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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DOL letter in support to Senator Nickles

Honorable Don Nickles
Chairman, Subcommittee on
Labor
Committee on Labor and Human
Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Nickles:

This is to express the views of the Department of Labor on S. 398, a bill "(t)o amend the Walsh-Healey and the Contract Work Hours Standards Act to permit certain employees to work a ten-hour day in the case of a four-day workweek."

The Department of Labor supports sufficient flexibility in the contract labor standards statutes to permit management and labor to implement new worktime arrangements that could enhance the quality of worklife, promote energy efficiency, and increase productivity.

We understand that some workers are interested in new worktime arrangements which can result in greater time available for family and other personal activities. We also recognize that our Nation's employers are interested in worktime arrangements which can maintain or increase employees' job satisfaction while creating energy savings and more productive results than conventional arrangements. A number of our Nation's employers and their employees have been trying some of these unconventional work arrangements. At your Subcommittee on Labor's March hearings, it was noted that contracts providing for a four-day, 10-hour day workweek have been signed with labor organizations in the construction industry in Alabama, Florida, Kentucky, Louisiana, Ohio, Oklahoma, Texas, and Utah.

The Federal law's contract overtime pay requirement for work over eight hours in a day in effect precludes the use of unconventional worktime arrangements by employers and employees subject to these laws. Moreover, the existence of this requirement may tend to discourage experimentation with these arrangements by others who are not currently subject to Federal legal constraints.

We support legislative action to remove the present disincentives so that Federal contractors, and their employees, can move forward together, as can other employers and their workers, in trying new worktime arrangements.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

Raymond J. Donovan

NAM Transition Team Paper

SUMMARY OF THE ISSUES

Compressed Workweek

THE ADMINISTRATIVE DIVISION WITHIN THE DEPARTMENT OF LABOR:

The Wage and Hour Division of the Employment Standards Administration is responsible for planning, directing, and administering programs dealing with a variety of Federal labor legislation, including the Walsh-Healey Act, the Contract Work Hours and Safety Standards Act, the Fair Labor Standards Act, and the Davis-Bacon Act.

LAWS IN QUESTION:

The Walsh-Healey Act (41 U.S.C. 35 (c)) provides "that no person employed by a contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day..." without payment of time-and-one-half for overtime. This Act applies to contracts in excess of $10,000. A related law, the Contract Work Hours and Safety Standards Act (40 U.S.C. 328) applies to construction contracts involving more than $2,000 federal dollars, service contracts in excess of $2,500 and supply contracts between $2,500 and $10,000.

PROBLEM

The Walsh-Healey Act and the Contract Work Hours and Safety Standards Act prohibit employers with federal contractors from departing from the standard 40-hour, five-day workweek schedule without incurring overtime penalties.

RECOMMENDED SOLUTION:

Amend the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act to provide federal contractors with the option of instituting a four-day, ten-hour workweek. Such an amendment should not mandate change but should leave the decision to affected employers.

ALTERNATIVE SOLUTIONS OR OTHER OPTIONS:

There are no other options. The law must be amended.

CONSTITUENCY GROUPS AFFECTED:

Employers with federal contracts in the manufacturing, construction, and service industries. Organized labor would also be affected by any changes in the work week.

PRIORITY FOR REMEDIAL ACTION:

We would recommend that legislation be introduced by the Administration within 30 - 60 days of taking office.

SUPPORTING DOCUMENTATION

Compressed Workweek

BACKGROUND

The interest in the compressed workweek concept, which usually means four days of ten hours each, has continued to grow over a period of ten years as employers continue to seek ways to meet the needs of a changing work force and economy. From the period of 1970-72 the interest in restructuring the work schedule was focused on the private sector and employers under contract to the federal government. From 1973-78, the focus was on the federal executive branch agency employees, and from 1977 to the present, the focus has been on employers under contract to the federal government for goods and services.

While employees in the federal executive sector were granted the option of going to a compressed workweek and flexitime schedule (Federal Employees Flexible and Compressed Work Schedules Act, Public Law 95-390), employers in the private sector under contract to the federal government for goods and services are prohibited by law from altering their work schedules from the standard 40-hour, five-day week without incurring overtime penalties. The two laws governing these private sector employees are the Walsh-Healey Public Contracts Act of 1936 and the Service Contract Work Hours and Safety Standards Act of 1962.

THE LAW

The Walsh-Healey Act (41 U.S.C. 35[c]) provides that "no person employed by a contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours

in any one day..." without payment of time-and-one-half for overtime. This Act applies to contracts in excess of $10,000. The Contract Work Hours and Safety Standards Act (40 U.S.C. 328) applies to construction contracts involving more than $2,000 federal dollars, service contracts in excess of $2,500 and supply contracts between $2,500 and $10,000. Efforts over the past ten years to amend these two acts have not been successful.

INDIVIDUALS AFFECTED

A very rough estimate by the Bureau of Labor Statistics indicates that about 15 million employees are currently covered by the Walsh-Healey Act and about 19-36 million employees under the Contract Work Hours and Safety Standards Act. (Source: Dick Woods, Office of Senator Bellmon, Chief Sponsor of the Amendment.)

ADVANTAGES

In the private sector, businesses of all sizes and types who are not covered under federal contracts, have instituted a four-day, ten-hour workweek and have met with varying degrees of success. Some of the advantages of the alternative work schedule have been cited by companies as the following:

-- Greater productivity: higher weekly output (stemming from reduced start-up and close-down time); reduced absenteeism, tardiness, and turnover;

-- Improved working conditions: reduced employee working costs, such as commuting fares, restaurant lunches, and child care; more "usable leisure" time for employees; increased employee morale; and ease in recruiting;

-- Energy conservation: reduction in fuel costs associated with commuting; reduction in energy usage for heating and cooling plants and offices.

ENERGY SAVINGS

A study done by the National Center for Energy Management and Power of the University of Pennsylvania (Feasibility Study of a System of Staggered Industry Hours, Final Report on FEA Contract #14-01-0001-1848, NCEMP 75-1, March 1975), estimates that $136 million in energy costs could be saved per year on a nation-wide basis if a compressed workweek schedule was instituted. The study reads,

> The four-day, forty-hour workweek was not analyzed in depth for all of the sectors studied in the project because most of the sectors would experience great difficulty in adapting their operations to this pattern. Tables 6 and 7 present the results of the analysis of this work pattern for three sectors that are believed to be adaptable to it. The tables indicate that significant energy savings can be gained by instituting a four-day week in selected sectors where continuous processing and heavy capital investments do not make it uneconomic. Utilities could save about $57 million per year in fuel costs from only the three sectors shown, or the equivalent of about 6.4 million barrels of No. 6 oil per year. Total energy savings in utility fuel, space conditioning, lighting, and gasoline sum up to over $136 million per year at the National level. This is the eqivalent of 13 million barrels of oil per year, or about 50,000 barrels per work day just from these three sectors.

Another example that may be cited is a meat packing plant in Colorado which has a low margin of capital for operating costs. It is estimated that a 25% savings in energy costs alone could be realized if that plant, which operates under federal contracts, could institute a four-day, ten-hour week. (Source: National Meat Association.) Considering that energy costs in the mid-west are expected to sky-rocket next year, (given heavy reliance on natural gas) a substantial savings in energy costs could have a dramatic impact on the profitability of that plant and others like it.

DOCUMENTED WORKPLACE EFFECT:

Anne Wiseman, reporting in Personnel Practice Bulletin, studied the effect of the compressed workweek in Australia, specifically on the results of the changed schedule on a clothing manufacturer. It was found that output increased 5.6 percent during the first 22 weeks of the operation; that the level of achievement varied among employee groups, with the lowest increase being 2.4 percent and the highest 12.5 percent; that absentee rates were lower for the first six months of the year under the compressed workweek than during the corresponding period of the preceding year; that before the introduction of the 4-day week, the working of overtime affected five groups but that after the introduction of the new schedule, the amount of overtime worked decreased considerably and was confined to maintenance and security staff; that the accident frequency rate was markedly lower than the rate for the corresponding period one year earlier. Management also experienced a reduction in costs for light and power and fuel.

In a report to the Congress by the Comptroller General (Contractors' Use Of Altered Work Schedules For Their Employees -- How Is It Working?, April 1976) the Department of Labor cited the results of its study of 16 firms: 2 insurance companies, 2 automobile dealers, 2 Government agencies, 1 wholesale trade firm, and 1 hospital using the compressed workweek schedule. The DOL study revealed that "...among the firms productivity generally increased, employee turnover was thought to be improved, some reductions in absenteeism occurred, and there was some improvement in the use of plants and equipment. In general, employees of the organizations seem to like the compressed schedules and did not wish to change

back to their former 5-day schedules."

Specific American firms who have had enormous success with the compressed workweek schedule include C.A. Norgren Company and Ball Corporation (the latter is still in the experimental stage).

However, it must be pointed out that while the compressed workweek schedule offers numerous advantages for a wide-range of industries and employers, this type of alternative work scheduling may not be suitable for all types of industries and operations.

Restrictions for those industries under federal contracts who would like to go to a four-day, ten-hour workweek without incurring overtime penalties could be eliminated by changing the laws that govern their operations. The Walsh-Healey Act and the Contract Work Hours and Safety Standards Act could be amended to provide federal contractors with the option of instituting a four-day, ten-hour workweek. The amendment should not mandate any change in work schedules if the present five-day, eight-hour workweek is preferable to employers.

Although the concept would probably be enthusiastically endorsed by local unions whose members would be in favor of more leisure time and some of the other benefits derived from alternative work scheduling, the effort to revise the legislation would undoubtedly meet with resistance from the national and international unions who would oppose it on principle alone. In the past, organized labor has made efforts to amend the Fair Labor Standards Act to reduce the number of workweek hours from 40 to 35, citing this as a means for reducing unemployment through work sharing.

It should be stressed, however, that the amendment to provide for a four-day, ten-hour workweek would not affect the 40-hour overtime provisions of the Fair Labor Standards Act or the Federal Minimum Wage Law. The amendment would not impact on the collective bargaining process nor would it conflict with other federal labor laws. But most importantly, the amendment would not mandate a four-day, ten-hour workweek, but only provide the option which is currently denied to federal contractors.

Compressed Workweek

NPM Issue Papers

Issue Brief

A public policy summary

Flexible Workweek Scheduling

Issue

Current law prohibits companies with federal contracts from operating on any weekly schedule other than the standard five-day, 40-hour workweek without incurring overtime labor costs. Since they must pay overtime for employee hours worked beyond eight a day, contractors who compress the workweek into four 10-hour days must pay overtime wages for eight of those hours. This requirement—which does not apply to employers not working under federal contracts—is opposed by many federal contractors who believe the compressed schedule can increase productivity, decrease some costs for employers and employees and boost employee morale. Sen. William Armstrong (R-CO) introduced S. 398 to permit federal contractors the option of instituting a compressed workweek without having to pay overtime until hours worked per week exceed 40.

Background

The laws that regulate federal contractors—the Walsh-Healey Act of 1936 and the Contract Work Hours and Safety Standards Act of 1962—are more restrictive than the Fair Labor Standards Act, which governs non-federal contract work. The Fair Labor Standards Act requires overtime pay only when weekly hours have exceeded 40, regardless of the number worked per day. The Walsh-Healey and the Contract Work Hours Acts, however, mandate time-and-a-half for hours worked beyond eight a day. Walsh-Healey governs contracts in excess of $10,000, while the Contract Work Hours Act applies to federal construction contracts over $2,000, service contracts in excess of $2,500, and supply contracts between $2,500 and $10,000.

A congressional study described the original intent of these laws as follows: "__establishment of standards for the administration of government contracts for government work; protecting workers from outright exploitation; protecting fair-minded employers from unfair competition; limiting overtime and reducing the hours of the standard workday." Although these purposes may be valid, many have questioned the justification for forcing employers under federal contracts to work hours different from non-government contract employers.

Interest in the concept of a compressed workweek has grown during the last decade as employers seek ways to meet the needs of a changing work force. The desirability of varied workday scheduling is illustrated by a recent Bureau of the Census report stating that about 7.6 million workers, or 12 per cent of all full-time non-farm wage workers, were on flexitime schedules with varied starting times, while only 1.9 million full-time jobs were using a compressed work week. The popularity of varied starting times suggests that a larger proportion of employers would probably adopt a compressed workweek if the overtime restrictions on federal contractors were eliminated.

Although not all industries and manufacturing operations lend themselves to flexible workweek scheduling, many industrial firms and their employees want such flexibility. Companies often have payroll reporting burdens because they simultaneously perform on federal and private contracts and their employees in the non-government sector are working on an alternative workweek schedule.

The restrictions of Walsh-Healey cause employee morale problems since employees often desire a shortened workweek and view it as an additional benefit. For instance, one set of non-government contract employees in a company may work on a compressed workweek schedule while another set of company employees in the same company is precluded from doing so because they perform on a government contract. This example may also be applied to companies that have both union and non-union operations. The unionized employees in plant "A" can bargain for the shorter workweek as part of their collective bargaining agreement while their counterparts in non-union plant "B" are legally forbidden from doing so. Thus, many companies are effectively precluded from bidding on government contracts.

Businesses of all sizes not working on federal contracts have instituted four-day, 10-hour workweeks and have reported many benefits. Some of the advantages include greater productivity through reduced absenteeism, tardiness and employee turnover; shortened start-up and close-down times; lower employee expense for commuting fares, restaurant lunches, and child care; more "usable leisure time"; improved morale; ease in recruiting; and energy conservation because of reduced fuel consumption for heating and cooling plants and offices.

Status

Early in the 97th Congress, Sen. Armstrong (R-CO) introduced S. 398 to allow businesses and employees under federal contracts the advantage of the compressed workweek. S. 398 was approved by the Senate Labor Subcommittee in July and is pending before the full Senate Labor Committee. As approved by the subcommittee, the bill would amend the Walsh-Healey Act and the Contract Work Hours Act to allow companies on federal contracts to work any combination of hours without paying overtime until hours exceed 10 per day or 40 per week. Senator Armstrong's original proposal, before subcommittee amendments, would have permitted only the option of a four-day, 10-hour workweek. S. 398 does not mandate any change in the workweek schedule nor does it affect the collective bargaining process or the 40-hour overtime provisions in the Fair Labor Standards Act. Sen. Weicker (R-CT) announced in August his intention to vote against the measure in committee. His position creates an even 8-8 split on the committee, with all other Republicans supporting the bill and all Democrats opposed.

Several bills have been introduced in the House—H.R. 1933, Brinkley (D-GA); H.R. 3185, Erlenborn (R-IL); and H.R. 2911, Lott (R-MS)—but passage is not expected, given the make-up of the full Education and Labor Committee. Rep. George Miller (D-CA), chairman of the House Subcommittee on Labor Standards, has

indicated that he is not opposed to holding hearings on the issue but would not consider supporting any measure that goes beyond the four-day, 10-hour workweek concept.

NAM Position

The National Association of Manufacturers established a coalition of industry organizations, including NAM member companies, to work for passage of S. 398. In March 1981, NAM testified in support of the legislation before the Senate Subcommittee on Labor. This testimony cited one company's successful 10-year experience with the 4-day, 10-hour workweek and outlined the benefits realized for both company and employees. The NAM also worked with Department of Labor officials to gain administration support for the measure and, in July, the administration announced its support.

Although some business groups have proposed amending S. 398 to eliminate the daily overtime requirement on hours worked in excess of 10 per day, passage does not appear to be politically feasible at this time. Many local unions enthusiastically endorse the compressed workweek concept, as embodied in S. 398, but the AFL-CIO opposes amending the Walsh-Healey Act in any way. Although union opposition to the bill appeared mild in the beginning, efforts to defeat S. 398 have increased because of the fear that industry lobbyists would try to eliminate the daily overtime provision altogether. Based on political realities, the majority of industry groups and individual firms are working with NAM's coalition to secure passage of S. 398 as amended in subcommittee.

Action

NAM members are urged to write to their senators, particularly members of the Senate Labor Committee, outlining the merits of amending current law to provide an optional compressed workweek for federal contractors. NAM companies should encourage favorable sentiment toward S. 398 in the Senate to improve the likelihood of passage in 1982.

For further information contact:
Industrial Relations Department
Randy Hale, *Vice President*
Geri Colombaro, *Director of Labor Relations*

February 1, 1982

Walsh-Healey file

U.S. Department of Labor

Office of Legislation and
Intergovernmental Relations
Washington, D.C. 20210

Reply to the Attention of:

DOL Memo

May 14, 1982

MEMORANDUM

TO: Don Shasteen

FROM: Geri Colombaro

RE: Amendments to the Walsh-Healey Act

BACKGROUND

Under current law, employers who do business with the federal government are required to pay overtime for any work beyond eight (8) hours per day. Employers in the private sector are governed by the Fair Labor Standards Act which requires overtime payment only when weekly hours exceed forty (40) per week, regardless of the number of hours worked per day. In 1978, the Federal Employee Flexitime and Compressed Work Schedules Act was passed to provide for a three-year experiment to allow federal employees the option of working flexitime and compressed work schedules. The authorization for the Act was scheduled to expire March 31, 1982 but a four-month extension was granted at the last moment.

THE LAWS

The Walsh-Healey Act (U.S.C. 35 [c]) provides "that no person employed by a contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in their performance of the contract shall be permitted to work in excess of eight hours in any one day..." without payment of time-and-one-half for overtime. This Act applies to contracts in excess of $10,000. A related law, the Contract Work Hours and Safety Standards Act (40 U.S.C. 328) applies to construction contracts involving more than $2,000 federal dollars, service contracts in excess of $2,500 and supply contracts between $2,500 and $10,000.

LEGISLATION

During the 97th Congress, legislation was introduced in both the House and the Senate to amend the Walsh-Healey Act and the Contract Work Hours Act to provide increased flexibility for government contractors. Early in 1981, Senator Armstrong (R-CO) introduced S. 398, legislation to amend the two acts to allow federal contractors the option of working a four-day, ten-hour workweek without paying overtime until hours worked exceed ten (10) per day, instead of the currently

mandated eight. In July, the Subcommittee on Labor of the Senate Labor and Human Resources Committee amended the bill to allow contractors to work any combination of hours without paying overtime until hours exceed ten (10) per day or forty (40) per week. The bill was approved by the Subcommittee and is pending action before the full Committee. In August, Senator Weicker (R-CT) announced his intention to vote against the measure if it was considered in the full committee. His position created an even 8-8 split on the committee, with all other Republicans supporting the bill and all Democrats opposing it.

Given these political considerations, Senator Armstrong is attempting to amend the Walsh-Healey Act by attaching an amendment to an appropriate vehicle on the Senate floor. If a time agreement is worked out to his satisfaction, Senator Armstrong will offer two amendments -- one to conform the language of the Walsh-Healey Act to that of the Fair Labor Standards Act, ie. to allow payment of overtime only after hours worked exceed forty (40) per week; and two, an amendment to provide for an optional four-day, ten-hour workweek. The second amendment would be offered only if the first one failed. If the time agreement allows for only one amendment, Senator Armstrong would then offer only the first amendment.

FLEXITIME LEGISLATION

One of the vehicles being considered is Senator Stevens' S. 2240, the Federal Employees Flexitime and Compressed Work Schedules Act, a bill to make permanent the three-year experiment in federal employee flexitime. The measure represents a compromise that has been worked out by the Administration and the American Federation of Government Employees union. Some argue that the compromise between the two groups is too fragile to survive having a Walsh-Healey amendment attached to it. Others argue that the Stevens' bill is a perfect vehicle for amending because employers and employees working federal contracts should not be denied the same flexibility as provided to those in the private sector and the federal government sector. They also believe that the vehicle is guaranteed certain passage since so many federal workers have enjoyed the flexitime schedule for three years and consider it to be part of their benefit package in working for the federal government. Senator Stevens' bill is on the calendar but is not expected to be considered on the Senate floor until some time after the Memorial Day recess. Senator Stevens' has indicated to business groups that he is adamantly opposed to having any amendments attached to his bill, including one by Senator Kennedy, et al. which he originally was inclined to support. Senator Stevens' told the business groups that he would move to table any amendments to his bill and that he thinks he has the votes to do it.

PROS FOR WALSH-HEALY AMENDMENTS

Many employers and their employees want the same flexibility allowed to those in the federal government and the private sector. Under the current law, many employers are effectively precluded from bidding on federal contracts if they alter in any way their standard eight-hour day, five-day week operations because they would have to pay overtime after each day for hours worked beyond eight. In addition, employers often have payroll reporting burdens because they simultaneously perform on federal and private contracts and their employees in the non-government sector are working on an alternative workweek schedule. In the private sector, businesses of all types and sizes have instituted flexible work hours and have realized certain benefits such as, greater productivity through reduced absenteeism, tardiness and employee turnover; shortened start-up and close-down time; lower employee expenses for commuting fares, restaurant lunches, and child care; more "usuable leisure time"; improved morale; ease in recruiting; and energy conservation because of reduced fuel consumption for heating and cooling plants and offices.

CONS FOR WALSH-HEALEY AMENDMENTS

The eight hour day is the product of a long and bitter struggle which should not be abandoned. The current law permits work beyond eight hours per day and requires overtime rates beyond that time. Since 93% of collective bargaining contracts require payment of overtime, a change in the law to conform it to that of the private sector would put union contractors in competition with non-union contractors by allowing non-union contractors to underbid union contractors. If the law were changed, contracts would have to renegotiated on that basis.

ADMINISTRATION'S POSITION

During Subcommittee markup on S. 398 last year, the Department of Labor sent a letter, which was signed by Secretary Donovan, to Senator Nickles (R-OK), Chairman of the Subcommittee, expressing support for increased flexibility for federal contractors. Specifically, the letter says, "...The Department of Labor supports flexibility in the contract labor standards statutes to permit management and labor to implement new worktime arrangements that could enhance the quality of worklife, promote energy efficiency, and increase productivity."

cc: Don Rosenthal
Bob Collyer
Robert Bonitati
Dick Crone
Ken Clarkson
Fred Upton

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 23, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Permitting Federal Contractors to Adopt Flexitime (Ref. 090680)

Attached is a draft letter from the President to Senator Baker regarding legislation that would permit federal contractors to adopt flexitime.

The issue has been added to the Women's Issue Matrix, as you requested.

The Honorable Howard H. Baker, Jr.
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Howard:

I recently signed into law Federal "flexitime" legislation, as set forth in S.2240, that will permit Federal agencies and their employees to enjoy the many demonstrated benefits offered by flexible and compressed work schedules. Not only does this measure represent a significant step forward from the standpoint of the enhanced productivity and employee morale associated with such schedules, but also it provides the necessary flexibility for increasing numbers of women and single heads of households who are entering the workforce.

Currently, there is a serious imbalance in the law which effectively denies these benefits to Federal contractors. While other private sector employers and Federal agencies are required to pay overtime only for hours in excess of 40 per week, Federal contractors must also pay a premium for all hours beyond eight per day. Senator Armstrong has introduced a bill, S.398, which would partially remedy this situation by permitting Federal contractors to implement four 10-hour day workweeks without daily overtime requirements. However, S.398 has been pending before the Labor and Human Resources Committee for more than a year. I believe it important that this inequitable anomoly be remedied fully and promptly.

During the debate on S.2240, Senator Armstrong offered an amendment which would have conformed certain Federal wage-hour rules affecting government contractors with those governing employers in general. The amendment was designed to provide Federal contractors and their employees with the same option of implementing compressed workweeks that is presently enjoyed by others in the private sector and Federal government. For the same reasons that I signed S.2240, I stand firmly in support of Senator Armstrong's efforts to end the disparate treatment of contractors and their employees.

As a Nation, we face challenges on many fronts. Following the concept embodied in Senator Armstrong's amendment, we have an opportunity to save Federal procurement monies, enhance our productivity and affirmatively respond to the changing needs of our workforce. I urge you to take whatever steps you can to bring this matter before the full Senate at the earliest possible date.

Sincerely,

cc: Hon. Orin Hatch
Hon. William Armstrong
Hon. Donald Nickles

DOCUMENT NO. 090680 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/17/82 **ACTION/CONCURRENCE/COMMENT DUE BY:** 8/24/82

SUBJECT: Permitting Federal Contractors to Adopt Flexitime

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
✓ PORTER	☐	X	TURNER	☐	☐
✓ BARR	X	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	PROPERTY REVIEW BOARD	☐	☐
DENEND	☐	☐	OTHER	☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐
MONTOYA	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
✓ UHLMANN	☐	X	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

Remarks:

Please draft the letter and return with this memo.

Please add this issue to women's issue matrix.

Please return this tracking sheet with your response.

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

AUG 16 1982

FOR: EDWIN L. HARPER

FROM: WILLIAM P. BARR WPB

SUBJECT: Permitting Federal Contractors to Adopt Flexitime -- An Issue of Potential Interest to Women That Is Also Economically Sound

1. Pls draft the letter + return with this memo
2. Pls add this issue to Women's issue matrix.

EH

Background

Under current law, federal agencies and private sector employers who are not engaged in government contracts are free to adopt flexible workweek schedules for their employees. Such flexible scheduling is consistent with the Fair Labor Standards Act (FLSA) -- the statute that governs minimum wages and overtime for federal and private sector employees and that requires overtime pay for only those hours in excess of forty hours per week.

In addition to FLSA requirements, however, government contractors are subject to the Walsh-Healey Act and the Service Contracts Act which, among other things, provide that federal contractors must also pay time-and-one-half overtime for all hours in excess of eight hours per day. The former act applies to contracts in excess of $10,000 while the latter addresses construction contracts involving more than $2,000, service contracts in excess of $2,500, and supply contracts between $2,500 and $10,000.

By requiring premium rates to be paid for all hours worked in excess of eight hours per day, these statutes make it prohibitively expensive for government contractors to use compressed, flexible and other alternative workweek schedules.

Issue

Should the Walsh-Healey and Service Contracts Acts be amended to permit federal contractors to adopt flexitime schedules, thus bringing these firms into line with the public sector and the rest of the private sector?

Benefits

The Bureau of the Census reports that, in 1980, 12% of all

full-time, non-farm wage and salary workers were on flexitime or other schedules that permitted them to vary the time their workdays began and ended. It has been estimated that, by the end of the decade, over one-third of the non-farm workforce will be involved in compressed, flexible and other alternative work schedules.

The increasing use of flexitime may provide a number of benefits to empoloyees generally:

- o Increased time at home with family; especially helpful to working mothers.
- o Reduced commuting time and expenses, as well as reduced child-care expenses.
- o In many cases, employee satisfaction has manifested itself in lower absenteeism, reduced turnover, and increased productivity.
- o More effective utilization of capital equipment; reduced start-up/shut-down time; reduced energy requirements.

If federal contractors are permitted to use flexitime schedules, cost savings could result in reductions in the costs of federal procurements.

Legislative Status

During consideration of S.2240, the Federal Flexitime Bill, Senator Armstrong offered a floor amendment that would have amended the Walsh-Healey and Service Contracts Act to permit government contractors to adopt flexible workweek schedules. The floor amendment was tabled 49-46 in what was essentially a procedural vote.

Senator Armstrong's measure (S.398) is now pending in the Labor Subcommittee of the Senate Committee on Labor and Human Resources. Senator Nickles, the subcommittee chairman, supports the bill. It is ready to be reported to the full committee where it is expected that Senator Weicker will try to keep it bottled up.

The chief supporters of this legislation are:

-- Business Roundtable
-- National Association of Manufacturers
-- U.S. Chamber of Commerce
-- American Electronics Association
-- numerous other groups; see attached list.

Women's groups appear not to have focused on the issue yet.

Opposition comes from national labor organizations, although numerous local labor groups support the bill. While it is a "test" vote for labor, it is not a high priority item.

Administration Position

On June 16, 1982, Secretary Donovan wrote the Labor Subcommittee supporting Senator Armstrong's bill. (See attached letter.)

Further Action Required

Senator Stevens has promised bill supporters that, if they can get the bill out of full committee, they will get a vote this session. Supporters feel they will win the vote.

Supporters would like the President to write a letter or make a statement in favor of the Armstrong bill, urging quick action on it.

The following companies and organizations are representative of those supporting Senator Armstrong's amendment to the Walsh-Healey Act and Service Contracts Act:

American Apparel Manufacturing Association
American Electronics Association
American Textile Manufacturers Institute, Inc.
Associated Builders and Contractors
Associated General Contractors of America
Burlington Industries
Business Roundtable
C.A. Norgren and Company
Dow Chemical USA
E.I. du Pont de Nemours & Company
Electronics Industries Association
Motorola, Inc.
National Association of Manufacturers
National Meat Association
National Utilities Contractors Association
Printing Industries of America
Springs Industries
TRW, Inc.
U.S. Chamber of Commerce
United Technologies Corporation
Upjohn Company

Issue Brief

A public policy summary

Flexible Workweek Scheduling

Issue

Present law effectively prohibits companies with federal contracts from operating on any weekly schedule other than the standard five-day, 40-hour workweek. Federal contractors must pay overtime for employee hours worked in excess of eight a day if they compress the workweek into four 10-hour days. This requirement—which does not apply to other private sector employers or to the federal government—unfairly discriminates against them and their employees. Studies have shown that compressed schedules contribute to improved employee morale and increased productivity.

This inequitable situation should be corrected by providing federal contractors and their employees the option, available to others in the private and federal sectors, of instituting compressed workweeks without having to pay overtime until hours worked exceed 40 per week.

Background

The laws that regulate federal contractors are more restrictive than the statute which governs overtime and minimum wage for federal and private sector employees. The Fair Labor Standards Act (which generally governs minimum wage and overtime for federal and private sector employees) requires overtime pay only when weekly hours have exceeded 40, regardless of the number worked per day. However, the Walsh-Healey Act and Contract Work Hours and Safety Standards Act (which regulate federal contractors) mandate time-and-one-half pay for hours worked beyond eight per day. Walsh-Healey governs contracts in excess of $10,000, while the Contract Work Hours Act applies to federal construction contracts over $2,000, service contracts in excess of $2,500 and supply contracts between $2,500 and $10,000.

A congressional study described the original intent of these laws as follows: "to establish standards in the administration of contracts for government work; to establish the federal government as a 'model employer'; to increase the purchasing power of labor; to protect workers from outright exploitation and to protect fair-minded employers from unfair competition; and to spread the available work, limiting overtime and reducing the hours of the standard workday." Conditions have changed significantly since enactment of these statutes. The "model employer"—the federal government—has found that compressed workweeks do offer meaningful benefits and is itself permitted to institute them without the costly requirement of paying overtime on a daily basis. Given that others in the private and federal sectors are not similarly restricted, there is no justification for continuing to limit the work scheduling flexibility of federal contractors and their employees.

Interest in the compressed workweek concept has grown during the last decade as employers sought to respond to the needs of a changing work force and to enhance resource use. The Bureau of Census reported that in 1980 about 7.6 million workers, or 12 percent of all full-time, non-farm workers, were on flexitime schedules with varied starting times. The report noted that 1.9 million full-time jobs were on a compressed workweek—an increase of nearly 60 percent since 1973. The increasing popularity of compressed workweeks suggests more employers would adopt them if the daily overtime restrictions for federal contractors were eliminated.

The restrictions of Walsh-Healey can lead to employee morale problems. For instance, one group of employees in a company may work on a non-government contract and be allowed to work on a compressed workweek schedule while another group of employees in the same company is precluded from doing so because it is involved with a government contract. This same example may be applied to companies that have both union and non-union operations. The unionized employees in plant "A" can bargain for the shorter workweek as part of their collective bargaining agreement while their counterparts in non-union plant "B" are legally restricted from doing so. In addition, companies performing federal and private contracts simultaneously often have payroll reporting burdens if their employees in the non-government sector are working an alternative workweek schedule.

Businesses of all sizes (not engaged in federal contracts) have instituted workweeks of four 10-hour days. Employees like such flexible scheduling because it increases leisure time and reduces expenses for meals and commuting. Employee satisfaction results in lower rates of absenteeism and tardiness, reduced turnover and increased productivity. Compressed workweeks offer employers additional benefits—more effective use of capital equipment, higher weekly output due to reduced start-up/shut-down time and reduced energy requirements.

Status

Early in the 97th Congress, Sen. William Armstrong (R-CO) introduced S. 398 to provide employers and employees under federal contracts the advantage of compressed workweeks. Following hearings on the bill, S. 398 was approved by the Senate Labor Subcommittee in July 1981 and forwarded for consideration by the full Labor and Human Resources Committee. As reported by the subcommittee, the bill would amend the Walsh-Healey Act and the Contract Work Hours Act to allow companies with federal contracts to work any combination of hours without paying overtime until hours exceed 10 per day or 40 per week. Senator Armstrong's original proposal, before subcommittee amendments, would have permitted only the option of a four-day, 10-hour workweek. S. 398 would not have mandated any change in the workweek schedule nor would it have affected the collective bargaining process or the 40-hour overtime provisions in the Fair Labor Standards Act. In late August 1981, Sen. Lowell Weicker (R-CT), the swing vote in the full Senate Labor and Human

Resources Committee, announced his intention to vote against the measure if it were brought up for a vote in the full committee, despite adminstration support of the legislation.

In view of the stalemate in the full committee and at the urging of an NAM-led business coalition, Senator Armstrong sought passage of compressed workweek legislation by attaching it as an amendment to S. 2240, The Federal Employee Flexible and Compressed Work Schedules Act of 1982. That bill was designed to make permanent the federal government's ability to institute alternative workweek schedules without paying overtime on a daily basis. Senator Armstrong's amendment would have similarly eliminated all daily overtime requirements and made the Walsh-Healey and Contract Work Hours Acts conform with the Fair Labor Standards Act. During Senate consideration of S. 2240 on June 30, 1982, he offered his conforming amendment. Amid intense lobbying by all sides, the amendment was tabled by a close vote of 49-46, largely on procedural grounds. This was a much stronger vote in support of the amendment than was anticipated, particularly since proponents of S. 2240 had argued strenuously that the Armstrong amendment would jeopardize passage of the entire bill.

Several bills were introduced in the House during the 97th Congress (H.R. 1933, Jack Brinkley, D-GA; H.R. 3185, John Erlenborn, R-IL; and H.R. 2911, Trent Lott, R-MS), but passage was not expected, given the make-up of the full Education and Labor Committee. Rep. George Miller (D-CA), chairman of the House Subcommittee on Labor Standards, had indicated that he was not opposed to holding hearings on the issue but would not consider supporting any measure that went beyond the four-day, 10-hour workweek concept.

All these bills died with the conclusion of the 97th Congress. Several similar measures were introduced in the House on the first day of the 98th Congress.

NAM Position

The National Association of Manufacturers supports legislation which would bring an end to the current disparate treatment of federal contractors and their employees and provide them with the same flexibility in scheduling alternative workweeks enjoyed in the private and federal sectors. Shortly after S. 398 was introduced in 1981, the NAM established a coalition of industry organizations, including NAM member companies, to work for passage of the bill. In March 1981, NAM testified in support of the legislation before the Senate Subcommittee on Labor. Among other things, this testimony cited one company's successful 10-year experience with the four-day, 10-hour workweek and outlined the benefits realized for both company and employees. NAM and other members of the coalition also worked with the Department of Labor to gain the administration's backing and, in both 1981 and 1982, the administration did support the measures.

Many local unions have enthusiastically endorsed the compressed workweek concept, as embodied in S. 398, but the AFL-CIO opposes amending the Walsh-Healey Act in any way. Although the opposition to the bill appeared mild in the beginning, union efforts to defeat Senator Armstrong's conforming amendment increased significantly when elimination of the daily overtime provision was included.

Renewed efforts to secure the introduction and passage of compressed workweek legislation began early in 1983. Coalition meetings have been held to discuss strategy. Conversations with Department of Labor and White House officials have been initiated to secure their support in the 98th Congress. Although a prime sponsor for the bill has not been determined, negotiations with members of the Senate are under way.

Action

Pending the introduction of a bill, NAM members are encouraged to raise this issue and outline the merits of compressed workweeks when communicating with their elected officials, particularly members of the Senate Labor and Human Resources Committee. NAM members can contribute significantly to favorable sentiment toward compressed workweek legislation and improve the likelihood of passage once it is introduced.

Information Contacts

NAM Industrial Relations Department

Randolph M. Hale,
Vice President

F.M. Lunnie, Jr.,
Assistant Vice President, and Director of Labor Relations

February 1983

viding flexible work schedules for Federal employees.

I fully supported the use of flexible work schedules for Federal employees to achieve maximum productivity, yet I feel we must simultaneously offer that option to the Federal contractor in the private sector. The concept of increased productivity, energy savings, and improved employee morale through use of compressed workweek is embraced both in my bill—which governs Federal contractors—and the already enacted legislation which reauthorized the Government's flexitime program. With this legislative proposal more or less identical in concept enacted last year, Congress has a golden opportunity to update a relic of the past.

The bill I offer today simply permits Federal contractors the option of instituting flexible work schedules without facing penalty. In the past, administration and many Senators have expressed their support for the legislation. It is needed primarily to bring the laws governing Federal contractors into conformity with current overtime provisions and flexibility provided to private sector employees. Specifically, the proposal amends parts of two statutes which regulate pay standards for Government contractors: The Walsh-Healey Act and the Contract Work Hours and Safety Standards Act. Those laws presently mandate that "no persons employed by Federal contractors shall be permitted to work in excess of 8 hours in any 1 day without payment of time and one-half for overtime."

Since the 1930's, when the Walsh-Healey and Contract Work Hours and Safety Standards Acts were enacted, employer and employee needs and desires have changed. Today, more than one-fifth of the labor force is functioning under flexible, compressed or voluntarily reduced work schedules. This trend will continue throughout the 1980's as life styles and family structures are changing. Employers who respond creatively to these new conditions will have the competitive edge.

Unfortunately, the Federal regulations have not kept pace with the changing society. Moreover, the unnecessary and outdated restriction has brought extra costs to the Government. In a report to the Congress by the Comptroller General (Contractors Use of Altered Work Schedules for Their Employees—How is it Working? April, 1976), the Department of Labor cited one instance of an organization utilizing a 4-day work schedule, that negotiated a contract with the Government and included about $240,000 in overtime and associated costs in the contract price because of the overtime payment required by the Walsh-Healey Act. The legislation also reduces the number of bids on Government contracts. The Department of Defense and the General Services Administration, who both do a large amount of contracting for the Government, supported legislative changes in the Walsh-Healey Act and Contract Work Hours and Safety Standards Act for this reason.

Mr. President, this bill has one objective and one aim. To allow Federal contractors the option of alternative work schedules. The benefits of flexitime, however, go far beyond less Government interference in the private sector. There are distinct advantages for companies who have chosen to implement the alternative schedule that should be noted. Numerous studies have been conducted on the optional "compressed workweek." These studies, including those done by the Comptroller General, the Bureau of Labor Statistics (The Revised Workweek: Results of a Pilot Study of 16 Firms), and the National Center for Energy Management and Power (Feasibility Study of a System of Staggered Industry Hours), point out the following advantages to this work schedule: Greater productivity—higher weekly output, improved use of plant equipment, and improved employee morale; improved working conditions—reduced employee working costs, increased job satisfaction, and ease in recruitment; and energy conservation—reduction in fuel costs associated with commuting, and reduction in energy usage for heating and cooling plants or offices.

One possible advantage of particular interest to me deals with the problem of air pollution. We now have evidence as a result of a study released by the Denver regional Council of Governments in cooperation with the Denver Federal Executive Board, examining the travel habits of some 7,000 Federal employees on the compressed workweek schedule in the Denver area. The study concludes that the compressed workweek is one of the most effective transportation management actions that Denver's Federal agencies can take in addressing the concern of air pollution and traffic congestion. It has been estimated that neither providing free transit service at peak periods for everyone in the area, nor an extensive and complicated program of carpool matching would even equal the impact on air pollution that resulted from only 7,000 employees on a compressed workweek. Imagine what could result if all employees of Federal contractors in the area, which easily number twice that of the Federal employees in the study, were allowed to shift to a 4-day workweek.

A change in the Walsh-Healey Act would not in any way affect the Fair Labor Standards Act, which governs all workers and provides that overtime premiums be paid whenever employees work more than 40 hours a week. The proposal would not impact the collective bargaining process, nor would it conflict with any of the Federal labor laws. Nothing in this amendment shall be construed to cover employees specified in the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act. Finally, the bill does not mandate a compressed workweek, only restores to American businesses and workers serving the Federal Government the basic freedom of choice.

Mr. President, in the past, we have heard many of the unions and workers testify to the effect that Government employees are eager to see the Federal Employee Flexible Work Schedules Act become permanent. The same is true for the employee in the private sector working on a Federal contract. Many private sector collective bargaining agreements across the Nation encompass the 4-day, 10-hour workweek. Many labor contracts in my own State of Colorado include provisions for a compressed workweek—and are merely waiting for Congress to update the archaic law.

In my opinion, it is only fair for Federal contractors to have the same advantages that private sector and Government employees do. If that is ever to be accomplished, we must seize the opportunity for the permanent statutory authority for alternative work schedules for Federal contractors. The Senate passed this proposal once before and it was dropped in conference. Therefore, it is necessary that we again pass this important legislation and follow it carefully through conference.●

By Mr. MITCHELL:

S. 871. A bill to amend the Public Works and Economic Development Act of 1965, as amended; to the Committee on Environment and Public Works.

REGIONAL ECONOMIC DEVELOPMENT ACT OF 1983

● Mr. MITCHELL. Mr. President, I am today introducing legislation to continue the economic development activities now performed by the Economic Development Administtration. My bill is virtually identical to the legislation enacted by the House of Representatives last year, and reintroduced this year by a bipartisan coalition of the House Committee on Public Works and Transporation, led by Congressmen OBERSTAR and CLINGER.

For the past 2 years, the administration has proposed the elimination of the Economic Development Administration. Since 1981, I have opposed this proposal. I said at the beginning of this longstanding debate that no matter how successful the President's economic policy was going to be, some sectors of our Nation, some regions, some rural areas, and some cities would not enjoy a full share in that success because of longstanding regional and local problems that inhibit economic growth.

For the past 2 years, Congress has rejected the administration's ill-conceived plan to kill EDA, recognizing that local pockets of unemployment and economic stagnation exist which need the specialized, targeted aid of EDA.

Bank with concessional financing or grants offered by the Agency for International Development, by methods including, but not limited to, the blending of the financing of, or parallel financing by, the Export-Import Bank and the Agency for International Development; and

(2) the combined use of credits, loans, or guarantees offered by the Export-Import Bank, with financing offered by private financial institutions or entities, by methods including, but not limited to the blending of the financing of, or parallel financing, by the Export-Import Bank and private institutions or entities.

(b) The purpose of the mixed financing program under this section shall be to offer or arrange for financing for the export of United States goods and services that is substantially as concessional as financing for which there is reasonable proof that a foreign government is offering to, or arranging for, a bona fide foreign competitor for a United States export sale.

(c) United States exports eligible for concessional mixed financing shall be exports offered at what can reasonably be judged to be the lowest evaluated bid, without respect to the terms of export financing.

(d) The Chairman of the Export-Import Bank is authorized to establish a fund, as necessary, for carrying out the mixed financing program described in this section.

ESTABLISHMENT OF A MIXED FINANCING PROGRAM IN THE AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 205. (a) The Administrator of the Agency for International Development shall establish within the Agency a program of mixed financing for United States exports. The program shall be carried out in cooperation with the Export-Import Bank and with private financial institutions or entities, as appropriate. The program may include—

(1) the combined use of the credits, loans, or guarantees offered by the Export-Import Bank with concessional financing or grants offered by the Agency for International Development, by methods including, but not limited to, the blending of the financing of, or parallel financing by, the Export-Import Bank and the Agency for International Development; and

(2) the combination of concessional financing or grants offering by the Agency for International Development with financing offered by private financial institutions or entities, by methods including, but not limited to the blending of the financing of, or parallel financing by the Agency for International Development and private institutions or entities.

(b) These funds may be combined with Export-Import Bank financing or private commercial financing in order to offer, or arrange for, financing for the exportation of United States goods and services that is substantially as concessional as financing for which there is reasonable proof that a foreign government is offering to, or arranging for, a bona fide foreign competitor for a United States export sale.

(c) United States exports eligible for concessional mixed financing shall be exports offered at what can reasonably be judged to be the lowest evaluated bid, without respect to the terms of export financing.

(d) Funds of the agency for International Development which are used to carry out a mixed financing program authorized by subsections (a), (b), and (c) shall be offered for financing only United States exports that can reasonably be expected to contribute to the advancement of the development objectives of the importing country or countries.

(e) The Administrator of the Agency for International Development is authorized to draw on Economic Support Funds, as necessary, and to establish a fund, as necessary, for carrying out a mixed financing program as described in this section.

APPOINTMENT OF A MIXED FINANCING COORDINATOR

SEC. 206. The President shall appoint an individual to coordinate and ensure the implementation of the mixed financing programs authorized by sections 204 and 205. The individual appointed by the President for this purpose shall develop procedures and mechanisms as necessary to assure that any offer of mixed financing for eligible United States exports is timely and permits the United States exporter to respond to the timing demands of the competitive situation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 207. There are authorized to be appropriated such sums as may be necessary to carry out this title.

DEFINITIONS

SEC. 208. As used in this title—

(1) the term "mixed financing" means the various combinations of official development assistance, official export credit, and private commercial capital to finance exports;

(2) the term "government mixed credits" means the combined use of credits, insurance, and guarantees offered by the Export-Import Bank with concessional financing or grants offered by the Agency for International Development to finance exports;

(3) the term "public-private cofinancing" means the combined use of either official development assistance or official export credit with private commercial credit, to finance exports;

(4) the term "blending of financings" means the use of various combinations of official development assistance, official export credit, and private commercial credit, integrated into a single package with a single set of financial terms, to finance exports; and

(5) the term "parallel financing" means the related use of various combinations of separate lines of official development assistance, official export credits and private commercial credit, not combined into a single package with a single set of financial terms, to finance exports.

PRINCIPAL PROVISIONS OF HEINZ EXPORT-IMPORT BANK AMENDMENTS ACT BILL

The intention of the bill is that it be a discussion draft. Its principal provisions would include the following:

1. *Competitiveness First Priority.* Make clear that the first priority of the Bank is the full competitiveness of all of its programs with the official credit programs of our trade competitors. Cost of money would be made only one of several other subordinate goals.

2. *Extension of Act; Budget Authorization.* Extend the Act for 6 years. Provide $7 billion of direct loan budget authority for fiscal year 1984 and $7.5 billion for fiscal year 1985. These amounts include a contingency fund of $2.7 billion which would be authorized but not appropriated unless foreign official subsidies reach unacceptable levels, and/or there is serious lack of progress in the OECD credit talks.

3. *Budget Treatment.* Request the GAO to study how the Bank should be financed, generally, and specifically whether it should be removed from the Federal outlays budget, in order to correct the distortion resulting from including the Bank's lending programs with Federal programs requiring actual expenditures. Urge that a unified Federal credit budget be established. (To be requested by the Committee; not included in bill per se.)

4. *Section 1912, Domestic Financing.* Improve Section 1912 protection against official foreign predatory financing in our domestic market (at terms below OECD Arrangement levels) in the following ways:

A. Speed up the Treasury Secretary's time for response to requests for Section 1912 assistance to 60 days;

B. Lower "determining" factor standard to a "significant" factor standard for authorizing Eximbank assistance;

C. Require the Bank to provide matching financing if the Secretary of the Treasury issues an authorization.

5. *Advisory Committee.* Reestablish Eximbank Advisory Committee, which expired in 1979; increase the number of advisors from 9 to 12, and add "service industries" and "state governments" as sectors to be represented on the Advisory Committee.

6. *Director's Term of Office.* Provide for four-year fixed terms for Bank directors and provide that the terms of Eximbank's President and Vice President be coterminous with that of the U.S. President; the terms of the remaining three directors would begin two years after the President's term begins.

7. *Congressional Notification.* Raise the amount of a loan or guarantee which the Bank must report to congress from the current $100 million to $250 million.

8. *Mixed Credits: Negotiations.* Direct the Administration to pursue negotiations to eliminate official mixed credit financing, including negotiations for the formulation of rules to prevent establishment of official practices having the same effect as mixed credits. Also include in such negotiations improved notification procedures so that all forms of mixed financing are reported, and that no derogations be allowed below the 50% level of foreign aid concessionality. Such negotiations should seek as well to prohibit mixed financing for facilities for the production of goods in structural oversupply in the world (e.g. steel).

9. *Mixed Credits: U.S. Programs.* Direct the Bank and AID to establish a mixed financing program. Such program would be used only to match such similar programs employed by foreign competitors against specific U.S. export sales bids. The President would appoint a Mixed Financing Coordinator to coordinate and ensure the implementation of this mixed financing program. No additional funds would be authorized.●

By Mr. ARMSTRONG:

S. 870. A bill entitled "The Federal Contractor Employees Flexitime Bill"; to the Committee on Labor and Human Resources.

FEDERAL CONTRACTOR EMPLOYEES FLEXITIME BILL

● Mr. ARMSTRONG. Mr. President, I am introducing a bill which would create permanent statutory authority for alternative work schedules for Federal contractors in the private sector. Last year, the Office of Personnel Management created and evaluated work schedules that vary from the "conventional" workweek and found them beneficial to agencies, employees, and the public. They concluded that alternative work schedules can improve the productivity of an organization and increase its service to the public without additional costs. Subsequently, the Senate passed a bill pro-

THE CASE FOR REFORM:
Walsh-Healey and Service Contracts Acts

ISSUE. The Senate should move promply to pass S. 870, the "Government Contractor Employees Flexitime Bill", introduced by Senator William Armstrong (R-CO) that would end the disparate treatment of federal contractors and their employees.

Currently, the Walsh-Healey Act and the Service Contracts and Safety Standards Act effectively prohibit federal contractors and their employees from enjoying the demonstrated benefits of compressed and other non-traditional work- week schedules. These laws mandate premium overtime rates for all hours worked in excess of eight hours per day. Private sector employers not engaged in government contracts and federal agencies are required to pay overtime only for those hours in excess of forty hours per week and eighty every two weeks, respectively.

BACKGROUND. The Fair Labor Standards Act (FLSA), the statute generally governing minimum wage and overtime for the federal and private sectors, requires overtime pay for only those hours worked in excess of forty hours per week. In addition to the requirements mandated by FLSA, however, government contractors are also subject to the Walsh-Healey and Service Contracts Acts which, among other things, mandate that federal contractors also pay time-and-one-half overtime for all hours worked in excess of eight hours per day. The former applies to contracts in excess of $10,000 while the latter addresses construction contracts involving more than $2,000, service contracts in excess of $2,500, and supply contracts between $2,500 and $10,000.

The Walsh-Healey Act was passed in the mid-1930's and one of its original purposes was to make the federal government a "model employer" through, among other means, requiring federal contractors to pay overtime for all hours in excess of eight-hour per-day. FLSA was subsequently enacted in 1938 but mandated overtime only when hours exceeded forty per week.

In the 97th Congress, Senator Armstrong introduced S. 398 which, as originally drafted, would have amended the Walsh-Healey and Service Contracts Acts to permit federal contractors to implement four ten-hour day workweeks without having to pay the daily overtime premium. Hearings were held before the Subcommittee on Labor in 1981 but due largely to the make-up of the Committee on Labor and Human Resources, the bill was never reported. As a consequence, Senator Armstrong offered an amendment that would conform Walsh-Healey with FLSA during debate on S. 2240, "The Federal Employees Flexible and Work Schedules Act of 1982. S. 2240 was designed to permit the federal government to implement compressed and other non-traditional workweek schedules without having to pay overtime on a daily basis. On June 30, 1982, the Senate voted 93-2 in support of S. 2240 but tabled Senator Armstrong's conforming amendment by a vote of 49-46. S. 2240 was passed by the House of Representatives on July 12 by an overwhelming majority and was subsequently passed into law.

(OVER)

Thus, while the "model employer" elected to provide flexibility in workweek scheduling for the federal sector, it continued to deny the same treatment for those which contract with it.

IMPACT. The Bureau of the Census reported that in 1980, 12% of all full-time, non-farm wage and salary workers were on flexitime or other schedules that permitted them to vary the time their workdays began and ended. The report noted also that the workweeks of 1.9 million employees were 4-1/2 days or less, an increase of nearly 60% since 1973. By the end of the decade, it is estimated that over one-third of the non-farm workforce will be involved in compressed, flexible and other alternative work schedules.

BENEFITS. The increasing use of compressed workweeks in the private and public sectors is a consequence of the demonstrated benefits that accrue to both employers and employees. Such schedules are more responsive to the desires of employees and provide, for example, for increased leisure and reduced commuting time/expenses. Employee satisfaction manifests itself in lower absenteeism and tardiness, reduced turnover and increased productivity. Additional benefits accruing to employers include more effective utilization of capital equipment, higher weekly output due to reduced startup/shutdown time, and reduced energy requirements.

COST-SAVINGS. Equally important is that the cost-savings realized by those government contractors electing to use compressed workweeks would result in reductions in the costs of federal procurements.

STATUS. On March 21, 1983, Senator Armstrong introduced S. 870, the "Federal Contractor Employees Flexitime Bill". S. 870, which was referred to the Committee on Labor and Human Resources, would remove the current daily overtime requirements from the Walsh-Healey and Service Contracts Acts and make them conform with FLSA. If enacted, this bill restore equity in the treatment of federal contractors and their employees by providing them with the same options currently enjoyed by the balance of the private sector and those in the federal government.

Contrary to critics of similar bills in the past, however, S. 870 would not affect federal minimum wage or the forty-hour overtime provisions of FLSA; impact the collective bargaining process; conflict with any other federal labor statutes; or mandate four-day workweeks. Rather, it would merely bring the Walsh-Healey and Service Contracts Acts into conformance with the FLSA and provide an option currently denied only to to federal contractors and their employees.

POSITION. The Congress should approve legislation to eliminate the disparate treatment of government contractors and permit them take advantage of the demonstrated cost-savings and other benefits deriving from compressed workweeks.

April 11, 1983

Attendees

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THE WHITE HOUSE
WASHINGTON

Date: APR 11

TO: M. UHLMANN

FROM: **DEE JEPSEN**

SUBJECT:

The attached is for your:

- ☐ Information
- ☒ Review & Comment
- ☐ Direct Response
- ☐ Appropriate Action
- ☐ Draft Letter
- ☐ Signature
- ☐ File
- ☐ Other

Comments:

United States Senate

MEMORANDUM

Memo to
4/3

This is a copy of the bill that Sen. Armstrong introduced the last day of the session prior to the Easter recess. Sorry it has taken so long to get you a copy--I just received it today. Please call if you have questions.

Margaret Weber
4-5941

copy for my files
Thanks
Mike Uhlmann

II

98TH CONGRESS
1ST SESSION

S. 960

To assist women in making career choices in the home or in the labor force, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, MARCH 21), 1983

Mr. ARMSTRONG introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To assist women in making career choices in the home or in the labor force, and for other purposes.

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

FINDINGS AND PURPOSE

SEC. 101. (a) The Congress finds that—

(1) women should have an equal opportunity and access to all careers and occupations, including that of career homemaker (sometimes called dependent wife);

(2) equal career opportunity for women depends on having an economically realistic choice between

being a career homemaker and being in the paid labor force; and

(3) women should have the freedom to make career choices without government compulsion, and Federal law and programs should not include incentives or disincentives to induce women to make particular career choices or to discourage them from choosing others.

(b) It is the purpose of this Act to help make it economically feasible for each woman to make her own career choices, whether they be in the home or in the labor force, or any combination thereof, without direct or indirect economic incentives or disincentives built into the Federal law or programs to favor a particular choice or type of choice.

INDIVIDUAL RETIREMENT ACCOUNTS

SEC. 201. Subsection (c) of section 210 of the Internal Revenue Code of 1954 is amended to read as follows:

"(1) IN GENERAL.—In case of any individual with respect to whom a deduction is otherwise allowable under subsection (a) who files a joint return under section 6013 for a taxable year, there shall be allowed as a deduction any amount paid in cash for the taxable year by or on behalf of the individual to an individual retirement plan established for the benefit of his spouse.

"(2) LIMITATION.—The amount allowable as a deduction under paragraph (1) shall not exceed the excess of—

"(A) the lesser of—

"(i) $4,000, or

"(ii) an amount equal to the sum of the compensation includable in the individual's and the spouse's gross income for the taxable year, over

"(B) the amount allowable as a deduction under subsection (a) to the individual and the spouse for the taxable year (determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b)).

In no event shall the amount allowable as a deduction under paragraph (1) exceed $2,000.".

FUNDS TO ENCOURAGE HOMEMAKING

SEC. 301. Part C of the General Education Provisions Act is amended by adding after section 439 the following new section:

"PROTECTION OF ROLE OF HOMEMAKER

"SEC. 439A. Funds made available under any applicable program shall not be used to discourage the pursuit of full-time homemaking as a career alternative.".

SEC. 401. Section 102(a) of the Contract Work Hours Standards Act (42 U.S.C. 328(a)) is amended to read as follows:

"(a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103 shall be computed on the basis of a standard workweek of forty hours, and work in excess of such standard workweek shall be permitted subject to the provisions of this section. For each workweek in which any such laborer or mechanic is so employed, such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of forty hours in the workweek.".

(b) Section 102(b) of such Act is amended—

(1) by striking out "eight hours in any calendar day or in excess of" in paragraph (1): and

(2) by striking out "eight hours or in excess of" in paragraph (2).

SEC. 402. Subsection (c) of the first section of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes" (4 U.S.C. 35(c)), commonly known as the Walsh-Healey Act, is amended by striking out "eight hours in any one day or in excess of".

SEC. 403. The amendments made by this Act shall not affect collective bargaining agreements in effect on the date of enactment of this Act.

SOCIAL SECURITY

SEC. 501. Section 215(b)(2)(A) of the Social Security Act is amended by (1) striking out "and" at the end of clause (i), (2) striking out the period at the end of clause (ii) and inserting ", and" in lieu thereof, and (3) adding after clause (ii) the following new clause (iii):

"(iii) in the case of an individual who—

"(I) attains age 62 or becomes disabled after December 1983,

"(II) is entitled to old-age or disability insurance benefits, and

"(III) is divorced and has not remarried,

by the number of years provided in clause (i) or (ii), as may be applicable, and further reduced by each year (not in excess of 10 such further years) during which that individual was married and received no wages or self-employment income for purposes of this title and no earnings while in the service of the Federal Government or any State (or political subdivision thereof).".

SEC. 502. (a) Section 215(b)(2)(A) of the Social Security Act is amended to read as follows:

"(2)(A) The number of an individual's benefit computation years equals the number of elapsed years reduced—

"(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years and by any child-care years (as defined in this paragraph), and

"(ii) in the case of an individual who is entitled to disability insurance benefits, by the sum of the number of years equal to one-fifth of such individual's elapsed years (disregarding any resulting fractional part of a year) and any child-care years (as defined in this paragraph) but not by more than the sum of 5 years and any such child-care years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount for purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which he was not entitled to a disability or an old-age insurance benefit. If an individual described in clause (i) or (ii) is living with

a child (of such individual or his or her spouse) under the age of 3 in any calendar year which is included in such individual's computation base years, each such year (up to a combined total not exceeding 2) shall be considered a 'child-care year' if in such year the individual was living with such child substantially throughout the period in which the child was alive and under the age of 3 in such year and the individual had no earnings as described in section 203(f)(5) in such year. The preceding sentence shall apply only to the extent that its application would not result in a lower primary insurance amount. The number of an individual's benefit computation years as determined under this subparagraph shall in no case be less than 2.".

○

98TH CONGRESS
1ST SESSION

S. 870

Entitled the "Federal Contractor Employees Flexitime Bill".

IN THE SENATE OF THE UNITED STATES

MARCH 21, 1983

Mr. ARMSTRONG introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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A BILL

Entitled the "Federal Contractor Employees Flexitime Bill".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 102(a) of the Contract Work Hours Standards Act (40 U.S.C. 328(a)) is amended to read as follows:

"(a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103 shall be computed on the basis of a standard workweek of forty hours, and work in excess of such standard workweek shall be permitted subject to the provisions of this section. For each workweek in which any such laborer or mechanic is so em-

ployed, such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of forty hours in the workweek.".

(b) Section 102(b) of such Act is amended—

(1) by striking out "eight hours in any calendar day or in excess of" in paragraph (1); and

(2) by striking out "eight hours or in excess of" in paragraph (2).

SEC. 2. Subsection (c) of the first section of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes" (41 U.S.C. 35(c)), commonly known as the Walsh-Healey Act, is amended by striking out "eight hours in any one day or in excess of".

SEC. 3. The amendments made by this Act shall not affect collective-bargaining agreements in effect on the date of enactment of this Act.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Bob Carleson

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

FROM Barbara Selfridge DATE 4/15/83

REMARKS

Attached is a paper explaining the Armstrong flexitime bill (S. 960) and a second Armstrong bill (S. 870) which Bill Barr indicated he wanted to examine.

cc:
Bill Barr

OMB FORM 4
REV AUG 70

April 14, 1983

ARMSTRONG BILL (S. 870)

Flexible and Compressed Work Schedules for Government Contractors and Subcontractors

Provision: This bill would amend the Walsh Healey Public Contractors Act and the Contract Work Hours and Safety Standards Act to make them comparable to the Fair Labor Standards Act, which provides that employees can work any combination of hours per day without receiving overtime until hours worked exceed 40 per week.

Background

° The two Acts amended by the bill now require overtime be paid for work over 8 hours a day or 40 hours a week.

° The Administration supported an identical amendment last year when it was offered by Armstrong.

° The national AFL-CIO opposes any departure from the current requirement for overtime after eight hours a day, a position which some local unions reportedly do not support.

NOTE

Armstrong also has introduced S. 960 which includes:

° The provision discussed above.

° IRA liberalizations which would provide a $4,000 maximum deduction for a married couple (twice the maximum deduction allowed a worker). This provision differs in detail from a similar EEA provision.

° Social Security liberalizations as follows:

-- In computing Social Security worker's benefits (disability or old age) for individuals who are divorced and not remarried, up to 10 extra "drop-out" years would be allowed, provided the extra year was one in which the individual was married and had no earnings. (This provision as now drafted has considerable definitional problems.) Social Security's actuaries have estimated the long-term cost to be .18-.20 percent of payroll (approximately a one to two percent increase in expenditures over the next 75 years). Because the provision would be phased-in for new beneficiaries, the short-term cost would be small.

-- In computing in Social Security benefits, up to two extra "child care drop-out" years would allowed all individuals provided the extra year was one in which the individual lived substantially with a child age three or under and had no earnings. The current limitations on extra child care drop-out years (now applicable only in in disability computations) would be removed, and this liberalized version of child care drop-out years would be extended to old-age and survivors benefits. Social Security's actuaries have estimated the long-term cost of this proposal to be .04 percent of payroll (approximately a three-tenths of one percent increase in expenditures over the next 75 years). While the benefit outlay consequences of the proposal are small (virtually rounding error), the administrative burdens associated with child care drop-out years are considerable. Further, once enacted, child care drop-out years might be liberalized, e.g., extended to years in which the parent had some earnings.

THE WHITE HOUSE
WASHINGTON

May 2, 1983

NOTE FOR ROGER PORTER

FROM: BILL BARR

Attached are the draft responses that you requested on the flexi-time bill.

THE WHITE HOUSE

WASHINGTON

May 2, 1983

Dear Sandy:

Thank you for your letter concerning Senator Armstrong's flexitime bill. I appreciate the role you have played in focusing attention on this important initiative. As you know, last Congress we supported Senator Armstrong's efforts.

In the next few weeks, the Cabinet Council on Human Resources will be considering whether the Administration should take a leadership role in seeking enactment of this initiative.

Sincerely yours,

James A. Baker, III
Chief of Staff

Alexander B. Trowbridge
President
National Association of
Manufacturers
1776 F Street, N.W.
Washington, D.C. 20006

THE WHITE HOUSE

WASHINGTON

May 2, 1983

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Sincerely yours,

Edwin L. Harper
Assistant to the President
for Policy Development

Alexander B. Trowbridge
President
National Association of
Manufacturers
1776 F Street, N.W.
Washington, D.C. 20006