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THE WHITE HOUSE
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 2/8/84 **Number:** 168901CA **Due By:**

Subject: Cabinet Council on Economic Affairs - Friday, February 10, 1984
8:45 a.m. - Roosevelt Room TOPICS: Rural Electrification Admin. Regulation & Market Interventi

	Action	FYI
ALL CABINET MEMBERS	☐	☐
Vice President	☑	☐
State	☑	☐
Treasury	☑	☐
Defense	☑	☐
Attorney General	☐	☑
Interior	☐	☑
Agriculture	☑	☐
Commerce	☑	☐
Labor	☑	☐
HHS	☐	☑
HUD	☑	☐
Transportation	☑	☐
Energy	☐	☑
Education	☐	☑
Counsellor	☑	☐
OMB	☑	☐
CIA	☐	☑
UN	☐	☑
USTR	☑	☐
GSA	☐	☐
EPA	☐	☐
OPM	☐	☐
VA	☐	☐
SBA	☐	☐

	Action	FYI
CEA	☑	☐
CEQ	☐	☐
OSTP	☐	☐
	☐	☐
	☐	☐
	☐	☐
Baker	☑	☐
Deaver	☐	☑
Darman *(For WH Staffing)*	☑	☐
Jenkins	☐	☑
Mc Farlane	☐	☑
Svahn	☑	☐
	☐	☐
	☐	☐
	☐	☐
	☐	☐
	☐	☐
CCCT/Gunn	☐	☐
CCEA/Porter	☑	☐
CCFA/	☐	☐
CCHR/Simmons	☐	☐
CCLP/Uhlmann	☐	☐
CCMA/Bledsoe	☐	☐
CCNRE/	☐	☐

REMARKS:

The Cabinet Council on Economic Affairs will meet on Friday, February 10, 1984 at 8:45 a.m. in the Roosevelt Room.

The agenda and background papers are attached.

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☐ Katherine Anderson ☐ Don Clarey
☑ Tom Gibson ☐ Larry Herbolsheimer
Associate Director
Office of Cabinet Affairs
456-2800

THE WHITE HOUSE

WASHINGTON

February 8, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: ROGER B. PORTER EH for

SUBJECT: Agenda and Papers for the February 10 Meeting

The agenda and papers for the February 10 meeting of the Cabinet Council on Economic Affairs are attached. The meeting is scheduled for 8:45 a.m. in the Roosevelt Room.

The first agenda item is an update on the legislative status of the Rural Electrification Revolving Fund Self-Sufficiency Act of 1983, a bill promoted by the National Rural Electric Cooperative Association (NRECA), which is estimated to have a total cost of $20.7 billion. A memorandum from Secretary Block describing the bill is attached.

The second agenda item is a review of a proposal for a regulatory planning process, which the Cabinet Council requested at its December 13 meeting. A memorandum prepared by Christopher DeMuth outlining the proposed process is attached.

Attachments

THE WHITE HOUSE

WASHINGTON

CABINET COUNCIL ON ECONOMIC AFFAIRS

February 10, 1984

8:45 a.m.

Roosevelt Room

AGENDA

1. Proposed Rural Electrification Administration (REA) Legislation
   (CM # 113)

2. Report of the Working Group on Regulation and Market Intervention
   (CM # 413)

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

February 3, 1984

our alt is not realistic; it has no chance.

no compromise: say we have alt; veto anything not in accord = keep bill as unacceptable as possible.

MEMORANDUM FOR CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: John R. Block
Secretary of Agriculture JRB

SUBJECT: Proposed REA Legislation

Regan: WH must now carry the ball

Senate hearings on S. 1300 (H.R. 3050), the Rural Electrification Revolving Fund Self-Sufficiency Act of 1983, proposed by the National Rural Electric Cooperative Association (NRECA) can be expected in April. The House has held hearings and floor action can be expected shortly.

The Cabinet Council on Economic Affairs has met on several occasions to review both the issues raised by this legislation and the position to be taken by the Administration. At the direction of the Cabinet Council on Economic Affairs, letters have been sent to Congress making clear the Administration's strong opposition to the bill (copies attached).

The bill continues to gain strength and efforts to gain support for the Administration's position have proven unproductive so far. USDA has drafted legislation pursuant to direction from the CCEA and in accordance with the budget guidelines issued by the Office of Management and Budget. The main provisions of the Administration proposal are as follows:

- -- REA activities will be placed on budget.
- -- The REA revolving fund will maintain an interest rate equal to the Government's cost of borrowing.
- -- User fees will be required of all borrowers to cover all S&E expenses.
- -- The REA revolving fund will not exceed $1.1 billion per year.
- -- Borrowers with a density of 10 or more consumers per mile must obtain funding through loan guarantees rather than through the REA revolving fund.

The long-term cost of the NRECA legislative proposal is in some dispute, but unacceptably high under any circumstances. The Administration's estimate is $20.7 billion which can be broken down as follows:

CBO says $15.8 B

1. Forgiveness of long-term notes by REA (principal only, interest of $307 million annually has already been forgiven) .... $ 7.9 billion

2. Downward only refinancing of Certificate of Beneficial Ownership notes (CBO's) (Interest payments lost, for the life of the loan, to Treasury, plus the legislation allows refinancing "without penalty") .... $ 8.0 billion

3. Downward only refinancing of loan guarantee commitments (Currently some $7.85 billion in long-term notes would be eligible for refinancing. Other notes [$26 billion] could qualify later. Again, this represents interest lost to Treasury assuming FFB will refinance them) .... $ 4.8 billion

Total .... $20.7 billion

Three additional provisions cannot be accurately estimated but will increase Government exposure by no more than $1 billion.

The Congressional Budget Office (CBO) has estimated the cost of the bill at $15.8 billion which can be broken down as follows:

1. Forgiveness of long-term notes by REA (principal only, interest of $307 million annually has already been forgiven) .... $ 7.9 billion

2. Downward only refinancing of Certificate of Beneficial Ownership notes (CBO's) (Interest payments lost, for the life of the loan, to Treasury, plus the legislation allows refinancing "without penalty") .... $ 7.9 billion (Approx.)

3. Downward only refinancing of loan guarantee commitments (Currently some $7.85 billion in long-term notes would be eligible for refinancing. Other notes [$26 billion] could qualify later. Again, this represents interest lost to Treasury.) .... Not calculated because CBO believes that FFB will refuse to refinance.

Total .... $15.8 billion

Three additional provisions cannot be accurately estimated but will increase Government exposure by no more than $1 billion.

Despite constant contact with Members of both houses, Administration testimony and media interviews by Administration officials, support for the Administration or any proposal other than that before the Congress is elusive. Congressman Ed Bethune (R-Arkansas) has a bill ready to introduce that would provide, according to CBO, a no cost solution to the fund imbalance -- the issue which was the genesis of the NRECA legislation. But Mr. Bethune has also found limited support for his alternative.

Bethune is to leg no cost so to fund imbala

The President's 1985 budget included two proposals which have apparently increased reaction against the Administration position. The notion of a user fee to cover $30 million annual salary and expense (S&E) costs and the suggestion of raising all lending rates from 5 percent to cost of money have received sharp reaction from members knowledgeable in the REA area.

All sources indicate that the realistic possibility of stopping this legislation is unlikely. At this time, it would be appropriate to reinforce the position taken by the Administration and USDA opposing the NRECA proposal through White House and Treasury Department input to the Congressional leadership. It should be made clear that the legislation in its present form is unacceptable to the Administration and bears the risk of a Presidential veto unless substantial changes are made.

Attachments

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

October 28, 1983

Honorable E (Kika) de la Garza
Chairman, Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department of Agriculture has serious concerns about several provisions of H.R. 3050, the Rural Electrification and Telephone Revolving Fund Self-Sufficiency Act of 1983.

The Administration strongly supports the Rural Electrification Administration program and recognizes the need for a stable, well maintained revolving fund to assure a sound electrical and telecommunication infrastructure for rural America.

We are concerned that the remedies provided for in H.R. 3050 will not achieve the stated purpose of the bill and will, at the same time, place a severe economic burden on the American taxpayer.

The Administration would be pleased to work with the Congress to amend the legislation in order to solve the REA Revolving Fund problem.

It is my responsibility to inform you that if H.R. 3050 is approved as currently drafted, I will be forced to recommend to President Reagan that he veto this defective and unnecessarily costly bill.

Sincerely,

John Block

JOHN R. BLOCK
Secretary

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

Honorable E (Kika) de la Garza
Chairman, Committee on Agriculture
House of Representatives
Washington, D. C. 20515

NOV 8 1983

Dear Kika:

I am writing to further clarify the Administration's views on H.R. 3050. The Administration is strongly opposed to H.R. 3050 because it provides a substantial increase in subsidies to the already heavily subsidized electric and telephone cooperatives.

Federal taxpayer dollars going to rural electric cooperatives over the last ten years have resulted in estimated (on and off budget) spending of $31.8 billion. The economic value of the subsidies and benefits is estimated at over $38 billion.

Two independent studies, by the Congressional Research Service and by National Economic Research Associates, Inc., support the conclusion that total Federal subsidies to REA borrowers are greater than any Federal subsidies provided to private utilities on a per customer basis. The 1982 NERA study conservatively estimates that for a new utility investment made in 1981, taking into account tax changes under ERTA and TEFRA, the annual subsidy per customer is more than three times greater for coops than for private utilities.

In addition to the above benefits, REA administrative costs to assist these borrowers totaled about $200 million over the last decade; nearly all cooperatives' revenues were exempt from Federal income taxes; and cooperatives had preferential access over private utilities to low cost Federal power.

Not surprisingly, electric rates charged by REA borrowers on average are lower than the rates charged by other electric utilities.

- Nationwide, REA borrower electric rates are about 12% lower than rates charged by other utilities.

- Even on an individual neighbor-to-neighbor comparison, rates charged by REA electric borrowers to residential customers are significantly lower than rates charged by neighboring non-REA utilities in 80% of the States with REA assistance.

In an independent report to Congress, the U.S. Comptroller General (GAO) concluded that residential customers served by REA borrowers pay <u>less</u> for the same amount of electricity used by residential customers of private utilities. The 8.5 million residential customers served by cooperatives receive lower cost power on average than the 63.8 million residential customers served by investor owned utilities.

The original purpose of the agency and 1936 Act was to bring electric and telephone service to farms and rural areas. About 99% of farms and rural areas are electrified and about 95% have telephone service.

H.R. 3050 would increase the Federal deficit by at least $19 billion over the next several years by:

- forgiveness of $7.9 billion in loan principal due Treasury beginning in 1993.

- refinancing of CBO's (borrowings from the Treasury) to lower interest rates when old CBO rates are at least one percent above current rates.

- refinancing of loan guarantees every seven years when the Treasury lending interest rate exceeds the current Treasury rate by at least one percent and when the borrower requests it.

- requiring third party debt guarantees by REA Administrator. This could insure all cooperative borrowing is federally subsidized.

- requiring subordination of Government first lien status--risking billions in Government assets.

- including broader criteria for the special (2 percent) interest rate on insured loans.

Instead of accepting H.R. 3050, I propose that the President's 84 budget proposal be adopted to reduce Federal risk and encourage more private sector involvement by:

- reducing existing Government loan levels over time and requiring coops to increase private borrowing.

- reducing the Federal share in rural electric and telephone funding. A Lehman Brothers' report concludes that the coops can significantly increase private sector borrowings to meet financial needs.

- encouraging, through these actions, major improvements in REA borrower balance sheets so that they could at last operate in a more business-like environment with less, not more, Government dependence.

As Secretary Block noted in his letter to you of October 28, 1983, the Administration believes that a strong, healthy rural electrification program remains important to ensuring the economic health and quality of life of rural areas. But H.R. 3050 represents a grossly inequitable effort to use taxpayer dollars to provide special benefits to private business interests that have organized a massive pressure campaign. Were it to pass in its current form, I would not hesitate to recommend that the President withhold his approval of the bill.

The Administration looks forward to working with the Congress to deal effectively with the revolving fund problem over the next few years.

Sincerely,

David A. Stockman
Director

IDENTICAL LETTER ALSO SENT TO:
HONORABLE EDWARD MADIGAN

DEPARTMENT OF THE TREASURY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20220

OCT 04 1983

Dear Mr. Chairman:

The Department would like to take this opportunity to comment on H.R. 3050, the "Rural Electrification and Telephone Revolving Fund Self-Sufficiency Act of 1983", which has been referred to your Committee. The Department strongly opposes enactment of H.R. 3050. It would add to the billions of Federal dollars already granted under existing subsidy programs to rural electric cooperatives. The further large increases proposed under H.R. 3050 are not justified. The Department's comments on specific provisions of the bill are detailed below.

Under existing law, the REA direct loan program is financed by (1) $7.9 billion of borrowings from Treasury which were outstanding when the Rural Electric and Telephone Revolving Fund was established in 1973 (the 1973 legislation repealed the requirement for the payment of interest to Treasury on this borrowing), (2) the sale to the Federal Financing Bank of certificates of beneficial ownership (CBOs) in the portfolio of direct loans, (3) authorized appropriations, and (4) authority to borrow from Treasury at current Treasury borrowing costs.

Section 4 of the bill would repeal the requirement for repayment of the $7.9 billion of borrowings from Treasury. The Department is not aware of any justification for the proposed cancellation of REA debt. While debt cancellation could be justified to the extent of realized loan losses, this justification is absent in the case of the REA program. Moreover, since this additional $7.9 billion of financing for the program would be provided outside of the budget/appropriations process, it would constitute backdoor financing. Accordingly, the Department is opposed to section 4.

Section 5 would authorize the Administrator to repurchase without penalty CBOs sold to the FFB whenever the interest rate on an outstanding CBO is at least 100 basis points higher than the current FFB rate. Thus, in a period of declining market interest rates, the Administrator could continuously refund the entire portfolio of some $3.3 billion of CBOs at successively lower interest rates and then simply wait out any periods of rising market rates. This proposal would provide substantial benefits to the fund at the expense of the FFB and the Treasury. Accordingly, the Department is opposed to section 5.

Section 7 would provide a similar rollover privilege for guaranteed borrowers from the Federal Financing Bank except that such rollovers could only occur every 7 years. That is, if the current FFB lending rate were at least 1 percentage point below the rate on an outstanding guaranteed loan, the borrower could request that the loan be refinanced without penalty at the current FFB rate. This proposal suffers from the same criticism as the proposal to refinance CBOs discussed above. FFB and REA have agreed in principle to permit REA-guaranteed borrowers to fund projects with rollovers of short-term debt during the up to 35-year period when an advance is outstanding. The contractual terms, which are now being worked out between FFB and REA, would be more flexible than the legislative language proposed in section 7 of the bill and would recognize the rights and obligations of all of the parties to the guaranteed loan contract.

Under existing law, REA makes direct loans at 5 percent (the standard rate) and at 2 percent (the special rate). Section 6 would amend existing law to authorize the Administrator, from time to time, to establish the interest rate for new loans made during a given period so that the interest income from new loans just covers the Administrator's anticipated interest expense on new borrowings during that period. Standard loans would bear interest at the rate so determined, but not less than 5 percent. Special loans would bear interest at not less than 2 percent nor more than one-half the standard loan rate. We understand that the effect of section 6 would be to increase the standard loan rate to about 6 percent.

Experience with Federal credit programs demonstrates that fixed interest rates, such as the 5 percent and 2 percent rates prescribed in the REA statute, produce perverse and unintended variations in interest rate subsidies as market rates of interest vary. This results in inequities among borrowers using the program at different times and in extraordinary demands for Federal loans at times of highest market rates of interest, which are also likely to be the times of greatest inflationary pressures and need for budgetary restraint. For example, at the current cost of long-term Treasury borrowing of about 12 percent, the cost of making a typical 35-year loan at 5 percent in the amount of $3 million is the same as the cost of providing an outright grant of $1.5 million and requiring the remaining $1.5 million to be paid with interest at 12 percent. Yet in 1973, when the 5 percent rate was established for the REA program, the Treasury's long-term borrowing rate was only about 7 percent, so the cost to the Government, and the subsidy to new borrowers, has risen substantially over the past decade because of the increase in market rates of interest rather than an increase in the need for the subsidy. The Department, therefore, opposes interest subsidies of this nature.

The Treasury has long maintained that the benchmark interest rate for Federal lending programs should be the current cost of Treasury borrowing for a period comparable to the maturity of the loan. The essence of the argument is that while the Treasury does not enter the market to borrow a specific amount for a specific maturity to finance a loan in that amount at that maturity, it is compelled to have a comparably greater amount of debt outstanding over the life of the loan. Thus, the best measure of the cost of the loan is the current market borrowing cost for comparable maturities. Any interest rate subsidies deemed necessary should be provided at a fixed spread below the Treasury borrowing rate. Under this approach, the interest rate subsidy is explicit. Accordingly, the Department is opposed to section 6 of the bill.

Under existing law, the REA Administrator is authorized, but not required, to guarantee loans to rural electric and telephone borrowers and to subordinate direct loans to other financing obtained by such borrowers. Section 7 of the bill would amend existing law to require the Administrator to guarantee such loans and to subordinate REA direct loans at the request of the borrower. Such subordination would substantially increase the Government's risk. Also, since eligible borrowers include States and municipalities, the guarantee and/or subordination of the aforementioned loans would result in the Federal guarantee of tax-exempt obligations.

The Administration is strongly opposed to Federal guarantees of tax-exempt obligations. Placing the credit of the United States behind a tax-exempt obligation creates a security that is superior to direct obligations issued by the U.S. Treasury and is contrary to the spirit of the Public Debt Act of 1941, which prohibits direct issuance by Federal agencies of obligations the interest on which is exempt from Federal income taxation. Federal guarantees of tax-exempts also have adverse effects on the municipal market, because they create securities which are superior to all other tax-exempt securities issued by State and local entities. Consequently, such guarantees add to the pressures on the municipal bond market, crowd out other, less creditworthy municipal borrowers, and increase the borrowing costs of all municipal borrowers. A guarantee of a tax-exempt obligation is an inefficient means of Federal financing because the revenue loss to the Treasury greatly exceeds the interest benefits to the borrower of the tax exemption. Since 1970, Congress has enacted at least 24 statutes which preclude Federal guarantees of tax-exempts and in many cases authorize more efficient means of providing Federal credit assistance to the affected borrowers. As indicated in the enclosed list, these statutes affect virtually every sector of the economy -- agriculture, community facilities, education, energy, housing, rural business and economic development, and transportation. Accordingly, the Department is opposed to section 7 of the bill.

The rural electric cooperatives have benefitted from a wide range of subsidies, including subsidized direct loans and 100 percent loan guarantees, tax-exempt status, retention of essentially tax-exempt status while taking advantage of tax incentives (e.g., Safe Harbor leasing) available to fully taxable entities, tax-exempt municipal bonds for pollution control equipment, and preferential access to low cost Federal power. No justification for the large increases in subsidies and U.S. Government risk proposed by the bill has, however, been provided. Thus, no further subsidies are warranted. We, therefore, strongly urge the Committee to reject this legislation.

The Office of Management and Budget has advised that there is no objection to the submission of this report to your Committee, and that enactment of H.R. 3050 in its present form would not be in accord with the President's program.

Sincerely,

Jordan Luke

Margery Waxman
Acting Deputy General Counsel

The Honorable
E de la Garza, Chairman
Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Enclosure

Statutes which preclude Federal guarantees of tax-exempt obligations

1. Loans for modernization and construction of hospitals and other medical facilities; P.L. 91-296, June 30, 1970, 42 U.S.C. 291j-7(e). 1/2/3/

2. New Community debentures; P.L. 91-609, December 31, 1970, 42 U.S.C. 4514. 2/3/

3. Water and waste facility loans sold out of the Agricultural Credit Insurance Fund; P.L. 91-617, December 31, 1970, 7 U.S.C. 1926(a)(1). 2/3/

4. Farm Credit Administration member institution guarantees; P.L. 92-181, December 10, 1971, 12 U.S.C. 2204.

5. Academic facilities loan insurance, P.L. 92-318, June 23, 1972, 20 U.S.C. 1132c-5.

6. Washington Metropolitan Area Transit Authority obligations; P.L. 92-349, July 13, 1972, D.C. Code 1-1441 note, 2/3/

7. Loans sold out of the Rural Development Insurance Fund; P.L. 92-419, August 30, 1972, 7 U.S.C. 1929a(h). 2/

8. Vocational rehabilitation facilities mortgages; P.L. 93-112, September 26, 1973, 29 U.S.C. 773(c).

9. National Railroad Passenger Corporation guaranteed obligations; P.L. 93-146, November 3, 1973, 45 U.S.C. 602(g).

10. Loan guarantees for initial operating costs of health maintenance organizations; P.L. 93-222, December 29, 1973, 42 U.S.C. 300e-(c)(3). 2/

11. Loan guarantees to assist the economic development of Indians and Indian organizations; P.L. 93-262, April 12, 1974, 25 U.S.C. 1451.

12. State housing finance and State development agency obligations; section 802 of P.L. 93-383, August 22, 1974, 42 U.S.C. 1440. 2/3/

13. Guarantees of obligations issued by coastal State and local governments to finance projects associated with the development of Outer Continental Shelf energy resources; section 7 of P.L. 94-370, July 26, 1976, 16 U.S.C. 1456a. 2/3/

14. Guarantees of Virgin Islands Bonds; P.L. 94-392, August 19, 1976, 48 U.S.C. 1574b. 2/

15. Loan guarantee program for acquisition of property (urban renewal); section 108 of P.L. 93-383 as amended by P.L. 95-128, October 12, 1977, 42 U.S.C. 5308. 2/3/

16. Guarantees of obligations issued by State and local governments to finance essential community development and planning occasioned by Federally assisted alternative fuel demonstration facilities; section 19(k) of the Federal Nonnuclear Energy Research and Development Act of 1974, as added by section 207(b) of P.L. 95-238, Feb. 25, 1978, 42 U.S.C. 5919. 2/3/

17. Guarantees for startup and construction costs of municipal or industrial waste treatment and synthetic fuels demonstration facilities; section 19(y) of the Federal Nonnuclear Energy Research and Development Act of 1974, as added by P.L. 95-238, Feb. 25, 1978, 42 U.S.C. 5919. 2/3/

18. New York City loan guarantees; section 103 of the Internal Revenue Code of 1954, as amended by section 201 of P.L. 95-339, August 8, 1978, 26 U.S.C. 103. 2/

19. Loan guarantees of the National Consumer Cooperative Bank; section 108(c) of P.L. 95-351, August 20, 1978, 12 U.S.C. 3018.

20. Guarantees of combination financing for hospitals and guarantees of combination refinancing for multifamily housing projects; section 242 of the National Housing Act, as amended by section 315 of P.L. 96-153, December 21, 1979, 12 U.S.C. 1715z-7.

21. Loan guarantees to assist the Chrysler Corporation; section 11 of P.L. 96-185, January 7, 1980, 15 U.S.C. 1870.

22. Revenue bonds guaranteed or otherwise secured by the United States Synthetic Fuels Corporation; section 155 of P.L. 96-294, June 30, 1980, 42 U.S.C. 8755. 2/3/

23. Loan guarantees for municipal waste energy projects; section 233 of P.L. 96-294, June 30, 1980, 42 U.S.C. 8833. 2/3/

24. Guarantees of obligations issued to finance ocean thermal energy facilities; section 1110 of the Merchant Marine Act, 1936, as added by section 203 of P.L. 96-320, August 3, 1980, 46 U.S.C. 1279c. 2/

1/ Superseded by P.L. 93-641, January 4, 1975, 42 U.S.C. 300q.

2/ Statutes which authorize guarantees of taxable municipal obligations.

3/ Statutes which authorize interest subsidies on guaranteed taxable municipals.

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

February 7, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: CHRISTOPHER DEMUTH Christopher DeMuth

SUBJECT: Regulatory Policy Initiative

As requested by the CCEA at its December 13 meeting, this memorandum sets forth a proposal for a regulatory policy planning process that could be established this year. Such a process would institutionalize our most successful regulatory reform efforts, and permit the President to establish specific regulatory policies and priorities on an Administration-wide basis.

Background:

The regulatory policy planning process would build upon the Administration's experience under four major initiatives:

- Executive Order 12291 requires that agency rules be justified by a showing that their benefits will be worth their costs, and requires that all rules be reviewed by OMB before they are issued. The Order has been highly effective in curbing the proliferation of new regulations. However, the Order provides no systematic mechanism for reviewing the economic inefficiencies in the large mass of existing regulations.

- The Task Force on Regulatory Relief targeted over 100 existing regulations for top-priority agency reconsideration, leading to a significant reordering of agency priorities towards revision or elimination of existing rules. However, many of these reviews were never completed, and many dubious regulatory policies were never touched. When the Task Force was ended, no comparable process was put in place for sustaining a high-level commitment to reforming existing regulatory policies.

- The "paperwork budget" process has been established, setting annual paperwork-reduction goals for each agency. This process has led to unprecedented reductions in Federal paperwork in each of the past three years.

However, the "paperwork budget" covers only one part of the private costs of government regulation--the "burden hours" of complying with government paperwork requirements---that can be estimated with tolerable accuracy and comparability across programs.

- The "regulatory agendas," published twice each year under E.O. 12291, describe planned and pending regulatory proceedings in each agency. However, in their current format, the agendas are little more than reference catalogues. They do not express Administration policy, nor do they provide a mechanism through which regulatory policy could be established. When the Task Force reviews were in full swing, the agendas documented a large number of serious reform initiatives. In contrast, the latest agendas (October 1983) are devoted largely to plans for issuing new regulations--and the "reform" or "deregulation" initiatives are mostly minor or technical.

A Regulatory Policy Planning Process:

The Administration is now in a good position to consolidate the best features of these initial efforts--through an annual planning process for setting affirmative, Administration-wide regulatory policy. Doing so would involve only incremental changes in current procedures for preparing the regulatory agendas, but would use these procedures explicitly for setting priorities and resolving major policy issues. In the short run, this process would give greater emphasis and direction to the President's regulatory reform program. In the longer run, it would lead to permanent improvements in the way regulatory policies are debated and decided in this and future administrations.

The regulatory policy planning process would consist of four steps:

- First, each major regulatory agency would prepare a policy document setting forth:
  - -- general policy goals and priorities for the coming year;
  - -- the most significant reviews of existing rules to be undertaken during the year; and
  - -- the most significant new rules to be considered during the year.
- Second, these policy documents would be reviewed by OMB. Reviews might suggest different or additional reform initiatives, identify interagency policy conflicts, or raise broader economic issues.

for most part, would centralize reg process under OMB = "problem" proposals would be lost in mass of plan = once OK'd, tough to stop -

- Third, each agency's policy plan would be presented to a senior Administration policy group (such as the CCEA) and to the President.

problem

- Fourth, final agency plans would be compiled and published as a single Administration policy document. This would be the regulatory equivalent of the President's annual budget document--setting forth major themes and initiatives--while the Regulatory Agenda would be the equivalent of the budget appendix, containing a large amount of routine information not appropriate for a general policy document.

Discussion:

A systematic procedure for taking stock and launching new initiatives seems a logical next step for the Administration's regulatory reform program. Establishing such a process this year would give new public emphasis to our resolve to exert firm discipline over the government's regulatory machinery. It is likely to be attacked only by Nadarites and other unapologetic advocates of unbridled regulatory growth, and by those in Congress and the bureaucracy who want to keep the rulemaking process decentralized and under their control. Individual initiatives growing out of this process could be politically controversial, but this has also been so of the Administration's other efforts to improve Federal management.

The regulatory policy planning process would not be a panacea for all of the problems of regulation. Statutory programs often leave Executive Branch officials little discretion whether to regulate or how that regulation must be accomplished. Moreover, the Task Force's experience showed that any regulatory changes worth making will be resisted by influential private groups, both before the agency and in court. As with spending programs, regulatory programs generate their own equilibriums of interest groups--including business groups--who develop a stake in the status quo and lobby heavily to maintain it. Every agency head understands that these groups have numerous ways of making their influence felt, not only in individual rulemaking proceedings, but on the general direction of the agency's policies and priorities over time.

The annual planning process would not abolish such regulatory politics, but could alter regulatory politics in the direction of sounder economic policy. It would not compromise the discretion of agency heads to initiate and decide notice-and-comment proceedings, and should increase that discretion as a practical matter--by strengthening the President's policy oversight and loosening the grip of the interest groups camped on agency doorsteps.

Finally, the policy-setting process would not supersede statutory requirements, but could bring about administrative reforms that would build momentum for eventual statutory change. The Executive Branch must be the entrepreneur in regulatory policy: Congress is institutionally averse to policy risks, and usually acts decisively only after agency initiatives have proven successful (as in the case of airline and financial services deregulation). A regulatory policy planning process, by giving our reform and deregulation efforts greater coherence within the Executive Branch, should give them greater influence in the Congress and the courts as well.

Timing:

At present, agency "regulatory agendas" are published each April and October, and this is a requirement of statute (the Regulatory Flexibility Act) as well as of E.O. 12291. The best time for the regulatory policy planning process would be January through March of each year, against the April deadline. This would come after most of the work in preparing the President's budget, and would permit consideration of regulatory policies in consert with major Administration legislative initiatives. The October agendas would still be issued (pending statutory change), but these would be routine "update" documents.

The preparation of the April 1984 regulatory agendas is already too far along to accommodate the planning process described in this paper. However, if the President approved such a process in February, it would be possible to prepare policy documents for several of the most important regulatory agencies by late April. The first planning exercise would focus on only the major regulatory agencies--Transportation, Labor, Interior, USDA, and EPA. From what we learn in this initial exercise, we can start early next Fall to "hit the ground running" with the first Regulatory Policy Plan of the President's second term.