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THE WHITE HOUSE

WASHINGTON

May 20, 1980

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT *Stu*
STEVE SIMMONS

SUBJECT: Vernon Weaver Memo on S. 918

We reluctantly urge that you not support S. 918, the SBA Authorization Bill. It is true, as Vernon points out in his memo, that S. 918 would provide some improvements over existing law. However, the bill would also make a number of detrimental policy changes. In addition, for better or worse, OMB has gotten the Administration very far out front on this issue and there would be some negative fallout if it appeared that the OMB position was being reversed. Frankly, had this not occurred, my recommendation might have been different. Below is a brief analysis of S. 918 provisions which leads us to this conclusion.

- (1) Authorization levels are set for SBA programs. SBA does not require new authorizing legislation, and thus there is no pressing need for this legislation. However, for non-disaster loan activities, S. 918 sets an authorization level for FY 81 which is \$252 million over our budget mark and FY 82 \$408 million over the mark. This could create upward budgetary pressures. This authorization also sets minimum personnel levels for SBA divisions which would restrict management flexibility.
- (2) Transfer of the disaster lending program for farmers from SBA to the Farmers Home Administration (FmHA). This is a transfer we strongly support, for FmHA's staff are better equipped to handle these farmer loans than are SBA's personnel. Also, SBA would be released from the existing 8-1/4% statutory cap on disaster loans, be able to make loans to businesses at the government borrowing interest rate plus 1%, and would have other lending requirements tightened. Despite the above advantages, a major drawback to the disaster lending transfer is that for the first time FmHA would be required to make loans to farmers able to obtain credit elsewhere, a policy you specifically disapproved of in a prior decision memo. FmHA says that this provision will increase lending by \$400 million and administrative expenses by \$4 million. OMB and key Senate Appropriations Committee staff members believe that mainly because of this provision, the disaster transfer from SBA to FmHA will ultimately not save money. The \$140 million savings figure Mr. Weaver sets forth is highly questionable, and the opening of FmHA loans to farmers able to obtain credit elsewhere is ill-advised.

(3) Creation of revolving borrowing authority from the Treasury. Since we have been in office, 6 supplemental appropriation bills have been submitted to Congress to fulfill the needs of disaster victims. Under S. 918 an SBA disaster borrowing authority level would be set by Congress. SBA, after clearance from OMB, would be able to sign notes from the Treasury against this level without needing supplemental legislation unless the borrowing authority level were passed. Since it is unclear whether the Congress would allow high borrowing levels under this provision (OMB would oppose high levels) it is unclear to what extent the provision would reduce the need for supplementals. However, by the very act of transferring farm disaster lending to FmHA, whose borrowing is off-budget, the need for supplementals would be reduced. Thus this process would be an improvement, but there still would be a need for some supplementals for disaster lending.

(4) The interest payment provision. SBA would not have to pay interest to the Treasury on \$4.9 billion in outstanding loans, as it must now do under existing law. The procedure masks the true cost of the SBA loan program, is bad budgetary practice, and bad precedent. House Small Business Committee Chairman Neil Smith's legislative proposal for dealing with this problem does not adequately correct it. This provision is very strongly opposed by OMB and the Senate Budget Committee staff. OMB, on behalf of the Administration, has been on record as opposing this provision in letters from McIntyre to Nelson and Muskie as well as in testimony. To now support the bill with this provision would be an about-face.

There are less significant provisions of S. 918 that should be mentioned. One which would clearly be advantageous would allow private lending institutions as opposed to SBA offices to service loans. This would cut down on paper work. However, there are other provisions that present problems. The bill:

- Would allow the product disaster loan program to help businesses which have been hurt as a result of a Federal agency declaration that their product is harmful to public health (nitrates, saccharine, etc.). Thus a company that had been distributing a product dangerous to the public could potentially receive financial help from the government for its behavior.
- Requires an annual report to Congress on the state of small business and an annual report for three years on implementation of the White House Conference recommendations. These are paperwork requirements we do not need.
- Raises the SBA Chief Counsel for Advocacy position to an Executive Level IV.

S. 918 does offer significant improvements, but there are a number of policy problems with it as outlined above. We are clearly on record as regarding the interest payment provision as unacceptable. Also, there does not appear to be great pressure from the small business community to pass the bill, and we have not received mail nor interest group visits on it as we have with much other legislation. Senator Nelson and Representative Smith want some legislation. However, we probably will be able to get them not to push the bill, for it is important to avoid a veto situation. Jim McIntyre met with Senators Nelson and Nunn a few days ago and reiterated our problems with S. 918. There has been some movement in the Small Business Committees of both Houses to delete the disaster lending transfer provisions, and pass what would remain of S. 918. This itself may present problems. We should try to see if we can get the Congress to pass an acceptable bill without the adverse baggage of S. 918.

I am concerned, however, that what we will soon get is all the other parts of S. 918 we did not want, without the disaster relief portions, which do take a step forward. Given where we are now, this is simply a situation we will have to face.

THE WHITE HOUSE

WASHINGTON

May 20, 1980

MEMORANDUM FOR: THE PRESIDENT
FROM: FRANK MOORE *FM*
SUBJECT: S. 918

The small business bill is a product of many months of delicate and often tortuous negotiation between the White House, the Congress, OMB and SBA. Although the bill is far from perfect, it does contain reforms which were earlier given little hope of attainment. The Members who have been with us and who have participated in various compromises will not press forward without a clear indication of our position. For the reasons summarized below, I would like to undertake one more attempt at compromise.

Consequence of failure to reach agreement

1. Farm disaster reform: your credibility

You made a commitment to try to get SBA out of the farm disaster lending business. This was adamantly opposed by House Small Business Committee Chairman Neal Smith, and for a time the administration was unable to get it introduced, even by request, in the House or Senate. You vetoed small business legislation in October 1978, partly because it did not contain farm lending reform. We then sought the support of the Speaker, Chairmen Bolling, Foley and Giaimo, and Senators Nunn and Huddleston to reach a compromise. These Members agreed to help and did so at some political risk because we indicated it was a high administration priority. They sense now that our commitment is waivering.

2. An imminent farm disaster this fall

Massive droughts are predicted in the wheat and corn belts this summer and fall. (Farm drought is the single largest component of SBA's farm disaster lending.) The cost could run into hundreds of millions of dollars. Unless we act to transfer farm lending from SBA to FmHA where it rightfully belongs, the changes in eligibility that are provided for in the pending legislation will not be implemented to handle fall disasters. SBA will continue to lend money to wealthy farmers

at low interest rates, without credit elsewhere tests and without the protection of a \$500,000 loan ceiling.

3. The human problem and its political implications

Your own experience in Georgia in 1977 is proof of the need to render meaningful and timely assistance to people in disaster situations. Each year SBA goes through the lengthy process of requesting supplemental appropriations to cover the needs of disaster victims. The administration bears the brunt of criticism for delays on two fronts: Congress criticizes us for failure to adequately "predict" disasters and properly estimate our need for extra supplementals; the public criticizes us for inadequately responding to disasters when Congress takes too long to approve supplementals. As a result, our record of service to disaster victims is regarded as worse than that of previous administrations.

Last year it took four months for SBA to get checks out to disaster victims in Alabama and Mississippi. Even now we are in the middle of another "crunch" in trying to get SBA's current supplemental request out of Congress. When it finally passes, it will be less than we requested and it is already spent.

S. 918 gives SBA Treasury borrowing authority, with limitations determined in appropriation acts for the extent of this borrowing. This makes a supplemental appropriation unnecessary. And although OMB objects to certain accounting procedures involved in this provision, we believe the single advantage of expediting relief to disaster victims is worth an attempt to iron out those objections.

4. The delicate situation on the Hill

If we do not support S. 918 now, Chairmen Smith and Nelson are not likely to be willing to cooperate in getting farm disaster reform in the near future. Smith does not really support the idea; Nelson has his own political situation to contend with. They would go with weaker bills. However, we believe both would be willing to correct in subsequent legislation the defects in borrowing authority contained in S. 918.

Furthermore, the Senate Budget Resolution requires the House and Senate Small Business Committees to find savings of \$900 M in BA (\$700 M in outlays). This can be accomplished by transferring farm disaster lending to FmHA. The Senate Budget Committee, which opposed the bill under Senator Muskie, now may be willing to change its position to support reconciliation.

Recommendation

I feel strongly that I and my staff should make a final attempt to reach a compromise on S.918.

I suggest that:

1. OMB be asked to trim down its objections to the bill and to focus on the two or three most salient areas of disagreement;
2. White House CL take this to the Hill and attempt a compromise with the key players in both House and Senate; OMB has already begun this process;
3. If our meetings on the Hill prove fruitful, and if Senator Nelson and Congressman Smith will agree in writing to correct the objectionable features in subsequent legislation, you should agree to support the bill;
4. I believe a meeting with you, Smith and Nelson will be necessary to close the deal and reassure them of our commitment. Likewise, it will give you an opportunity to inform them personally that you will insist on the fulfillment of their written commitment to pass corrective legislation.

THE WHITE HOUSE

WASHINGTON

May 20, 1980

MEMORANDUM FOR THE PRESIDENT

FROM:

ANNE WEXLER *AW*

SUBJECT:

VERNON WEAVER'S MEMORANDUM CONCERNING
THE OMNIBUS SMALL BUSINESS BILL, S918

I do not believe that you should be in a position of being forced to say no on this bill. The constituency problems are too serious and we need to be positively positioned, calling for a good Democratic small business bill.

Although I am not familiar with all of the details, I would recommend that you ask Vernon Weaver and Jim McIntyre to undertake an effort to get this bill through additional negotiations with Chairmen Nelson and Smith. We should hold off on your direct involvement in negotiations for the time being, but should instead send out the message that you would like these issues reconciled as fast as possible to accomplish the goal of a good small business bill.

I see no reason at this point either to give up completely on our substantive problems or to take a negative position on the bill.

DATE: 10 APR 80

FOR ACTION: STU EIZENSTAT

FRANK MOORE

TIM MCINTYRE

- COB Monday

Anne Wesler

5/19 comment will be done tonight Attached

Comments by COB Today 5/20

INFO ONLY:

*5/20/80
Stu, FM & IM are going to take a last stab @ stopping this from going in. Alue will let us know outcome.*

SUBJECT: MEMO FROM SMALL BUSINESS ADMINISTRATION RE: ADMINISTRATIO
SUPPORT OF OMNIBUS SMALL BUSINESS BILL, 1980

DK

*6/11/80
given back to Paul Sullivan
did not go to President*

+ RESPONSE DUE TO RICK HITCHESON, SENIOR SECRETARY (155-7452)

+ BY:

ACTION REQUESTED: IMMEDIATE TURNAROUND

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

*5/30 Hold per Paul Sullivan
most likely not going*

ID 802025

THE WHITE HOUSE
WASHINGTON

DATE: 10 APR 80

FOR ACTION: STU EIZENSTAT

FRANK MOORE

JIM MCINTYRE

Comment expected Tues noon 4/15

*per Kuld
every one*

INFO ONLY: THE VICE PRESIDENT

SARAH WEDDINGTON

ANNE WEXLER

SUBJECT: MEMO FROM SMALL BUSINESS ADMINISTRATION RE: ADMINISTRATION

SUPPORT OF OMNIBUS SMALL BUSINESS BILL, S. 918

+++++
+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (455-7052) +
+ BY: 1200 PM SATURDAY 12 APR 80 +
+++++

ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

ID 802027

THE WHITE HOUSE

WASHINGTON

DATE: 10 APR 80

FOR ACTION: LLOYD CUTLER

Oneh: may not need to go to Pres

INFO ONLY: THE VICE PRESIDENT

ZBIG BRZEZINSKI

file
no need to submit to

SUBJECT: CIVILETTI LETTER RE UNITED STATES OLYMPIC COMMITTEE

+++++

+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +

+ BY: +

+++++

ACTION REQUESTED: IMMEDIATE TURNAROUND

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:



Office of the Attorney General
Washington, D. C. 20530

April 10, 1980

The President,

The White House.

Dear Mr. President:

You have requested my opinion on the question whether the United States Olympic Committee (USOC) has a legal duty, under the Amateur Sports Act of 1978, 36 U.S.C. § 371 et seq., to send a team of American athletes to the Summer Olympic Games in Moscow. For reasons stated below, it is my opinion that no tenable argument can be made that the USOC is required to send an American team to the Moscow Games. To the contrary, I believe that the Amateur Sports Act gives the USOC discretion not to send a team to any particular Olympic Games, including the Moscow Games.

There would appear to be only two conceivable bases for an argument that the USOC is legally bound to send an American team to the Moscow Games. 1/ One argu-

1/ We do not believe that Section 202(a)(5) of the Amateur Sports Act of 1978, 36 U.S.C. § 392(a)(5), to which Counsel to the President Lloyd Cutler's letter of April 9, 1980 refers, is relevant. The Olympic Games are not conducted under the auspices of the national governing bodies and need not meet the requirements of § 202(b), 39 U.S.C. § 392(b).

ment might be that the Amateur Sports Act of 1978 grants no discretion to the USOC to refuse to send an American team to any particular Olympic Games no matter what the circumstances might be. Another argument would be that the Amateur Sports Act of 1978 creates in individual athletes a substantive legal right to compete in any particular Olympic Games if they otherwise qualify to compete on the basis of their performance in competition with other athletes for berths on our Olympic team. I will address each of these arguments in turn.

The Amateur Sports Act of 1978 recognized and established the USOC as a federally chartered corporation, inter alia, to "exercise exclusive jurisdiction . . . over all matters pertaining to the participation of the United States in the Olympic Games" § 104(3), 36 U.S.C. § 374(3). 2/ The creation of the USOC as a corporation rather than a government agency is, I believe, important to an understanding of its powers regarding the participation of an American team in any particular Olympic Games.

2/ Under § 105(a)(3), 36 U.S.C. § 375(a)(3), the USOC is empowered to "organize, finance, and control the representation of the United States in the competitions and events of the Olympic Games"

Although the USOC does not have all the powers normally associated with a private corporation, such as the power to issue capital stock, 3/ its creation as a corporation having most of the powers associated with private corporations suggests quite strongly a congressional intent to vest in it wide discretion to take any action not specifically precluded by the Amateur Sports Act of 1978.

No provision of the Amateur Sports Act of 1978 expressly precludes the USOC's making a decision not to participate in any particular Olympic Games. Nor does any provision of that Act, by implication, preclude the USOC's making such a decision. Indeed, I believe that the 1978 Act should be read to assume congressional awareness that under the rules of the International Olympic Committee, national Olympic committees established by countries to represent them on the IOC could decide not to participate in any particular Olympic Games. For example, in 1976 numerous African nations through their respective Olympic bodies declined to send to or withdrew teams from the Summer Games in Montreal. Congress may be charged, I believe, with enacting the 1978 Act with that recent history

3/ 36 U.S.C. § 378.

in mind. In addition, there is no sanction if a delegation withdraws before "final entries" have been made. 4/ Moreover, the current IOC by-laws state that national Olympic committees such as the USOC —

shall organize and supervise their country's representation at the Olympic Games. Representation covers the decision to participate 5/

Given that § 105(a) (2) of the Amateur Sports Act of 1978, 36 U.S.C. § 375(a) (2), establishes the power of the USOC to "represent the United States as its national Olympic committee in relations with the International Olympic Committee," I believe that Congress intended in enacting that Act that the USOC would be empowered to decide not to participate in any particular Olympic Games.

Under my analysis above, I believe the argument that the 1978 Act created substantive legal rights in individual athletes to participate in any particular Olympic

4/ Rule 25 of the Rules of the International Olympic Committee (1979) (IOC Rule). Although "final entries" is not defined, it appears to refer to the entry form containing the names and numbers of competitors which must be submitted to the Organizing Committee of the Olympic Games no later than ten days before the relevant Olympic competitions begin. IOC Rule 36, ¶ 4; By-law V, ¶ 8 to IOC Rule 24.

5/ By-law V, ¶ 7, to IOC Rule 24.

Games may be disposed of summarily. Under § 114 of the Act, 36 U.S.C. § 382b, the USOC "shall establish and maintain provisions for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete . . . to participate in the Olympic Games" (Emphasis added.) Although it might be argued that Art. IX, § 1 of the USOC Constitution, 6/ read literally, suggests the existence of a right of individual athletes to participate in particular Olympic Games "if selected," the language of § 114 and its legislative history contradict the suggestion that this "right" was to be viewed as a substantive restriction on the USOC's power to make the participation decision. Thus,

6/

No member of the U.S.O.C. may deny or threaten to deny any amateur athlete the opportunity to compete in the Olympic Games, the Pan-American Games, a world championship competition, or other such protected competition as defined in Article I, Section 2(g); nor may any member, subsequent to such competition, censure, or otherwise penalize, (a) any such athlete who participates in such competition, or (b) any organization which the athlete represents. The U.S.O.C. shall, by all lawful means at its disposal, protect the right of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions.

while the report issued by the Senate committee recognized a "right to take part in the Olympic Games," the context in which that "right" was described demonstrates that Congress' concern in § 114 was to prevent athletes from being "used as pawns by one organization to gain advantage over another." S. Rep. No. 770, 95th Cong., 2d Sess. 6 (1978). ^{7/} See also H.R. Rep. No. 1627, 95th Cong., 2d Sess. 15 (1978).

In view of the historical understanding and practice regarding the power of national Olympic committees to make participation decisions and given that no provision of the Amateur Sports Act of 1978 expressly or implicitly qualified that understanding, I do not believe that a tenable argument can be made that the USOC is required by law to send an American team to the Moscow Games. In reaching this conclusion, I do not mean to suggest that Congress could not, by statute, accomplish that end or otherwise dictate the course the USOC is to follow in this

^{7/} Even if § 114 were viewed as granting a substantive right to "selected" athletes to participate in any particular Olympic Games, the legislative history of that provision indicates that the right conferred would be limited to protection from "an arbitrary rule which, in its application, restricts, for no real purpose, an athlete's opportunity to compete." S. Rep. No. 770, at 6.

matter. I merely conclude that in enacting the 1978 Act, Congress implicitly recognized the preexisting understanding that the USOC, as our country's national Olympic committee, would have the power to make a decision whether to participate in particular Olympic Games.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin R. Civiletti". The signature is written in a cursive style with a large, sweeping initial "B".

Benjamin R. Civiletti
Attorney General