ /			/ /
		Referral Note:				
			/ /			/ /
		Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: June 25 **ACTION/CONCURRENCE/COMMENT DUE BY:** 5:00 TUESDAY, 6/28

SUBJECT: ADMINISTRATION POSITION ON H.R. 2053 - "AIR TRAVELERS SECURITY ACT" (ANDERSON) [Senate version: S. 746 (Warner)]

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	HARPER	☑	☐
MEESE	☐	☑	HERRINGTON	☐	☐
BAKER	☐	☑	JENKINS	☐	☐
DEAVER	☐	☑	McMANUS	☐	☐
STOCKMAN	☐	☑	MURPHY	☑	☐
CLARK	☑	☐	ROGERS	☐	☐
DARMAN	☐P	☑S	ROLLINS	☐	☐
DUBERSTEIN	☑	☐	VERSTANDIG	☑	☐
FELDSTEIN	☐	☐	WHITTLESEY	☑	☐
FIELDING	☑	☐	BRADY/SPEAKES	☐	☐
FULLER	☑	☐	_____	☐	☐
GERGEN	☑	☐	_____	☐	☐

REMARKS:

Please provide your recommendation by 5:00 p.m. Tuesday, June 28th.

Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

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

June 24, 1983

MEMORANDUM FOR RICHARD DARMAN

FROM: CHRISTOPHER DEMUTH CD

SUBJECT: Administration Position on H.R. 2053, "Air Travelers Security Act" (Glenn Anderson, et al.) [Senate version: S. 746 (Warner)]

Purpose of the Legislation

This bill would reverse a recent decision of the Civil Aeronautics Board that opened the marketing of air transportation tickets to competitive entry and removed the antitrust immunity of marketing agreements among ticket agents and airlines.

Background

The retail sale of air transportation tickets is governed by two "conference agreements" among the airlines and ticket agents, which take the place of the thousands of two-party contracts that would otherwise be required. The agreements, one for domestic and one for international ticketing, establish accreditation standards for travel agents, provide for the transfer of ticket revenues from agents to airlines, and require member airlines to sell their tickets only through travel agents accredited by the conferences. Since all major airlines are conference members, the agreements effectively prevent the marketing of tickets except through conference-accredited agents. Under current law, agreements such as these are immune from the antitrust laws if approved by the CAB, as they have been for many years.

Last December, the CAB disapproved that portion of the conference agreements that prohibit member airlines from using ticket agents other than those accredited by the conferences. The Board found these "exclusivity clauses" anti-competitive and without merit. The Board also found no need to immunize the other aspects of the conference agreements from the antitrust laws. Under this decision, exclusivity clauses covering single-line tickets have already been discontinued. Exclusivity clauses covering joint-line tickets, and general antitrust immunity, will end at the end of 1984.

The CAB decision does not shut down the conferences; it merely exposes their accreditation standards to antitrust scrutiny and opens the door for airlines to employ alternative ticket marketing methods (such as automatic ticket machines) in addition to the agents accredited by the conferences.

Tactical Situation

The principal organized support for H.R. 2053 is from the American Society of Travel Agents. The principal organized opposition is from the business travel departments--who would be free under the Board's decision to negotiate commissions or quantity discounts for their companies, similar to agents' sales commissions.

The Air Transport Association (airlines) has testified in favor of the bill. But the airlines are in fact unenthusiastic about the bill, and no individual firm is working for it. The airlines are afraid of travel agent retaliation if they do not support the bill (agents are adept at "plating away" from disfavored airlines in making bookings).

Because the support for this bill is intense but narrow, the Administration's position is considered critical. If we oppose, we will probably kill the bill, but if we support (or take no position), the bill has a reasonably good chance of passage.

Current Status

The House and Senate Committees have not yet scheduled mark-ups. Chairman Howard in the House has requested an Administration position, and our response is overdue. CAB Chairman McKinnon believes this is one of the major decisions of his tenure and is very anxious that the Administration support him.

Recommendation and Options

OMB recommends that the Administration oppose H.R. 2053, for reasons explained in the attached draft letter. This position is supported by the Departments of State, Justice, and Transportation.

Decision

_____ Oppose bill (OMB recommendation).

_____ Support bill.

Attachment

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

DRAFT

Honorable James Howard
Chairman
Committee on Public Works and Transportation
U. S. House of Representatives
Washington, D. C. 20515

Dear Jim:

This is in response to your request for the Administration's views on H.R. 2053, a bill "[t]o assure the continued protection of the traveling public in the marketing of air transportation, and for other purposes."

The Administration opposes this bill. It is inconsistent with our program to eliminate regulatory barriers to competition, and contrary to the direction set by Congress in the Airline Deregulation Act of 1978--an Act passed with wide bipartisan support.

H.R. 2053 would reverse the Civil Aeronautics Board's recent decision (in the Competitive Marketing Investigation) opening the marketing of air transportation tickets to competitive entry. For many years, conference agreements among the airlines and travel agents have contained "exclusivity clauses" requiring member airlines to market their tickets exclusively through member travel agents. Because all major airlines are members of these conferences, the exclusivity clauses effectively prevent the marketing of tickets except through conference-accredited agents. While the conference agreements as a whole appear to provide substantial economies in ticket marketing, the exclusivity clauses are fairly clear violations of the antitrust laws and could not be maintained absent CAB approval and resulting antitrust immunity.

In reaching its recent decision, the Board found that the exclusivity clauses were anti-competitive and unnecessary to provide the benefits of the conference system. It also found that the conference agreements were not per se anti-competitive, but that their provisions should face the same antitrust scrutiny as similar agreements among competitors in other industries. Based on these findings, the Board withdrew its approval of exclusivity clauses applied to single-line tickets immediately, and announced that its approval of exclusivity clauses applied to joint-line tickets, and antitrust immunity generally, would be withdrawn at the end of 1984--a delay that will permit an orderly transition from regulated to competitive ticket marketing.

DRAFT

Section 412 of the Federal Aviation Act requires the CAB to disapprove any agreement unless it finds that the agreement "is necessary to meet a serious transportation need or to secure important public benefits. . . , and it does not find that such need can be met or such benefits secured by reasonably available alternative means having materially less anti-competitive effects." In the 40,000 pages of testimony and exhibits of the Competitive Marketing Investigation, the Board could find no compelling evidence that travel agent exclusivity provided an important public benefit not otherwise available. Instead, the Board found that exclusivity only protected the travel agents from other forms of competition, such as discount ticket offices or automatic ticketing machines. The Board members concluded, and we agree, that Section 412 and good public policy required the Board to discontinue exclusivity. Their decision will subject the sale of air transportation to the tests of market competition. We expect that the economic benefits of the free market experienced in other deregulated industries will be repeated in the marketing of air transportation.

By phasing out exclusivity, the Board is not destroying the travel agent system. In fact, the Board approved the common accreditation system and the area settlement plan. The standards for accreditation relating to competency, honesty, security, and location have not changed at all. The Board did question whether some of those standards were too stringent, but left that for the airlines and the agents to examine.

The benefits of the conference system will continue without antitrust immunity because both the airlines and the travel agents have strong incentives for continuing it. No other mechanism provides the airlines with comparable market access, or provides ticket agents with a comparable scope of transportation alternatives. By eliminating the need for every airline to negotiate with every travel agent, the conferences reduce the marketing cost of air transportation. They can continue to provide this service without exclusivity or antitrust immunity.

We believe the Board made the right decision--one that is not only consistent with, but essential to, the policy set by Congress in the Airline Deregulation Act of 1978. The Administration is strongly opposed to H.R. 2053 or any similar attempt to reverse the Board's decision.

Sincerely,

David A. Stockman
Director

THE WHITE HOUSE

WASHINGTON

June 30, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Message to Congress Under the Impoundment Control Act of 1974

Attached is the proposed ninth special message for 1983 under the Impoundment Control Act of 1974, 2 U.S.C. §§ 683, 684 (copies attached). The message advises Congress of a proposed rescission and four deferrals of budget authority. Our office normally does not review such messages, but is reviewing this one since it is the first one after Chadha.

Under 2 U.S.C. § 683, the President may propose rescissions of budget authority, but such rescissions are ineffective unless Congress passes a bill agreeing to the proposal within 45 days. This is not a legislative veto, since the required Congressional action is passage of a bill through both Houses, which bill would then be presented to the President. The President has no independent authority to rescind budget items. The language in the message, referring to a proposed rescission, is thus consistent with Chadha. The Office of Legal Counsel ("OLC") advises that it concurs in this assessment.

Deferrals are subject to a one-house legislative veto under 2 U.S.C. § 684. OLC advises that the legislative veto provision, § 684(b), is severable from the deferral authority. The message refers to deferrals, not proposed deferrals, consistent with the view that the legislative veto provision is invalid and severable. OLC has no objection to the message.

I recommend approving the message as written. It was obviously drafted with sensitivity to the legislative veto issue.

Attachment

THE WHITE HOUSE

WASHINGTON

June 30, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Message to Congress Under the Impoundment Control Act of 1974

Counsel's Office has reviewed the proposed message, and finds no objection to it from a legal perspective. The message is consistent with the Supreme Court's decision in INS v. Chadha, and has been approved by the Department of Justice.

RAH:JGR:aw 6/30/83

cc: RAHauser
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 30, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Message to Congress Under the Impoundment Control Act of 1974

Counsel's Office has reviewed the proposed message, and finds no objection to it from a legal perspective. The message is consistent with the Supreme Court's decision in INS v. Chadha, and has been approved by the Department of Justice.

RAH:JGR:aw 6/30/83

cc: RAHauser
JGRoberts
Subj.
Chron

§ 682. Definitions

For purposes of sections 682 to 688 of this title—

(1) "deferral of budget authority" includes—

(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law;

(2) "Comptroller General" means the Comptroller General of the United States;

(3) "rescission bill" means a bill or joint resolution which only rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 683 of this title, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress;

(4) "impoundment resolution" means a resolution of the House of Representatives or the Senate which only expresses its disapproval of a proposed deferral of budget authority set forth in a special message transmitted by the President under section 684 of this title; and

(5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in paragraph (3) of this section and in section 683 of this title, and the 25-day periods referred to in sections 687 and 688(b)(1) of this title. If a special message is transmitted under section 683 of this title during any Congress and the last session of such Congress adjourns sine die before the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in paragraph (3) of this section and in section 683 of this title (with respect to such message) shall commence on the day after such first day.

Pub.L. 93–344, Title X, § 1011, July 12, 1974, 88 Stat. 333.

Codification. This section was formerly classified to section 1401 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub.L. 97–258, § 1, Sept. 13, 1982, 96 Stat. 877.

Effective Date. Section effective July 12, 1974, see section 905 of Pub.L. 93–344, set out as an Effective Date note under section 621 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–344, see 1974 U.S.Code Cong. and Adm.News, p. 3462.

Library References

Constitutional Law ⇐58, 77.
United States ⇐41, 82.
C.J.S. Constitutional Law §§ 130 et seq., 169, 170.
C.J.S. United States §§ 41, 122.

§ 683. Rescission of budget authority

Transmittal of special message

(a) Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying—

(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

(3) the reasons why the budget authority should be rescinded or is to be so reserved;

(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

Requirement to make available for obligation

(b) Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved.

Pub.L. 93–344, Title X, § 1012, July 12, 1974, 88 Stat. 333.

Codification. This section was formerly classified to section 1402 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub.L. 97–258, § 1, Sept. 13, 1982, 96 Stat. 877.

Effective Date. Section effective July 12, 1974, see section 905 of Pub.L. 93–344, set out as an Effective Date note under section 621 of this title.

Fiscal Year Transition Period of July 1, 1976, through September 30, 1976, Deemed Part of Fiscal Year Beginning July 1, 1975. Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning July 1, 1975, for purposes of this section see section 204(12) of Pub.L. 94–274, Title II, Apr. 21, 1976, 90 Stat. 392, set out as a note under section 390e of Title 7, Agriculture.

Legislative History. For legislative history and purpose of Pub.L. 93–344, see 1974 U.S.Code Cong. and Adm.News, p. 3462.

§ 684. Disapproval of proposed deferrals of budget authority

Transmittal of special message

(a) Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying—

(1) the amount of the budget authority proposed to be deferred;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;

(3) the period of time during which the budget authority is proposed to be deferred;

(4) the reasons for the proposed deferral, including any legal authority invoked by him to justify the proposed deferral;

(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority and specific elements of legal authority invoked by him to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

Requirement to make available for obligation

(b) Any amount of budget authority proposed to be deferred, as set forth in a special message transmitted under subsection (a) of this section, shall be made available for obligation if either House of Congress passes an impoundment resolution disapproving such proposed deferral.

Exception

(c) The provisions of this section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 683 of this title.

Pub.L. 93–344, Title X, § 1013, July 12, 1974, 88 Stat. 334.

Codification. This section was formerly classified to section 1403 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub.L. 97–258, § 1, Sept. 13, 1982, 96 Stat. 877.

Effective Date. Section effective July 12, 1974, see section 905 of Pub.L. 93–344, set out as an Effective Date note under section 621 of this title.

Fiscal Year Transition Period of July 1, 1976, through September 30, 1976, Deemed Part of Fiscal Year Beginning July 1, 1975. Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning July 1, 1975, for purposes of this section, see section 204(12) of Pub.L. 94–274, Title II, Apr. 21, 1976, 90 Stat. 392, set out as a note under section 390e of Title 7, Agriculture.

Legislative History. For legislative history and purpose of Pub.L. 93–344, see 1974 U.S.Code Cong. and Adm.News, p. 3462.

§ 685. Transmission of messages; publication

Delivery to House and Senate

(a) Each special message transmitted under section 683 or 684 of this title shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committee of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

Delivery to Comptroller General

(b) A copy of each special message transmitted under section 683 or 684 of this title shall be transmitted to the Comptroller General on the same day it is transmitted to the House of Representatives and the Senate. In order to assist the Congress in the exercise of its functions under sections 683 and 684 of this title, the Comptroller General shall review each such message and inform the House of Representatives and the Senate as promptly as practicable with respect to—

(1) in the case of a special message transmitted under section 683 of this title, the facts surrounding the proposed rescission or the reservation of budget authority (including the probable effects thereof); and

(2) in the case of a special message transmitted under section 684 of this title, (A) the facts surrounding each proposed deferral of budget authority (including the probable effects thereof) and (B) whether or not (or to what extent), in his judgment, such proposed deferral is in accordance with existing statutory authority.

Transmission of supplementary messages

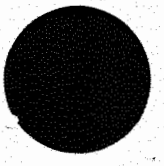
(c) If any information contained in a special message transmitted under section 683 or 684 of this title is subsequently revised, the President shall transmit to both Houses of Congress and the Comptroller General a supplementary message stating and explaining such revision. Any such supplementary message shall be delivered, referred, and printed as provided in subsection (a) of this section. The Comptroller General shall promptly notify the House of Representatives and the Senate of any changes in the information submitted by him under subsection (b) of this section which may be necessitated by such revision.

Printing in Federal Register

(d) Any special message transmitted under section 683 or 684 of this title, and any supplementary message transmitted under subsection (c) of

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET



☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Richard G. Darman

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Message to Congress re: 1983 Special Message under the Impoundment Control Act of 1974 -- Rescission / Deferrals

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUH011		ORIGINATOR	830 6129			/ /
		Referral Note:				
CUAT 18		D	83 106129		S	8310701
		Referral Note:				
			/ /			/ /
		Referral Note:				
			/ /			/ /
		Referral Note:				
			/ /			/ /
		Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: June 29 ACTION/CONCURRENCE/COMMENT DUE BY: July 1

SUBJECT: MESSAGE TO CONGRESS RE 1983 SPECIAL MESSAGE UNDER THE IMPOUNDMENT CONTROL ACT OF 1974 -- RESCISSION/DEFERRALS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	HARPER	☐	☐
MEESE	☐	☐	HERRINGTON	☐	☐
BAKER	☐	☐	JENKINS	☐	☐
DEAVER	☐	☐	McMANUS	☐	☐
STOCKMAN	☐	☐	MURPHY	☐	☐
CLARK	☐	☐	ROGERS	☐	☐
DARMAN	☐P	✓SS	ROLLINS	☐	☐
DUBERSTEIN	☐	☐	VERSTANDIG	☐	☐
FELDSTEIN	☐	☐	WHITTLESEY	☐	☐
FIELDING	✓	☐	BRADY/SPEAKES	☐	☐
FULLER	☐	☐	_____	☐	☐
GERGEN	☐	☐	_____	☐	☐

REMARKS:

Could you please give us your opinion on the language contained in the message to Congress prepared by OMB. (See the attached note from the Executive Clerk's Office.)

Thank you.

RESPONSE:

Richard G. Darman

June 28, 1983

Sara:

Bob Rothbard of OMB (ext. 3603) assures us that, despite last week's Supreme Court decision regarding the legislative veto, the President should still be reporting "a proposal to rescind ..."

Since this is the first such Presidential action after that decision, do you think that perhaps Fred Fielding's people would like to consider this matter?

Dan

Received SS
1983 JUN 28 PM 3:16

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

JUN 28 1983

MEMORANDUM TO THE PRESIDENT

FROM: David A. Stockman

SUBJECT: 1983 Special Message under the Impoundment Control Act of 1974

The ninth special message for 1983 under the Impoundment Control Act of 1974 is attached for your signature. This special message includes a rescission of $15.0 million and four deferrals totaling $34.8 million. The proposed rescission and two of the deferrals are routine financial management actions. The remaining actions:

-- defer $3.0 million in the Energy Activities' Building Conservation Program because of a redirection in research and development activities. This deferral also includes the estimated termination costs associated with the proposed closedown of the Energy-Related Inventions Program;

-- defer $13.0 million in the Alternative Fuels Productions Program since there are a sufficient number of projects to support synthetic fuels development. This deferral is to be used as an offset to the Energy Activities' FY 1984 Fossil Energy budget request.

Analysis of Budget Costs

The effect on outlays of the rescission and deferrals reported in this special message is as follows:

(in millions of dollars)		
1983	1984	1985-87
-29.7	+12.2	-0.7

Recommendation

I recommend that this special message be transmitted to the Congress.

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report a proposal to rescind $15,000,000 in budget authority previously provided by the Congress. In addition, I am reporting four new deferrals of budget authority totaling $34,795,142.

The rescission proposal is for the Department of State's migration and refugee assistance account. The deferrals affect Energy Activities, the Department of Health and Human Services and the Board for International Broadcasting.

The details of the rescission proposal and deferral are contained in the attached reports.

THE WHITE HOUSE,