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Walter -
I understand your handling E.O.s now -
I thought you might like a copy of this.
If you have any questions or comments please give me a call.
Diane

File
National
Service

MEMORANDUM

To: Bruce Reed, Rick Allen
From: Diane Lowe, x6586
Date: March 3, 1993
Re: Executive Order Establishing an Inter-Agency Working Group on National Service

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This memorandum proposes and analyzes a possible executive order which would establish an inter-agency Working Group on National Service ("Working Group"). The goal of this order would be to set up an inter-agency working group that would coordinate efforts by Executive Branch departments and agencies with respect to National Service projects. Section I sets forth a draft of the proposed executive order. Section II examines the legal authority for issuing the order, identifies previous examples of orders creating Presidential task forces or working groups, and examines the federal personnel regulations to determine whether, and under what circumstances the members of the Working Group might be considered to be detailees to the White House. Section III discusses the practical impact of the executive order and discusses whether existing FY93 funds appropriated for existing and proposed national service projects may be reprogrammed to finance national service initiatives of the Clinton Administration.

I. DRAFT EXECUTIVE ORDER

Below is a proposed executive order establishing an inter-agency working group that would coordinate a national service program.

Inter-Agency Working Group on National Service

WHEREAS, a national service program would serve to rebuild civic identity, unity, and responsibility;

WHEREAS, a national service program would help to guarantee access to college or post-secondary training for Americans willing to service their country;

WHEREAS, national service provides a means for youth to integrate service and learning;

WHEREAS, national service projects would encourage volunteerism; and

WHEREAS, national service volunteers would perform tasks that address real domestic and social problems that neither the public nor the private sector now is performing.

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish an Inter-Agency Working Group on National Service, it is hereby ordered as follows:

1. Establishment.

1-101. There is hereby established an Inter-Agency Working Group on National Service (the "Working Group"). The Working Group shall be composed of the heads of the following departments, agencies, and commissions, or their designated representatives:

a.
b.
c.
d.

1-102. The Director of the Office of National Service, or his designee, shall also be a member of the Working Group and shall be the Chairperson of the Working Group.

2. Purposes and Functions.

2-201. In furtherance of the goals of the National Service program, the Working Group shall:

a. ensure that there is communication and coordination among Executive Branch departments and agencies concerning National Service projects; and

b. develop and promulgate a National Service Agenda which shall:

(1) identify and evaluate existing National Service programs;

(2) identify tasks that are amenable to resolution through National Service projects;

(3) coordinate existing National Service programs and eliminate duplication of function; and

(4) identify statutes that would need to be revised in order to implement the National Service Agenda and recommend legislation.

2-202. The head of each Executive Branch department and agency shall designate a senior officer of his or her department or agency to be the liaison with the Working Group and provide the Working Group with such information relating to National Service as the Working Group may request.

3. Administration.

3-301. Members of the Working Group shall serve without additional compensation for their work on the Working Group. Their responsibilities as Working Group members shall be in addition to their permanently assigned duties.

3-302. Executive Branch departments and agencies shall cooperate with and assist the Working Group in performing its functions.

3-303. The Chairperson shall be responsible for providing the Council with such administrative services or support as may be necessary or appropriate.

3-304. The Chairperson shall report to the President on the performance of the Working Group's functions.

II. LEGAL AUTHORITY

A. Authority to Create a Working Group by Executive Order

The President's authority to establish a working group of this type derives from Article II, of the Constitution: Article II, Section 1 vests the executive power in the President; Article II, Section 2[1] confers upon the President the power to "require the Opinion, in writing of the principal officer in each of the Executive Departments, upon any Subject relating to the Duties of their respective Offices"; Article II, Section 2[2] vests the appointments power in the President. Presidents have invoked the President's power as chief executive to establish working groups of this type in the past. See, e.g., E.O. 12631, Working Group on Financial Markets (1988); E.O. 12396, International Private Enterprise Task Force (1982); E.O. 12083, Energy Coordinating Committee (1987) (attached at Tab A).[1]

B. Legal Classification of Members of the Working Group

Whether the members of the Working Group would be considered "detailees" to the White House turns on the nature of the person's responsibilities under the order and on length of time during which he or she fulfills those responsibilities.

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[1] On November 5, 1992, President Bush issued Executive Order 12820, which sets forth measures to facilitate federal employees' participation in community service activity.

According to Subchapter 8 of the Federal Personnel Manual (attached at Tab B), members of the Working Group would fall into one of the following four classifications:

(1) reimbursable detailees;

(2) nonreimbursable detailees who must be reported to Congress;

(3) nonreimbursable detailees who need not be reported to Congress; or

(4) nondetailees.

For members of the Working Group to qualify as nondetailees, they would have to continue to perform the duties of their permanent position in addition to their new duties as members of the Working Group. If members of the Working Group were to have offices in the Old Executive Office Building even if they retained their offices at the agency, they might be deemed to be detailees to the White House, and would have to comply to relevant statutes regarding detailees. It is unclear whether providing an informal work area for Working Group members at the OEOB would render them detailees. For members to qualify as nonreimbursable detailees who need not be reported by the White House to Congress, the members' work would have to pertain to a matter similar to that ordinarily handled by the loaning agency, and aid that loaning agency in accomplishing a purpose for which its appropriations were provided, and the detail must last no longer than 30 days. Once reported, a non-reimbursable detailee remains non-reimbursable, so long as the detail does not exceed 180 days. The applicable statutes are discussed below.

1. Definition of Detail

The Federal Personnel Manual defines "detail" as "the temporary assignment of an employee to a different position or set of duties for a specified period of time." FPM. Ch. 300, subch. 8-3. The detailee returns to his or her regular duties at the end of the detail. An employee who has been detailed continues to hold his or her original position and maintains the same status and pay. Id. However, if an employee continues to perform the duties of the position to which permanently assigned and also carries out some of the duties of another position for a limited time, that employee generally is not considered to be on a detail. Id. Thus, in order for the members of the Working Group to not be considered detailees, they would have to continue to perform the duties of their permanent position.[2]

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[2] The Federal Personnel Manual does not address a situation where an employee's job title would include his responsibilities as a member of a working group, for example, "Deputy Secretary for National Service Programs."

2. Reimbursable and Nonreimbursable Details

"Reimbursable" details require that the borrowing agency pay the loaning agency for the detailed employees' services. A Comptroller General's decision holds that all inter-agency details must be reimbursable except under limited circumstances. 64 Comp. Gen. 370, March 20, 1985. Nonreimbursable details of employees from one agency to another are permissible where:

(1) the detail pertains to a matter similar or related to those ordinarily handled by the loaning agency, and will aid the loaning agency in accomplishing a purpose for which its appropriations are provided; or

(2) the fiscal impact on the appropriation supporting the detail is negligible.

Id. at 2.[3] Presumably, each member of the Working Group will be drawn from an agency which utilizes the services of, or houses portions of, the National Service Program. As such, it should be possible to bring most, if not all, members of the Working Group within the requirements for nonreimbursability.

3. Details to the White House

The head of any department, agency, or independents establishment of the Executive Branch may detail employees of such department, agency, or establishment to the White House. 3 U.S.C. sec. 112. The White House shall reimburse the detailing department, agency or establishment for the pay of each detailed department, agency, or establishment for the pay of each detailed employee for any period occurring during any fiscal year after 180 calendar days after the employee is detailed in such year. Id. Thus, if members of the Working Group were deemed to be detailed employees, they could work at the White House for up to six months without reimbursement by the White House to the loaning department, agency, or establishment.

If members of the Working Group merely attend meetings at the Office of National Service, or a designated place at OEOB, it would appear that they would not be deemed to be detailed to the White House. However, if members of the Working Group had offices at OEOB, even while maintaining their permanent offices at their respective agencies, there is some risk that they might be deemed to be detailees.

It should be noted, that regardless of the legal status of the members of the Working Group, the Executive Order establishing the Working Group need not specify where members of the Working Group will meet and work. See, e.g., E.O. 12631, Working Group on Financial Markets (1988) (attached at Tab A).

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[3] This provision is consistent with the law requiring that appropriations be spent only for the purposes for which appropriated. 31 U.S.C. sec. 1301(a).

4. Reports to Congress on Inter-Agency Details

The Treasury, Postal Service, and General Government Appropriations Act requires Executive Branch agencies to report annually to the Senate and House Committees on Appropriations on employees or members of the armed services detailed to Executive Branch agencies. See historical and statutory notes preceding 5 U.S.C.A. sec. 3341. The report shall list the grade, position, and offices of each person detailed and the agency to which each such person is detailed. Id. In addition, the President shall report to Congress for each fiscal year, among other things, the number of individuals detailed to the White House for more than 30 days,, the number of days in excess of 30 each individual is detailed, and the aggregate amount of reimbursement made. 3 U.S.C. sec. 113(b)(4).

III. PRACTICAL IMPACT

A. Central Coordinating Body

The practical impact of an executive order to establish a Working Group on National Service would be the creation of a central coordinating body for all federal, national service efforts. At the present time, there is no one group that coordinates the various national service programs that have been or will be established by the Executive Branch departments and agencies. The Working Group as constituted would have the authority to review and evaluate existing National Service programs, develop a National Service Agenda, and propose (subject to Presidential review) legislation to enact the National Service Agenda.

B. Availability of Funds

There remains a question whether, prior to fiscal 1994, funds exist to actually begin implementation of the National Service Agenda. Should a Working Group be created, the question will undoubtedly arise whether various existing appropriations for volunteer service programs may be utilized to implement President Clinton's new national service initiatives. Your original inquiry asked whether two existing programs -- Youthbuild funded through HUD and the Civilian Community Corps (CCC) funded through the Department of Defense -- could be utilized for that purpose.

As you know, the executive power to spend is generally structured as follows: while the executive (1) may not spend in excess or in advance of an appropriation, 31 U.S.C. sec. 1341; (2) appropriated only when authorized by law, 31 U.S.C. sec. 1532; (3) the executive may reprogram unobligated funds within an appropriation account as long as the expenditures are within the general purpose of the appropriations and are not in violation of any other specific limitation or otherwise prohibited.[4]

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[4] GAO, Principles of Federal Appropriations Law (2d ed.) at 2-26 (citing B-123469, May 9, 1955). See also, Funding of Attorney Fee Awards Under the Equal

The pattern in current law on volunteer service programs (including the CCC and Youthbuild), is to enact a very detailed authorization bill, and then to appropriate in lump sums. Most of the programs are authorized through the Domestic Volunteer Service Act of 1974[5] and the National and Community Service Act of 1990.[6] In both cases, the fiscal year 1993 appropriations bills provided lump sums appropriations, but the authorizing statutes allocate funds with specificity. The authorizing statute for the ACTION agency (and the Appropriations Conference report) breaks the agency's funding into separate categories for different types of volunteers -- VISTA, VISTA Literacy Corps, Foster Grandparents, Senior Companions, and Retired Senior Volunteers.[7] The National and Community Service lump sum appropriation is affected by the provision in the authorizing statute that earmarks 30% for each of three subtitles. Accordingly, the executive power to transfer and reprogram funds may be limited by the specific directives of the authorizing statutes.[8]

Nonetheless, because many of the programs in current law are quite similar to the national service program that President Clinton has championed, it may be possible to focus and coordinate existing programs in ways that provide greater visibility and that test models for later expansion. Consider, for example, the model of

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Access to Justice Act, 6 Op. O.L.C. 204, 210 (1982) ("It is a well settled principle of law that a lump sum appropriated for an agency's general programs and activities may be used by the agency for any otherwise authorized purpose, even if the legislative history of the appropriation statute prescribes specific priorities for allocating funds among authorized activities."); Attorney General's Authority to Reprogram Funds for the United States Marshals Service to Avoid Deficiencies, 4 Op. O.L.C. (Vol. B) 701, 702 (1980)("The Comptroller General has taken the position that a lump sum appropriation may be sued for any authorized purpose, even if the legislative history of the appropriation statute prescribes specific priorities with regard to allocating funds among authorized purposes.") Use of Law Enforcement Assistance Administration Program Grant Funds for Administrative Purposes, 4 Op. O.L.C. (Vol. B) 674 (1980).

[5] 42 U.S.C. sec. 4951 et seq.

[6] 42 U.S.C. 12510 et seq.

[7] 42 U.S.C. sec. 5081, 5082; Conf. Rpt. 102-974 at 110.

[8] According to the Comptroller General, "as a general proposition . . . except as specified otherwise in the appropriation act, appropriations to carry out enabling or authorizing also must be expended in strict accord with the original authorization both as to the amount of funds to be expended and the nature of the work authorized." Principals at 2-36 (citing 36 Comp. Gen. 240, 242 (1956); B-220682, February 21, 1986; B-204874, July 28, 1982: B-125404, August 31, 1956; B-151157, June 27, 1963). Although Congress may amend or repeal the authorization act in the appropriation bill, such amendment or repeal must be explicit. Id. at 2-37.

an individual who volunteers for a minimum of a year and who receives a subsistence allowance during that period and post-service education benefits afterward.[9] Presumably the funds in existing programs could be used to publicize the volunteer opportunities to young people and to create coordinated recruitment and training programs that would cut across several programs. Such activities would be consistent with provisions of the underlying authorizations and appropriations. Under current law, volunteers may perform service for a subsistence allowance through VISTA, the American Conservation and Youth Corps, the National and Community Service Act, Youthbuild, and the Civilian Community Corps. If the Administration wanted to increase post-service education benefits by reprogramming funds within the relevant accounts, the authorizing statutes should be analyzed in accordance with the appropriations principles described above.[10]

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[9] Post-service benefits are available under certain existing programs that provide volunteers with subsistence allowances:

VISTA. College loan deferment and forgiveness. 20 U.S.C. secs. 1071 and 1087.

American Conservation and Youth Corps. Post-service education and training benefits (such as scholarships and grants) in an amount not in excess of the lesser of $100 per week or $5000 per year. PL 101-610, sec. 132 (codified as 42 U.S.C. 12510 et seq.).

National and Community Service Act. Post-service benefit of $2000 per year of service (shared equally by state and federal funding) to be used for tuition or college loan repayment. PL 101-610, sec. 146 (codified as 42 U.S.C. 12510 et seq.).

Youthbuild. No post-service benefit. But the provision permitting payments in excess of the poverty rate from non-federal sources may allow a public-private partnership model for post-service benefits. 42 U.S.C. 5091f.

Civilian Community Corps. Educational Assistance of $5000 for each period of service (9 months to a year). Conf. Rpt. 102-966 at 221 (codified as sec. 195G of subtitle H of 42 U.S.C. 12510 et seq.).

[10] Because these programs include so many statutory directives -- and yet are so similar in purpose to President Clinton's visions of national service -- this area may lend itself to a reorganization proposal, rather than an executive order.

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Divider Title: **A**

Presidential Documents

Executive Order 12631 of March 18, 1988

Working Group on Financial Markets

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish a Working Group on Financial Markets, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is hereby established a Working Group on Financial Markets (Working Group). The Working Group shall be composed of:

(1) the Secretary of the Treasury, or his designee;

(2) the Chairman of the Board of Governors of the Federal Reserve System, or his designee;

(3) the Chairman of the Securities and Exchange Commission, or his designee; and

(4) the Chairman of the Commodity Futures Trading Commission, or her designee.

(b) The Secretary of the Treasury, or his designee, shall be the Chairman of the Working Group.

Sec. 2. *Purposes and Functions.* (a) Recognizing the goals of enhancing the integrity, efficiency, orderliness, and competitiveness of our Nation's financial markets and maintaining investor confidence, the Working Group shall identify and consider:

(1) the major issues raised by the numerous studies on the events in the financial markets surrounding October 19, 1987, and any of those recommendations that have the potential to achieve the goals noted above; and

(2) the actions, including governmental actions under existing laws and regulations (such as policy coordination and contingency planning), that are appropriate to carry out these recommendations.

(b) The Working Group shall consult, as appropriate, with representatives of the various exchanges, clearinghouses, self-regulatory bodies, and with major market participants to determine private sector solutions wherever possible.

(c) The Working Group shall report to the President initially within 60 days (and periodically thereafter) on its progress and, if appropriate, its views on any recommended legislative changes.

Sec. 3. *Administration.* (a) The heads of Executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Working Group such information as it may require for the purpose of carrying out this Order.

(b) Members of the Working Group shall serve without additional compensation for their work on the Working Group.

(c) To the extent permitted by law and subject to the avail therefor, the Department of the Treasury shall provide the with such administrative and support services as may be nece performance of its functions.

Ronald Reag

THE WHITE HOUSE,
March 18, 1988.

[FR Doc. 88-6380
Filed 3-21-88; 11:23 am]
Billing code 3195-01-M

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Divider Title: **B**

Subchapter 8. Detail of Employees

8-1. SUMMARY

This subchapter explains agency authority to detail competitive and excepted service employees. (Details of Senior Executive Service appointees and details of other employees to SES positions are explained in FPM Supplement 920-1, subchapter S5.)

8-2. AUTHORITIES

a. *Office of Personnel Management (OPM)* sets the policy on details to competitive and excepted positions within an agency under 5 U.S.C. 3341, based on its responsibilities for administering the laws on the competitive service and the classification of positions.

b. *Agencies* may detail employees to:

—Competitive and excepted positions within an agency (intraagency details) following 5 U.S.C. 3341 and this subchapter;

—Competitive and excepted positions in other agencies (interagency details) following section 601 of 31 U.S.C. 1535 and other applicable statutes;

—Certain executive positions following 5 U.S.C. 3345–3349;

—International organizations following 5 U.S.C. 3343 and FPM Chapter 352;

—Foreign Governments following 22 U.S.C. 2387, administered by the State Department; and

—NonFederal organizations following the Intergovernmental Personnel Act, 5 U.S.C. 3371–3376, and FPM Chapter 334.

c. *General Accounting Office (GAO)* exercises oversight responsibility for agency use of appropriated funds and, in this capacity, determines under what conditions nonreimbursable details may be made. See section 8-6.

8-3. DEFINITION AND PURPOSE OF DETAILS

a. A detail is the temporary assignment of an employee to a different position or set of duties for a specified period of time. There is no formal position change; officially, the employee continues to hold the position from which detailed and keeps the same status and pay.

b. An employee who continues to carry out the duties of the position to which permanently assigned and also performs some of the duties of another position for a limited time (e.g., while the other position is vacant or the incumbent is on leave) generally is not considered to be on a detail. Performance of other duties on regular basis may, however, require classification action.

c. Agencies may detail employees for any legitimate management purpose, for example, to handle unexpected workloads or special projects; to fill in during another employee's absence; for training; or pending position classification, security clearance or investigation.

8-4. PERMISSIBLE INTRAAGENCY DETAILS

Subject to sections 8-5, 8-6, 8-7, and 8-8, employees, by appointment type, may be detailed to other positions as follows:

a. Career and career-conditional employees: to competitive or excepted positions.

b. TAPER employees (temporary appointment pending establishment of a register): to competitive or excepted positions.

c. Schedule A or B employees: to competitive or excepted positions.

d. VRA (Veterans Readjustment Act) appointees: to competitive or excepted positions.

e. Excepted service employees (other than those covered by paragraphs c and d above): to excepted positions. They may be detailed to positions in the competitive service but only under delegated agreement with OPM or with OPM's prior approval. This approval is required for interagency and intraagency details; see Civil Service Rule 6.5.

f. Employees in status quo: to competitive or excepted positions.

g. Term and temporary employees: to competitive or excepted positions. A term employee may be detailed only to a position appropriate for term employment; a temporary employee may be detailed only to a position appropriate for temporary employment. See FPM Chapter 316. A detail does not extend the expiration date of a term or temporary appointment.

8-5. TIME LIMITS ON INTRAAGENCY DETAILS

a. Agencies should keep details within the shortest practicable time limits and should make continuing efforts to secure necessary services by appropriate personnel actions. Supervisors should be advised of the conditions and limits on details.

b. Time limits in this section apply to intraagency details of:

—competitive service employees,

—excepted service employees to competitive service positions, and

—excepted service employees in General Schedule (including "GM") positions to excepted service positions.

See section 8-6 for information on when time limits apply to interagency details.

c. Initial details and extensions. Agencies may make initial details for up to 120 calendar days. Details may be extended in increments up to 120 days, subject to the maximum calendar time limits in paragraph d.

d. Maximum time limits.

—Agencies may make and extend details of employees to unclassified duties, and to positions at the same, lower, or higher grade (except SES) in 120-day increments, up to a maximum of 1 year. *Exception*: The maximum is 2 years for details to positions in an organization undergoing a commercial activity study as defined in paragraph i.

—See FPM Supplement 920-1, subchapter S5 for information on details of non-SES employees to SES positions.

e. Unclassified duties. For the purposes of this section, a "classified position" has a written statement of duties to which an appropriate classification authority has assigned a grade level; the position may or may not have been officially established.

If a set of duties is later classified, time under a detail to the unclassified duties counts toward the maximum time limits in this section, but not toward the maximum period in FPM Chapter 335 for noncompetitive details to higher grade positions.

f. Overly long details. Agencies should be especially careful to keep details to higher grades within time limits. Employees generally have no right to retroactive temporary promotions for details exceeding the time limits in this section. Exceptions occur when an agency regulation or collective bargaining agreement establishes the right to a temporary promotion. [Wilson v. United States, 229 Ct. Cl. 510 (1981) and 61 Comp. Gen. 408 (1982).]

g. Requests for extensions beyond maximum time limits. Send requests for extensions beyond the maximum time limits to the servicing OPM office. *Exception:* When SES appointees or positions are involved, send requests to the Director, Office of Executive Personnel, 1900 E Street, NW., Washington, DC 20415. NOTE: OPM approval is also required for an agency to detail an employee back to a position to which he or she had been detailed (for the maximum time period) within the previous 30 days.

h. Computing time limits. Although a new time limit applies each time an employee is detailed to a different position, agencies should not routinely keep employees on detail for long periods. When an employee's service on detail will extend beyond a year, the agency should review the situation to see if other action, based on the reasons for the detail, would be more appropriate.

i. Commercial activity study means a review under OMB Circular A-76 of an agency activity that could be performed under contract. The results of the review are used to create the most efficient organization and to compare proposals from contractors.

8-6. REIMBURSABLE AND NONREIMBURSABLE DETAILS

a. General rule. A Comptroller General's decision (64 Comp. Gen. 370, March 20, 1985) holds that in the absence of a specific statute authorizing nonreimbursable details, all details within an agency (intraagency details) and all details between agencies (interagency details) must be made on a reimbursable basis except in the limited circumstances described in this section. Where a reimbursable detail is not required by the Comptroller General, the organizations involved decide whether the detail should be reimbursable or nonreimbursable.

b. Intraagency details. All intraagency details must be reimbursable *except* when the detail is:

(1) To a position covered by *the same appropriation* as the position from which detailed;

(2) To a position covered by a *different appropriation* but the detail involves a matter related to the loaning organization's appropriation and will

aid it in accomplishing the purpose for which appropriations are provided; or

(3) To a position covered by a *different appropriation* but, regardless of the purpose of the appropriation, the detail will have a negligible impact on the loaning organization's appropriation. (The GAO decision makes all details based on negligible impact subject to the time limits in 5 U.S.C. 3341 and this subchapter.)

c. Interagency details. All interagency details must be reimbursable *except* when the detail:

(1) Involves a matter related to the loaning agency's appropriation and will aid it in accomplishing the purpose for which appropriations are provided; or

(2) Will have a negligible impact on the loaning agency's appropriation. The GAO decision makes all details based on negligible impact subject to the time limits in this subchapter.

d. Details to congressional committees. According to the GAO decision, details to congressional committees made on a nonreimbursable basis because of negligible impact are subject to the time limits in this subchapter.

e. Written agreements. Written agreements between agencies and between components of a single agency are required for reimbursable details subject to the GAO decision. See 31 U.S.C. 1535.

8-7. DOCUMENTATION OF DETAILS

a. Intraagency Details.

(1) Agencies must use an SF 52, Request for Personnel Action, (or an SF 50, Notification of Personnel Action, at the agency's option) to document as a permanent record in the Official Personnel Folder:

--details for more than 30 days to a higher grade position or to a position with more promotion potential, and

—all other details for 120 days or more.

(2) *Exception*. An SF 52 is not required for a detail to a position identical to the employee's current position or one with the same grade, series, and basic duties as the employee's current position.

(3) Details for which an SF 52 is not required are still subject to the time limits in this subchapter. Agencies must still keep track of such details in order to know when to process a 120-day extension and when the maximum time limit has been reached.

b. Interagency Details. Agencies should document interagency details in the employee's Official Personnel Folder by filing a copy of the agreement with the borrowing agency or a completed SF 52.

8-8. REPORTS TO CONGRESS ON INTERAGENCY DETAILS

The Treasury, Postal Service and General Government Appropriations Act, requires Executive agencies to report annually to the Senate and House Committees on Appropriations on employees or members of the armed services detailed to other agencies. The report requirements are in the law, which is set out as a note preceding section 3341 in title 5 of the annotated U.S. Code (available in most Government libraries).

8-9. RELATED POLICIES

a. The time-after-competitive-appointment restriction applies to details of employees. See FPM Chapter 300, subchapter 5.

b. Qualifications Standards. OPM's qualification standards, other than those involving minimum educational requirements, are not mandatory for details. However, if an agency details an employee subject to merit promotion procedures, it must apply the same standards to all applicants.

c. Crediting Details for Qualifications Purposes. The General Policies and Instructions for the Qualifications Standards Handbook provide that the experience of employees on detail is credited as an extension of the work the employee was doing immediately prior to the detail, or on its own merits, *whichever is more beneficial to the employee.*

d. Time-in-grade requirements. Service while on detail is credited for time-in-grade purposes at the grade of the position the employee officially holds.

e. Competition. Although agencies may make intraagency details of employees to higher graded positions or positions with more promotion potential for a maximum of 1 year, competition under FPM Chapter 335 is required for certain details. See FPM Chapter 335 for time limits.

f. Performance appraisals for detailees. See 5 C.F.R. 430 and 432 and related FPM material.

Document No. 002833 SS

WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/15/93 **ACTION/CONCURRENCE/COMMENT DUE BY:** 10:00am 2/16/93

SUBJECT: DIRECTION OF NATIONAL SERVICE INITIATIVE

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☑	PASTER	☑	☐
McLARTY	☐	☑	RASCO	☑	☐
GEARAN	☑	☐	RUBIN	☐	☑
PANETTA	☑	☐	SEGAL	☐	☑
EMANUEL	☐	☑	STEPHANOPOULOS	☐	☑
GIBBONS	☐	☐	VARNEY	☐	☐
HALE	☐	☐	WATKINS	☐	☐
HERMAN	☐	☑	WILLIAMS/HRC	☑	☐
LAKE	☐	☐	VERVEER	☑	☐
LINDSEY	☐	☐		☐	☐
MONTOYA	☐	☑		☐	☐
NUSSBAUM	☐	☑		☐	☐

REMARKS:

This is an important decision document on National Service. I would like to forward to the President tomorrow. If you have views, comments, ect., please respond by the deadline.

RESPONSE:

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
Ext. 2702

THE WHITE HOUSE

WASHINGTON

February 15, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: ELI J. SEGAL

SUBJECT: DIRECTION OF NATIONAL SERVICE INITIATIVE

The vision of national service that you expressed at last Thursday's NEC meeting differs significantly from the approach that evolved during the Transition. The purpose of this memorandum is to outline the differences and present three key issues for your decision. These decisions are essential to completing the design of a program and the drafting of legislation for submission to Congress.

Given the large commitment of resources to national service in the budget, and the fact that we will be responding to many inquiries when the numbers are released, it is all the more important to resolve these issues as quickly as possible.

Background: Competing Visions of National Service

There may well have been an intellectual disconnect between the middle class higher education program you articulated in the campaign and the view that evolved during the Transition. The following history, while oversimplified, gives a sense of how the Transition plan evolved.

DLC View

The DLC national service plan envisions a program to help mold good citizens at the earliest possible age -- preferably before college. The DLC stresses the value of economic diversity among participants, pointing to the social benefits associated with the military draft. To make the program attractive to middle class students (and assure participation by an economically diverse population) the DLC supports the highest possible post-service benefit.

The DLC model is Boston's City Year, in which an economically diverse group of mostly pre-college youths perform relatively low-skill tasks.

Service Community View

A significant segment of the service community aims to maximize the availability of national service opportunities to at-risk youth. They tend to favor smaller post-service benefits in order to accommodate more participants. Senator Kennedy and others concerned about creating opportunities for low income youth will be concerned about maintaining some parity between service program education benefits and the level of benefits available under the means-tested Pell Grant program. They hope to avoid giving higher benefits to middle class students than are available to poor students.

These advocates share the DLC view that pre-college programs should be emphasized. Their models include the Los Angeles Conservation Corps, in which poor and primarily Latino youths have worked to revitalize South Central Los Angeles.

Transition Synthesis

At a December meeting after visiting Boston's City Year, Al From, Senators Mikulski, Nunn, Kennedy, and Wofford, and Congressman McCurdy reached substantial agreement among themselves on guidelines for national service legislation.

Building on your Notre Dame speech during the campaign (Tab 1), the Transition proposal and the resultant outline for legislation (Tab 2) reflect the view that national service should place significant -- perhaps primary -- emphasis on pre-college, low-skill, group service.

The central outstanding question among Transition advisors, ranging from Al From to Peter Edelman, regarded the size of the post-service benefit.

Implementing the Campaign Promise

It is clear that you envision a national service program stressing post-college, high-skill individual service (such as teaching as opposed to corps). In particular, you made it clear at the NEC meeting last week that you view the service program as an extension of your promise to make college more accessible to the middle class, and that you do not view the service program as a social program.

In the following section I will present both the issues that you need to consider and the major policy issues which we are presenting for your decision. While you can simply indicate on this memo, or in a meeting with me what decisions you choose, I think the best course may be for you to meet with several key congressional leaders to hear the debate that will arise on the Hill.

A very useful meeting would include Senators Kennedy, Nunn, Wofford and Mikulski and Congressman Ford.

Issues to Consider

(1) Political Support: Either or both sides of the unlikely Nunn-Kennedy coalition might oppose the balance in your approach, one group on the basis of the pre/post college mix and the other because of the size of the benefit.

(2) Economic Diversity: By aiming for a lower age group, in which low income and middle class are equally represented, the Transition approach hopes to place middle-class and underclass youths side-by-side. By aiming the program at a post-college group (which is one quarter of the population and disproportionately middle class) a post-college approach would tend to result in less economic diversity.

(3) Absorption: While there are dozens of pre-college corps around the country (although only City Year has the economic diversity that is desired) there are fewer functioning models of post-college programs (Teach for America, VISTA, etc.). There may be problems creating the promised number of slots at the post-college level.

(4) Two-tier professional structure: If there are truly a large number of college graduates ready to serve, the real issue may be a shortage of funding for communities to hire teachers (and police officers, nurses, etc.). At the other extreme, creating "real" jobs may raise fears of job displacement by creating a class of semi-professionals.

Decisions

As you can see from the attached outline, legislation can be drafted to permit a range of possible implementation approaches. The legislation can specify target pre/post college participation levels or leave that decision to administrative guidelines; the level of benefits could be left flexible up to a ceiling; and the types of service can be defined very broadly.

We are proceeding on the presumption that you want a legislative proposal to clearly articulate your vision, and in order to draft legislation which does so, the following decisions are critical.

(1) Pre/Post College Mix

Legislation should specify either a range or a specific mix of participants for whom the program is intended. In addition, at last week's NEC meeting you raised the possibility of a differential education benefit for pre and post college participants.

(A) Target population

The pro and con arguments are discussed fully above. Please indicate your preference below:

______ Most funding for post-college slots, lesser for pre-college

______ Equal weighting

______ Most funding for pre-college slots, lesser for post-college.

______ Prefered ratio (e.g. 80/20; 60/40) ________

(B) Differential Benefits

The argument for a differential benefit is that the value of work and the market wage for younger and lower skilled particpants is not as high as the comparable value and wage for a college graduate.

The argument against a differential benefit is that a lower benefit for pre-college participants will discourage middle class participation.

Recommendation: The idea of a differential rate is very attractive and would help shift the use of dollars in the program towards the post-college program that is your principal concern.

______ Design a differential benefit

______ Design a single benefit structure

(2) Size of Education Benefit

As discussed above, the principal outstanding question in the Transition concerned the size of the post-service benefit.

Since the DLC considered diversity of participation the critical issue, the $10,000 benefit was seen as essential to attract middle-class participants. For Peter Edelman and Melanne Verveer, $5,000 is enough of an incentive for someone who needs the program most and for middle class graduates who really want to serve.

Arguments for $5,000 education benefit

(1) With limited funding for means-tested programs, offering higher benefits for middle class graduates would create a political and perhaps a policy problem. Peter Edelman, for example, believes that a $10,000 benefit would be "dead on arrival" in Congress.

(2) Newt Gingrich et al. could parody the program describing the $10,000 benefit as creating middle class welfare queens.

(3) A lower post-service benefit would open the program up to more participants.

(4) A two-year, $5,000 per year benefit would more than offset the average unpaid student loan of $6700. Particularly with regard to post-college benefits, levels of indebtedness is a more important consideration than total cost of college, since other arrangements have already been made to cover non-financed costs.

(5) A higher benefit may create an incentive for students to go deeper into debt in the hope that they will be accepted to this program and have higher loans to repay.

Arguments for $10,000 education benefit

(1) Many of your key campaign aides, such as Stan Greenberg, believe that only a very large benefit will be seen as fulfilling your campaign promise to let kids pay off the cost of a college education in exchange for serving.

(2) A high benefit maximizes the program's appeal to the middle-class, ensuring that national service does not become a "poor people's program".

(3) If you start with $10,000, Congress may force you to go down to $7,500 or even $5,000; if you start with $5,000, you may end up at a lower and utterly inadequate figure.

Recommendation: There are compelling political and substantive arguments on both sides of the case. I would recommend coming in at a high benefit, but below $10,000, perhaps $7,500 or $8,000.

Please indicate the benefit level you want:

_____ $10,000

_____ $7,500

_____ $5,000

_____ Other _______________

Conclusion

After the issues presented in this memo are resolved, we will be in a position to draft legislation rather quickly. While there are other important issues to be decided, including the extent to which matching funding will be required to achieve a public/private partnership, in my view these will be relatively easy to decide compared to the philosophical issues presented above.

TAB 1

Excerpts from September 11, 1992 Notre Dame Speech

Throughout this campaign I've talked about my plan to open the doors of college to every American. To offer every American in this country the opportunity to borrow the money to go to college and then require them to pay it back, either as a small percentage of their paychecks after they go to work or even better, by going back home and serving their community.

Frankly, I would much rather see everyone, whether they are rich, or poor, or middle class, pay back that debt by going home and working for two years in a peace corps here in America, to rebuild America. Just think of it. Millions of energetic young men and women serving their country by teaching the children, policing the streets, caring for the sick, working with the elderly, or people with disabilities, building homes for the homeless, helping children to stay off of drugs and out of gangs -- giving us all a new sense of home and real limitless possibilities.

I have offered this plan to help more young people go to college, but I have also offered it because I want America to send the message that our society values and honors service to community, just as Harry Truman's GI Bill honored the service of my father's generation, who fought and won World War II, just as the Peace Corps, which President Kennedy created with the help of you former president, Father Hesburgh and Senator Wofford, sent that message to my generation. Just as millions of Americans from all backgrounds and every walk of life are waiting for a summons to service and citizenship, not just for young people that are going on to college but for young people in our high schools and people of all ages who want to so something for their communities and for their country.

 DRAFT

National Service Trust Fund Act of 1993

A. Establishment of the National Service Trust Fund

Funds appropriated to the Trust Fund may be used to provide a benefit worth $10,000 for each year of service to individual completing one or two terms of approved national service.

States and a new National Service Agency will approve national service positions in the areas of education, human services, environment, and public safety from among the following:

-- Programs funded in part 3 of section B, below.

-- Program comparable to those funded in part 3 of section B, below.

-- In the case of individuals who have completed one term of national service in a youth corps program, service on the staff of a youth corps program.

-- Service as a service-learning coordinator in a program eligible for funding under part 1 of section B, below.

-- Service in employer-support service positions that have been vacant for not less than a year and are unlikely to be filled due to a shortage of qualified applicants and that are located in depressed urban or rural areas.

To guard against displacement of paid workers, the nondisplacement and nonduplication provisions of the National and Community Service Act (NCSA) apply to all positions.

The ability to approve half of national service positions will be awarded to states -- one-fourth of positions to be allocated to states based on population and one-fourth based on a competition. The other half of positions will be awarded on a competitive basis by the National Service Agency -- at least one-fourth directly to public and private non-profit organizations and up to one-fourth to federally run programs or programs sponsored by other federal agencies.

Any recent college graduate of any age or out-of-school youth may participate by applying to and being accepted into a program offering approved national service positions. To assist individuals in locating approved positions, a national database will be established which can be accessed through college placement offices, employment centers, and other appropriate locations.

A minimum term of service qualifying the individual for a $10,000 benefit is equal to 1500 hours of service over a period of not less than nine months. A part-time term of service of the equivalent number of hours must be completed within three years. A benefit may be used to pay for tuition, fees, room and board at an institution of higher education, to repay qualified federal student loans, or to obtain employment training.

To promote national esprit de corps, the National Service Agency will arrange a national training program for participants, along with a national insignia to be used on uniforms, promotional materials, and other materials of approved programs. It will also arrange for a national visibility campaign promoting national service and facilitate creation of an alumni network of individuals who have participated in national service.

B. Authorization of National Service Programs

To support an infrastructure of national service positions, funding is authorized for stipends and benefits (health care, child care) for participants and for program support. Three types of National Service programs may be supported:

1. School-age service-learning programs, as authorized under subtitle B of the NCSA.

2. Older American programs, including the Older American Volunteer Programs of the Domestic Volunteer Service Act.

3. Full- and part-time national service eligible for benefits through the Trust Fund, including:

-- Youth Corps (as currently authorized in subtitle C and D of the National and Community Service Act);

-- Specialized Service Corps (including Earth Corps, Public Safety Corps, Health Corps, Education Corps, and a Child Welfare Corps);

-- Individual Placement Programs (as currently authorized in subtitle D of the NCSA and VISTA);

-- Professional Corps (including a Police Corps, Teach for America Corps, and Service-Learning Corps); and

-- Public Interest Entrepreneurs.