November 3, 1999
Financial Privacy Talking Points

Here is the privacy paragraph from the SAP on S.900.

"In May, the President stressed the importance of adopting strong and enforceable privacy protections for consumers financial information. S. 900 provides protections for consumers that extend far beyond existing law. For the first time, consumers will have an absolute right to know if their financial institution intends to share or sell their personal financial data, and will have the right to block sharing or sale outside the financial institutions' corporate family. Of equal importance, these restrictions have teeth. S. 900 gives regulatory agencies full authority to enforce privacy protections, as well as new rulemaking authority under the existing Fair Credit Reporting Act. The bill also expressly preserves the ability of states to provide stronger privacy protections. In addition, it establishes new safeguards to prevent pretext calling, by which unscrupulous operators seek to discover the financial assets of consumers. In sum, we believe that this reflects a real improvement over the status quo; but, we will not rest. We will continue to press for even greater protections – especially effective choice about whether personal financial information can be shared with affiliates. "

Q: Privacy advocates have criticized the bill for being too weak. What is your response?

A: On the contrary, S. 900 provides protections for consumers that extend far beyond existing law. The easiest way to see this is to go through the "fair information principles" that privacy groups and this Administration apply to privacy rules generally:

(1) *Notice.* Consumers will have an absolute right to know if their financial institution intends to share or sell their personal financial data. Consumers and consumer advocates -- for the first time -- will have an important way to monitor how personal information is flowing from their financial institutions and demand those protections they want from the firms with which they do business. (If asked, note that the conference strengthened the House bill here -- notice applies to sharing with affiliates, too, and not just outside companies.)

(2) *Choice.* The bill provides, for the first time, the requirement that a consumer have a choice before information is transferred to third parties. (If asked, say: The Administration also pushed to have this choice extend to transfers of information to affiliated companies, but we were not able to win on that issue in this bill. We have pledged that we will continue to work for greater privacy protections, especially on this issue of affiliate transfers.)

(3) *Access.* Consumers already have strong access rights to their credit histories under the Fair Credit Reporting Act. We believe that customers generally will have easy access to their information, under that Act and by means of monthly statements.

(4) *Security.* Financial services companies already have strong incentives to maintain security, and banks are specially examined on computer security.

(5) *Enforcement.* Prior to this bill, there was a specific law that prevented examination or enforcement for privacy violations. That law has now been repealed, and the new bill provides the full powers of banking and securities enforcement for violations of the new privacy protections. These enforcement powers include penalties of up to $1 million per day for violations, as well as expulsion from the industry for willful violations.

In summary, the new law will make an improvement on the status quo toward fulfilling all the fair information principles, although the Administration continues to seek more improvements especially for consumer choice before information is transferred to affiliated companies.

Q: Privacy groups and some members of Congress say that the Administration caved on the privacy issue. Why did you settle for so little?

A: On the contrary, the history shows that the Administration's efforts are a key reason why the privacy provisions exist at all. When the Senate passed its bill last winter, not one of the privacy protections we have been discussing was in the bill. The key change occurred when the President himself announced the need for financial privacy protections on May 4. The key protections in the bill -- clear notice, choice before transfers, and strong enforcement -- were in the package of proposals that the President put forward. Comptroller of the Currency Hawke also made a major speech at that time about specific and serious privacy problems in the banking industry.

After the President's speech, the privacy issue picked up momentum in the House. When the House passed its privacy provisions, the Administration said that the changes were an improvement but promised to pursue additional protections.

Since that time, in Administration testimony and through our efforts on the Hill, the Administration has pushed for stronger privacy protections. Despite the opposition of some in the Senate, who wished to eliminate privacy protections entirely from the bill, the Administration insisted that all of the protections included in the House bill must be in the final law.

In the conference negotiations, we not only achieved all that was included in the House bill, but also won two important changes. First, the final bill makes sure that customers have clear notice of how their information is shared with all companies, including affiliates. Second, the final bill makes sure that states can pass stronger privacy protections -- the federal rules are a floor and not a ceiling.

These two changes will help in our ongoing fight for better privacy protections. The companies will have to give notice of how they share information with anyone else, so that the whole world can see what is being done. Bank examiners and securities regulators will be on hand to make sure the disclosures are accurate. Then, armed with that knowledge, states can enact stronger privacy protections. All of this new information can help form the basis for eventually winning stronger national protections.

Q: **There has been particular criticism of the "joint marketing" provision, that allows even unaffiliated companies to get access to customer information. How can you sign the bill when it contains such a loophole?**

A: The Administration has been very clear on this issue -- we believe that consumers should have the choice to opt-out of marketing done by both affiliates and third parties. The joint marketing provision, by allowing transfers to other companies, goes against this Administration position, and this is one of the areas where we hope to win better protections in the future.

Even though we oppose this language in the bill, it is worth noting that the law contains two helpful safeguards. First, there must be clear disclosure to consumers of the information sharing. That way, customers can see how their information is being used and take their business elsewhere if they object. Second, the joint marketing is limited to "financial services." For other sorts of joint marketing, the individual would have a legally-protected choice about whether the information can go to a third party.

Q: **Critics assert that, under the financial modernization bill, insurance companies will be able to share medical information with affiliated or unaffiliated banks, who can use that information to make credit decisions. (E.g., You could be denied a loan because the bank learns that you are taking medication for a life threatening disease.) This is exactly what the President said, in his May 4th privacy proposal, that he wanted to prevent. Critics also assert the medical privacy regulations being issued today by HHS do not address this problem, because they cover only electronic records and many insurers are not reached. Why is the President supporting this Financial Modernization bill when it will allow such unconscionable use of private medical information?** [This Q&A was developed by Gene Sperling and Sarah Rosen Wartel for use on the Hill.]

A: Today, information of many kinds can be freely sold or shared between banks and insurance companies. The banking bill, for the first time, places important limitations on all information sharing by and with financial institutions. The proposed medical privacy regulations issued by HHS last week will provide essential additional protections specifically designed for medical information. While there is still a need for comprehensive medical privacy legislation, the HHS regulations coupled with protections in the Financial Modernization bill protect against what the President wanted to address -- sharing of medical information between health insurance companies and other financial institutions for use in making credit and other important financial decisions. If the financial modernization bill were not enacted, significant information sharing would continue without the important protections that the bill provides.

Under the proposed HHS regulations, personal medical information held by an health insurance company, for example, can only be shared with any "business partner" (another affiliated or unaffiliated company) if the business partner signs an agreement promising: (1) to keep the information confidential; and (2) not to use the information for any other purpose (other than the purpose for which it was collected) without the express consent of the patient.

Moreover, there is a particular provision that applies to banks and other companies who receive information in the course of processing payments. That provision would specifically ban diagnostic and treatment information from being shared with the company involved in the payments.

As a result, an insurance company covered by the proposed medical rules would be barred from sharing or selling private medical information with an affiliated or unaffiliated bank, except for purposes of processing the patient's transaction (e.g., issuing the insurance check), without an agreement to protect the confidentiality of the information and express consent from the patient on the use of the information.

Regarding the concern that the HHS regulations only cover electronic records, the scope of "electronic" is very broad, especially in a financial services setting. Any medical record *once it has been electronic* is covered. It remains covered once printed out in paper form, and the information itself remains covered once it has been processed or transmitted in electronic form. Today, virtually all insurance records are stored and transferred electronically.

Finally, it is true that some insurers are not subject to HHS regulatory authority -- life insurance and employment disability insurance (not medical disability). However, the vast majority of the medical information in the hands of insurers is held by covered insurance firms. The excluded insurers have relatively little personal medical information. Nonetheless, this is a good example why the comprehensive medical privacy legislation is so essential. The President on Friday once again called upon Congress to break the logjam and provide Americans a comprehensive framework for protection of medical privacy. While we push forward with the regulatory process, we will continue to press equally hard to make Congress fulfil its responsibility to the American people to protect their medical privacy.