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THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 7154 - Federal Rules  
of Civil Procedure Amendments Act of 1982

Richard Darman has requested comments by close of business January 7 on enrolled bill H.R. 7154, which amends the Federal Rules of Civil Procedure on service of process. Under the bill, service of a summons and complaint may be effected by first-class mail, with acknowledged receipt. If receipt is not acknowledged within twenty days, service must be made by personal delivery, but the party served will be required to pay the costs of service, unless he can justify failure to acknowledge the attempted service by mail. The bill would essentially relieve U.S. Marshals of service of process obligations in civil cases. An unrelated provision of the bill raises the fine for foreign agents who act in the United States without notifying the government. OMB, Justice, and the Administrative Office of U.S. Courts recommend approval; other affected agencies have no objection.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. The bill differs from the Supreme Court's proposal, which would have simply permitted service by registered or certified mail, but provides an adequate substitute. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

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

SUBJECT: Enrolled Bill H.R. 7154 - Federal Rules  
of Civil Procedure Amendments Act of 1982

Counsel's Office finds no objection from a legal perspective  
to the above-referenced enrolled bill.

FFF:JGR:aw 1/6/83

cc: FFFielding  
✓JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1983

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FFF:JGR:aw 1/6/83

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Chron

# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1/1Name of Correspondent: Richard G. Daiman☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Enrolled Bill H.R. 7154 - Federal Rules  
of Civil Procedure Amendments Act of 1982

## ROUTE TO:

## ACTION

## DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CU Holland</u>	ORIGINATOR	<u>83101106</u>			<u>1/1</u>
<u>WAT18</u>	Referral Note: <u>D</u>	<u>83101106</u>		<u>S</u>	<u>83101107</u>
	Referral Note:	<u>1/1</u>			<u>1/1</u>
	Referral Note:	<u>1/1</u>			<u>1/1</u>
	Referral Note:	<u>1/1</u>			<u>1/1</u>
	Referral Note:	<u>1/1</u>			<u>1/1</u>

## ACTION CODES:

A - Appropriate Action  
C - Comment/Recommendation  
D - Draft Response  
F - Furnish Fact Sheet  
to be used as Enclosure

I - Info Copy Only/No Action Necessary  
R - Direct Reply w/Copy  
S - For Signature  
X - Interim Reply

## DISPOSITION CODES:

A - Answered  
B - Non-Special Referral  
C - Completed  
S - Suspended

## FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

# WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/6/83 ACTION/CONCURRENCE/COMMENT DUE BY: 1/7/83 c.o.b.

SUBJECT: ENROLLED BILL H.R. 7154 - FEDERAL RULES OF CIVIL PROCEDURE  
AMENDMENTS ACT of 1982

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DOLE	<input type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

## Remarks:

May we have your comments on the attached Bill by close of business Friday, January 7. Thank you.

Richard G. Darman  
Assistant to the President  
(x2702)

## Response:



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

JAN 6 1983

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7154 - Federal Rules of Civil  
Procedure Amendments Act of 1982  
Sponsors - Rep. Edwards (R) California and Rep. McClory  
(R) Illinois

Last Day for Action

January 14, 1983 - Friday

Purpose

(1) Amends the Federal Rules of Civil Procedure to allow service of process by first class mail or by individuals other than U.S. Marshals and special court appointees, and (2) increases fines which may be imposed on agents of foreign governments who act in the United States without giving prior notice to the Secretary of State.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Administrative Office of the United States Courts	Approval
Department of State	No objection (Informally)
National Security Council	No objection
Department of Defense	No objection
Central Intelligence Agency	No objection (Informally)

Discussion

H.R. 7154 concerns two distinct subjects which are addressed separately below.

Federal Rules of Civil Procedure

Under the Rules Enabling Act, the Supreme Court can propose to Congress new procedural rules and amendments to the existing Federal Rules of Civil Procedure. These proposals become law unless Congress acts within 90 days of the transmittal to prevent from becoming law. On April 28, 1982, the Supreme Court transmitted to Congress several proposed changes to the

11/6/83

rules including amendments to allow service of process in certain cases (e.g., delivery of subpoenas, summonses and complaints) by (1) any person not a party to litigation and not less than 18 years of age, and (2) certified or registered mail. Currently, delivery of such documents in cases under Federal court jurisdiction, and in which the United States is not a party, must be made by a U.S. Marshal, his deputy, a person specially appointed by the court, or by a person authorized by the law of the State in which the court is located. The Administration supported the Supreme Court's proposed changes as a way of relieving the U.S. Marshals Service of having to routinely serve summonses, subpoenas, and complaints for private parties in all civil actions. Despite Administration support for the proposed changes, Congress enacted Public Law 97-227 to postpone the effective date of the Court's proposed changes until October 1, 1983.

After further consideration of the Court's proposal, Congress enacted H.R. 7154, the enrolled bill, as an alternative to the Court's proposal. H.R. 7154 prohibits the Supreme Court's proposed rule from taking effect and provides that, in cases under Federal court jurisdiction anyone who is at least 18 years old, and not a party to the litigation, may deliver summonses, subpoenas, and complaints to the named party. In addition, plaintiffs may send such documents to defendants by first class mail, as opposed to sending certified mail which was proposed by the Supreme Court, as long as a prepaid postage return envelope addressed to the sender, and a receipt form, is included.

Essentially, the new rule will also require the delivery of summonses, subpoenas, and complaints, except in a foreign county, to be completed within 120 days, or a dismissal of the case (which will not affect the plaintiff's right to file a new suit) will be instituted. If a subpoena, summons or complaint is mailed to the defendant and no response is received within 20 days, the documents must then be delivered by (1) a person 18 years of age or older and not a party to the litigation, (2) the Marshals Service, or (3) a person specially appointed by the court. Parties who do not respond to the mail, and to whom documents must be delivered in person, will be required to pay the costs of such service unless they can show good cause for not responding to the mailed notice. Although the mail may also be used to send subpoenas, summonses and complaints to an agency or officer of the United States, they must be sent by registered or certified mail -- a practice now followed when a Federal agency or officer is outside the Federal judicial district in which a case is being litigated.

In order to provide flexibility in these new procedures, H.R. 7154 includes several exceptions to requirements for the delivery of summonses, subpoenas, and complaints. Service by a Marshal or a special court appointee may be ordered (1) when the plaintiff is unable to pay (i.e., the plaintiff is a pauper), (2) in certain

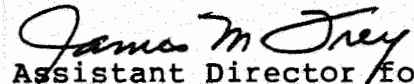
cases involving seamen, (3) when the court deems it necessary in a particular case, or (4) when the plaintiff is the United States or one of its officers or agencies. Additionally, courts may follow service of process rules of the State in which they are located if such rules can be conveniently used in a particular case.

In its enrolled bill views letter recommending approval of H.R. 7154, the Department of Justice advises that H.R. 7154 will effectively relieve the U.S. Marshals Service from having to serve process in all civil actions, and that the service-by-mail provisions of the enrolled bill will provide for fair and efficient service of process in civil actions. Informally, Justice advises that relieving the U.S. Marshals Service of these routine service responsibilities will save \$1 million annually and allow 50 marshal positions to be eliminated.

Amendments to Notification Requirements

H.R. 7154 increases from \$5,000 to \$75,000 the fine on diplomatic or consular officers or attaches who act in the United States on behalf of foreign governments without giving prior notice to the Secretary of State.

H.R. 7154, which passed the House and Senate by voice vote, will take effect 45 days after enactment.

  
Assistant Director for  
Legislative Reference

Enclosures

# Ninety-seventh Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-fifth day of January,  
one thousand nine hundred and eighty-two*

### An Act

To amend the Federal Rules of Civil Procedure with respect to certain service of process by mail, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Rules of Civil Procedure Amendments Act of 1982".

SEC. 2. The Federal Rules of Civil Procedure are amended as follows:

(1) Rule 4(a) of such Rules is amended by striking out "it for service to the marshal or to any other person authorized by Rule 4(c) to serve it" and inserting in lieu thereof "the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint".

(2) Subsection (c) of Rule 4 of such Rules is amended to read as follows:

“(c) SERVICE.

“(1) Process, other than a subpoena or a summons and complaint, shall be served by a United States marshal or deputy United States marshal, or by a person specially appointed for that purpose.

“(2)(A) A summons and complaint shall, except as provided in subparagraphs (B) and (C) of this paragraph, be served by any person who is not a party and is not less than 18 years of age.

“(B) A summons and complaint shall, at the request of the party seeking service or such party's attorney, be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court for that purpose, only—

“(i) on behalf of a party authorized to proceed in forma pauperis pursuant to Title 28, U.S.C. § 1915, or of a seaman authorized to proceed under Title 28, U.S.C. § 1916,

“(ii) on behalf of the United States or an officer or agency of the United States, or

“(iii) pursuant to an order issued by the court stating that a United States marshal or deputy United States marshal, or a person specially appointed for that purpose, is required to serve the summons and complaint in order that service be properly effected in that particular action.

“(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule—

“(i) pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

“(ii) by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to

be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3).

“(D) Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

“(E) The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

“(3) The court shall freely make special appointments to serve summonses and complaints under paragraph (2)(B) of this subdivision of this rule and all other process under paragraph (1) of this subdivision of this rule.”.

(3) Rule 4(d) of such Rules is amended—

(A) by striking out “SUMMONS: PERSONAL SERVICE” and inserting “SUMMONS AND COMPLAINT: PERSON TO BE SERVED” in lieu thereof; and

(B) by striking out paragraph 7.

(4) Rule 4(d)(5) of such Rules is amended—

(A) by striking out “delivering” and inserting “sending” in lieu thereof, and

(B) by inserting “by registered or certified mail” after “complaint”.

(5) Rule 4(e) of such Rules is amended by striking out “SAME” and inserting “SUMMONS” in lieu thereof.

(6) Subdivision (g) of Rule 4 of such Rules is amended to read as follows:

“(g) RETURN. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or deputy United States marshal, such person shall make affidavit thereof. If service is made under subdivision (c)(2)(C)(ii) of this rule, return shall be made by the sender’s filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.”.

(7) Rule 4 of such Rules is amended by adding at the end the following:

“(j) SUMMONS: TIME LIMIT FOR SERVICE. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court’s own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.”.

SEC. 3. The Appendix of Forms at the end of the Federal Rules of Civil Procedure is amended by inserting after Form 18 the following:

H. R. 7154—3

"FORM 18-A.—NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL.

"United States District Court for the Southern District of New York

"Civil Action, File Number \_\_\_\_\_

"A. B., Plaintiff

v.

"C. D., Defendant

} Notice and Acknowledgment of Receipt of Summons and  
Complaint

"NOTICE

"To: (insert the name and address of the person to be served.)

"The enclosed summons and complaint are served pursuant to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure.

"You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

"You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

"If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

"If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

"I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint was mailed on (insert date).

" \_\_\_\_\_  
Signature

" \_\_\_\_\_  
Date of Signature

H. R. 7154—4

"ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

"I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned manner at (insert address).

"\_\_\_\_\_  
Signature

"\_\_\_\_\_  
Relationship to Entity/Authority to  
Receive Service of Process

"\_\_\_\_\_  
Date of Signature".

SEC. 4. The amendments made by this Act shall take effect 45 days after the enactment of this Act.

SEC. 5. The amendments to the Federal Rules of Civil Procedure, the effective date of which was delayed by the Act entitled "An Act to delay the effective date of proposed amendments to rule 4 of the Federal Rules of Civil Procedure", approved August 2, 1982 (96 Stat. 246), shall not take effect.

SEC. 6. Section 951 of title 18, United States Code, is amended by striking out "\$5,000" and inserting in lieu thereof "\$75,000".

*Speaker of the House of Representatives.*

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

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 7378 - Codification  
of Laws Pertaining to Money and Finance

Richard Darman has requested comments by close of business January 7 on enrolled bill H.R. 7378, which enacts as positive law portions of Title 31 of the United States Code. This is part of the continuing work of the Office of the Law Revision Counsel of the House of Representatives. The bill contains the necessary boilerplate stating that no substantive change is intended by the codification itself, location in U.S.C., or caption titles. OMB, Treasury, and Defense recommend approval, the TVA and SBA (affected by the substantive provisions) have no objection, and Justice defers to the other agencies.

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objections.

Attachment

THE WHITE HOUSE  
WASHINGTON

January 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

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

SUBJECT: Enrolled Bill H.R. 7378 - Codification  
of Laws Pertaining to Money and Finance

Counsel's Office finds no objection from a legal perspective  
to the above-referenced enrolled bill.

FFF:JGR:aw 1/7/83

cc: FFFielding  
✓ JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1983

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cc: FFFielding  
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Subj.  
Chron

# **WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET**

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1 1Name of Correspondent: Richard G. Durman☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Enrolled Bill H.R. 7378 - Codification of Laws  
Pertaining to Money and Finance**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>Cu Holland</u>		ORIGINATOR	<u>83101106</u>			<u>1 1</u>
<u>CUAT 18</u>		Referral Note:	<u>D 83101106</u>		<u>S 83101107</u>	
		Referral Note:	<u>1 1</u>			<u>1 1</u>
		Referral Note:	<u>1 1</u>			<u>1 1</u>
		Referral Note:	<u>1 1</u>			<u>1 1</u>
		Referral Note:	<u>1 1</u>			<u>1 1</u>

**ACTION CODES:**

A - Appropriate Action  
 C - Comment/Recommendation  
 D - Draft Response  
 F - Furnish Fact Sheet  
 to be used as Enclosure

I - Info Copy Only/No Action Necessary  
 R - Direct Reply w/Copy  
 S - For Signature  
 X - Interim Reply

**DISPOSITION CODES:**

A - Answered  
 B - Non-Special Referral  
 C - Completed  
 S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

# WHITE HOUSE STAFFING MEMORANDUM

-6  
JR

DATE: 1/6/83 ACTION/CONCURRENCE/COMMENT DUE BY: 1/7/83 c.o.b.

SUBJECT: ENROLLED BILL H.R. 7378 - CODIFICATION OF LAWS RELATING TO MONEY  
AND FINANCE

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DOLE	<input type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING →	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

May we have your comments on the attached Bill by c.o.b. Friday,  
January 7. Thank you.

Richard G. Darman  
Assistant to the President  
(x2702)

Response:



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

JAN 6 1983

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7378 - Codification of Laws Relating  
to Money and Finance  
Sponsor - Rep. Rodino (D) New Jersey

Last Day for Action

January 14, 1983 - Friday

Purpose

To codify certain laws regarding money and finance as Title 31 of the United States Code.

Agency Recommendations

Office of Management and Budget

Approval

Department of the Treasury

Approval

Department of Defense

Approval (Informally)

Tennessee Valley Authority

No objection (Informally)

Small Business Administration

No objection (Informally)

Department of Justice

Defers (Informally)

Discussion

Public Law 97-258 restated, without substantive change, certain general and permanent laws related to money and finance and enacted those laws as title 31 of the United States Code. That legislation was part of the ongoing program of the Office of the Law Revision Counsel of the House of Representatives to prepare all titles of the United States Code for enactment as positive law. Examples of law restated by P.L. 97-258 included statutes concerning the Federal budget process, the coinage of currency, and the General Accounting Office.

H.R. 7378 further amends title 31 of the United States Code to take into account statutes enacted after April 15, 1982, the cut-off date for inclusion in P.L. 97-258. These include seven bills that have been enrolled during the past several months (e.g., the Prompt Payment Act and the Debt Collection Act).

Interested Executive branch agencies have reviewed the enrolled bill and are satisfied that it does not make any substantive change in existing law.

H.R. 7378 passed both Houses by voice vote.

*James M. They*  
Assistant Director for  
Legislative Reference

Enclosures

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 7336 - Education  
Consolidation and Improvement Act  
of 1981 Technical Amendments

Richard Darman has requested comments by close of business today on enrolled bill H.R. 7336, the Education Consolidation and Improvement Act of 1981 Technical Amendments. The bill, however, does more than make technical amendments. Section 17(a) (1) of the bill would make the authorized provision of funds to Bureau of Indian Affairs schools "a fulfillment of a continuing trust responsibility of the Federal Government as it relates to education for Indian students." The President recently vetoed a bill, S. 2623, containing identical language, on the ground that the Federal Government has no such trust responsibility. Recognition of such responsibility could well have serious legal ramifications beyond this particular bill -- indeed, inclusion of the objectionable language in this bill is entirely gratuitous, so its sponsors obviously intend to commit the government to a principle of broader application.

Section 16 of the bill makes the existing legislative veto provision in the Education and Consolidation Improvement Act of 1981 more offensive, by providing that final Education regulations are to be considered "recommendations to the Congress" with no force or effect, pending congressional review. The period for such review is also lengthened.

Education has several policy objections to other so-called "technical" amendments. One of these is a source of concern from a legal perspective. Section 1 of the bill requires that programs for the education of migratory children be based on the definition of "migratory children" in existing Education regulations. The Secretary had proposed new regulations to change the definition. While nothing prevents Congress from legislating a particular definition, including one in existing regulations, such an effort to codify regulations detracts from the Secretary's rulemaking authority.

OMB, Education and Interior recommend disapproval; Justice recommends objecting to the legislative veto provision. OMB has submitted a composite memorandum of disapproval, focusing on the Indian trust section, the legislative veto section, and the migratory children section. I recommend disapproval, and have no legal objection to the proposed memorandum.

Attachment

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

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

SUBJECT: Enrolled Bill H.R. 7336 - Education  
Consolidation and Improvement Act  
of 1981 Technical Amendments

Counsel's Office agrees with the recommendation of the Departments of Education and Interior and the Office of Management and Budget that the President not approve the above-referenced enrolled bill. Despite its title, the bill goes beyond technical amendments in the Education Consolidation and Improvement Act of 1981.

Section 17 of the bill is legally objectionable, because it describes the provision of funds to Indian schools as "fulfillment of a continuing trust responsibility of the Federal Government." No such responsibility has yet been recognized. The language is gratuitous in the bill and clearly an effort to commit the Federal Government to legal responsibilities beyond the purview of the bill. The President recently disapproved S. 2623 primarily because it contained identical language, and the objections raised in the memorandum of disapproval for that bill are equally applicable to this one.

Section 16 of the bill is also legally objectionable, because it accentuates the existing constitutionally offensive legislative veto provision in the General Education Provisions Act. While this objection alone would not bar approval, it may appropriately be cited if the bill is disapproved. The provision in section 1 of the bill codifying the existing regulatory definition of "migratory children" is also objectionable as a restriction on the rulemaking authority of the Secretary of Education. Congress may legally codify such definitions, but as a policy matter the Executive should not easily relinquish regulatory flexibility.

We have no legal objections to the proposed memorandum of disapproval.

FFF:JGR:aw 1/7/83 ✓  
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

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COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 7336 - Education  
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We have no legal objections to the proposed memorandum of disapproval.

FFF:JGR:aw 1/7/83  
cc: FFFielding/JGRoberts/Subj./Chron

# **WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET**

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1 1 1Name of Correspondent: Richard G. Wacmar☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Enrolled Bill H.R. 7336 - - Education  
Consolidation and Improvement Act of  
1981 Technical Amendments**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>83101106</u>			<u>1 1</u>
<u>WAT 18</u>	Referral Note: <u>D</u>	<u>83101106</u>			<u>5 83101107</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>

**ACTION CODES:**

A - Appropriate Action  
 C - Comment/Recommendation  
 D - Draft Response  
 F - Furnish Fact Sheet  
 to be used as Enclosure

I - Info Copy Only/No Action Necessary  
 R - Direct Reply w/Copy  
 S - For Signature  
 X - Interim Reply

**DISPOSITION CODES:**

A - Answered C - Completed  
 B - Non-Special Referral S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

# WHITE HOUSE STAFFING MEMORANDUM

COB FRIDAY  
January 7, 1983

*JK*

DATE: Jan. 5, 1983 ACTION/CONCURRENCE/COMMENT DUE BY: January 7, 1983

SUBJECT: Enrolled Bill H.R. 7336--Education Consolidation and Improvement Act of 1981 Technical Amendments

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DOLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

## Remarks:

Please provide comments on this enrolled bill by close of business Friday. Also, please provide comments/edits on attached Memorandum of Disapproval.

Thank you.

Richard G. Darman  
Assistant to the President  
(x2702)

## Response:



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

JAN 5 1983

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7336 - Education Consolidation  
and Improvement Act of 1981 Technical Amendments  
Sponsor - Goodling (R) Pennsylvania

Last Day for Action

January 14, 1983 - Friday

Purpose

(a) Makes several substantive and technical amendments to the Education Consolidation and Improvement Act of 1981 (ECIA) and the General Education Provisions Act (GEPA); (b) adds requirements to the existing legislative veto mechanism in GEPA as it applies generally to Department of Education programs; and (c) makes Federal aid for educationally deprived Indian children under ECIA a Federal trust responsibility.

Agency Recommendations

Office of Management and Budget	Disapproval (Memorandum of Disapproval attached)
Department of Education	Disapproval (Memorandum of Disapproval attached)
Department of the Interior	Disapproval (Memorandum of Disapproval attached)
Department of Justice	No position (Language objecting to legislative veto provision attached)

Discussion

The ECIA was enacted as part of the Omnibus Budget Reconciliation Act of 1981 and reflects the Administration's efforts to streamline Federal education programs for the disadvantaged (Chapter 1) and to provide education block grants to the States (Chapter 2).

Although the enrolled bill has been labelled as "technical" amendments to the ECIA, it contains several troublesome provisions that make significant substantive changes to current law. Two of these -- the changes to the existing legislative veto provision in GEPA for regulations of education programs and

the provision making Federal aid for disadvantaged Indian children served by Chapter 1 a Federal trust responsibility -- have implications beyond the ECIA. In addition, the Department of Education finds objectionable several of the amendments that relate solely to ECIA.

H.R. 7336 was introduced during the lame duck session and was passed by voice vote in the House. The Senate then adopted the House-passed bill by voice vote without a conference. Although the Administration had no opportunity to comment formally during congressional consideration, Department of Education staff did advise the House Education and Labor Committee staff informally that the Administration had serious concerns with the bill.

#### Federal Trust Responsibility Provision

The enrolled bill would make the currently authorized provision of funds to Bureau of Indian Affairs schools under Chapter 1 of ECIA "a fulfillment of a continuing trust responsibility of the Federal Government as it relates to education for Indian students".

This language is identical to that contained in another bill passed in the lame duck session, S. 2623, Tribally Controlled Community College Assistance Act Amendments, which would make Federal support for the colleges funded under that Act a trust responsibility. The Department of the Interior recommended your disapproval of S. 2623 in large part because of that provision, and you have disapproved the bill. Interior similarly recommends that you disapprove H.R. 7336 because of its trust responsibility provision.

The same objections expressed about the trust responsibility language of S. 2623 apply to this bill. To reiterate briefly, Interior does not believe Indian education should be characterized as a trust responsibility. It is not currently so defined in law or treaty. Interior is concerned that the vague statutory language making this program a trust responsibility is subject to various interpretations by the courts that could require the provision of education at Federal expense to all Indians regardless of need or tribal status. Furthermore, this provision could establish a highly undesirable precedent for making all Federal Indian social services a Federal trust responsibility.

The House Committee report on H.R. 7336, in an extensive discussion of this issue, asserts that the enrolled bill clarifies but does not change the existing trust relationship between the Federal Government and the Indian and Alaskan Native governments, and that the Federal responsibility for providing education opportunities and services is inherent in the relationship and not something new to it. The Committee characterizes

the existing relationship as one similar to but not synonymous with a guardian-ward or classic legal trust relationship. Although the report says that this bill does not create any new legal rights or obligations, it cautions that Federal agencies, especially the Bureau of Indian Affairs, are to administer congressionally directed programs using the highest degree of care and responsibility to see that the Indian people receive the best services suited to their needs and wishes. Neither the bill nor the Committee report makes clear, however, what this means.

### Legislative Veto Provision

Section 431 of GEPA, which governs the rulemaking procedures for almost all Department of Education programs, contains a legislative veto provision of departmental regulations. The Executive branch has already taken the position that this legislative veto provision is unconstitutional. H.R. 7336 makes significant changes to the current procedures, intruding further into Executive prerogatives and prolonging an already lengthy and overburdened rulemaking procedure.

Specifically, H.R. 7336 would require that during the current 45-day congressional review period, any final regulation of the Department "shall be considered as a recommendation to the Congress and shall have no force and effect". Education believes that characterizing a final regulation as a recommendation to Congress raises serious constitutional questions and may be a violation of the separation of powers doctrine.

The enrolled bill would also lengthen the current 45-day period for congressional review of the Department's regulations by excluding Saturdays and Sundays. This would add at least another 12-day delay for all regulations, making the minimum delay 57 days. The bill would also exclude any days in which either House of Congress is not in session, thus further delaying the effective dates of the Department's final regulations.

In its enclosed views letter, Justice advises that although the imposition of these time periods are themselves constitutional, they are directly attached to and indeed are integral to the existing unconstitutional two-House legislative veto mechanism. Accordingly, Justice believes that you should register your objection to this unconstitutional device in any Memorandum of Disapproval you may issue on the enrolled bill.

### ECIA Program Provisions

#### Applicability of GEPA

As the Congress' way of settling disagreements it has had with the Executive branch concerning the applicability of GEPA to

ECIA, H.R. 7336 provides that all GEPA provisions will apply except where specifically made inapplicable or superseded by ECIA. For the most part, this provision conforms to the Administration's recent positions on GEPA applicability. In one significant instance, however, it does not; namely, section 425 of GEPA is made applicable to ECIA. Education believes that the complex procedures of section 425 (e.g., Federal mandate of local and State appeals procedures; Federal settlement of issues) are at odds with the philosophy of Chapter 2 of ECIA and will make increased Federal involvement in detailed program administration likely, contrary to the intent of the block grant.

#### Limitation on Definition of "Currently Migratory Child"

Under the antecedent program regulations, a child was deemed eligible for compensatory educational services as the child or ward of a migrant worker or fisherman if he had moved from one school district to another within the last 12 months. Proposed new regulations by the Department would require, in addition, a showing that the child's education had been disrupted because of his migrant status. The intent of these new regulations is to focus available resources on migrant children most in need of special services. Children who might no longer be eligible for special migrant services under the proposed regulations could still qualify for other ECIA services if they are disadvantaged.

The enrolled bill would preclude final issuance of the proposed regulations by mandating use of the antecedent Title I definition. This is objectionable because it (1) interferes with the Secretary's rulemaking authority and (2) seriously dilutes available resources by requiring continued use of a broader than desirable definition.

#### Possible Extension of Antecedent Programs

When numerous programs were consolidated into the Chapter 2 block grant in 1981, the law provided that fiscal year 1982 funds appropriated for the previously authorized programs would remain available to State and local educational agencies to be used in accordance with the new block grant. H.R. 7336 would extend the use of those funds until September 30, 1983, and authorize their use in "phasing out" old programs and "promoting an orderly transition" to the block grant. Education is concerned that this could be construed to permit operation of antecedent programs until September 30, 1983, thus deferring implementation of the Chapter 2 consolidation. The Department notes, however, that the House Committee Report language dealing with this provision may be sufficient to overcome its concern.

#### Modifications to Chapter I Program Authorities

The bill makes numerous substantive changes to the Chapter 1 programs operated by local educational agencies (LEAs) that reinstitute certain provisions of the antecedent Title I program. As stated in the House Committee report, ECIA eliminated much of

the specific Title I statutory language in terms of requirements, options, and exceptions for designing and implementing programs, with resulting confusion about whether certain activities previously authorized could be continued.

H.R. 7336 attempts to clarify how programs may operate by making a number of program changes. It eliminates a provision that enables an LEA to use part of the available funds for all low-achieving children in a school district. According to the House floor discussion, this deletion is designed to prevent compensatory education funds from being so dispersed as to be ineffective.

The bill also reinstates provisions from the Title I statute that clarify the options available to local districts in designing and implementing Chapter I programs. H.R. 7336 provides, for example, that school districts may "skip" otherwise eligible schools in distributing funds if those schools are receiving services of the same nature and scope from non-Federal sources.

In its views letter, Education expresses concern that the intent and legal effect of several of these new provisions are unclear and may cause confusion among school administrators. Education is also concerned that several of the provisions appear to reintroduce the requirement that only children in greatest need of special assistance may be served. Although this concern is grounded in the Administration's strong belief in local flexibility, the application of that principle in this case runs counter to an equally strong principle -- that scarce funds need to go to those most in need.

### Recommendations

Education recommends that you disapprove H.R. 7336. The Department points to the seriously objectionable infringement on Executive branch constitutional authority and further substantial regulatory delays posed by the bill's revisions to the existing legislative veto of departmental regulations. Education is also concerned that several of the changes to the ECIA could be construed as reinstating old modes of operation under the Chapter 1 programs for disadvantaged children.

Interior, as noted above, recommends your disapproval because H.R. 7336 makes the provision of services to Indian children under ECIA a trust responsibility.

H.R. 7336 does contain several beneficial provisions that correct obvious flaws in the ECIA, including the streamlining of requirements for small school districts. None of these changes, however, is essential to the operation of ECIA, and program operations will not be disrupted if this bill is not approved. In view of your disapproval of S. 2623 because of the trust responsibility provision in that bill, the identical provision in his bill would logically call for the same response.

Accordingly, we concur in the Interior and Education recommendations for your disapproval of H.R. 7336. A draft Memorandum of Disapproval, combining material in the statements provided by Education, Interior, and Justice, is attached for your consideration.

A handwritten signature in cursive script, reading "David A. Stockman". The signature is written in dark ink and is positioned above the printed name and title.

David A. Stockman  
Director

Enclosures

## MEMORANDUM OF DISAPPROVAL

I have withheld my approval of H.R. 7336, which would make certain amendments intended to improve the implementation of the Education Consolidation and Improvement Act of 1981.

I continue to support the objectives of both Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act. However, I cannot approve H.R. 7336 because the bill makes substantive changes to the Education Consolidation and Improvement Act that are unacceptable, as well as amendments to the legislative veto provision of the General Education Provisions Act that I believe to be an unwarranted intrusion on the Executive branch's constitutional authority.

Among the unacceptable provisions is section 17(a)(1), which would declare the Federal Government's assistance to disadvantaged Indian students under ECIA Chapter 1 to be a part of its trust responsibility toward Indian tribes. This provision is the same as one included in S. 2623, the Tribally Controlled Community College Assistance Act Amendments, from which I recently withheld my approval. The provision of Federal education assistance to Indian students is not characterized in law or treaty as a trust responsibility, and has not been held by the courts to be so. As I noted in my Memorandum of Disapproval on S. 2623, to declare the provision of education to Indian students a trust responsibility would potentially create legal obligations and entitlements that are not clearly intended or understood. This provision of H.R. 7336 is unnecessary to the administration of the Chapter 1 program.

Also unacceptable is section 16(b) of H.R. 7336, which would make certain amendments to a two-House legislative veto device presently contained in section 431 of the General Education Provisions Act. The Attorney General has advised me, and I agree, that two Houses of Congress cannot bind the Executive branch by passing a concurrent resolution that is not p

to me for approval or veto.

Another objectionable provision of H.R. 7336, section 1, would require continuation under Chapter 1 of the definition of a currently migratory child that was in use under the antecedent Title 1 program. This requirement would prevent the Administration from focusing the limited resources available for migrant services under Chapter 1 on those children whose education is actually interrupted as a result of their migrant status.

Other amendments in the bill relating to the Education Consolidation and Improvement Act could be construed to reinstate requirements and procedures contrary to the intent of the Act to provide greater authority and flexibility for State and local educational agencies.

My disapproval of H.R. 7336 in no way reflects upon the efforts of the author of this bill, Representative William Goodling, of Pennsylvania. Mr. Goodling worked closely with the Department of Education to clarify specific weaknesses in the Education Consolidation and Improvement Act and to reflect that effort in the House report language. Despite his efforts, there are substantive provisions in H.R. 7336 that do not eliminate the ambiguities in the language of the existing ECIA and seem to restore undesirable complexity to the administration of ECIA programs.

Although the bill would make several desirable changes to the Education Consolidation and Improvement Act, the objectionable provisions far outweigh any of its benefits.

For these reasons, I cannot approve the bill.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 7, 1983

REMARKS OF THE PRESIDENT  
AT SIGNING CEREMONY FOR H.R. 3809,  
ATOMIC ENERGY ACT AMENDMENTS

The State Dining Room

1:33 P.M. EST

THE PRESIDENT: Thank you very much and welcome to the White House. Please sit down. You must know that something good has happened when you see all these Members of the Congress and of the Administration and we're all smiling at the same time. (Laughter.)

The 97th Congress received its share of criticism for some things that happened during the lame duck session. But today we're signing a vital piece of legislation that made it over whatever final hurdles there were during the last frantic hours before adjournment. That's a tribute to the dedication of leaders like Senators McClure and Stafford and Simpson and Johnston; Representatives Broyhill, Dingell, and Udall. They and many of their colleagues provided the bipartisan muscle needed to push the bill through the legislative maze -- as it always appears to me to be.

I understand that almost a dozen Congressional committees were involved in this legislation but with the partisan support -- or bipartisan support, I should say, and cooperation from industry, labor, and the environmental groups, we managed to get it through the process.

It's a bill good for all those groups because it's good for America. The Nuclear Waste Policy Act of 1982 which I'm signing today provides the long overdue assurance that we now have a safe and effective solution to the nuclear waste problem. It's an important step in the pursuit of the peaceful uses of atomic energy -- a program that was launched by President Eisenhower some 30 years ago. The outlines of that program have changed with the years but America's leadership in the development and use of peaceful atoms remain strong.

This administration is committed to the use of nuclear energy as a crucial element in the enormous task of supplying America's energy needs. American industry has developed the strong technological base for the production of electricity for nuclear energy and we owe it to our people to make it possible to use this technology to better their lives.

This act -- the culmination of 25 years of legislative effort clears the barrier that has stood in the way of development of this vital energy resource. It allows the federal government

MORE

to fulfill its responsibilities concerning nuclear waste in a timely and responsible manner. On October 8th, 1981, I announced several policy initiatives regarding nuclear energy, which Secretary Edwards and Secretary Hodel have worked hard to implement. In April of this last year, I requested legislation in the area of waste that encompasses key elements of this bill -- a system fees paid by utilities so the full cost of nuclear waste disposal will be borne by the beneficiaries of nuclear power, rather than taxpayers as a whole; a method for state participation in the siting procedures, giving them a strong voice in the process and means for resolving objections; a limited and temporary, federal storage program to assist utilities with grave, near-term storage problems, thus preventing plant shutdowns over the next decade as utilities run out of onsite storage; a commitment to permanent geologic disposal as the ultimate solution to waste problems; a study of monitored, retrievable storage as an interim step toward permanent disposition and a clear distinction between the handling of civilian and defense wastes.

The step we are taking today should demonstrate to the public that the challenge of coping with nuclear waste can and will be met. With resolve and the good sense to work together as was demonstrated by the Congress on this issue, we can and will prevail over the sometimes complex and perplexing problems associated with energy. This legislation represents a milestone for progress and the ability of our democratic system to resolve a sophisticated and devious issue.

Enactment of this legislation is particularly appropriate now, because it enhances the prospects of ample supplies of electricity at affordable prices for all Americans.

And with that, and with a thank-you to all of these people who are here with us on the platform and who have made this possible, I shall now sign that bill with those pens that will only write one word at a time. (Laughter; applause.)

It is a good thing Bing Crosby was never in this spot. He only used his first name. (Laughter.)

(The legislation is signed.)

Thank you all very much, and thank all of you.  
(Applause.)

END

1:39 P.M. EST

THE WHITE HOUSE

WASHINGTON

January 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 5470 - Miscellaneous  
Amendments of the Internal Revenue Code and  
the Employee Retirement Income Security Act

Richard Darman has requested comments by close of business today on enrolled bill H.R. 5470. This bill would make miscellaneous amendments to the Internal Revenue Code and ERISA. The bill would clarify the law by providing that periodic personal injury payments are excludable from gross income, exclude from gross income "difficulty of care" payments to those caring for handicapped foster children, provide that Indian tribal governments may be treated as states for most tax purposes, and authorize the Department of Labor to certify which multiple employer trusts are covered by ERISA and which are not, thereby clarifying the application of state law to such trusts. Treasury objects to the exclusion of difficulty of care payments, because they are compensation (beyond expenses) and should be taxed as such, but does not recommend disapproval. I view treating Indian tribal governments as states as objectionable as a policy matter, but it is consistent with the equally objectionable (but well established) non-integrationist policy with respect to Indians. OMB, HHS, Interior, and Labor recommend approval; other affected agencies have no objection, except for the above-noted objection of Treasury.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 10, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

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

SUBJECT: Enrolled Bill H.R. 5470 - Miscellaneous  
Amendments of the Internal Revenue Code and  
the Employee Retirement Income Security Act

Counsel's Office finds no objection from a legal perspective  
to the above-referenced enrolled bill.

FFF:JGR:aw 1/10/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 10, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5470 - Miscellaneous  
Amendments of the Internal Revenue Code and  
the Employee Retirement Income Security Act

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FFF:JGR:aw 1/10/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: RICHARD G. DARMAN

☐ MI Mail Report

User Codes: (A) (B) (C)

Subject: Enrolled Bill H.R. 5470 - Miscellaneous Amendments of the  
Internal Revenue Code and the Employee Retirement Income  
Security Act

## ROUTE TO:

## ACTION

## DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU HOLLAND		ORIGINATOR	83 / 01 / 07			/ /
CU AT 18		Referral Note:				
		D	83 / 01 / 07		S	83 / 01 / 10
		Referral Note:				
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		Referral Note:				

## ACTION CODES:

A - Appropriate Action  
C - Comment/Recommendation  
D - Draft Response  
F - Furnish Fact Sheet  
to be used as Enclosure

I - Info Copy Only/No Action Necessary  
R - Direct Reply w/Copy  
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X - Interim Reply

## DISPOSITION CODES:

A - Answered C - Completed  
B - Non-Special Referral S - Suspended

## FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments:

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

# WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/7/83 ACTION/CONCURRENCE/COMMENT DUE BY: c.o.b. MONDAY, 1/10

SUBJECT: ENROLLED BILL H.R. 5470 - MISCELLANEOUS AMENDMENTS OF THE INTERNAL REVENUE CODE AND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DOLE	<input type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

May we have your comments on the attached Bill by close of business Monday, January 10. Thank you.

Richard G. Darman  
Assistant to the President  
(x2702)

Response:



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

JAN 7 1983

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5470 - Miscellaneous Amendments of  
the Internal Revenue Code and the Employee Retirement  
Income Security Act  
Sponsor - Rep. Jacobs (D) Indiana

Last Day for Action

January 14, 1983 - Friday

Purpose

To amend (1) the Internal Revenue Code concerning periodic payments for damages, certain foster care payments, and tax treatment of Indian tribal governments and (2) the Employee Retirement Income Security Act concerning waivers of preemption in the cases of the Hawaii Prepaid Health Care Act and multiple employer welfare arrangements.

Agency Recommendations

Office of Management and Budget

Approval

Department Health and Human Services

Approval

Department of the Interior

Approval

Department of Labor

Approval

Council of Economic Advisers

No objection

Department of Commerce

No objection

Department of Justice

No objection (Informally)

Department of the Treasury

Does not recommend  
disapproval

Discussion

Exclusion for Periodic Damage Payments

Current tax law excludes from a taxpayer's gross income a number of kinds of compensation payments received on account of personal injury or sickness (e.g., certain workmen's compensation payments and damages received under a suit or settlement of a claim). The Internal Revenue Service has generally held that damages for personal injury are excludable from gross income whether paid as a lump sum or paid in periodic payments out of a fund invested and owned by an insurer.

The enrolled bill clarifies existing law to state explicitly that the exclusion from gross income for damages received for personal injury applies whether the damages are received in a lump sum or in periodic payments. The bill also adds a new section, sought by the insurance industry, to the Internal Revenue Code providing that under certain circumstances any amount received for agreeing to undertake an assignment of liability to make periodic payment of personal injury damages is excludable from gross income. More particularly, any amount so received (e.g., by an insurer) is excludable from gross income to the extent that it is used to purchase an annuity or obligation of the United States if the annuity or obligation of the United States is designated to fund the periodic payments and the purchase is made within sixty days before or after the date of assignment.

#### Exclusion for Certain Foster Care Payments

"Gross income" means all income, from whatever source derived. The tax code does allow for numerous exclusions, exemptions, and deductions from gross income, however. Several of these provisions apply to taxpayers who provide care for foster children. For example, a "dependent" for tax purposes includes a foster child who receives over half of his or her support from the taxpayer, who has as his or her principal residence the home of the taxpayer, and is a member of the taxpayer's household.

The Internal Revenue Service has promulgated administrative guidelines concerning amounts received and expended by taxpayers who provide foster care to children. In general, a foster parent who renders gratuitous services to a child-placing agency in feeding and caring for foster children may exclude from gross income amounts received from the agency to the extent that the payments do not exceed the taxpayer's expenses.

According to the report of the Senate Committee on Finance, some child-placing agencies make payments to foster parents in addition to basic payments if a foster child is handicapped. These payments, called "difficulty of care" payments, are presently includible in gross income. The enrolled bill amends the tax code to exclude difficulty of care payments from the gross income of foster parents in certain situations. The exclusion is available only with respect to minor foster children under the age of nineteen and for no more than ten foster children per taxpayer.

The Treasury Department strongly objects to this provision. In its attached views letter, the Department states that difficulty of care payments are compensation for services rendered and as

such should be included in a taxpayer's gross income. The Department of Health and Human Services, by contrast, generally supports the provision. Treasury's concerns do not lead it to recommend disapproval of the enrolled bill, however.

#### Tax Status of Indian Tribal Governments

Under current law, States and their political subdivisions are generally exempt from Federal income tax and most Federal excise taxes. In addition, a number of transactions between individuals and State governments result in favorable Federal tax treatment for the individuals involved (e.g., exclusion from income of interest received on State and local bonds and deductions for taxes paid to State and local governments).

The tax code does not explicitly exempt Indian tribal governments from Federal taxation; however, the Internal Revenue Service has ruled that Indian tribes are not taxable entities. Tribal income is includible in the gross income of an individual tribal member when it is distributed or constructively received by the tribal member. Because a tribal government does not fit within the definition of a "State," the Federal excise tax exemption is not available to it. Similarly, the favorable tax consequences available to private parties entering into transactions with State governments are not available for transactions entered into with tribal governments.

According to the report of the Senate Committee on Finance, many Indian tribal governments exercise sovereign powers, with police powers and powers of eminent domain and taxation similar to State governments. Moreover, Indian tribes often have responsibilities for the welfare of their members much like those of State governments, and a number of tribes have increasingly sought funds to stimulate their tribal economies and provide government-like services.

The enrolled bill assists Indian tribal governments by providing them with tax status similar in some respects to that accorded State governments. Specifically, the bill exempts articles sold for the exclusive use of Indian tribal governments from Federal excise taxes and treats Indian tribal governments as States for tax purposes in transactions with individuals in several areas (e.g., allowing individual taxpayers to exclude from income interest on certain public purpose bonds issued by tribes and to deduct for taxes paid and charitable contributions made to tribal governments).

These provisions are effective with respect to taxable years beginning after December 31, 1982, and expire on December 31, 1984.

## Employee Retirement Income Security Act (ERISA) Amendments

The enrolled bill contains two amendments to ERISA, both of which provide an exemption from Federal preemption under ERISA. Because of the importance which the Department of Labor attaches to the amendment related to Multiple Employer Trusts, described below, Labor recommends approval of the enrolled bill based on the ERISA provisions, deferring to Treasury on the tax provisions. A detailed description of both amendments is attached to the Labor letter.

### -- Hawaii Health Plans Exemption

ERISA preempts State laws that regulate pension and welfare (including health) plans operated by employers for their workers. H.R. 5470 would make an exception for the Hawaii Prepaid Health Care Act, under which all employers doing business there must maintain health plans for their employees with specific mandated benefits. The exception would apply only to the Act as passed in 1974 and not to subsequent amendments and would permit State regulation of health plan minimum standards.

In its views letter, the Department of Labor says that it has been opposed to an exception for Hawaii, because it could set a precedent for other ERISA exceptions. Without uniform legal preemption of State laws, employers doing business in several States could face a wide range of requirements. Labor's opposition was expressed within the Executive branch during congressional consideration of this issue, but the Administration decided not to oppose the legislation at that time. The enrolled bill addresses Labor's concern by stating that the exemption for Hawaii "shall not be considered a precedent."

### -- Multiple Employer Trusts Exemption

Multiple Employer Trusts (MET's) are generally designed by private promoters to provide health insurance and other benefits to small employers and individuals for relatively low rates. MET's have a high rate of failure, because the promoter often takes excessive fees or the rates charged are too low to pay the benefits promised. MET's that have not been privately insured often become insolvent, leaving thousands of individuals with large unpaid medical bills.

This problem has been aggravated by a lack of clarity about who can regulate MET's. Because MET's, in virtually all cases, are not established by employers for their own employees, they are not employee benefit plans under ERISA. The Federal Government, therefore, has no jurisdiction to regulate them. Some MET's claim, however, that they are employee benefit plans and refuse to submit to State regulation, arguing that they are subject to ERISA and are not subject to State laws for that reason.

The enrolled bill seeks to clarify the limit of Federal jurisdiction so that States may regulate MET's. The bill would (1) establish in Federal law a definition of MET's as multi-employer welfare arrangements (MEWA's) and (2) allow Labor to certify which MEWA's are plans covered by ERISA and thus not subject to State regulation except with respect to reserve requirements in State insurance laws. If there is no Labor certification, a MEWA would be subject to State insurance laws unless it is fully insured.

Labor believes these provisions would deter MET's from claiming ERISA preemption and thus make them become subject to State regulation, because State reserve requirements would apply in either case. We hope that Labor is correct in this assessment of the bill. There may, however, be circumstances under which MET's could still claim they are covered by ERISA if they had not met State reserve requirements or were not fully insured; they would then continue to seek State court determinations that ERISA preempts the State laws on that basis. The certification process will also cause additional work for Labor. Experience under this law will determine whether further legislation is needed to achieve the intended purpose.

\* \* \* \* \*

H.R. 5470 passed both Houses by voice vote.

*James M. Frey*  
Assistant Director for  
Legislative Reference

Enclosures

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 10, 1983

The President has signed the following legislation:

H.R. 2475, which authorizes the Secretary of the Interior to consummate a land exchange in Mono County, California, to protect the habitat of an endangered species, the Owens River Pupfish;

H.R. 4001, which authorizes a land exchange in New Mexico between the Navajo Tribe and the Vanderwagens;

H.R. 4496, which clarifies the citizenship status of the Texas Band of Kickapoo Indians and provides certain Federal services for the Band;

H.R. 4568, which directs the Secretary of the Interior to release restrictions contained in a previous land conveyance to the City of Albuquerque, New Mexico;

H.R. 5027, which designates the building known as the United States Post Office and Courthouse in Norfolk, Virginia, as the "Walter E. Hoffman U.S. Courthouse";

H.R. 5456, which amends the Plant Quarantine Act of 1912 to eliminate the requirement for public hearings;

H.R. 5826, which reinstates oil and gas lease W-24153 in Wyoming;

H.R. 5916, which declares that certain lands be held in trust for the Ramah Band of Navajo Indians in New Mexico and the Mississippi Band of Choctaw Indians;

H.R. 6243, which authorizes the distribution and use of funds already awarded and appropriated to the Confederated Tribes of the Warm Springs Reservation in Oregon;

H.R. 6419, which releases the reversionary interest of the United States in certain lands held by Eastern Washington University;

H.R. 6519, which allows student interns working as volunteers in the Internal Revenue Service to have access to tax information when required by their duties;

H.R. 7005, which amends the Federal Seed Act with respect to prohibitions relating to interstate commerce in seed mixtures intended for lawn and turf purposes and the importation of certain seeds;

H.R. 7143, which extends until September 30, 1983, agricultural and productive credit and self-help community development programs administered by the Agency for International Development;

H.R. 7159, which allows modification of certain effluent limitations applicable to two pulp mills in California;

H.R. 7316, which establishes the National Park System Visitor Facilities Fund to finance rehabilitation and repair of such facilities in the Park System;

H.R. 7423, which grants a Federal corporate charter to the Former Members of Congress organization;

S.J. Res. 101, which designates the week beginning October 17, 1982, as "National High School Activities Week";

S.J. Res. 240, which requests the President to designate the week of January 16, 1983, through January 22, 1983, as "National Jaycee Week";

S.J. Res. 264, which designates the week of March 13, 1983, through March 19, 1983, as "National Children and Television Week".

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