

June 15, 1999

MEMORANDUM TO JOHN PODESTA

FROM: SARAH ROSEN, NEC

RE: JUNE 16TH FINANCIAL MODERNIZATION CONFERENCE CALL

Attached please find an excellent memorandum from Treasury prepared for you as background for this call. As the memorandum notes, the Administration's primary objective for the call is to make clear that Secretary Rubin's departure will not occasion a change in Administration position on CRA and choice in operating structure. However, **privacy** may be the topic foremost on the minds of the CEOs on the call.

Gene Sperling and Gary Gensler hosted a meeting of industry trade groups on Monday to discuss Financial Modernization. If that meeting is any guide, virtually every question you get will be about privacy. For that reason, I provide further background on this issue.

The President's Proposals

On May 4, 1999, President Clinton announced a five-prong strategy for "Financial Privacy and Consumer Protection in the 21st Century." The first prong was privacy, including three legislative proposals.

- **Notice and Opt-Out Before Sharing with Affiliates or Third Parties.** Although consumers put great value on the privacy of their financial records, our laws have not caught up to technological developments that make it possible and potentially profitable for companies to share financial data in new ways. Current law does provide some privacy protections: for example, the Fair Credit Reporting Act (FCRA) requires a form of notice and opt-out before certain information about consumers (e.g., information provided on an account application) can be shared. But there are no limits on the sharing of information about consumers' transactions (e.g., account balances, who they write checks to) within a financial conglomerate, or even on the sale of that information to a third party. We support legislation to give consumers control over the use and sharing of all their financial information.
- **Limit Sharing of Medical Information within a Financial Conglomerate.** One of Americans' greatest privacy concerns involves medical information. Yet, cross-industry mergers and consolidation have given banks unprecedented access to consumers' medical records. We support legislation requiring that medical information, such as that gathered from life insurance records, not be shared within financial services conglomerates (e.g., between banking and insurance affiliates) or with third parties, except for narrowly defined purposes. Consumers who undergo physical exams to obtain insurance, for

example, should not have to fear that the information will be used to lower their credit card limits or deny them mortgages.

- **Give bank regulators the authority they need to ensure compliance with existing privacy protections.** Currently, bank regulators may not examine for compliance with existing privacy protections, but must wait for a consumer complaint. Congress should give regulators broader authority to monitor compliance.

Current Legislative Status of Privacy

Over the last few months, momentum on privacy has built. The Senate bill contained a ban on pretext calling but no new privacy protections. While Senate Democrats, including Senator Sarbanes, are avid proponents of privacy, they agreed that further progress on the issue could be addressed separately. The Senate Banking Committee is holding a series of hearings on the issue this month.

The House Banking Committee reached bipartisan consensus on modest provisions -- a ban on sharing medical information within financial conglomerates (with imperfect language) and a requirement of notice (but no choice) before sharing transactional information.

In the House Commerce Committee, Democrats led by Representative Markey were not willing to compromise. In a surprising turn of events, Republicans agreed to an amendment during mark-up that was effectively two of the President's proposals: (1) it requires notice, and opt-out before transactional information can be shared with third parties or affiliates; and (2) it bans sharing medical information within financial conglomerates.

Two events last week propelled the Republicans to reverse their prior course of deflecting privacy proposals: (1) Acting Comptroller Hawke called bank privacy practices "seamy"; and (2) the Minnesota Attorney General filed a suit against U.S. Bancorp alleging that its bank had sold personal account information to telemarketers for a cut of the profits. The latter event especially infuriated members, as bank lobbyists had been telling them that banks did not sell information to third parties - only wanted to protect it for use by affiliates.

Administration Concerns With Commerce Committee Language

The Administration does have a few concerns with the Commerce Committee's privacy language:

- **Enforcement Authority:** The bill does not expand - as we recommended - bank regulator ability to examine for compliance with privacy requirements; and it gives all rulemaking and enforcement authority for the bill to the FTC - not to the bank and securities regulators.

- **Coverage of Non-Regulated Financial Institutions:** The bill covers only bank holding companies - not non-bank financial institutions like finance or mortgage companies. Fairness to regulated entities and consumer protection would recommend expanding coverage.
- **Need For Possible Exceptions:** There may be unintended consequences of the proposal if, for example, it creates barriers to fraud detection or processing efficiency. We would be willing to work with industry to better understand what exceptions, if any, are necessary.

Administration Strategy on Privacy and Financial Modernization

It is too early to tell whether there will be any conflict between two Administration goals. Treasury is implementing a carefully laid strategy to win support for the President's position on CRA and operating structure choice. The privacy issue adds a new - and as yet unpredictable - variable. If possible, we also want to achieve a victory for the President and consumers by seeing Congress adopt the President's privacy proposals.

Talking Points

During the Sperling/Gensler meeting with industry representatives, they pleaded for Administration support for consideration of privacy outside the context of Financial Modernization. Gene gave them no encouragement that we would help them stall on privacy, nor did he say that we would insist on its inclusion; however, he was very effective making the following points in response:

- **The President has clearly stated his policy objectives in the area of privacy.**
- **The momentum on this issue is going only one way; Congress seems increasingly likely to address this issue quickly given its deep-rooted populist appeal.**
- **You can resist that momentum or you can try to work with us to determine how your legitimate "technical" concerns can be accomplished consistent with the President's stated policy objectives.**
- **That work will be time well spent, regardless of the vehicle Congress chooses to address privacy. The issue is not going to go away.**

Attachment