HOGAN & HARTSON

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202/637-5827

June 11, 1993

BY MESSENGER

The Honorable Bob Dole
Office of the Senate Republican Leader
S-230, U.S. Capitol
Washington, D.C. 20510

Dear Senator Dole:

On behalf of Hogan & Hartson and myself, I wanted to thank you for speaking this morning at the Legislative Conference.

As always, you were terrific -- and during the break that followed, all attendees were talking about how much they enjoyed your remarks and what a great Leader you are. You had a large number of big fans in the audience, not the least of which is me.

I really can't thank you enough and hope that I can be of help to you or the Office down the road.

As requested, I have enclosed two copies of the Firm's issue briefs, which were distributed at the Conference.

Again, thank you and I hope to see you again soon.

thanks

Very truly yours,

Jim

James G. McMillan

6808M

Gramm letter that Jim marked is also attached -
Kerry

United States Senate

WASHINGTON, D. C. 20510-4302

June 9, 1993

Ms. Nancy Granese
Hogan & Hartson
555 13th Street, N.W.
Washington, D.C. 20004

Dear Nancy:

I enjoyed having the opportunity to discuss the Clinton economic plan at today's breakfast meeting and appreciate your taking the time to share your thoughts. The issues raised provide valuable insight into the effects of this plan on business and industry, and I will certainly keep these comments in mind as the Senate debates the President's plan in the weeks to come.

I would be happy to hear any additional ideas and suggestions you might have, and please let me know if I can be of service.

Yours respectfully,

Phil

PHIL GRAMM
United States Senator

PG:jhr

PHIL GRAMM
TEXAS

United States Senate
WASHINGTON, D. C. 20510-4302

June 9, 1993

Ms. Nancy Granese
Hogan & Hartson
555 13th Street, N.W.
Washington, D.C. 20004

Dear Nancy:

I enjoyed having the opportunity to discuss the Clinton economic plan at today's breakfast meeting and appreciate your taking the time to share your thoughts. The issues raised provide valuable insight into the effects of this plan on business and industry, and I will certainly keep these comments in mind as the Senate debates the President's plan in the weeks to come.

I would be happy to hear any additional ideas and suggestions you might have, and please let me know if I can be of service.

Yours respectfully,

Phil

PHIL GRAMM
United States Senator

PG:jhr

TO: Senator Dole
FR: Kerry

RE: Hogan and Hartson Legislative Conference
9:30 a.m.
J.W. Marriott

*You will be speaking to approximately 400-450 Hogan and Hartson attorneys and clients--corporate and business executives, bankers, and trade and professional association representatives.

*Jim McMillan will be introducing you.

*Congressman Michel will be there from 8:00-8:45. Speaker Foley from 8:45-9:30.

*Jim suggests a few opening remarks on the budget/health care/NAFTA, and then opening it up for Q&A.

HOGAN & HARTSON

MEMORANDUM

June 9, 1993

BY HAND DELIVERY

TO: Joyce McCluney
Kerry Tymchuk

FROM: Jim McMillan JM

RE: Information Sheet: H & H Annual Legislative Conference

Senator Dole is scheduled to speak at 9:30 a.m. on Friday, June 11, 1993, at the Hogan & Hartson Annual Legislative Conference. The event is being held at the J.W. Marriott Hotel in the downstairs salons C, D, E and F (rooms will be opened up). A crowd of about 400 to 450 individuals is expected to attend and will consist largely of corporate and business executives, bankers, and trade and professional association representatives. Press has not been invited.

House Republican Leader Michel and Speaker Foley are scheduled to speak from 8:00 a.m. to 8:45 a.m. and from 8:45 a.m. to 9:30 a.m., respectively.

The period from 9:30 a.m. to 10:15 a.m. is scheduled for Senator Dole. I will introduce the Senator at 9:30 a.m. after which, needless to say, he is free to give his remarks and engage in Q & A as he wishes on any topics he wishes. We have scheduled a break from 10:15 a.m. to 10:30 a.m. so if the Senator needs to leave early, the break will simply be extended.

Parking is reserved for Wilbert along the Pennsylvania Avenue side of the Hotel. It is my understanding that the Senator will enter the building at the main, 14th Street circular driveway entrance. I will meet him there and escort him down to the Conference.

If you have any questions, please do not hesitate to call me at 637-5827. Thanks.

6800M

SPEAK

8:45 am

Fri, June 11
J.W. Marriott
Program begins 8:00 a.m.
Reserving 8:30 or 9:00 a.m.
for Senator or at his
convenience

James G. McMillan
4541 Warren Street, N.W.
Washington, D.C. 20016

April 21, 1993

OK

$1,000.00

Foley & Michel have accepted

The Honorable Bob Dole
Office of the Republican Leader
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

As I read the newspapers, watch your T.V. appearances and catch up on news in the RLO, it is reassuring that the Republican Party is in your hands and that you are busy exposing the Clinton Administration for what it is. A day does not go by that we do not hear of a new tax proposal and big spending plans.

I am doing fine in my new job (I should say new-old since I used to work here) and have been extremely busy doing corporate and securities work since I arrived. I have done some legislative work as well and hope to do more.

I am writing to see if you would be able to speak at Hogan & Hartson's Annual Legislative Conference during the morning of Friday, June 11, 1993. The conference will be attended by a number of the firm's lawyers and clients and is intended to provide an update on those issues pending or expected to be pending before Congress. I suspect that health care reform will figure prominently on everyone's agenda. Speakers will include Members of both the House and the Senate, as well as the Administration.

The format would be to speak for about 20 minutes, to be followed by about 10 minutes of Q & A. Needless to say, you could speak on any topics you wish.

I hope you are able to make it and will be in touch with Yvonne. I expect to be dropping by the RLO in the next couple of weeks and hope to see you then.

Thanks,

Very truly yours,

Jim

James G. McMillan

HOGAN & HARTSON

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PARTNER
DIRECT DIAL (202) 637-5676

BRUSSELS
LONDON
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WARSAW
BALTIMORE, MD
BETHESDA, MD
McLEAN, VA

April 27, 1993

The Honorable Bob Dole
Office of the Republican Leader
United States Senate
Washington, D.C. 20510

Dear Bob:

I am writing to invite you to speak at Hogan & Hartson's Annual Legislative Conference to be held at the J. W. Marriott Hotel on Friday, June 11, 1993, from 8:00 a.m. to 12:30 p.m.

I know you have already received a request from Jim McMillan, who recently rejoined the firm from your office, and I wanted to touch base with you as well.

The Conference will be attended by a broad cross section of the business community and is intended to provide an update on those issues pending or expected to be pending before Congress. Needless to say, I suspect the tax bill and health care reform will be uppermost in everyone's mind.

The format will be informal. We would schedule you to speak for about 20 minutes, with approximately 10-15 minutes of question and answer.

I hope you are able to make it and look forward to hearing from you.

Kindest regards,

Frank

Frank J. Fahrenkopf, Jr.

6556M

SENATOR BOB DOLE

HOGAN AND HARTSON

LEGISLATIVE CONFERENCE

JUNE 11, 1993

*THANK YOU, JIM.

*JIM MADE A LOT OF FRIENDS DURING HIS YEARS IN MY OFFICE, BUT HE PROBABLY MADE ONE ENEMY, TOO-- LAWRENCE WALSH.

*JIM WAS MY POINT MAN IN MY BATTLE AGAINST SPECIAL PERSECUTOR WALSH, AND I ONCE SAID THAT MR. WALSH HASN'T ACCOMPLISHED AS MUCH IN SIX YEARS AS JIM USUALLY DID IN ONE WEEK

*I KNOW YOU'VE ALREADY HEARD FROM SPEAKER FOLEY AND LEADER MICHEL THIS MORNING, SO I'LL JUST BRIEFLY

DISCUSS A FEW TOPICS WHICH JIM TOLD ME MIGHT BE OF INTEREST TO YOU, AND THEN I'LL BE HAPPY TO TAKE YOUR QUESTIONS.

*IT GOES WITHOUT SAYING THAT THE LAST FEW WEEKS HAVEN'T BEEN GOOD ONES FOR THE CLINTON ADMINISTRATION. AND IF THEY THINK THEY'RE GOING TO SELL THE

PRESIDENT'S ECONOMIC PLAN TO THE AMERICAN PEOPLE, THEN THEY'VE GOT SOME MORE ROUGH TIMES AHEAD.

*LET ME BE CLEAR IN SAYING THAT I LIKE PRESIDENT CLINTON, AND HE SAYS HE LIKES ME. WE'VE AGREED ON THAT, AT LEAST.

*AND THERE ARE ISSUES, WHERE THE PRESIDENT AND I

SEE EYE-TO-EYE--RUSSIAN AID, FOR INSTANCE...AND NAFTA-- ALTHOUGH THE PRESIDENT IS GOING TO HAVE TO SHOW A GREAT DEAL MORE LEADERSHIP ON BEHALF OF NAFTA IF THERE'S A CHANCE FOR IT TO BE PASSED.

*BUT THERE ARE ALSO ISSUES WHERE THE PRESIDENT AND I HAVE FUNDAMENTAL

DISAGREEMENTS ON PRINCIPLE. AND CHIEF AMONG THOSE DISAGREEMENTS IS HIS ECONOMIC PLAN.

*DURING HIS CAMPAIGN, THE PRESIDENT SAID AGAIN AND AGAIN THAT HE WAS COMMITTED TO REDUCING THE DEFICIT--HE SPOKE OF $3 IN SPENDING CUTS FOR EVERY $1 IN TAX INCREASE.

*WELL, THE FACT IS THAT THE HOUSE-PASSED BUDGET RECONCILIATION CONTAINS $6.35 IN TAX INCREASES TO EVERY $1 IN SPENDING CUTS.

*AND THE VAST MAJORITY OF SPENDING CUTS DON'T OCCUR UNTIL FOUR OR FIVE YEARS DOWN THE LINE. INDEED, IN FY 1994, THE HOUSE-PASSED PLAN CALLS FOR $20.68 IN TAX AND

SPENDING INCREASES FOR EVERY $1 IN SPENDING CUTS.

*I DON'T THINK THAT'S WHAT THE AMERICAN PEOPLE THOUGHT THEY WERE VOTING FOR LAST NOVEMBER.

*THE MESSAGE THAT THE VOTERS SENT BACK THEN WAS "CUT SPENDING FIRST." AND THAT'S THE SAME MESSAGE THEY SENT IN TEXAS, IN LOS

ANGELES, AND IN THE CONGRESSIONAL ELECTIONS IN WISCONSIN AND CALIFORNIA WHERE REPUBLICANS LOST BY NARROW MARGINS IN OVERWHELMINGLY DEMOCRAT AREAS.

*EVERYWHERE I GO, BUSINESSMEN AND WOMEN TELL ME THAT THEY ARE NOT HIRING PEOPLE...THEY ARE NOT

EXPANDING, BECAUSE THEY'RE NERVOUS ABOUT THE PRESIDENT'S PLANS...THEY DON'T KNOW HOW MUCH THEY WILL BE ABLE TO AFFORD AFTER THE TAX INCREASES AND MANDATE INCREASES HIT THEM.

*AND THEY'RE NERVOUS ABOUT HOW MUCH THEY'LL PAY TO FUND THE CLINTONS' HEALTH CARE REFORM PLAN.

*WITH THE PLAN NOT SCHEDULED TO COME OUT BEFORE THIS FALL, I THINK IT CAN SAFELY BE SAID THAT THERE IS NO CHANCE THAT ANY PLAN WILL BE ADOPTED THIS YEAR.

*THE GOOD NEWS FOR PRESIDENT CLINTON IS THAT WHILE HIS DISAPPROVAL NUMBERS CONTINUE TO GO UP

TO RECORD HIGHS, THE AMERICAN PEOPLE AREN'T TOO IMPRESSED WITH ANYONE ELSE, EITHER--AND THAT INCLUDES CONGRESSIONAL REPUBLICANS OR ROSS PEROT.

*THERE ARE THOSE IN OUR PARTY WHO THINK THAT ALL WE NEED TO DO IS STAND ASIDE, LET CLINTON HAVE HIS WAY, AND WATCH THE VOTERS

CONTINUE TO COME OUR WAY.

*WELL, IF PEOPLE WANT TO VOTE REPUBLICAN BECAUSE THEY DON'T LIKE THE PRESIDENT, THAT'S FINE WITH ME. BUT I ALSO THINK WE HAVE TO DO MORE. WE HAVE A RESPONSIBILITY TO PROVIDE LEADERSHIP...AND TO PROVIDE REALISTIC AND MEANINGFUL ALTERNATIVES ON ISSUES LIKE

THE BUDGET AND HEALTH CARE. AND THAT'S PRECISELY WHAT WE'LL BE DOING IN THE COMING WEEKS AND MONTHS.

*LET ME STOP HERE AND TAKE QUESTIONS--AND FOR ALL THOSE HOGAN AND HARTSON CLIENTS OUT THERE, LET ME ASSURE YOU THAT I'M NOT CHARGING BY THE HOUR.

HOGAN & HARTSON

WASHINGTON, D.C.

CLINTON AND CONGRESS: WHAT'S AHEAD?

ISSUE BRIEFINGS

JUNE 11, 1993
J.W. MARRIOTT

HOGAN & HARTSON
555 THIRTEENTH STREET, N.W.
WASHINGTON, D.C. 20004
(202) 637-5600

CLINTON AND CONGRESS: WHAT'S AHEAD?

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ANTITRUST

In the area of antitrust legislation, one bill is likely to become law in a matter of days, but otherwise it does not appear that there will be much activity in this area in the 103rd Congress.

1. *Production Joint Ventures*

The National Cooperative Production Amendments of 1983 (S. 574; H.R. 1313) passed the House on May 18 and the Senate on May 28. The President is expected to sign.

The bill would amend the National Cooperative Research Act of 1984 and allow participants in joint manufacturing ventures, like those in joint research ventures, to notify the Justice Department and the Federal Trade Commission and thereby limit any potential antitrust exposure to single, not treble, damages. Moreover, joint production ventures, whether notified or not, would be analyzed under the rule of reason.

There has been some controversy over a proviso that would limit the single-damage protection to ventures where "the principal facilities" are located in the United States and where all participants are either U.S. persons or persons from a country that does not discriminate between U.S. persons and its own domestic persons "with respect to participation in joint ventures for production."

The House Committee Report on the bill emphasized that under this proviso a venture could have "significant production" facilities outside the U.S., so long as the "principal production facilities" were inside the U.S. The Report also makes clear that the nondiscriminatory foreign law requirement is satisfied if "a country . . . is a party to an international agreement with the United States that provides national treatment." These clarifications apparently satisfied Administration concerns.

The bill does not portend any dramatic change in the antitrust treatment of production joint ventures. There are significant production joint ventures in operation today (e.g. GM/Toyota). The legislation is, however, intended to alleviate any unfounded antitrust concerns that may be prevalent in the business community, and thereby encourage the formation of these ventures.

2. *Trade-Antitrust Issues*

There is a perception in Congress that some foreign companies are competing unfairly by using profits in a home market that is protected from competition to subsidize exports to the United States, to the detriment of U.S. competitors. S. 99 (Metzenbaum) and S. 332 (Specter), which are bills virtually identical to ones that their sponsoring Senators introduced last year, address this perception in slightly different ways.

Both bills would amend the Antidumping Act of 1916, 15 U.S.C. § 72, to authorize private remedies against an exporter without showing predatory intent. S. 99 would authorize treble damage actions by domestic companies who have been injured by sales below the average total cost of products exported from a protected home market. S. 332 emphasizes injunctive relief for injury caused by sales at less than the foreign market value (actual or constructed).

S. 332 is therefore essentially an antidumping bill with expanded remedies. S. 99 is an antitrust/anti-dumping hybrid, ultimately designed to stimulate antitrust enforcement in foreign countries.

Hearings have not been held on either bill in this Congress, and it is not considered likely that either will pass in its present form. However, either or both bills may provide the vehicle for a dialogue on this politically sensitive subject.

3. *Industry-Specific Bills*

As usual, there are a number of pending bills that focus on particular industries. Included in this group are the Insurance Competitive Pricing Act of 1993 (S. 84; H.R. 9), which would modify the antitrust exemption applicable to the business of insurance; the Professional Baseball Antitrust Reform Act of 1993 (S. 500; H.R. 108), which would remove baseball's antitrust exemption; the Airline Predatory Pricing Prevention Act of 1993 (S. 770), for which the title is self-explanatory; and the Motor Vehicle Industry Competitiveness Act (H.R. 1870), which would establish a Commission to make recommendations for improving the competitiveness of the domestic auto industry.

There are also a substantial number of bills that address health care issues (S. 223, S. 325, S. 491; H.R. 101, H.R. 191, H.R. 237, H.R. 834, H.R. 1200, H.R. 1765). These bills deal with issues like cooperation among hospitals to eliminate duplication and reduce costs, standards to improve the quality of health care, malpractice reform, managed competition in health care plans, physician referrals to captive health care providers, and expanded access to health care.

Industry-specific bills have not fared well in recent years. Moreover, it is unlikely that antitrust legislation in the area of health care will progress until the outlines of the Administration's proposals are known.

4. *Old Business*

A number of bills have been introduced without success year after year. Included in this group are bills to limit the recovery of treble damages to price-fixing offenses, to permit so-called "indirect purchasers" to sue for damages, to provide for "contribution" among antitrust defendants, and to modify the evidentiary standards in dealer termination cases. No bills of this kind have been introduced thus far, and it is unclear whether any will be introduced.

The only bill in this group that came close to passage in the last Congress was the Consumer Protection Against Price Fixing Act (S. 429). This bill, which dealt with price-fixing claims by terminated dealers, passed the Senate and the House in different versions, but died when the House refused to pass the Senate version that had been adopted in conference. It is unclear whether the Senate version, which is laden with compromise amendments, will be reintroduced or whether supporters will try again with a "clean" bill.

AVIATION

As the 103rd Congress completes committee assignments for its 124 new members and turns to the legislative process, it faces an aviation industry in continuing crisis. The airlines have, by some estimates, lost more than $8 billion over the past three years, while numerous airlines remain in bankruptcy and thousands of airline and aerospace workers have lost their jobs. In addition to the woes of the airline industry, the aerospace industry has faced significant losses in market share since 1980 with Airbus Industrie now controlling 28 per cent of the foreign aircraft market and 44 per cent of the domestic aircraft market.

The 102nd Congress had attempted to address the problems faced in the aviation industry by passing legislation to create a national commission composed of six Congressional appointees and one Presidential appointee to promote a strong and competitive airline industry. The legislation was originally signed by President Bush in November of 1992. The 103rd Congress revisited this legislation after Congressman Oberstar (D-MN) held three days of hearings in February aimed at assessing the financial health of the airlines. In these hearings, Stephen Wolf, CEO of United Airlines, called for the creation of a different and larger commission whose composition would include both Presidential and Congressional appointees. Wolf's proposal gained wide support and resulted in the National Commission To Ensure a Strong Competitive Airline Industry composed of five voting Presidential appointees and one non-voting Presidential appointee as well as ten voting Congressional appointees and six non-voting Congressional appointees.

Gerald Baliles, the former Governor of Virginia, has been selected to chair the Commission, and hearings were held from May 24 through June 4. The Commission will focus on the industry's current financial condition, the adequacy of competition, the advantages and disadvantages of various governmental actions to deal with aviation industry problems, international aviation policy, the aircraft manufacturing industry, and incentives for expedited aircraft fleet conversion. The Commission will provide advice as to what legislative and regulatory remedies should be pursued by Congress and the President. The Commission is expected to address a number of contentious issues, including the foreign investment in and ownership of U.S. airlines, government subsidies of foreign aircraft manufacturers, changes in the bankruptcy laws, improvements to the capacity of airports and the air traffic control system, obtaining additional international rights for U.S. carriers, elimination of unnecessary and costly regulatory burdens on airlines, and equalizing regulatory requirements on U.S. and foreign air carriers.

Congressional action in the 103rd Congress is expected to reflect the recommendations of the Commission. However, there have been some preliminary indications from Congress as to what types of actions might be recommended after the Commission hearings conclude. Congressman Oberstar and Senator D'Amato (R-NY) have introduced legislation aimed at providing an investment tax credit for air carriers which invest in aircraft meeting Stage 3 noise requirements. The proposal is expected to spark more rapid conversion of aircraft, while also providing much needed capital to aircraft manufacturers. Similarly, Congresswoman Dunn (D-WA) has introduced legislation to guarantee loans for the purchase of aircraft meeting Stage 3 noise requirements. Her proposal, however, is limited to U.S. manufactured aircraft only. Senator Gorton (R-WA) has introduced similar legislation without preferences for U.S. built aircraft. U.S. industry appears to favor the Gorton approach because it does not jeopardize the recent U.S.-European Communities pact on aircraft subsidies.

Congress is seeking additional ways to assist U.S. aircraft manufacturers given their financial concerns. Congressman Gejdenson (D-CT) has proposed the introduction of an Aerotech consortium -- similar to the Sematech consortium used in the case of semiconductors -- aimed at channeling research and development monies to aircraft manufacturers. In the Senate, Senator Danforth has introduced similar legislation with significant bipartisan support. Similarly, Congressman Tom Lewis (R-FL) has introduced legislation to establish a joint aviation research and development program between the Federal Aviation Administration and the Department of Defense. These proposals, however, have not been met with broad industry support.

In an effort to respond to the perceived problem of European government subsidies of Airbus Industrie, Senator Danforth (R-MO) has introduced legislation to initiate a countervailing duty investigation with respect to large aircraft produced by Airbus Industrie. The Commission is also expected to review this matter closely and possibly recommend legislative or regulatory action that directly responds to these perceived inequities.

The recent debate over foreign ownership of U.S. carriers sparked by the British Airways/USAir transaction continues to draw legislative attention. Some in Congress are looking for ways to encourage foreign investment in weaker airlines. Senator Danforth and Congressman Clingler (R-PA) have each introduced legislation providing an exception to the current restrictions on foreign ownership and control of U.S. carriers. The proposed legislation contemplates allowing foreign ownership of up to 49 per cent of U.S. carrier voting stock in instances where the foreign owner or owners are of a nationality that has a liberalized bilateral air transport agreement with the United States.

In conjunction with the Department of Transportation's ("DOT") aggressive efforts to protect new entrants in the air carrier market as well as existing small carriers, there has been some legislative action aimed at curtailing predatory behavior by the larger air carriers. Specifically, Senator Danforth has introduced legislation that would give the DOT the power to issue cease and desist orders where it determines that carriers are engaging in predatory pricing activities. Independently of legislative action, the DOT has aggressively intervened in two recent instances on behalf of start-up carriers Reno Air and Kiwi Airlines who complained that their larger competitors (Northwest Airlines and Continental Airlines respectively) were engaging in predatory behavior. In both cases the large carriers have backed away from a confrontation with DOT.

There also appears to be support in the Congress for changes in the tax code to reduce burdens on the airline industry. Senator Danforth has introduced legislation which prohibits any increase in taxes on the sale of, or energy content of, aviation fuel. In addition, Congressman Oberstar has introduced legislation which proposes amendment of the tax code to provide an investment tax credit for the purchase of Stage 3 aircraft.

The House Transportation Appropriations Subcommittee recently indicated a desire to develop criteria for identifying and evaluating projects to be funded under the Airport Improvement Program. In this regard, Congressman Carr (D-MI) has initiated discussions to develop investment based criteria that the subcommittee would use in the future when earmarking funds for air traffic control and airport projects. Specifically, future funds would be disbursed pursuant to the new investment based criteria. Currently, no such earmarking occurs in the allocation of Airport Improvement Program funds.

Although the major U.S. air carriers continue to recommend that the Congress consider requiring bankrupt carriers to be deemed unfit to provide air transportation, Congressional leaders do not appear receptive. Instead, there have been repeated indications from members of Congress -- including

Congressman Oberstar -- that Congress and the Commission should not harm the competitive position of carriers who are already in bankruptcy. Many fear that such an approach is simply being recommended to injure competitors and not to resolve the structural problems in the airline industry.

Phone: (202) 637-5600 HOGAN & HARTSON Fax: (202) 637-5910

CAMPAIGN FINANCE REFORM

On May 21, the Senate began work on legislation to reform the campaign finance laws. The campaign reform bill, S. 11, is the result of several months of negotiations between President Clinton and Democratic congressional leaders. The Senate is now into its third week of debate on the bill and its outcome is anything but certain.

The legislation under consideration is a broad reform of the campaign finance laws. The most controversial provision in the bill is the proposal to use public funds to encourage candidates to comply with voluntary spending limits. Senate Republicans oppose public financing of campaigns and have stated that they currently have the necessary votes to filibuster the bill if this provision stays in. Republicans claim that the plan will lock in the status quo at taxpayer expense. They maintain that challengers need the option of outspending incumbents because incumbents enjoy many advantages that come with their office. Democrats argue that the bill will level the playing field for challengers by providing public funds and eliminating PAC contributions. Several Senate Republicans are proposing a compromise to the public financing provision in the form of a gross receipts tax that would be imposed on the campaign funds of candidates who refuse to comply with the limits.

There are also signs in the House of growing Democratic discontent with the public funding provisions. On May 20, Congressman Glen Browder of Alabama released a letter to House Speaker Tom Foley, signed by 47 Democrats, opposing public financing. House Democrats also differ with the Senate on other important provisions, including the elimination of PAC contributions. There is little doubt but that if the bill is approved by the Senate it will face a tough battle in the House.

The bill is also controversial because of its estimated cost of approximately $200 million. Senate Democrats say the bill will be paid for largely by eliminating a tax deduction for lobbying expenses. However, the elimination of this tax deduction was included by House Ways and Means Committee Chairman Dan Rostenkowski as a deficit reduction measure in the recently passed reconciliation bill.

S. 11 is very similar to the campaign financing reform bill considered by the Senate in 1987. The Senate debate on that bill continued over nine months and forced a record eight cloture votes in an attempt to break a Republican filibuster. At one point, the Republicans filibustered for a continuous 53 hours and 24 minute session. In the end, the bill failed to muster the votes necessary to pass.

A cloture motion to limit debate on S. 11 has been filed. Sixty votes are needed to cut off debate. However, there are still dozens of amendments yet to be considered.

The following is a summary of the major provisions of S. 11:

PAC contributions. The bill would ban all PAC contributions in federal elections: House, Senate and Presidential.

Contributions from lobbyists. The bill would ban any lobbyist from directing clients or PACs to make contributions to members whom the lobbyist has contacted in the previous 12 months, and prohibits lobbying of members who received a contribution from that lobbyist in the proceeding year. It also extends the prohibitions to contacts between lobbyists and staffers.

Candidate contributions. The bill reduces the amount an individual can spend on his or her own campaign under the bill from $250,000 to $25,000.

Spending limits. For Senate candidates the bill provides for voluntary spending limits from $1.2 million to $5.5 million depending on state population. The voluntary spending limit for House candidates is $600,000. These levels would rise with inflation after the 1996 election.

Benefits. Candidates who comply with the voluntary spending caps would receive federal communication vouchers that could be used for media advertising, printing costs and postage. Senate candidates would get vouchers equal to 25% of the spending limit. House candidates would receive vouchers worth up to 33% of the spending limit. Broadcasters would be obliged to sell candidates for federal office discounted advertising time.

Effective date. The bill, as amended on the Senate floor, would apply to the 1994 Congressional races.

The campaign reform bill would also restrict the flow of "soft money" into federal campaign committees. The following is a summary of these provisions:

Party activities. Parties could not use money that does not comply with federal contribution limits (soft money) for any activity that promotes a federal candidate, or for voter registration, keeping records on voters, or get out the vote drive for federal candidates. All generic party activity would have to paid for with hard dollars at all times. Hard dollars is money raised under federal guidelines.

In non-Presidential years, parties could use soft money to conduct get-out-the-vote efforts exclusively in behalf of state and local candidates.

Contribution limits. The bill would provide a limit of $60,000 on what an individual could give to candidates, parties and political per two year election cycle. The current limitation is $50,000. Individuals could make annual contributions of up to $25,000 to candidates, $20,000 to national parties and an aggregate of $20,000 to state party federal accounts.

National parties. National Democratic and Republican parties could raise soft money only for their building funds, an existing exemption that allows parties to purchase and rent office space with unregulated money, and to transfer it to state parties for said activities.

Federal funds. The bill would give Presidential nominees added federal funds for use in grass roots campaigns. The amount would be equal to 2 cents per voting age per person or about $11 million in 1996.

Federal candidate fundraising. Federal candidates, office holders and their agents would be prohibited from solicting or receiving funds not subject to federal contribution limits. But they could speak at an event that raises both hard and soft money for state candidates. Federal candidates and office holders would be barred from raising funds for independent groups that register and turn out voters.

State party grass roots funds. The bill establishes a new grass roots fund which could be used only to fund activities that promote the party, not individual candidates. These funds would not be transferable from one state party grass roots account to another. National and state party committees, along with candidate committees, could transfer money to grass roots funds provided the money was raised in accordance with federal contribution guidelines.

ENVIRONMENT

Since passage of the Clean Air Act Amendments of 1990, Congress has struggled with moving any major pieces of environmental legislation. During the last session of Congress, bills to reauthorize and amend the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA) stalled. The 103rd Congress will again address these two pieces of legislation as well as reauthorization of the Superfund statute, elevation of EPA to Cabinet status, and legislation to address pesticide residues in food. Legislation to address indoor air pollution and radon also may be considered.

It appears now that the highest priority will be Clean Water reauthorization. It is unlikely, however, that any major environmental legislation will be enacted during 1993. It is possible that some less comprehensive environmental legislation could be enacted such as regulation of interstate waste transportation, scrap tire legislation, or possibly a radon bill. Highlights of the pending environmental legislation are as follows.

The Clean Water Act

Presently, Clean Water Act reauthorization appears to be the highest priority of the environmental committees in Congress. Hearings are now under way. The issue that is receiving the greatest attention is federal funding assistance to states and localities to build sewage treatment plant systems. Other issues being considered include:

- Requiring the same level of stringency in setting effluent guidelines for conventional pollutants as required for toxic pollutants.
- Requiring extensive biomonitoring and ambient water quality monitoring by dischargers.
- Requiring more stringent pretreatment by indirect dischargers and requiring those dischargers to receive NPDES permits.

- Reducing discharges from combined sewer overflows.

- Substantially increasing permit fees for dischargers.

- Requiring environmental audits that would be publicly available.

- Requiring toxic reduction action programs by publicly-owned treatment works (POTWs) under which the POTW could prohibit the sale of particular products within its service area, to reduce the level of toxic pollutants in wastewater it receives.

- Requiring localities to develop comprehensive watershed management programs, particularly to address non-point source pollution.

Clean Water legislation likely will be introduced this summer in the Senate. The House Environment and Public Works Committee will likely propose legislation later in the fall.

In addition to the regulatory issues described above, the issue of wetlands protection continues to be controversial: developers and other commercial interests believe that wetlands restrictions are too onerous, while the environmental community believes they are not strict enough. Rep. Hayes (D-LA) has reintroduced his relatively pro-development wetlands bill, H.R. 1330, which would set three categories of wetlands based on their ecological value, ease regulation of lower-valued wetlands, and in certain instances require compensation for "takings" of wetlands if permission to fill is denied. For the environmental community, Rep. Edwards (D-CA) has introduced H.R. 350, which would expand wetlands protections by providing tax incentives to preserve wetlands, broadening the range of activities for which a permit is required, and expanding citizen suit authority.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund)

Along with reauthorization of the Clean Water Act, reauthorization of Superfund is expected to be one of Congress's highest environmental priorities. Both the House Subcommittee on Transportation and Hazardous Materials (Energy and Commerce Committee) and the Senate Subcommittee on

Superfund, Recycling, and Solid Waste Management (Environment and Public Works Committee) have held several days of hearings. Some business groups, alarmed by the growing transaction costs of Superfund, believe that the program's strict, joint and several liability system needs to be abolished. At the other end of the spectrum are those who believe that no legislative changes are required and that problems such as transaction costs can be dealt with through administrative changes.

In addition to questions concerning the liability system, Congress is likely to address other issues, such as:

- the liability of banks and other lenders with a financial interest in contaminated sites,
- the liability of municipalities and small businesses associated with municipal waste dumps,
- possible clarification of the level of cleanup required for a Superfund site,
- the speed of cleanups, and
- EPA contract management.

EPA Administrator Carol Browner testified before committees in both the House and Senate on May 12 and 13 that she would be making legislative recommendations at the end of the summer. At these hearings, Browner strongly supported the site specific, "polluter pays" principal and other aspects of the basic liability system currently in place.

The Resource Conservation and Recovery Act

RCRA has been before Congress for action for the last four years. In the last Congress, committees in both the Senate and the House reported extensive RCRA reauthorization bills, but they proved to have a wide array of controversial elements and died at the end of the session. The Senate passed a narrower piece of legislation, aimed at curbing interstate transportation of municipal solid wastes, but there was no comparable House action.

No comprehensive RCRA bill has been introduced yet this year and none appears likely, despite recent statements by Rep. Dingell (D-MI), chairman of the House Energy and Commerce Committee which has jurisdiction over RCRA, that he would like to see a bill by the end of the year. Instead, different members of Congress have introduced narrow pieces of legislation addressing discrete issues. These include the following:

- Legislation to promote municipal solid waste recycling, including measures to promote markets for recycled consumer products through federal procurement and other measures. E.g., H.R. 1821 (Hochbrueckner, D-NY). One problem in the municipal solid waste recycling area is that the environmental community is urging Congress to adopt recycling rate targets that are much higher than municipalities and industry think can be achieved.

- Legislation to allow states and localities to restrict interstate transportation of municipal solid wastes for disposal. S. 439 (Coats, R-IN), H.R. 1076 (Wyden, D-OR), H.R. 963 (Boucher, D-VA). The legislation is couched as affecting "municipal solid waste," but this term is defined to include commercial and industrial wastes as long as they are not hazardous and are generally consistent with the type of wastes generated in the municipal stream (glass, paper, wood, food wastes, plastics, and the like).

- Legislation to create a national bottle bill, under which states would be required to comply with national standards if they did not enact their own bottle legislation within two years. H.R. 1818 (Markey, D-MA); S. 818 (Hatfield, R-OR).

- Legislation to facilitate recycling of scrap tires. During the last session of Congress, legislation to remediate existing stock piles of scrap tires and to regulate current tire removal practices was included as part of the comprehensive RCRA reauthorization legislation which failed to be enacted. Rep. Slattery (D-KS) already has reintroduced his scrap tire legislation from last session and there appears to be growing support for moving this bill through Congress independent of RCRA reauthorization or possibly as part of a less comprehensive RCRA bill. The Slattery bill would require the U.S. EPA and the states to establish scrap tire management and recovery programs, setting standards for tire disposal and requiring permits for scrap tire management facilities. The legislation sets a January 1, 2005 goal for eliminating all existing scrap tire piles containing more than 3,000 scrap tires. Funding would be through a fee of $.85 per tire on the sale of new tires by manufacturers or importers.

- Legislation to promote recycling of automobiles, plastics, and "white goods" (household appliances), and require EPA to prepare model construction standards for multi-unit and multifamily office and residential buildings, to facilitate recycling operations. S. 938 (Lautenberg, D-NJ).

- Legislation to govern lead-acid battery recycling (H.R. 1808, Torres, D-CA) and newsprint recycling (H.R. 1809, Torres, D-CA).

If a comprehensive RCRA bill is introduced, it will likely include issues such as these, as well as measures to promote source reduction, as environmentally preferable to recycling. Source reduction is a substantial priority within EPA as well. At this point, Congress appears to be focusing on solid (non-hazardous) waste issues, but last year's Senate bill included a range of hazardous waste issues that may crop up as well.

EPA Cabinet Status and "Environmental Equity"

On May 4th, the Senate passed legislation to elevate EPA to the status of a Cabinet-level department (S. 171). Similar legislation was approved by the House in 1990 (101st Congress) and the Senate in 1991 (102nd Congress). Also, President Clinton has made repeated statements in support EPA cabinet status. In the House, the legislation is pending before two Committees, the Government Operation Committee and the Energy and Commerce Committee. The enactment of this legislation this Congress is considered likely, but some of the amendments adopted in the Senate have generated concern in the House.

As passed by the Senate, the new Department of the Environmental Protection (USDEP) would have many of the same responsibilities that the EPA currently has. In addition, S. 171 would create within the Department an Office of Environmental Justice. This office would be charged with: 1) developing a plan for ensuring equity in environmental protection; 2) evaluating how environmental policies effect people who suffer the highest exposure to pollution and identifying methods for reducing such exposure; 3) preparing an annual report on the progress in achieving environmental equity;

4) collection of data relevant to the disproportionate impact of pollution on individuals and groups; 5) identifying "environmental high impact areas" which receive the highest exposure to toxic chemicals; and 6) assessing the health effects caused by emissions in high impact areas.

S. 171 would also create a Bureau of Environmental Statistics within the new Department. The Bureau would be responsible for compiling, analyzing, and publishing statistics on environmental quality, including sources of pollution and the effects of pollution on public health and the environment. The Bureau would be directed to make this information "readily accessible" to the public. The Bureau also would be required to prepare, for some proposed rules, "a comprehensive assessment of specific costs and benefits resulting from implementation of the proposed new regulation or the proposed regulatory change including an assessment of the total number of direct and indirect jobs to be gained or lost as a result of implementation" of such proposals.

Along with creating the new Department, S. 171 would eliminate the White House Council on Environmental Quality and transfer its functions to the Department. The role that the Council now serves in mediating interagency disputes over the environmental impact of major federal actions would be transferred to the office of the President.

A highly controversial provision that was adopted as an amendment during Senate floor consideration would require that the Secretary determine whether any final regulation "will substantially advance the purpose of protecting the human health and safety or the environment against" the risks addressed by the regulation and that such benefits "will justify the cost" of the regulation. In making this determination, the Secretary is required to conduct a comparative analysis of the risk addressed by the regulation to other risks to which the public is exposed.

Pesticides in Food

Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) regarding the regulation of pesticides are currently before Congress. The amendments have several significant provisions. Most importantly, the amendments would loosen the requirements of FFDCA's Delaney clause, which currently establishes a zero-risk standard for residues of pesticides that are potential carcinogens and that concentrate in processed foods. Modification of the existing standard is a high priority for the food industry as a result of the 1992

Les v. Reilly decision in which a federal court overturned an EPA policy that had permitted the use of pesticides that cause at most a de minimis, or negligible, risk of cancer. The amendments also would streamline existing FIFRA procedures for canceling or suspending pesticide registrations and help insure the availability of minor use pesticides.

Food safety legislation, particularly the establishment of a negligible risk standard, is a high priority for the food industry. However, Congress has not been eager to grapple with the politically delicate issue of pote ntial carcinogens in the food supply, regardless of the low degree of risk many of these chemicals pose. There have been indications recently that EPA will support specific food safety legislation in the near future.

Indoor Air and Radon

In the last Congress, the House and Senate passed separate legislation addressing indoor air pollution, but were unable to work out their differences. The House legislation was fairly limited, requiring EPA to establish proficiency standards for measuring radon gas in homes, schools, and other buildings. In addition to the proficiency standards, the Senate legislation would have required nationwide radon testing in schools, federal buildings, and residences purchased with federal assistance. Another bill which passed the Senate during the 102nd Congress would have addressed other indoor air problems, including requiring EPA to report to Congress on the subject of "chemical sensitivity disorders" and to develop health advisory documents for various indoor air contaminants.

This year, Sen. Lautenberg (D-NJ) has introduced S. 657, the Indoor Radon Abatement Reauthorization Act of 1993, and Sen. Mitchell (D-ME) has introduced S. 656, the Indoor Air Quality Act of 1993, which are similar to last year's legislation. The Senate Subcommittee on Clean Air and Nuclear Regulation, chaired by Senator Lieberman (D-CT), held a hearing on these bills May 25. EPA Deputy Administrator Robert Sussman testified that the Agency "generally supports" the two bills, but suggested some changes that the Agency believes would make the legislation more effective. Having the support of the Administration is expected to increase the chances of enacting this legislation in the 103rd Congress.

The lead bill in the House is H.R. 1930, introduced April 29 by Rep. Kennedy (D-MA) and referred to three Committees: Science, Space, and Technology; Energy and Commerce; and Energy and Commerce. Hearings on H.R. 1930 have not yet been scheduled.

FINANCIAL INSTITUTIONS

The banner under which banks and savings and loans ("depository institutions") are approaching this Congress reads "regulatory relief." This is a reaction to the severe micro-management by bank supervisors mandated by the Federal Deposit Insurance Corporation Improvement Act ("FDICIA") passed in the last Congress and the cumulative effect of over forty major regulatory provisions enacted in the last five years affecting depository institutions. Estimates of the dollar cost to the depository industry directly attributable to regulatory compliance have been as high as $20 billion. The industry blames the so-called credit crunch primarily on the excessive regulation required by FDICIA as well as the zealous application of implementing regulations by the depository supervisory agencies.

During the first four months of the Clinton Administration, few tangible results in the area of statutory or regulatory relief can be identified. No legislation has been sponsored by the Administration. On the regulatory front, however, the new Comptroller of the Currency has relaxed the requirements for documenting small business loans for the best capitalized banks, and a proposal by that same bank regulator would give more flexibility to banks in disposing of their repossessed real estate. Secretary of the Treasury Bentsen has hinted that the Administration may propose regulatory relief legislation, but up to now no one has seen a draft of such legislation. Among the things that such legislation might include is another attempt at so-called regulatory consolidation, to reduce the number of agencies that supervise depository institutions. A modest attempt at this goal would be a consolidation of the Office of Thrift Supervision with that of the Office of the Comptroller of the Currency, since both are bureaus of the Treasury Department. It is apparent thus far in the Administration that relief will be provided through relaxed regulatory implementation at first before the Administration gets behind any legislation that might appear to be "going soft" on depository institutions. Further, we believe it is unlikely that there will be any attempt to initiate a massive overhaul of the laws that govern our country's financial intermediaries. Rather, there will be piecemeal tinkering around the edges. Such attempts may include further refinements in money laundering legislation, attempts at nation-wide branching for federally chartered or insured depositories and relaxation of Community Reinvestment Act requirements.

Several bills have been introduced on these topics, but have not progressed very far. One major piece of legislation is progressing, and that deals with an overhaul of the bankruptcy laws of the United States. The bill, S. 540, is complex and the American Bankers Association submitted testimony of some 49 pages in discussing its provisions. Of most interest to depository institutions are its provisions which remove procedural road blocks and extend time limits in which lending institutions can assert and perfect their interest in collateral, and the provisions which prevent so-called mortgage cram downs.

On April 30 the Administration proposed the Student Loan Reform Act of 1993 which has the dual objective of reducing the high default ratio in the government student loan program and advancing the President's national service program. Essentially, instead of loans being originated by banks and savings institutions, they would be granted directly by one or more federal agencies, by the post-secondary schools or alternative originators such as state agencies, or private lenders including the Student Loan Marketing Association. Repayment would be made either (i) by the student directly back to the federal agency or agent; (ii) by paying back the loan to the IRS through a percentage deduction of a student's income or (iii) by payment, in part, through one or two years of service in a wide-range of community, environmental or health services. Finally, the long-awaited attempt to stimulate inner city rehabilitation through "community development banks" may be subject to an all-out Administration initiative. This was the only financial services issue discussed by the President during his campaign.

FOOD AND AGRICULTURE

The 103rd Congress will continue a focus on the regulation of food and agricultural products that reached a crescendo at the end of the 101st Congress when the Nutrition Labeling and Education Act of 1990 was passed. That law, currently being implemented by regulation, was the most significant legislation affecting food marketing practices since passage of the Federal Food, Drug, & Cosmetic Act in 1938.

This Congress will move away from food labeling toward the regulation of food safety, a subject of legislative initiatives for many years. It is likely to receive intensified consideration in light of a recent U.S. Supreme Court decision effectively limiting the approval of pesticides used on agricultural commodities, as well as publicity surrounding the inspection of food products. Related issues involving the effectiveness of current Food and Drug Administration enforcement powers, the adequacy of FDA and U.S. Department of Agriculture resources, and the implications of budgetary concerns for food and agricultural programs generally will also receive attention.

Food Safety

The Delaney Clause, added to the Food, Drug & Cosmetic Act by the Food Additive Amendments of 1958, prohibits the use in food of any substance found to cause cancer in man or animals regardless of the degree of risk to human health. This provision has come under increasing attack as scientific techniques have enabled the detection of carcinogens at infinitesimal levels. The Environmental Protection Agency, which sets tolerances for pesticide residues enforced by FDA, has historically considered substances that present only a de minimus risk of cancer to be safe. The U.S. Supreme Court has held this policy unlawful, concluding that the Delaney Clause must be strictly and narrowly interpreted. As a result, the availability of many pesticides important for the production of an abundant and wholesome food supply have been placed in jeopardy.

Several bills have already been introduced to address the Delaney Clause as well as other concerns that have been raised with respect to the regulation of food ingredient safety. Representatives Lehman (D-CA), Bliley (R-VA), and Rowland (D-GA), have introduced a bill that would establish a negligible risk standard for pesticide residues in processed and raw foods and would allow EPA to take into account benefits offered by a substance in the standard setting process. Representative Waxman (D-CA) has again introduced his bill that would establish a very stringent standard and prohibit consideration of benefits. Companion legislation has been introduced by Senator Kennedy. In addition, bills introduced by Representative de la Garza (D-TX), and Senator Inouye, are intended to ensure the availability of pesticides used in the production of fruit and vegetables.

Some of the same Congressional committees having jurisdiction over food safety legislation will be involved in health care reform. This could interfere with the enactment of food safety/pesticide legislation this year. Because the federal agencies, notably EPA, are already taking steps to implement the Supreme Court Delaney Clause decision, however, there will be growing pressure to amend the food safety laws.

Inspection

Since the mid-1980's, Congress has considered a number of initiatives designed to "modernize" meat and poultry inspection. Although there is general agreement that the inspection program should take greater advantage of scientific techniques useful in detecting bacterial contamination, and focus less upon organoleptic (e.g., sight, touch and smell) criteria, as recommended by the National Academy of Sciences and others, there remains little consensus as to the components of the inspection system of the future. Options range from reducing the number of inspectors and placing greater responsibility for inspection on plant employees utilizing scientific detection techniques, to retaining current levels of inspection but training inspectors to employ new technologies.

Senator Leahy (D-VT) and Representatives Stenholm (D-TX) and de la Garza (D-TX) of the Agriculture Committees have called for inspection reform. Meanwhile, USDA has announced a Pathogen Reduction Program and Strategic Plan, including changes to the inspection program under current law and the design of a new inspection system which could require amendments to the Federal Meat Inspection Act and Poultry Products Inspection Act. These initiatives will receive much attention this Congress.

Meanwhile, FDA has announced a mandatory quality control program coupled with inspection of seafood products. That agency has assumed an aggressive posture in the area of food safety, and can be expected to seek broader jurisdictional authority. Indeed, a bill sponsored by Senator Durenberger (R-MN), the Food Safety and Inspection Agency Act of 1993, would establish a single independent federal agency responsible for food safety regulation. The bill would combine the food regulatory responsibilities currently administered by FDA, USDA, and the Department of Commerce.

FDA Enforcement

Bills considered in the House and Senate last year would have expanded FDA's enforcement capabilities. Although not yet introduced in this Congress, action in this area can be expected. Last year's bills would have given FDA administrative recall authority, seizure and embargo authority, subpoena power, the authority to impose civil penalties, and increased agency authority over company records and imported products.

Under the proposals, FDA could initiate an administrative recall upon a determination that there is a reasonable probability that a food, drug, or cosmetic will cause serious adverse health consequences or death. FDA would be allowed to seize products in violation of the Federal Food, Drug and Cosmetic Act and could embargo products if an FDA officer or employee has reason to believe, as the result of an inspection, that a food, drug, device, or cosmetic is in violation of the Act.

The previous bills would have given the FDA Commissioner the authority to issue a subpoena for any hearing, investigation, or other proceeding, other than a rulemaking, if the Commissioner determines that there is reason to believe a violation has occurred. Subpoenas could require the attendance and testimony of witnesses, as well as the production of documentary evidence relevant to the subject matter of the proceeding.

FDA would also be given authority to impose civil penalties from $250,000 for an individual to $1 million for a corporation per violation. The bills have included broad inspection powers, and recordkeeping and reporting requirements for companies, as well as increased FDA authority to regulate imports.

In past Congresses, although purportedly needed to enable FDA to enforce the law, the proposed legislation had not received Administration support. This year, however, FDA's Commissioner has already called for legislative action to expand the agency's powers.

User fees amounting to more than $200 million to be imposed upon FDA-regulated companies have been proposed as part of the appropriations bill to fund FDA enforcement. This issue will likely be hotly debated in light of the federal budget situation.

Production Agriculture, Budget & Related Issues

In anticipation of the 1995 farm bill and upcoming reauthorizations, the 103rd Congress will closely review the operation of the numerous existing agriculture production and conservation programs. Although this Congress will address the legislative imperatives of production agriculture, its efforts will be tempered and shaped by external forces such as budget constraints, trade agreements and market developments.

In the context of FY 1994 budget reconciliation, the House agreed to reduce the acreage eligible for program payments for wheat, feed grains, cotton and rice program participants. The House also made several changes to smaller programs, some of which have been the subject of intense budget scrutiny outside of the agriculture committees. Final budget reconciliation legislation likely will increase assessments on participants in the honey, peanuts, sugar and tobacco programs and enact stricter limitations on payments to wool and mohair producers. Also, the House agreed to increase certain Forest Service recreational user fees.

Although farm state legislators have been generally successful at representing these interests during the 1994 budget reconciliation process, many of the savings proposals which have been discarded during consideration of reconciliation legislation are likely to resurface in the 1995 farm bill debate. Some of the proposals include elimination of the honey program, means-testing for production program payments, increasing unpaid program acreage and eliminating production set-aside programs. They also include increasing current agricultural user fees or creating fees where none currently exist. For example, during initial budget reconciliation consideration, the Clinton Administration proposed new user fees to finance recovery of the Federal government's cost of developing commodity grading standards and user fees for meat and poultry inspection services. The Administration also proposed user fees to recover the cost of administering marketing agreements and orders and increased Forest Service grazing and recreational fees.

Many of these proposals will have a direct impact on the food and agricultural sector; others represent changes at the margins of existing agricultural programs. By the time farm bill reauthorization is required, the impact of budgetary, trade and political pressures may require Congress to lay bare the agricultural legislative framework and reform the philosophical and operational underpinnings of present agricultural policies.

Of final significance, the 103rd Congress has reauthorized the Commodities Futures Trading Commission Act for two years. Therefore, Congress will be reviewing its own recently completed work in this area. This reauthorization likely will revisit the question of regulation of derivative financial products and off-exchange investments.

An exemption compromise struck during the 1993 Conference committee represents merely a stop-gap solution to this question to some lawmakers. Congress is awaiting the results of several studies on the scope of the derivatives market and the risks it poses. These studies will be instrumental in Congress' legislative approach to the regulation of this market. In the meantime, this issue will be the subject of ongoing oversight in the relevant subcommittee of the House Committee on Agriculture.

LABOR AND EMPLOYMENT

In the area of labor and employment legislation, the change of administrations has dramatically altered the playing field and dialogue on these issues. During the 102nd Congress, vetoes by President Bush precluded the enactment of such bills as the Family and Medical Leave Act. In addition, the threat of a veto worked to force significant compromises between republicans and democrats on a number of bills, including changes to the 1991 Civil Rights Act which helped to mitigate the impact of the legislation on the employer community.

With the Clinton Administration either endorsing or likely to be sympathetic to a variety of reforms in the labor and employment areas, the congressional focus for opponents of such reforms has shifted from a largely veto strategy to that of a filibuster. Attention is directed to the Senate where the 56 democrats to 44 republicans provides opportunities in certain situations for republicans to garner the necessary 41 votes to block cloture.

In some cases, a filibuster strategy in the Senate has clearly not been a viable option as was the situation with the Family and Medical Leave Act, which was signed into law by President Clinton on February 5, 1993 and will go into effect on August 5, 1993. The new law generally requires employers with 50 or more employees to provide eligible workers with up to 12 weeks of unpaid leave each year to care for a new child or in the case of their own serious illness or the serious illness of a child, parent or spouse. Interim final regulations under this law were published in the Federal Register on June 4, 1993.

The most significant labor-related debate for the first session of the 103rd Congress will likely be the Workplace Fairness Act or so-called striker replacement legislation (S.55 and H.R.5), which would ban the use of permanent replacement workers in an economic-based strike where higher pay or benefits are at issue. During the 102nd Congress, while the legislation easily passed the House, it failed on two cloture motions to shut off debate in the Senate. Republicans voting to invoke cloture were Sens. D'Amato, Hatfield, Packwood, Specter and Stevens; democrats voting against the motion to invoke cloture were Sens. Boren, Bumpers, Hollings, Pryor and Sanford. Floor consideration in the House is expected in June or early July 1993. Senate action will follow either later in the summer or early fall. While the legislation is expected to easily pass the House, its prospects in the Senate are at best unclear with republicans within reach of the necessary votes to successfully filibuster the bill.

A number of other major pieces of legislation affecting labor and employment rights are likely to be considered during the 103rd Congress, although with the calendar for the first session rapidly filling up, timing is uncertain. In March 1993, Sen. Kennedy and Rep. Ford introduced the Comprehensive Occupational Safety and Health Reform Act (S. 575 and H.R. 1280). The legislation is very similar to bills introduced during the 102nd Congress and would overhaul OSHA by mandating joint labor-management safety and health committees and by requiring employers to develop written safety and health programs which include safety and health training and education for workers. In addition, the legislation provides for the creation of new and expanded criminal penalties.

The 103rd Congress has also witnessed the reintroduction of the Equal Remedies Act, which would eliminate the caps on punitive and compensatory damages contained in the 1991 Civil Rights Act and the Americans with Disabilities Act.

The Clinton Administration has also indicated a strong interest in broader labor law reform aimed at improving worker-management collaboration. On May 24, 1993, the 10-member Commission on the Future of Worker-Management Relations established jointly by Labor Secretary Reich and Commerce Secretary Brown, held its first meeting. The Commission has one year to complete its report which, among other things, is to include an examination of current laws and collective bargaining practices and proposals for reform. Many expect the Commission's report to provide the basis for legislation aimed at reforming the collective bargaining process and enhancing the power of organized labor.

Finally, as a result of the change in administrations, appointments to fill existing vacancies or terms which will expire in 1993 on the National Labor Relations Board are likely to have a significant impact on the administration and interpretation of the National Labor Relations Act.

LOBBY ACT REVISIONS

Summary

On May 6, 1993, the Senate passed the Lobby Disclosure Act of 1993 (S 349) by a vote of 95-2. The bill would revamp existing lobbying disclosure laws to close loopholes, collect more information on persons who lobby Congress and the executive branch, and make that information easily accessible to the public.

Current Regulations

The current lobby registration system is a patchwork of laws and regulations that are so vague and inconsistent that the majority of those who work to influence legislation or government policy can remain anonymous. Only those who spend a majority of their time personally lobbying members of Congress must register. Lobbying staff and members of the executive branch does not require disclosure. A Government Accounting Office report found that fewer than 4,000 of the 13,500 people who list themselves in the directory "Washington Representatives" were registered as lobbyists.

While these loopholes have been known for decades, past efforts to mandate more complete disclosure have fallen victim to inertia, partisan bickering, and the constitutional imperative to protect citizens' right to petition government.

S 349

The Senate bill (S 349), sponsored by Sens. Carl Levin (D-Mich.) and William S. Cohen (R-Maine), tries to balance a desire to reveal the identities and clients of all paid lobbyists without requiring registration by every person who contacts a government official or comes to Washington for an annual meeting. The bill would replace the several current laws (principally the 1946 Federal Regulation of Lobbying Act and the 1938 Foreign Agents Registration Act) with one statute.

Levin and Cohen vigorously resisted the idea that their narrowly crafted bill, which they began work on several years ago, should be expanded to require lobbyists to disclose gifts to members of Congress and their staffs. Past efforts to strengthen lobbying registration had been sunk by such extraneous amendments. Nevertheless, Sen. Paul Wellstone (D-Minn.) was successful in passing an amendment that would require lobbyists to disclose any gift worth more than $20 (or an aggregate of $50 annually) -- including meals, trips, and entertainment -- to a member of Congress or a staff member. Levin and Cohen criticized the mechanics of Wellstone's amendment, saying that it was inconsistent with Senate rules, shifted the burden of disclosure from members of Congress to lobbyists, and fell short of their goal of eliminating such gifts.

Below are the highlights of the bill:

- Registration would be required for any organization that spends or receives more than $5,000 from all clients it lobbies for or more than $1,000 from any single client in half a year.

- Lobbying contacts would be defined as any communications with congressional members or aides or high-level executive branch officials with regard to legislation or official actions.

- Any organization that hires a lobbyist would have to file a report covering all of its lobbying activities.

- Reports would be required twice a year. They would have to specify clients, lobbyists, amounts spent or received, issues involved, agencies and committees contacted, and interests of foreign affiliates.

- Lobbyists would have to disclose whether they had served in the previous two years in government positions that were subject to lobbying.

- The bill would not require registration by religious organizations, journalists, or public officials.

- An Office of Lobbying Registration and Public Disclosure would be established within the Department of Justice, with its director subject to Senate confirmation.

- The office would have to make registration information available in a form that could be cross-checked against information on campaign contributions on file at the Federal Election Commission.

- Fines of up to $200,000 could be imposed for failure to comply.

- Separate registration requirements would be retained for foreign governments and political parties.

- Provisions of the 1989 "Byrd amendment" that prohibit using appropriated federal funds to lobby for contracts, grants, or loans would be preserved.

HR 823

Similar legislation (HR 823) has been introduced in the House by Rep. John Bryant (D- Texas). The bill is pending before the House Judiciary Subcommittee on Administrative Law. Although a markup has been expected for some time, no date has been set.

Outlook

The bill has been endorsed in concept by President Clinton, and is likely to pass the House and become law this session.

SCIENCE and TECHNOLOGY

I. National Technology Policy

A. Background

In September 1992, the Clinton/Gore campaign outlined a "National Technology Policy for America" in a paper entitled "Technology, the Engine of Economic Growth." The paper made it plain that a Clinton Administration would view technology policy as a basic means for implementing a national economic growth strategy. Vice Presidential Candidate, Al Gore, was designated to be the coordinator to implement the policy. The policy itself was not so much a novel concept as it was an amalgam of programs which Senator Gore and other Democratic members of Congress had been advocating for some time.

The Administration's technology policy was announced officially on February 22, 1993, in the document "Technology for America's Economic Growth, A New Direction to Build Economic Strength." Although the initial stimulus package of the Clinton Administration has been defeated in the Senate and other Administration legislative measures have had great difficulty, legislative measures to implement a Clinton/Gore technology policy are progressing favorably. In many cases these measures enjoy strong business, if not bipartisan, support.

B. Relationship Between Government And Business

According to the Clinton/Gore Administration, the federal government has in the recent past failed to provide sufficient amounts of "economic leadership" and "business support." Economic leadership is to be provided chiefly through a new National Economic Council. Chaired by the President with the participation of the Vice-President, this council is a counterpart to the National Security Council. The Council includes as a key member, John H. Gibbons, Assistant to the President for Science and Technology policy. Gibbons, in turn, through his position as Director of the Office of Science and Technology Policy, heads a twenty-agency Federal Coordinating Council for Science, Engineering and Technology. The Council formulated the Administration Science and Technology FY 1994 Budget proposals discussed below.

From an international technology perspective, the policy envisages a more aggressive stance in opening non-U.S. markets to U.S. businesses, equity in treatment of U.S. businesses in those markets and equity of treatment of foreign corporations in the United States markets.

Support of U.S. businesses is also to be accomplished through (1) investment in "research and development" and "infrastructure," (2) the dissemination throughout the manufacturing sector of technology, and (3) the application of technology to education.

II. Budget Implementation Of Clinton/Gore Technology Policy

A. Dual-Use Technology and Defense Conversion

The primary budgetary tool for institution of the Clinton/Gore technology policy is the conversion of dollars formerly spent for defense R&D into civilian or "dual-use" research. In rough terms, the FY 1993 Federal R&D Budget is allocated sixty percent to defense programs and forty percent to non-defense programs. The Clinton/Gore Administration is attempting to shift the balance between defense and non-defense programs back to a fifty-fifty balance. It is estimated that this will result in a shift of approximately thirty billion dollars over four years from defense to non-defense R&D. For FY 1984 the Administration proposes a 3% increase, with this increase going almost exclusively to civilian R&D. The primary sub-agencies for effecting the shift in R&D spending will be the Defense Advanced Research Project Agency (from whose name the President has dropped the word "Defense" so that the agency is now simply the Advanced Research Projects Agency), and the some 726 federal laboratories controlled chiefly by Commerce and Energy. The most prominent of these labs from a policy perspective is the National Institute of Standards and Technology in Gaithersburg, for whom the Administration proposes a 39% increase to $532 million.

The ARPA budget is to be increased for FY 1994 from $1.29 Billion to $2.2 Billion. Perhaps, more importantly, ARPA has been designated the lead agency for the Defense Technology Conversion Council. Conversion proposals are due from affected industries in mid-July and awards will be made in September. Other agencies involved are the Department of Commerce, the Energy Department, NASA, and the National Science Foundation.

B. Fiscal Year 1994 Budget Initiatives

1. Advanced Manufacturing Technology

(a) The goal of the AMT initiative is to accelerate the development and application of advanced manufacturing technologies to improve the manufacturing capabilities of U.S. industry.

(b) The President's FY 1994 budget request for the AMT initiatives is $1.4 billion.

2. The Advanced Materials And Processing Initiative

(a) The goal of the AMP is to improve the manufacture and performance of materials and processing technology.

(b) The President's FY 1994 budget request for the AMP is $2.1 billion.

3. The High Performance Computing And Communication Initiative (Information Superhighways)

(a) The HPCC program is organized into five components.

HPCS - High Performance Computing System
NREN - National Research and Education Network
ASTA - Advanced Software Technology and Algorithms.
IITA - Information Infrastructure Technology and Applications
BRHR - Basic Research in Human Resources

(b) The President's FY 1994 budget requests $1 billion for the HPCC initiative plus $96 million for the IITA component.

4. U.S. Global Change Research Program Initiative

(a) The U.S. Global Change Research Program (USGCRP) Initiative was conceived to provide scientific understanding of the interactive physical, geological, chemical, biological, economic and social processes that regulate the total earth system.

(b) The President's FY 1994 budget proposes $1.5 billion for the USGCRP Initiative (13% increase over 1993).

5. Bio-Technology Research Initiative

(a) Included are bio-technology research programs on environmental remediation, gene therapy, vaccine development, structural biology, food safety, marine bio-technology, and manufacturing and bio-processing.

(b) The FY 1994 bio-technology research budget request is $4.3 billion.

6. Science Mathematics Engineering And Technology Education Initiative

(a) The strategy of this initiative is to promote science, mathematics, engineering and technology education at all levels.

(b) The President's 1994 budget proposes the investment of $2.33 billion in this initiative.

7. Civil Transportation Infrastructure

(a) Significant R&D increases are proposed in civil transportation infrastructure, including magnetic levitation, high speed rail, "smart highways", and civilian aviation.

(b) Nearly $2 billion is proposed, a 29% increase over 1993 levels.

III. Principal Pending Legislation

A. HR 820 The Competitiveness Act of 1993

1. The sponsor of the bill is Representative Tim T. Valentine, Democrat from North Carolina, along with 49 co-sponsors (43 Democrats and 6 Republicans). The Bill is similar to the National Competitiveness Act of 1992 (HR 5231) which passed the House and died in the Senate. The bill proposes to:

(a) Establish an Advanced Manufacturing Technology Development Program to promote the development of advanced manufacturing technologies.

(b) Expand the National Science Foundation's activities to include manufacturing technology development, worker training partnerships and total quality management programs.

(c) Establish a program to coordinate the collection and dissemination of information on foreign technological capabilities.

(d) Expand the Department of Commerce's Advanced Technology Program.

(e) Establish a National Technology Outreach Program to assist U.S. manufacturers to upgrade their technology base.

(f) Expand NIST's nationwide manufacturing technology centers.

2. On May 19 the House of Representatives passed the National Competitiveness Act (HR 820) authorizing $1.5 billion over the next two years to help improve U.S. manufacturing's development and transfer of technology. Aides in the Senate expect the bill to reach the Senate floor next week.

(a) The Department of Commerce and the National Science Foundation will be the primary recipient of this money.

(b) The Bill includes authorization for up to $731.5 million through fiscal 1995 for the Commerce Department's Advanced Technology Program, a five-fold increase in two years.

(c) It also authorizes $722 million for research sponsored by the National Institute of Standards and Technology and $50 million for the National Science Foundation.

(d) The bill authorizes $186 million to create around 100 technical outreach centers to provide companies with the latest information on manufacturing operations and technology needs.

B. S4 The National Competitiveness Act of 1993

1. This bill is sponsored by Senator Earnest F. Hollings, Democrat from South Carolina, and co-sponsored by 19 others (18 Democrats and 1 Republican).

2. The Senate Bill S4 was reported out of the Committee on Commerce, Science and Transportation on May 25, 1993.

3. S4 is roughly equivalent to HR 820; but S4 also authorizes $380 million funding for high performance computing and computer communications applications linked in "information highways, as proposed by Vice-President Al Gore and $52 million for a pilot technology oriented "venture capital" initiative.

C. HR 1757 The High Performance Computing and High Speed Networking Applications Act

1. The bill was introduced on April 21, 1993 by its sponsor, Representative Rick Boucher, Democrat from Virginia, along with 18 co-sponsors (17 Democrats and 1 Republican).

2. The bill will provide for a coordinated federal program to accelerate development and dissemination of applications of high performance computing and high speed networking.

3. As of May 27, 1993 the bill is still pending in the House Science, Space and Technology Committee.

D. S-473 DOE National Competitiveness Technology Partnership Act

1. "Introduced by Senator J. Bennett Johnston (D. La) with eleven co-sponsors (4 Democrats and 7 Republicans).

2. Extends existing cooperative Research and Development Act by requiring some laboratories to set aside twenty percent of their budgets for CRADA's. It is expected there will be over 1,700 non-defense CRADA's in 1994, a 17% increase with public and private investments of over $3 billion.

E. Other Bills

There are about sixty additional pending bills that deal in some manner with technology policy.

IV. Conclusion

Science and technology policy is an area in which the Clinton/Gore legislative initiatives are moving forward and likely to be enacted. Businesses in science and technology should position themselves now to participate in the changes this legislation will bring.

SECURITIES INDUSTRY

Overview

The legislative agenda of the Securities and Exchange Commission is uncertain at this point and likely will remain so until the Senate confirms Arthur Levitt, Jr., the President's nominee to succeed Richard C. Breeden. As a result of uncertainty surrounding the SEC Chairmanship prior to Mr. Levitt's nomination, there have been few legislative proposals initiated by the SEC. Nevertheless, several significant measures are pending in the Congress and appear likely to move forward during the current legislative session. Four of these measures, all designed to shore up investor protections against perceived abuses, are discussed below.

As a preliminary matter, it may be important to note that, on May 27, 1993, the House Energy and Commerce Subcommittee on Telecommunications and Finance approved a bill that would authorize the SEC's funding for fiscal years 1994 and 1995. The measure provides for funding of $281.9 million for fiscal year 1994 and $317.7 million for fiscal year 1995. The authorization for fiscal year 1994 has more than doubled the $127.2 million appropriation the SEC received in fiscal year 1993. Subcommittee Chairman Edward J. Markey has said that "phenomenal growth" in the securities market in the past decade has put new demands on the SEC that warrant the proposed funding increase. If the authorized amounts are appropriated, the SEC will be in a position to increase its regulatory presence on all fronts, including regulatory, oversight, and enforcement.

Limited Partnership Reform Act of 1993

Reform of limited partnership roll-up procedures remains a legislative priority, despite the SEC's attempt to address the abuses in this area by adopting stringent disclosure and other requirements in late 1991. The National Association of Securities Dealers also has adopted rules addressing partnership roll-up abuses, and has urged that legislative action be postponed to allow their rules a chance to work. Because of alleged investor losses in roll-up transactions in recent years, however, it appears that legislative action may proceed.

The Limited Partnership Roll-up Reform Act of 1993 would amend the Securities Exchange Act of 1934 with respect to rules and regulations governing limited partnership roll-ups. The bill is identical to legislation passed by the House last year. The bill would require the SEC to amend its proxy disclosure rules to require, in connection with solicitations of limited partners to approve a proposed roll-up transaction, inclusion in the solicitation materials of an independent fairness opinion. The bill would also require a minimum solicitation or offering period of 60 days. In addition, the persons making the solicitation would be required to provide requesting limited partners with access to a list of all other limited partners subject to the solicitation.

The Investment Adviser Oversight Act of 1993

The number of investment advisers registered with the SEC has increased dramatically over the last 12 years, while the number of SEC staff members assigned to inspect or oversee the investment adviser industry has experienced little growth. To address this imbalance and to protect the public from investment adviser fraud, the Investment Adviser Oversight Act of 1993 has been introduced in the Senate and the Investment Adviser Regulatory Enhancement and Disclosure Act of 1993 has been introduced in the House. The House bill, which has been approved by the full House, would impose fees ranging from $300 to $7,000 for investment advisers required to register with the SEC. The revenue generated from these fees would be directed to the SEC programs for inspecting and overseeing investment advisers. The House bill also would direct the SEC to conduct regular examinations of investment advisers (or to delegate examinations to one or more self-regulatory organizations). The bill also would impose a suitability requirement allowing investment advisers to recommend only investments which are in the best interest of the client, and would require investment advisers to provide more detailed account information to clients.

The Senate bill would authorize and fund a significant increase in the number of SEC examiners who supervise financial planners and investment advisers. The bill also would authorize the SEC to require fidelity bonding in certain cases, thereby providing protection for clients of investment advisers.

Financial Fraud Detection and Disclosure Act

This bill would require independent auditors of companies to report any frauds or illegalities they uncover that are not corrected by the audited company, unless the illegality is clearly inconsequential. The bill would require information about possible illegalities to be provided to corporate managers and, if management failed to take "timely and appropriate remedial action," to the company's board of directors. If notice of illegalities is given to the board of directors and the board does not report them to the SEC within one day, the auditor would be required to report the illegality to the SEC and may be required to resign from the engagement.

The bill also would set three new audit requirements for independent auditors. First, each audit would have to include procedures designed to discover illegal acts affecting the company's financial statements. Second, the auditor would have to develop procedures to identify transactions among related parties that would materially affect the company's financial statements or that should be disclosed in the financial statements. Third, the auditor would have to evaluate whether there is substantial doubt about the company's ability to continue as a going concern over the next fiscal year.

The SEC would be empowered to impose civil penalties against auditors for violating the requirements of the bill. Under the bill, which is supported by the AICPA, auditors would be granted a safe harbor from civil liability for statements made in any reports sent to the SEC to reporting illegalities.

Mark-up and hearings before the House Telecommunications and Finance Subcommittee occurred on March 18, 1993 and the bill was approved by the Subcommittee by voice vote. The full Energy and Commerce Committee approved the Bill by voice vote on April 27, 1993.

Government Securities Reform Act of 1993

This bill would extend the SEC's authority to prescribe antifraud and antimanipulation rules for the government securities market. The bill also would require government securities brokers and dealers to develop internal controls to prevent fraud, manipulation or other wrongdoing, and would provide regulators with an early warning system by requiring reports of large concentrations of positions in the Treasury market. In addition, the bill would modify recordkeeping requirements, would lift current restrictions that prevent the NASD and financial institution regulatory agencies from developing and applying normal sales practices and other rules of fair practice to the government securities activities of the entities they regulate and would provide the SEC authority to assure investors access to government securities market price information.

TELECOMMUNICATIONS

Legislative and Regulatory Developments

Numerous areas of legislative activity affecting the telecommunications industry during the 102nd Congress were of interest, including cable television rate regulation, radio frequency spectrum issues, and campaign finance reform, many of which are slated to be on the agenda for the 103rd Congress. The most noteworthy legislation considered by the 102nd Congress and pending before the 103rd Congress is discussed below.

Cable Television Regulation

The most celebrated communications legislation enacted during the 102nd Congress involved the reregulation of the cable television industry. During its past two sessions, Congress considered various bills to reregulate the cable television industry. Senator Hollings (D-SC), Chairman of the Senate Commerce Committee, introduced the initial Senate cable bill (S. 12), and then Senator Lieberman (D-CT) and Representative Shays (R-CT) introduced later bills in the Senate and House proposing even stronger regulation of the cable industry. In essence, these bills proposed rate regulation of all levels of service for cable operators not facing "effective competition" which, by definition, included the vast majority of all cable operators. In addition to regulating rates, these various bills proposed adoption of technical and customer service standards, restoration of must carry and channel positioning obligations to protect local broadcasters, limitations on cable programming exclusivity, and reformation of leased access and franchise renewal procedures.

In the last days of the 102nd Congress, the House and Senate overrode a presidential veto to enact a bill reregulating the cable television industry. The new law (Public Law No. 102-385), which is known as the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), requires the Federal Communications Commission ("FCC") to regulate rates for basic cable service, and rolls back rates for other levels of service deemed unreasonable. The 1992 Cable Act also sets minimum customer-service standards, allows local stations to charge cable operators for use of their signals, and requires cable-affiliated program vendors to make programming available to cable competitors at reasonable rates.

Since Congress enacted the 1992 Cable Act, the FCC has issued numerous regulations implementing it. As an example, on March 29, 1993, the FCC issued numerous regulations relating to must-carriage and retransmission consent and on May 3, 1993, the FCC issued an expansive Report and Order and Further Notice of Proposed Rulemaking implementing the rate regulation provisions of the 1992 Cable Act. In addition to the FCC's Report and Order, the FCC anticipates issuing a further Notice of Proposed Rulemaking sometime in June 1993, to establish standards for cost-of-service analysis. The FCC's rules implementing the 1992 Cable Act currently are scheduled to become effective on June 21, 1993.

Telephone Regulation

There are a number of bills pending before the 103rd Congress concerning telephone regulation. On March 29, 1993, Representative Boucher (D-VA.) introduced the Communications Competitiveness and Infrastructure Act of 1993 (H.R. 1504). This bill proposes lifting the 1984 prohibition on telephone companies' ownership of cable television systems within their respective service territories in order to promote competition in the cable television industry. This bill would also permit telephone companies to provide video programming, and encourages the modernization of the telecommunications infrastructure. This bill currently is pending before the House Energy and Commerce Committee where no further action has been taken.

During the 102nd Congress, legislation designed to address privacy concerns raised by the use of telephone display devices (caller ID devices) stalled. On March 18, 1993, Senator Kohl (D-WI) reintroduced legislation (S. 612) that would allow consumers to block the display of their phone number on caller ID devices, on a per-call basis. This bill currently is pending before the Senate Judiciary Committee where no further action has been taken.

Finally, numerous bills were introduced during the 102nd Congress, which are being reintroduced by the 103rd Congress, aimed at promoting and encouraging the rapid development and deployment of a nationwide, advanced, interactive, broadbased telecommunications infrastructure. For example, on June 23, 1992, Senator Inouye (D-HI) introduced S. 2882 and on October 5, 1992, Representative Markey (D-MA) introduced H.R. 480 both of which authorize appropriations for the National Telecommunications and Information Administration. S. 2882 was referred to the Senate Commerce, Science and Transportation Committee while H.R. 480 was referred to the House Energy and Commerce Committee where no further action was taken.

On June 9, 1993, Senators Danforth (R-MO) and Inouye (D-HI) introduced a bill (S. 1086) which encourages the development of a nationwide telecommunications infrastructure through increased competition for telephone, as well as cable, services. The local competition provisions of this bill would require telcos to provide interconnection to their networks to prospective competitors at any technically feasible point. The bill also contains provisions that would permit telcos to enter the cable television business in their service areas under certain conditions. One of those conditions would be that the telco could not purchase more than a 5% interest in a cable system providing service within the telco's exchange area, or enter into any joint venture or partnership with that type of cable company. The bill also would permit telcos to provide video programming through separate subsidiaries and under tariffed rates filed with states.

Radio Frequency Spectrum

The allocation of radio frequency spectrum has also received substantial attention. In his budget, President Clinton proposed raising revenue by opening up competitive bidding auctions for radio frequency spectrum. On February 2, 1993, Representative Dingell (D-MI) introduced H.R. 707, known as the Emerging Telecommunications Technologies Act of 1993, which passed the House on March 2, 1993. H.R. 707 reallocates 200 megahertz of government spectrum for private users to promote emerging technologies, such as high definition television and digital audio broadcasting. Then on May 13, 1993, Representative Markey (D-MA) included the competitive bidding concept in his Licensing Improvement Act of 1993, during a subcommittee mark-up of the budget resolution. Representative Markey's bill includes the language of H.R. 707. Both the Licensing Improvement Act and H.R. 707 were incorporated into the omnibus Budget Reconciliation Act of 1993 which passed the House by a narrow margin of 219 to 213 on May 27, 1993. The Budget Reconciliation Act must now pass the Senate before becoming law. The Senate Commerce Committee approved the Senate's version of H.R. 707, which is captioned S. 335, on May 25, 1993. Congress hopes to raise $7.2 billion from the sale of public radio spectrum.

Broadcasting

Campaign Finance Reform

Following an election year in which campaign finance was an important issue in many Congressional races, a number of campaign reform bills have been proposed. Following is only a sampling of these bills many of which are relevant to the communication arena since they regulate broadcasters' sale and airing of political advertising.

In the House, two noteworthy bills were introduced. On January 6, 1993, Representative Bliley (R-VA) introduced the Political Broadcasting Act of 1993 (H.R. 449) which calls for free radio and television broadcasting time for political advertising. This bill has been referred to the House Energy and Commerce Committee. Then, on January 26, 1993, Representative Kanjorski (D-PA) introduced H.R. 612 which would amend the House of Representatives Election Campaign Reform Act of 1990. H.R. 612 would reform campaign practices for elections to the House of Representatives by, among other changes, encouraging the use of longer campaign commercials. The bill has been referred jointly to the House Administration, Ways and Means, and Energy and Commerce Committee where no further action has been taken.

On the Senate side, five noteworthy bills were introduced. On January 21, 1993, Senator Boren (D-OK) introduced the Congressional Spending Limit and Election Reform Act of 1993 (S. 3). This proposed legislation would rewrite the law governing the financing of congressional campaigns and provide limited public financing for candidates who abide by voluntary spending limits. The Senate has been debating S. 3 since May 21, 1993, with various senators waiting to introduce over 60 amendments to the bill. On February 4, 1993, Senator Danforth (R-MO) introduced S. 329, known as the Campaign Advertising and Disclosure Act of 1993, which would clarify the lowest unit charge provisions of Section 315 of the Communications Act of 1934. In essence, Section 315 provides that candidates for political office must be able to purchase nonpreemptible advertising spots from broadcast stations in the 30 days preceding a primary and in the 45 days preceding a general election at the lowest unit charge. In an effort to clarify and simplify Section 315, S. 329 proposes shortening the length of time during which candidates can purchase advertising spots at the lowest unit rate, and would require that the candidate make certain declarations with regard to advertisements on his/her behalf, including a statement in the advertisement that he/she has approved the advertisement. S. 329 currently is pending before the Senate Commerce, Science and Transportation Committee, where no further action has been taken. Also on February 4, 1993, Senator Hollings (D-SC) introduced the Clean Campaign Act of 1993 (S. 334) which proposes amending that portion of the Communications Act of 1934 regarding the broadcasting of material for political candidates. The Clean Campaign Act of 1993 would require that if a political candidate refers to another political candidate it must be in person. If not, the broadcaster must supply the referenced candidate with the same amount of time, at the same time of day, free of charge. The proposed legislation was referred to the Senate Commerce, Science and Transportation Committee, which held a hearing on the bill on May 13, 1993.

On April 27, 1993, Senator Dorgan (D-ND) introduced a bill (S. 829) that would require that a political advertisement aired during the lowest unit charge time be at least five minutes in length and further require that an unobscured full-faced picture of the candidate be displayed for no less than 75 percent of the length of the communication and occupy no less than 40 percent of the television screen area. This bill has been referred to the Senate Commerce, Science and Transportation Committee, which held a hearing May 13, 1993. On May 5, 1993, Senator Roth (R-DE) introduced a bill (S. 893) which is similar to H.R. 449 in that it calls for broadcasters to supply free television broadcast time for Senate candidates in connection with their campaigns. This bill currently is pending before the Senate Commerce, Science and Transportation Committee where no further action has been taken.

Alcoholic Beverages

On April 22, 1993, Representative Kennedy (D-MA) introduced a bill (H.R. 1823) that would require health warnings to be included in all advertisements for alcoholic beverages. This bill currently is pending before the House Energy and Commerce Committee where no further action has been taken. However, many producers of alcoholic beverages have warned publicly that they may not advertise their products as extensively in the event this bill is enacted. In view of the substantial advertising budgets of alcoholic beverage companies and their threats not to advertise, broadcasting entities are watching this bill with interest.

Violence on Television

The Senate introduced two bills relating to violence on television. On May 11, 1993, Senator Durenberger (R-MN) introduced a bill (S. 943) to protect children from the physical and mental harm resulting from violence contained in television programs. This bill is pending before the Senate Commerce, Science and Transportation Committee. On May 18, 1993, Senator Dorgan (D-ND) introduced a bill (S. 973) that would require the FCC to evaluate and publicly report on violence contained in television programs. The bill is pending before the Senate Commerce, Science and Technology Committee.

Miscellaneous Bills

The 103rd Congress has also seen the introduction of several miscellaneous bills affecting broadcasting. For example, on February 18, 1993, Representative Engel (D-NY) introduced the Multilingual Radio Act of 1933 (H.R. 971). This bill would require the FCC to initiate rulemaking procedures to improve multilingual radio broadcasting. H.R. 971 currently is pending before the House

Energy and Commerce Committee where no further action has been taken. Then on April 1, 1993, Representative Collins (D-MI) introduced three separate bills relating to telecommunications. The first bill (H.R. 1611) would require continued and improved efforts to promote diversity in media ownership, management, and programming. The second bill (H.R. 1613) would establish within the White House an Office of Telecommunications policy. The third bill (H.R. 1615) would discontinue service to radio mobile units if users engaged in drug trafficking. All three bills are pending before the House Energy and Commerce Committee.

On May 5, 1993, Senator Hefner (D-NC) introduced the Fairness in Broadcasting Act which would require broadcasters to afford reasonable opportunities for persons or entities to discuss conflicting views on issues of public importance. This bill has been referred to the Senate Energy and Commerce Committee. Also on May 5, 1993, Representative Lipinski (D-ILL) introduced both the Right to View Professional Sports Act, which would allow the display of games between professional sports teams by means of video programming at places of public accommodation, and the Taxpayer's Right to View Act, which would prohibit pay-per-view charges for entertainment events that receive public financial support. The Right to View Professional Sports Act was referred jointly to the House Judiciary and Energy and Commerce Committees, while the Taxpayer's Right to View Act was referred to the House Energy and Commerce Committee. There has been no further action taken on either bill.

TRADE

The Clinton Administration has put forth a most ambitious trade agenda, promising to make the 103rd Congress extremely active.

General Agreement on Tariffs and Trade (GATT)

The Clinton Administration has recently indicated that it intends to complete the Uruguay Round of GATT negotiations by December 15th of this year. The Administration's first hurdle is extension of fast track authority. Fast-track authority, for the Uruguay Round negotiations will expire on July 1, 1993 (under the procedures, the Administration would have had to notify Congress of an agreement by March 1, 1993, giving Congress 90 days to act) and the Administration is seeking an extension until April 15, 1994, with a 120-day notification period, which under the procedures would give the Administration until December 15, 1993 to negotiate an agreement. The Administration is pursuing a strategy of seeking a "clean" fast track extension bill, i.e. one without amendments. Chances for passage will decline substantially if the bill becomes a magnet for trade amendments, and at least one Member has indicated an intention to add renewal of Super 301 to the fast track bill. A "no" vote on fast-track extension would probably kill the Uruguay Round. Certain Members have suggested that in exchange for a clean extension of fast-track, the Administration should support consideration of a broader trade bill at the end of the year.

Assuming that the Administration gets fast track extension approval, negotiating a package that will be acceptable to our trading partners and to Congress will present major challenges. Difficulties facing the Clinton Administration include lack of support from key U.S. industries and pressure from certain industry groups to make major changes to provisions of the draft text in areas such as: (1) antidumping (certain U.S. industries are seeking tougher rules); (2) textile trade (U.S. industry wants to extend the period for phasing out existing trade restraints); (3) agriculture (considerable progress has been made on U.S.-EC oilseed trade with the agreement of the new French government to a previously negotiated deal); (4) audiovisual trade (the U.S. industry is seeking intellectual property protection without a "cultural rights" exception); (5) services (the U.S. industry is seeking adequate market access provisions); and (6) dispute settlement (the U.S. opposes the scope of the proposed Multilateral Trade Organization based on perceived surrendering of U.S. sovereignty). The Administration is currently pushing for an ambitious market access package (zero for zero tariffs for certain sectors), which it is counting on to attract broad-based support from U.S. industry.

North American Free Trade Agreement (NAFTA)

One of the Clinton Administration's top trade priorities is completion of the NAFTA in time to permit the agreement to enter into force, as scheduled, on January 1, 1994. The NAFTA was signed by the U.S., Canada, and Mexico in December 1992. President Clinton supports NAFTA provided it is accompanied by side agreements dealing with environmental and labor standards as well as import surges. In order to meet the January 1, 1994 deadline for entry into force, the side agreement negotiations must be completed this summer so that legislation implementing the NAFTA provisions can be considered under the fast-track procedures (requiring an up-or-down vote with no amendments) before Congress adjourns this fall.

Satisfactory conclusion of the side agreements is proving to be a considerable challenge. The Administration has promised tough side agreements with "teeth." To a number of environmental groups and many Members of Congress, an agreement with "teeth" is one in which trade sanctions are used if environmental standards are not met. Therefore, the Administration has proposed establishment of trilateral Commissions with independent investigative powers and use of trade sanctions as a remedy if environmental and labor standards are consistently violated. However, many Republican Members of Congress have objected to the proposal as surrendering U.S. sovereignty.

Successful completion of NAFTA may result in other related legislative initiatives. For example, in response to concern that NAFTA could cause investment flight from Caribbean Basin countries, Sam Gibbons (D-FL), Chairman of the Trade Subcommittee of the House Committee on Ways and Means introduced legislation in March which provides that products from Caribbean countries be granted, for a temporary three-year period, the same tariff treatment they would receive under the NAFTA. The bill also provides that during this period, the Caribbean countries could negotiate accession to NAFTA, during which time fast-track would apply. The Administration has also indicated recently that upon successful completion of the NAFTA, commencement of negotiations with Chile on a free trade agreement are possible. However, the necessary fast-track authority has not been granted by Congress.

Trade Legislation: Super 301 and the Trade Agreements Compliance Act (TACA)

In addition to the NAFTA implementing legislation and the Uruguay Round fast-track extension, there is some chance that a general trade bill may be introduced before the end of the year. If Super 301 legislation is not added to the fast track extension bill, it may be included in a general trade bill together with legislation providing for a private right of action under Section 301 (TACA). The Administration has indicated support for both of these initiatives.

If a general trade bill is introduced it could include provisions similar to those included in H.R. 5100, which passed in the House last session. H.R. 5100 included provisions to add an "anticircumvention" action to the U.S. antidumping duty law and to target countries with trade surpluses for 301 investigations.

Separately, House Majority Leader Richard Gephardt (D-Mo.) recently announced that he plans to introduce an amendment to Section 301 later this fall. The amendment, which he is calling "green and blue 301" (green for the environment and blue for blue collar workers who "deserve government on their side"), is intended to provide a tool for protecting U.S. industries from competition from goods produced in countries with low environmental and worker protection standards.

Extension for Generalized System of Preferences (GSP) Program

The GSP program, which accords duty-free treatment to certain goods from developing countries expires in July if not renewed. To prevent the program from lapsing, the Administration is seeking a short 15-month extension until October 1994 and expansion of the program to include republics of the former Soviet Union as eligible countries. During the extension, the Administration has stated that it will consider ways of improving the program. Possible changes that have been suggested include conditions related to environmental protection and human rights.

The GSP extension passed the House May 27 as part of the Budget Reconciliation Bill. However, the provision could be delayed in the Senate due to budget rules. The GSP program is estimated to cost $630 million, which the Administration has promised will be offset by unspecified cuts.

U.S.-Japan Trade/"Results Oriented" Trade Policy

On U.S.-Japan trade relations, the Administration is currently drafting a proposal for a new "framework" for dealing with Japan replacing the Structural Impediments Initiative. While it has not been finalized, it appears that under the new framework, the U.S. will propose that certain sectors be identified and that quantifiable targets be set for improvement in the U.S. trade imbalance in those sectors. Among those sectors is the automotive industry. The U.S. is also proposing that macroeconomic issues, such as the need for Japan to increase imports from all sources, reduce its export/GDP ratio, and follow a stimulative macroeconomic policy be included in the framework.

In Japan, the U.S. approach to the framework has met with strong opposition. Japan has released a document indicating that it will not engage in discussions establishing specific quantitative targets for foreign imports. In addition, Japan has indicated that it does not want linkage between sectoral and structural issues and its overall trade surplus.

The Clinton Administration has repeatedly promised a "results-oriented" trade policy, thus raising the expectation that the Administration will succeed in getting measurable progress in areas of U.S. concern. To the extent that this approach leads to negotiation of trade agreements with "measurable" indicators, whether measured by an increase in the market share of imports in a particular sector, increased investment in a particular sector, or some other measure, this approach is likely to lead to increased enforcement measures under Section 301 or other mechanisms. The Administration has already announced a special review of a bilateral Supercomputer Agreement which could result in action under Section 301.

China MFN

The Clinton Administration recently issued an Executive Order for renewal of MFN for China, which includes administrative conditions in the area of human rights, but which specifically excludes both the areas of trade and arms control as MFN conditions. The decision to condition MFN sets up a long-term tug-of -war between the U.S. business community favoring continued MFN status for China, and supporters in Congress for a strong human rights policy. It is clear that many of the human rights conditions will not be satisfied in one year. The likely outcome is that the Administration will be in a position next year of wanting to extend MFN, but lacking dramatic progress on human rights to justify an extension. In this situation, MFN renewal could become an issue again next year.

Trade Initiatives for Former Soviet Union

As part of the Administration's policy to foster market economics and democratic institutions in the former Soviet Republics, Congress will be considering revisions in trade laws (e.g. Jackson-Vanik amendment, non-market economy (NME) provisions in the antidumping laws), and agricultural aid and credit programs.

BTU Border Tax Adjustment

The version of the Administration's tax package which passed in the House recently included a tax on energy and a particular provision applying the energy tax at the U.S. border on imports. The "BTU" tax is a broad-based tax on energy measured in British Thermal Units. Under the energy bill, the BTU tax will apply to imported "high energy" products in the same manner as it applies to domestically manufactured products. Thus, the tax will be assessed based on the energy directly used to produce the product. It is not yet clear what products will be covered under the bill.

In the Senate, the package will be changed dramatically, due to the President's agreement to set aside the BTU tax. Attempting to encourage a compromise between the Administration and the Senate on the energy tax, we may see a gasoline tax instead of the BTU tax.

Customs Modernization and Informed Compliance Act

Pending customs legislation will modernize and streamline the customs laws to permit the additional use of automation in the processing of import entries by Customs. Many of the provisions of the bill will benefit importers by reducing the compliance burdens and transactional costs of the importation process. However, there are also provisions in the bill that would impose new procedural responsibilities on importers, such as requirements to produce required records, and, in some instances, subject importers to additional penalties for noncompliance.

The bill is pending before the House Ways and Means Committee, where it is being temporarily held up by a group of customs brokers who object to air courier's rights to make entry under the new procedures. A joint industry group, the Hill, and Customs are currently working on a compromise, and the bill will likely move some time in June, depending on other legislative priorities of Congress and the Administration.

Export Control Legislation

Earlier this year, the Export Administration Act, which establishes export controls on U.S. exports, was extended until June of 1994. A major U.S. industry group has announced that it will propose major legislation to revamp the existing export control regime some time this month. In light of the end of the Cold War, emergence of proliferation issues, and the increased importance to the U.S. of trade, a fundamental re-examination of the export control laws is underway in the Administration and in Congress. The Administration has announced that it is seeking to balance foreign policy and commercial interests in its review of the Export Administration Act. A few bills dealing with particular export control issues have been introduced already this year, and a comprehensive package is expected later this year.

Sectoral Issues

Trade disputes and trade cases are expected to have an impact in Congress, especially in consideration of any GATT agreements and NAFTA. Automotive trade with Japan will be an issue, with possible congressional consideration of a tariff increase for multi-purpose vehicles. Steel trade will also be an issue. In agriculture, GATT agreements may require consideration of laws regulating protected industries (e.g., peanuts, sugar, dairy, cotton), as well as subsidy programs.

Shipbuilding Trade Reform Act

The Ways & Means Subcommittee on Trade is holding hearings on a bill that would permit trade actions against dumped or subsidized ships. Trade sanctions could be taken in sectors other than shipping. This bill passed the House twice last year. The current bill has been modified to meet Senate concerns.

HEALTH

Having made health care a major issue in the Presidential campaign, as well as in many congressional races, both the new Clinton Administration and the 103rd Congress have health care issues high on their list of priorities. Deficit reduction, including cuts in federal health care spending, and health care reform are the two top priorities.

Currently, the Congress is focused on reducing the federal deficit through the budget reconciliation process for fiscal year (FY) 1994. As the Senate searches for additional savings, Medicare, the federal health care entitlement program for the aged and disabled, and Medicaid, the joint federal-state health care program for certain low-income individuals, are identified as likely targets for additional and substantial cuts aimed at provider reimbursement. The Administration's self-imposed deadline for unveiling its comprehensive health care reform proposal has slipped, in part due to the issue's complexity and in part to enable the Administration to concentrate on moving its FY 1994 federal budget proposals through the Congress.

FY 1994 BUDGET RECONCILIATION

<u>The President's Proposals</u>. In early April, the Clinton Administration released its proposed FY 1994 budget. This proposal -- a combination of program savings, revenue raising measures, and targeted investments -- spelled out the specific legislative changes needed to meet the budget goals announced by the President in February. With regard to the major health care entitlement programs, the President's plan proposed savings in Medicare totalling approximately $46 billion over 5 years; revenue measures to fund Medicare Part A totalling $55.8 billion over 5 years; and savings in Medicaid totalling $7.5 billion over 5 years.

Under the President's proposal, Medicare savings would come primarily from reducing the rate of increase in payments to hospitals and physicians, extending and refining current Medicare Secondary Payer provisions, and increasing beneficiary Part B premiums beginning in FY 1997 so that premium payments would maintain the 1996 share of program costs. (While hospital and other Part A Medicare expenses are funded through a payroll deduction-financed trust fund, Part B of Medicare, which covers physician and other outpatient expenses, currently is financed 25% by beneficiary premiums and 75% by general revenues of the government.)

The two major proposals to raise revenue for the Part A trust fund are: (1) repeal the taxable maximum so that the Medicare payroll tax would be paid on all earned income; and (2) increase the portion of Social Security benefits subject to income tax for higher income beneficiaries and earmark this revenue for the Medicare Part A trust fund. Medicaid savings would be achieved primarily by clarifying that personal care services are only an optional benefit under Medicaid and reducing the federal Medicaid match rate to 50% for all administrative services.

<u>The House Version</u>. In late May, the House of Representatives passed by a narrow margin its FY 1994 budget reconciliation bill, H.R. 2264. The bill contains many of the President's budget proposals, including the controversial energy tax. However, as discussed below, the bill contains Medicare and Medicaid savings of a somewhat larger magnitude than proposed by the President, and some of the means for achieving these savings differ from the President's proposals. Moreover, in order to assuage conservative Democrats, the House leadership added an annual "entitlement review" mechanism designed to enforce controls on entitlement spending.

The House Ways and Means Committee has exclusive jurisdiction over Medicare Part A and shares jurisdiction over Medicare Part B with the House Energy and Commerce Committee. Energy and Commerce has exclusive jurisdiction over Medicaid. Each committee acts independently such that the House budget reconciliation bill includes differing Part B provisions which will have to be resolved in conference committee following Senate action.

The House Ways and Means Committee's Medicare Part A and B provisions save approximately $50.5 billion over 5 years. The major Medicare cost savings provisions are:

- For FY 94 and FY 95, the bill would freeze Medicare payments to providers, which accounts for $36.4 billion of the $50.5 billion in savings over 5 years. The hospital market basket, used to update payments to hospitals and hospices would be set at 0 for these two years. For home health agencies and skilled nursing facilities, which are paid on a reasonable cost basis subject to cost limits, the cost limits would not be updated for these two years. The Medicare Economic Index, used to update physician payments, would be set at 0 for these two years.

- With regard to Medicare Part B premium payments, the "25% rule", scheduled to expire in 1995, would be extended through 1997. This results in "savings" (actually increased revenues from beneficiary premium payments) of more than $8 billion over 5 years.

- Currently, Medicare is secondary payer to certain employer group health plans covering certain disabled and End Stage Renal Disease program beneficiaries. These Medicare Secondary Payer provisions, scheduled to expire September 30, 1995, would be extended for three more years. Savings are estimated at $4.3 billion over 5 years.

Additional cost savings provisions include changes in reimbursement for certain types of durable medical equipment and ostomy supplies and a reduction in payment for erythropoietin.

The Ways and Means Committee also adopted revenue raising provisions which would:

- Eliminate the wage base cap (now set at $135,000) for the Medicare payroll tax, generating more than $29 billion over 5 years; and

- Increase the taxable portion of Social Security and Railroad Retirement Tier 1 benefits from 50% to 85% for higher income beneficiaries, raising almost $32 billion over 5 years. Unlike the President's proposal, however, this revenue would be retained in the general revenue fund and not earmarked for the Medicare Part A trust fund.

Also included in the House bill are new physician ownership and referral provisions. Under current law, physicians (or immediate family members of such physicians) with a financial relationship with clinical laboratories are prohibited from referring Medicare patients to those entities. This ban on self-referral would be extended in two ways. First, the ban would apply to Medicaid and private pay patients (excluding HMO patients) in addition to Medicare patients. Second, the ban would extend beyond clinical laboratories to "designated health services", defined to include a much broader range of services, such as physical and occupational therapy, durable medical equipment, radiology services, home infusion therapy, home dialysis, home health services, and inpatient and outpatient hospital services.

The Committee also approved 44 minor and technical Medicare amendments similar to those contained in last year's urban aid legislation, which was passed by both houses of Congress but vetoed by former President Bush.

The Energy and Commerce Committee's Medicare Part B proposals closely track the President's plan. Totalling $21 billion over 5 years, the savings are achieved primarily by reducing the payment update for physician services (except primary care services) in 1994 by 3 percentage points for surgical services and 2 percentage points for all other services. The Committee also adopted provisions, similar to the Ways and Means provisions, regarding changes in reimbursement for certain types of durable medical equipment and a reduction in payment for erythropoietin, as well as including certain physician ownership and referral provisions.

Senate Action Pending. Currently, the spotlight is on the Senate which returned from its Memorial Day recess to take up in earnest the FY 1994 budget reconciliation package. As has been widely covered in the press, the President has abandoned his controversial Btu energy tax but wants an alternative energy tax. It appears that Medicare and Medicaid have been laid on the table as probable targets to absorb additional cuts to offset some of the revenue loss resulting from a compromise on the Btu tax.

Should the Congress ultimately adopt deeper Medicare and Medicaid cuts as part of budget reconciliation, this likely would have an impact on the Administration's health care reform efforts. As discussed below, the Administration is assuming that a significant portion of financing needed for health care reform will come from Medicare savings. If these savings are "used up" for deficit reduction, the Administration may come up short on reform financing.

HEALTH CARE REFORM

When the Congress completes action on budget reconciliation, indications are that the Administration will move forward with its next major goal, reform of the country's health care system.

Introduction. Five days after taking the oath of office, President Clinton made health care reform a top priority by appointing Hillary Rodham Clinton to chair his Task Force on National Health Care Reform. Confronting a self-imposed 100-day deadline, the Task Force took off in a flurry of activity with cluster groups, "tollgates", and public hearings. While the Task Force and its staff delivered its recommendations to the President in May, the President reportedly has not yet made the final decisions needed before the proposal will be ready to be released to the public and sent to the Congress. It now appears possible that the plan could be unveiled in July, if the Congress finishes budget reconciliation before its August recess.

Access, Cost, and Quality. As with other health policy issues, a framework for analyzing any health care reform proposal should include the effects on access, cost, and quality. Unfortunately, it is frequently the case that efforts to address one of these aspects of health care adversely effects another.

Politically, access may be the most important issue. The President's primary goal in undertaking health care reform is to make affordable health insurance universally available. There are approximately 37 million Americans who lack health insurance. The majority of these are working individuals and their dependents. The fact that millions of Americans lack health insurance does not mean that they have no access to health care but that they enter the health care delivery system inefficiently and often too late to prevent low birthweight babies or avoidable diseases. The cost of much of that care also is shifted to those who are insured, since providers raise their charges to paying customers to account for bad debt.

There are two major components to cost: how to control rapidly rising health care costs and how to finance the enormous up-front cost of expanding access to the uninsured. With regard to controlling costs, many experts believe that the most significant factor is the intensity of services delivered to those who enter our health care delivery system. Each year, more tests, treatments, and even cures are available than the year before. Other factors include defensive medicine costs and administrative costs, but the key to controlling costs would be to implement a system in which health care is delivered in the most efficient and appropriate way, without significant cost shifting among payers.

There are two competing theories on how to control health care costs: managed competition and the single-payer system. As discussed below, it appears likely that the Clinton Administration will develop a hybrid plan with many characteristics of managed competition but with some sort of global budgeting feature as well.

The most vexing part of the cost problem, however, is how to finance the substantial up-front cost of expanding access to the uninsured. A number of possible financing mechanisms are presented below.

The availability and provision of quality care may well be influenced by the kinds of cost controls chosen. Short-term controls on prices or premiums could drive capital away from the health care sector and dry up innovation. In the longer term, managed competition probably would mean more managed care and the evolution of a system which would reward under-utilization rather than encourage over-utilization. The development of quality measures which can be used effectively to evaluate individual providers and the appropriateness of patterns of treatment will be critical to ensuring quality care in a reformed system.

The Plan's Structure. While critical decisions remain to be made, some options regarding the plan's structure have been widely reported as being given serious consideration. The Task Force reportedly has embraced an approach based on a combination of managed competition, global budgeting, and an employer mandate.

Under this approach, it is expected that the states would have the bulk of the responsibility for implementing and administering the new system. In large part, the federal government's role would be concentrated at the front-end, with responsibility for outlining the structure of the managed competition model, defining the basic benefit plan, and establishing the financing mechanism. The federal government also is expected to perform certain on-going functions, such as data collection and analysis, and developing new practice guidelines and administrative procedures. It also would set price and budget controls if all else fails.

Under pure managed competition theory, there would be the establishment of "health insurance purchasing cooperatives" (HIPCs) and "accountable health plans" (AHPs). HIPCs would be established on a state or regional basis to function as collective purchasing agents for the buyers of health insurance in the area. Each HIPC would contract with AHPs, managed care-like partnerships between providers and insurers, to provide health care services. To be eligible to compete for a HIPC contract, each AHP would have to meet guidelines established for the sale and purchase of health insurance, including the requirement that the complete standard benefits package be offered. The White House Task Force is reportedly considering a streamlined version of this structure which would rely solely on purchasing alliances, rather than insisting on the establishment of AHPs. In either case, the existing system of purchasing health insurance through individual brokers largely would be replaced.

With several exceptions, providers of health care, such as hospitals, laboratories, clinics, and physicians, would continue to provide health services to patients as they do today. Undoubtedly, groups of physicians and systems of institutional providers would be much more prevalent. Providers would have new responsibilities to keep and contribute data for such purposes as outcomes research and evaluating their performance. States would be expected to play a more active role in overseeing health care quality and data analysis, in cooperation with federal agencies.

Insurers and provider networks could agree to cover health care services either on a fee-for-service basis or, more likely, through health maintenance organizations, preferred provider groups, or similar networks. States would continue to have broad authority to establish and administer health insurance guidelines, except with respect to the basic benefit package, which would be designed at the federal level, either by a new federal entity or possibly by Congress.

It is anticipated that the President will not propose "pure" managed competition. Rather, it is expected that some form of <u>global budgeting</u> will be a component of the plan. Should it be included, there is evidence that global budgeting could be quite controversial. The health care industry has expressed significant concern that, while the intent of global budgets may be to help states manage their health care spending, such budgets could lead ultimately to price controls or the rationing of services.

In addition, congressional proponents of managed competition generally oppose global budgeting, or similar spending caps or limits. It appears to be their belief that managed competition would work most effectively if providers and insurers compete with each other, rather than against a potentially arbitrary ceiling or cap. Also, as a practical matter, the data which would be necessary to establish such budgets presently are not available in many states.

The final major component of the Task Force recommendations on the plan's structure is likely to be the most contentious: the <u>employer mandate</u>. In order to achieve the goal of universal coverage, it is expected that the Task Force will propose an expansion of the current system which uses the employer as the primary conduit for obtaining health insurance.

As mentioned above, of the approximately 37 million Americans who have no health insurance, the majority are either employed or dependents of those employed. Some argue, therefore, that it would be efficient to rely on the existing employer-based system of health insurance to establish universal access. Yet, it appears that most businesses which do not provide health insurance for their employees do not do so because of the cost. One goal of the President's health care reform plan is to make health insurance more affordable. Nevertheless, the impact of an employer mandate, particularly on small businesses or on labor-intensive industries could be enormously costly and controversial.

Financing Options. How to finance the President's health care reform plan is probably the most difficult part of the entire endeavor. In large part, this is due to the need to generate substantial up-front revenues both to cover low-income individuals who will require financial assistance to purchase health insurance and to make health insurance affordable for employers who cannot now afford to offer such coverage to their employees.

The most likely financing options include:

- a tobacco tax;
- an employer-paid premium. There are a number of options which are being presented to the President for this revenue source:
  - a flat per capita premium payment on each employer for each employee. The premium would most likely be pegged to the average premium cost in the state or region.
  - an income-related premium or payroll tax. Such a tax could be a fixed percentage of payroll or could be progressive, with higher payments for more highly compensated employees, subject to a cap.
- a "recapture" tax applied to providers to "recapture" some of the increased reimbursement which it is assumed will be available to providers in a universal health care system.
- a cap on the deductibility of employer-paid premiums, again pegged to a state or regional average.
- an employee contribution to the premium, likely to be capped at 2% or 3% of gross income.
- unspecified "cuts" in Medicare spending.

Conclusion. Once the President announces his plan, the momentum for reform will shift to the Congress. Regardless of the details of President Clinton's proposal, he will have to have bipartisan support to enact health care reform. Republicans in both the House and the Senate can be expected to offer their own reform proposals. Moreover, the President has some prominent members of his own party, some who favor a single-payer approach and some who want more reliance on market forces, who will have to be convinced that the President's plan successfully will achieve the shared goals for health care reform.

June 10, 1993

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TAX LEGISLATIVE OUTLOOK

Senate Outlook

The rapidly moving Senate developments will be discussed at the June 11 Legislative Program.

Key Provisions of the House Tax Package

The tax component of the House-passed reconciliation package relies on several critical revenue-raising "legs": A combination of tax increases on higher-income individuals; a significant increase in the taxable portion of Social Security benefits (85 percent of benefits for couples with incomes above $32,700); an increase in the corporate tax rate to 35 percent; a reduction in the business meals and entertainment deduction; and the BTU tax on energy (discussed in the separate Energy Section of the Hogan & Hartson Legislative Outlook).

Tax Increases for Individuals

More specifically, on the individual side, the House adopted a series of tax increases that combine to push the top marginal tax rate to well over 40 percent. The top tax rate is increased from the present 31 percent to 36 percent for taxable incomes of over $140,000 on a joint return. A 10 percent "millionaire's" surtax is imposed on joint taxable incomes over $250,000 by means of a special 39.6 percent tax rate for income above the $250,000 threshold. (Capital gains remain subject to a top tax rate of 28 percent.) The "temporary" measures adopted on an emergency basis in the 1990 budget act that disallow itemized deductions by 3 percent of joint adjusted gross income (prior to itemized deductions and exemptions) above $108,000 and phase out personal exemptions beginning at $162,700 of joint adjusted gross income would be made permanent. The Medicare hospital insurance tax of approximately 3 percent of income up to a cap of $135,000 would now apply to the entire amount of income. In general, these changes would be retroactive to the beginning of 1993. Taken together, these changes could produce a top marginal rate for individuals in the range of 40-45 percent.

Tax Increases for Businesses

On the business side, the House measure would increase the corporate tax rate by one percentage point to 35 percent. The House Ways and Means Committee decided to drop the Administration's proposed investment credit as being too cumbersome, ineffectual, and expensive and to apply some of the resulting revenue savings to reduce from 36 percent to 35 percent the corporate rate increase originally proposed by the Administration.

The remaining tax increases on business under the House-passed package are largely targeted at discrete areas.

a. business meals and entertainment

In a move expected to have a significant effect on corporate sales forces, the House reduced the deductible portion of business meals and entertainment from the current 80 percent to 50 percent. The package also would disallow business deductions for club dues.

b. overseas operations of U.S. multinationals

There has been much controversy over the Administration's proposals affecting the overseas business operations of U.S.-based multinationals and the U.S. business activities of foreign multinationals. The most controversial of these Administration proposals would have dramatically increased the U.S. tax cost for U.S. multinationals of manufacturing overseas for foreign markets. The growing trend in a range of industries has been to establish foreign manufacturing facilities to achieve production cost efficiencies and to help penetrate nearby foreign markets. Typically, the technology has been developed in the United States by the U.S. parent, which then licenses the technology to its foreign manufacturing subsidiary. The Administration's proposal would have placed the royalties paid by the foreign manufacturing subsidiary to the U.S. parent for the technology in the passive category for foreign tax credit purposes, thereby severely limiting the foreign tax credit benefits and correspondingly increasing the U.S. tax cost of producing overseas. This provision evoked widespread opposition among Ways and Means Members who feared its impact on U.S. competitiveness overseas and, as a result, this "foreign royalties provision" was dropped from the House package.

The Administration's "foreign royalties" proposal also had included a partially offsetting, beneficial provision that would have allocated

100 percent of the cost of R&D performed in the U.S. to U.S. income for purposes of computing the foreign tax credit. This 100-percent R&D expense allocation provision was dropped along with the remainder of the foreign royalties proposal. In its place, the House package includes a flat allocation to U.S. income of 50 percent of the cost of R&D performed in the U.S. (with the remainder being allocated in accordance with the current law regulatory formula). This 50-percent allocation represents an important reduction from the 64-percent U.S. R&D allocation that had been agreed upon as the "permanent solution" to the section 861 R&D allocation issue in years past, but because of revenue cost considerations had remained on the table as one of the so-called "extenders" or expiring provisions that Congress must renew on a nearly annual basis.

Two other controversial Administration proposals affecting U.S. multinationals were included in the House package. The first would substantially increase the potential for the loss of deferral of U.S. tax on the earnings of foreign subsidiaries. Under current law, U.S. tax on income earned abroad by the foreign subsidiaries of a U.S. multinational generally is deferred until the earnings are repatriated to the U.S., unless the income is passive in nature or unless the subsidiary reaches very high thresholds in its holdings of passive assets (75 percent of total assets) or in its passive income (50 percent of income). The Administration proposed to greatly increase the possibility that U.S. tax deferral would be lost with respect to these overseas earnings by providing that current U.S. taxation would be triggered if the foreign subsidiary holds passive assets that constitute 25 percent or more of its total assets. In such a case, the subsidiary would be subject to current U.S. tax on the lesser of its current and accumulated earnings and profits or the excess of passive assets over the 25-percent threshold. By applying to accumulated earnings, this change effectively would be retroactive in nature.

On another hard-fought front, the House package includes the Administration's proposal to dramatically scale back the possessions tax credit under section 936. Under current law, the section 936 credit effectively shelters from U.S. tax permanently profits allocable to a U.S. multinational's manufacturing activities in a possession such as Puerto Rico. A substantial number of U.S. pharmaceutical, biotechnology, medical device, and computer companies have established production facilities in Puerto Rico to avail themselves of the section 936 benefits in producing high technology products for the U.S. and export markets. Some have criticized the credit benefits as being disproportionate to the job benefits created, and the Administration seized on these criticisms to shift the focus of the credit from manufacturing profits to wages, proposing to cap the section 936 benefits at a level equal to 60 percent of cash wages paid to employees in the possession. This proposal was adopted intact in the House package.

c. *U.S. activities of foreign multinationals*

The House package includes two provisions targeted at the U.S. business activities of foreign-based multinationals. One provision would tighten the penalties for substantial inbound transfer pricing adjustments on products and services sold by the foreign parent to its U.S. subsidiary. A second, very controversial provision would extend the so-called "earnings stripping" rules to debt of the U.S. subsidiary that is guaranteed by the foreign parent. The earnings stripping rules were adopted in 1989 to address the concern that foreign multinationals were repatriating earnings from U.S. business operations by way of excessive interest payments on related party debt between the U.S. subsidiary and its foreign parent, with the U.S. subsidiary deducting the interest payments and the payment to the foreign parent largely being relieved of U.S. withholding tax at the border by reason of U.S. tax treaties. These current law rules deny the U.S. subsidiary's interest deduction on such debt if the subsidiary's debt-equity ratio exceeds 1.5:1 and the interest payments exceed 50 percent of adjusted income. The Administration's proposal, adopted in the House package, would extend these rules to interest on U.S. subsidiary debt to unrelated lenders that is simply guaranteed by the foreign parent. This dramatic broadening of the earnings stripping rules would be retroactive, applying to outstanding debt. The proposal is retroactive in a second way by repealing the 1989 Act grandfather rule for related party debt outstanding at the time the original earnings stripping rules were adopted.

d. *amortization of intangible assets*

The House package also includes a provision from last year's tax simplification legislation that is intended to put an end to the years of I.R.S.-taxpayer wrangling over the proper treatment of so-called "intangible assets" that are acquired by the purchaser of an ongoing business. Since goodwill is neither deductible nor amortizable under current tax law, taxpayers -- particularly those who paid substantial premiums in excess of hard assets during the takeovers of the 1980's -- had achieved new heights of cleverness in identifying exotic forms of intangible assets, such as workforce-in-place, that were said to have both discernible value and limited and ascertainable useful life, permitting amortization for tax purposes. The House reconciliation measure would create a "bright line" rule for a very broad range of intangible assets acquired as part of a business -- ranging from goodwill itself to non-compete agreements -- under which these assets would be amortizable over a fixed 14-year period. This new provision would apply to acquisitions taking place after the date of enactment and retroactively on an elective basis to acquisitions after July 25, 1991. Any pending acquisition expected to close during the summer or later this year should take account of these new amortization rules for intangible assets.

e. cap on deduction for executive compensation

President Clinton's much publicized proposal during the campaign to cap at $1 million the deduction for executive compensation emerged largely toothless as proposed by the Administration and included in the House package. The exception for "performance-based" compensation largely ate up the rule, since stock options would effectively be exempt from the cap (so long as certain shareholder procedural requirements were satisfied) and stock options are largely the source of executive compensation levels in excess of the $1 million threshold. On a related front, the amount of compensation that can be taken into account by pension plans in computing benefits was reduced from the current approximately $236,000 to $150,000.

f. other revenue-raisers

Other House revenue-raisers include denial of the deduction for lobbying expenses, requiring mark-to-market accounting of securities portfolios of securities dealers, and further tightening of the corporate estimated tax rules that some have likened to parachuting onto a dime, and modification of the substantial understatement of income penalty.

Revenue-losing provisions and tax incentives

On the revenue-losing side, a number of the so-called "extenders" -- R&D tax credit, employee educational assistance exclusion, targeted jobs credit -- were permanently extended in the House measure. Passive loss relief was adopted for real estate professionals, paid for by increasing the depreciation period for commercial real estate by about 8 years to 39 years. A number of current law restrictions affecting pension fund investment in real estate were liberalized in an effort to spur such investment. The luxury tax was repealed for boats, planes, jewelry, and furs, and the threshold triggering tax was indexed for autos.

June 10, 1993