To: Welfare Reform Working Group Staff Contacts

From: Jeremy Ben-Ami

Subject: Update

Date: July 16, 1993

This memo updates you on several important items including the revised hearing schedule and new Working Group staff and provides you with several items that may be helpful including talking points and a public packet of information.

REGIONAL VISITS

We are settling on a revised schedule for the Working Group's regional visits based on input from the agencies and the White House --

Chicago: August 10 and 11 (definite)
Washington DC: August 19 (definite)
California: September 9 and 10 (tentative)
New Jersey: October 6 and 7 (tentative)
Tennessee: October 27 and 28 (tentative)

We will be doing a round of phone calls this week to confirm attendance at the above meetings and to ensure that the schedule is confirmed.

For the Chicago visit:

*Everyone should plan to leave Washington on Monday evening, August 9; you can plan to leave Chicago on Wednesday evening, August 11.

*Everyone should be staying at The Palmer House which is a Hilton Hotel: 17 East Monroe Street, Chicago, IL 60603 You can call Jim Hickman (401-6958) for further details.

NEW STAFF

There are several new staff who have recently joined the Welfare Reform Working Group who will most likely be working closely with all of you. Let me briefly identify them for you so you will take their phone calls! --

Patricia Sosa: Director of Public Outreach for the Working Group (401-9261)

Patricia's responsibilties include bringing advocacy groups and non-governmental organizations into the process of developing welfare reform policy. She will be coordinating meetings and briefings, and providing regular feedback to the Working Group on the reactions of the advocacy community. She will also be compiling a clearinghouse on these organizations and their positions on welfare reform.

Jim Hickman: Hearing Coordinator (401-6958)
Wanda Williams: Hearing Coordinator (401-1455)

Jim and Wanda are responsible for all aspects of planning and managing the regional visits of the Working Group. They will be coordinating schedules, arrangements regarding travel and accommodations as well as the itineraries for site visits and public forums.

Abbie Gottesman: (205-3600)

Abbie is working primarily on mail intake and response. She will also be working with Patricia Sosa on public outreach projects.

Toby Graff: (401-9258)

Toby is working with Patricia on public outreach and is responsible for tracking, scheduling and reporting on all meetings by the Working Group with outside organizations. If any of your agencies have meetings with outside organizations on welfare reform, please report them to Toby.

Helene Grady: (401-4886)

Helene is working on compiling a comprehensive profile of welfare data, model community programs, success stories and press coverage in each of the fifty states.

MODEL PROGRAMS

To help with a number of aspects of the above work, we would greatly appreciate your input regarding quality state and local contacts and examples of model programs. Not only are we looking for contacts in the hearing states, but also throughout the country for the state profiles.

TALKING POINTS/PUBLIC PACKET

Attached for the use of your agency are copies of both the official welfare reform talking points and the public packet we are distributing when people ask for background on the welfare reform effort.

I would greatly appreciate it if you could ensure that all the appropriate offices at your agencies receive copies of these items. These include, for example, public affairs, intergovernmental affairs, Congressional relations, speechwriting and the personal offices/assistants to the Working Group members and Cabinet Secretaries.

STAFF CONTACTS

Also attached is a copy of the staff contact list for the Working Group. Please look it over and let me know if there are any changes that should be made, any problems, etc.

WELFARE REFORM WORKING GROUP

Staff Contacts (as of 7/16/93)

Agriculture	Mike Fishman 703-305-2017 fax: 703-305-2576	Ellen Haas
Education	Judy Wurtzel 401-3281 fax: 401-3095	Madeleine Kunin Ray Cortines
HHS	Susan Bender 690-8204 fax: 690-6154	Walter Broadnax
	Marcy Carlson 690-7409 fax: 690-6562	Wendell Primus
	Ann McCormick 690-5880 fax: 690-6562	David Ellwood
	Carol Roddy 690-8335 fax: 690-6498	Joycelyn Elders
	Michelle Rodman 401-4541 fax: 401-7741	Fernando Torres-Gil
	Jeremy Ben-Ami 401-6954 fax: 401-4678	Mary Jo Bane
	Steve Hagey 690-6238 fax: 690-6896	Ken Apfel
HUD	Jill Khadduri 708-1537 fax: 708-5536	Michael Stegman
IRS	Robert Carver 622-6860 fax: 622-6536	Robert Carver
Justice	Deborah Sorkin 514-1026 fax: 514-6113	Eleanor Acheson Julie Samuels

Labor	Stacey Grundman 219-6151 fax: 219-7971	Thomas Glynn Doug Ross
Treasury	Ben Nye 622-2735 fax: 622-2633	Maurice Foley Alicia Munnell

White House Offices

Domestic Policy Council	Cookie Waldon 456-7777 fax: 456-7739	Kathi Way
	Cathy Mays 456-6515 fax: 456-7739	Bruce Reed
Inter-governmental	Mildred Taylor 456-2896 fax: 456-2889	Jeff Watson
National Service	Karen Ewing 456-6444 fax: 456-6420	Eli Segal
NEC	Bonnie Deane 456-2801 fax: 456-2223	Eugene Sperling
CEA	Francine Obermiller 395-5036 fax: 395-6947	Joseph Stiglitz
OMB	Wendy New 395-4844 fax: 395-5730	Isabel Sawhill
Vice President	Charlotte Hayes 456-6277 fax: 456-6231	Elaine Kamarck

Working Group on Welfare Reform, Family Support and Independence

Chairs

Bruce Reed	*Deputy Assistant to the President for Domestic Policy*
David Ellwood	*Assistant Secretary for Planning and Evaluation, Department of Health and Human Services*
	Assistant Secretary for the Administration for Children and Families, Department of Health and Human Services

Members

Ken Apfel	*Assistant Secretary for Management and Budget, Health and Human Services*
Walter Broadnax	*Deputy Secretary, Department of Health and Human Services*
Robert Carver	*Deputy Assistant Secretary for Returns Processing, Treasury Department*
Maurice Foley	*Office of Tax Policy, Treasury Department*
Thomas Glynn	*Deputy Secretary, Department of Labor*
Ellen Haas	*Assistant Secretary for Food and Consumer Services, Department of Agriculture*
Elaine Kamarck	*Office of the Vice President*
Madeleine Kunin	*Deputy Secretary, Department of Education*
Alicia Munnell	*Assistant Secretary for Economic Policy, Treasury Department*
Larry Parks	*Senior Advisor to the Secretary, Department of Commerce*
Wendell Primus	*Deputy Assistant Secretary for Human Services Policy, Department of Health and Human Services*
Julie Samuels	*Director, Office of Policy and Management Analysis, Department of Justice*
Isabel Sawhill	*Associate Director for Human Resources, Office of Management and Budget*
Eli Segal	*Assistant to the President for National Service*
Eugene Sperling	*Deputy Assistant to the President for Economic Policy*
Michael Stegman	*Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development*
Joseph Stiglitz	*Council of Economic Advisors*
Fernando Torres-Gil	*Assistant Secretary for Aging, Department of Health and Human Services*
Jeff Watson	*Deputy Assistant to the President for Intergovernmental Affairs*
Kathi Way	*Special Assistant to the President for Domestic Policy*
	Surgeon General
	Assistant Secretary for Intergovernmental and Interagency Affairs, Department of Education
	Assistant Attorney General for Policy Development, Department of Justice
	Assistant Secretary, Employment and Training Administration, Department of Labor

Charge to the Working Group on Welfare Reform, Family Support and Independence

> *"It's time to honor and reward people who work hard and play by the rules. That means ending welfare as we know it -- not by punishing the poor or preaching to them, but by empowering Americans to take care of their children and improve their lives. No one who works full-time and has children at home should be poor anymore. No one who can work should be able to stay on welfare forever."*
>
> -- President Bill Clinton
> Putting People First

President Clinton has charged the Working Group to develop a proposal to "end welfare as we know it." The Working Group is guided by four principles underlying the President's vision for reform:

Make Work Pay -- People who work should not be poor. They should get the support they need to ensure that they can work and adequately support their families. The economic support system must provide incentives that encourage families to work and not stay on welfare.

Dramatically Improve Child Support Enforcement -- Both parents have a responsibility to support their children. One parent should not have to do the work of two. Only one-third of single parents currently receive any court-ordered child support. The system for identifying fathers and ensuring that their children receive the support they deserve must be strengthened.

Provide Education, Training, and Other Services to Help People Get Off and Stay Off Welfare -- People should have access to the basic education and training they need to get and hold onto a job. Existing programs encouraged by the Family Support Act of 1988 need to be expanded, improved and better coordinated.

Create a Time-Limited Transitional Support System Followed By Work -- With the first three steps in place, assistance can be made truly transitional. Those who are healthy and able to work will be expected to move off welfare quickly, and those who cannot find jobs should be provided with work and expected to support their families.

Based on these core principles, the Working Group will be developing a detailed proposal that will not simply change the welfare system but will ultimately provide a genuine alternative to it.

Welfare Reform: Next Steps

The Welfare Reform Working Group is charged with presenting a detailed proposal to create a transitional assistance system in line with the broad principles outlined by the President. To tackle this complex task, the Working Group is assigning staff to develop background information and policy options in the following areas:

Making Work Pay -- to explore ways of improving the economic incentives to work and the distribution of financial and other supports for the working poor, such as the Earned Income Tax Credit

Child Support -- to address issues ranging from paternity establishment and support enforcement to the possibility of a child support insurance/assurance program

Absent Parents -- to examine current government policies as they relate to absent parents so that they can better meet their parental responsibilities

Transitional Support -- to review strategies for providing assistance on a temporary basis along with the education, training, and other supports needed to get off welfare and into jobs

Post Transitional Work -- to examine the issues related to employing those reaching the end of their time-limited assistance

Child Care -- to explore how best to meet the need for child care in a system of transitional assistance and mandatory work

Program Simplification -- to look at the rules and regulations of benefit programs for low income families to find ways to make them more uniform and simple

Private Sector Job Creation -- to focus on including in a transitional assistance system the incentives necessary to create jobs for welfare recipients in the private sector

Prevention/Family Stability -- to ensure that efforts to prevent out-of-wedlock births and family break-up are given priority in the reform plan

While federal employees will be staffing the Working Group, they will be seeking input and proposals from individuals and organizations outside the government. Those who are interested in providing input, ideas and suggestions are invited to write to the Working Group at the address provided on the following page. Specific proposals as well as general comments are welcome.

Public Input in Welfare Reform

The Working Group has made public involvement and input a top priority as it develops its proposal for the President. To achieve this, the Working Group will be taking a number of very specific steps to involve the public in its work:

Hearings/Public Events -- The Working Group will be holding a series of hearings and events across the country during the summer designed to provide the public with an opportunity to present the Working Group with their ideas and opinions. These events will also allow the Working Group to begin to get public reaction to some of the ideas it is developing. The schedule of these public events should be available by the end of June.

Working Papers -- The Working Group will be publishing a series of working papers over the course of the summer and fall to provide information and spark public discussion of the issues underlying the welfare reform effort. These papers will be widely circulated. To receive copies, please write to the Working Group at the address listed below.

Meetings/Briefings -- Working Group staff will be setting up briefings and meetings for groups of organizations interested in welfare reform. A special office of Public Liaison is being set up by the Working Group to reach out to organizations concerned with welfare issues to ensure that information is widely disseminated and that a broad range of opinions are being solicited to inform the efforts of the Working Group.

Intake Center -- The Working Group is establishing an intake center for all mail and information requests. The Center will ensure that proposals, suggestions, and ideas are forwarded to the appropriate staff and that requests for meetings and speakers are handled in a timely manner. To contact the Working Group, please write to:

Welfare Reform Working Group
Administration for Children and Families
370 L'Enfant Promenade SW 6th floor
Washington, D.C. 20047

TALKING POINTS
Welfare Reform

GENERAL GUIDANCE

- <u>Welfare is a Top Priority</u> Welfare reform is a top priority of the President/Administration/Department. The President is committed to developing a bold program to "end welfare as we know it."

- <u>Four Values</u> Work, Family, Opportunity, Responsibility. The welfare system discourages work, weakens families, provides no real opportunity, and fails to reward responsibility. Our plan will be based on the values at the core of American beliefs:

  WORK -- If you work, you shouldn't be poor; those who play by the rules should be rewarded

  FAMILY -- Both parents have an obligation to support their children; parents should support their children, not the government

  OPPORTUNITY AND RESPONSIBILITY -- The fundamental linkage underlying the support system: the government should provide people with the support they need to get and hold a job -- training, education, child care or health care. However, individuals, not the government, must be responsibile for their families. Both parents must support their children and those who can work will be expected to work to support their families.

- <u>These Values Lead to the Four Principles Underlying the President's Vision</u> All administration speeches/comments on welfare reform should emphasize the four principles: (1) Making Work Pay; (2) Improving Child Support Enforcement; (3) Providing Education, Training, and Support to help people get and hold jobs; and (4) Creating a System of Time Limited Transitional Support followed by Work. These goals are discussed in more detail on the following page.

CAUTIONS

- <u>It's Too Early to Discuss Specifics</u> It is too early to address questions about specific aspects of the welfare reform plan. Many policy options are under discussion, and, in general, particular ideas have not been ruled on or off the table.

- <u>Do Not Discuss Dates/Deadlines/Timelines</u> The Working Group intends to have a plan for the Domestic Policy Council and the President to review as soon as possible, but we are not publicly committing to a date for releasing the plan or submitting legislation.

- <u>Do Not Discuss Costs/Budgets In Any Detail</u> It is still too early in the Working Group's work to discuss costs. We anticipate that returning welfare to its original purpose as a transitional assistance program will reduce caseloads and save money in the long run.

WELFARE REFORM WORKING GROUP

- o The Welfare Reform Working Group was announced by President Clinton on June 11, 1993.

- o The Working Group is comprised generally of senior, sub-cabinet level appointees from a variety of Departments and White House offices. The list of members is attached. It will be chaired by Bruce Reed, David Ellwood, and Mary Jo Bane.

- o The staff of the Working Group is made up of federal employees. They will be consulting widely with individuals and organizations with an interest and expertise in welfare reform. They will also be working closely with Congress and officials from state and local government. These efforts are described in more detail on the following page.

GOALS

President Clinton has charged the Working Group to develop a proposal to "end welfare as we know it." The Working Group is guided by four principles underlying the President's vision for reform:

- o **Make Work Pay** -- People who work should not be poor. They should get the support they need to ensure that they can work and adequately support their families. The economic support system must provide incentives that encourage families to work and not stay on welfare.

- o **Dramatically Improve Child Support Enforcement** -- Both parents have a responsibility to support their children. One parent should not have to do the work of two. Only one-third of single parents currently receive any court-ordered child support. The system for identifying fathers and ensuring that their children receive the support they deserve must be strengthened.

- o **Provide Education, Training, and Other Services to Help People Get Off and Stay Off Welfare** -- People should have access to the basic education and training they need to get and hold onto a job. Existing programs encouraged by the Family Support Act of 1988 need to be expanded, improved and better coordinated.

- o **Create a Time-Limited Transitional Support System Followed By Work** -- With the first three steps in place, assistance can be made truly transitional. Those who are healthy and able to work will be expected to move off welfare quickly, and those who cannot find jobs should be provided with work and expected to support their families.

Based on these core principles, the Working Group will be developing a detailed proposal that will not simply change the welfare system but will ultimately provide a genuine alternative to it.

PUBLIC INPUT

While the Working Group and its staff are federal employees, they will be working closely with individuals and organizations outside the government in an open and collaborative process to develop ideas and policy options. The Working Group will be taking a number of very specific steps to involve the public in its work:

- **Hearings/Public Events** -- The Working Group will hold hearings and public events across the country designed to provide the public with an opportunity to present the Working Group to begin to get public reaction to some of the ideas it is developing.

- **Briefing Papers** -- The Working Group will be publishing a series of working papers over the course of the summer and fall which will be designed to provide information and spark public discussion of the issues underlying the welfare reform effort. These papers will be widely circulated.

- **Meetings/Briefings** -- Working Group staff will be setting up briefings and meetings and consulting widely with groups and organizations interested in welfare reform. A special office of Public Liaison is being set up by the Working Group to reach out to organizations concerned with welfare issues to ensure that information is widely disseminated and a broad range of opinions are being solicited to inform the efforts of the Working Group.

- **Intake Center** -- The Working Group is establishing an intake center for all mail and information requests. The Center will ensure that proposals, suggestions, and ideas are forwarded to the appropriate issue groups and that requests for meetings and speakers are handled in a timely manner.

COLLABORATION WITH CONGRESS

Congressional experience, particularly with the Family Support Act of 1988, is also extraordinarily valuable in the development of a welfare reform plan. The administration will work closely with the leadership and committee chairs in both Houses prior to introducing legislation.

COLLABORATION WITH THE STATES AND LOCALITIES

The President beleives the experiences of the States provide valuable lessons for the development of national policy. He has, therefore, asked the Governors, State legislators, and State welfare directors to form a group to consult with the administration throughout the development of the welfare reform plan.

WELFARE REFORM, FAMILY SUPPORT AND INDEPENDENCE

The Challenge: To design a support system that rewards and reinforces work, family, responsibility, independence, and community.

The Problems: Work often does not pay. Working people are often worse off and more insecure than those collecting welfare.

Single parents are expected to do the job of two. Absent parents are often not expected and even discouraged from helping to support and nurture their children.

Welfare discourages work, isolates, stigmatizes, and humiliates. Recipients often remain on welfare for years. Current system of support from many different programs is fragmented, complex and often counterproductive.

The Reforms: **Make Work Work**

Transform Child Support Enforcement

Expand and Improve Education and Training

Create a Transitional Welfare System Followed by Work

MAKE WORK WORK

The Goal: Make work genuinely feasible and rewarding for all persons.

Strategies:

Modifications of Existing Programs or Reforms Already Underway:

Expand tax credits--EITC (Treasury)
Raise Minimum wage (DOL)
Expand and Improve Child Care (HHS, Treasury, Ed)
Improve Food Stamp Work Incentives (Ag)
Improve Housing Assistance Work Incentives (HUD)

Big Ideas/ New Initiatives

Worker Support Offices to provide advance payment of the EITC and any other transfers, help with child care, health insurance, transportation, job placement, support services, training, and even provide jobs for welfare exhaustees.

Drastically simplify, consolidate, and possibly cash out existing transfer programs for which the working poor qualify.

Key Questions:

Should we go much beyond the items already in the budget to support workers?

How can we get the EITC and health coverage to people in a simple and timely fashion?

Does it make sense to consolidate multiple programs for low income workers?

Who would administer worker support offices?

TRANSFORM CHILD SUPPORT ENFORCEMENT

The Goal: Insure that children get the support they deserve and need from absent and custodial parents. Make self-support feasible for single mothers.

Strategies:

Modifications of Existing Programs or Reforms Already Underway:

In-hospital Paternity Establishment (HHS/states)
Improve Guidelines (HHS/states)
W-4 Reporting (HHS or Treasury)
Improved Withholding (HHS/states)
Nationwide Data Sharing (HHS/states)
Mandatory Updating (HHS/states)
Increased Penalties (license suspension, etc) (HHS/states)

Big Ideas/ New Initiatives

Completely Decouple Child Support Enforcement from AFDC receipt. Remove mother as enforcer.

Statewide or Federal Registry and Collection of All Awards

Child Support Enforcement and Insurance

Key Questions:

How much should single mothers be expected to work in order to escape poverty and welfare?

How much can realistically be collected from absent fathers?

What should be done to support or penalize fathers who cannot or will not pay?

What elements of child support enforcement should be administered by what level of government?

Costs and Collections

Expand and Improve Education and Training

The Goal: Create a training system that really helps people move ahead and reduces their need for welfare.

Strategies:

Modifications of Existing Programs or Reforms Already Underway:

AFDC-JOBS (HHS)
JTPA (DOL)
Vocational Education (DOE)
Adult Education (DOE)
Local School Systems
Community Colleges
Pell Grants (DOE)
National Service

Big Ideas/ New Initiatives

Establish a more unified training system not linked to welfare receipt per se. Possibly link training to worker support offices.

Key Questions:

How intensive and expensive should training be?

Should training come first?

What strategies work best for whom?

Should welfare recipients be given special programs and attention?

Create a Transitional Welfare System Followed by Work

The Goal: For the healthy and employable, transform the current welfare system with a genuinely time-limited, transitional one followed by work.

Strategies:

Modifications of Existing Programs or Reforms Already Underway:

AFDC-JOBS (HHS)
(Modify existing JOBS program to require Community Work Experience Program CWEP for persons after some point)

Big Ideas/ New Initiatives

Create a number of PSE jobs for former welfare recipients.

Create new transitional support program which ends after certain time and create special jobs programs for people leaving the transitional support system.

Link jobs to worker support offices

Key Questions:

How many people can realistically be expected to work?

What happens to the "walking wounded"?

How do we determine employability?

Work for the welfare check or work instead of welfare? (CWEP versus PSE)

What happens if people refuse to work?

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Business and Administrative Law
Rm. 5362 Cohen Bldg.
330 Independence Ave., S.W.
Washington, D.C. 20201

May 3, 1993

MEMORANDUM

TO : Paul K. Legler
Special Assistant
Office of the Assistant Secretary for
Planning and Evaluation

FROM : Associate General Counsel

SUBJECT: Working Group on Family Support and Independence

I am responding to your April 6 memorandum to Harriet Rabb in which you seek legal advice on a series of questions related to development of a plan for welfare reform.

You indicate that a "Working Group on Family Support and Independence" ("Working Group") comprised solely of full-time federal employees will be formed to develop a welfare reform plan for submission to the Domestic Policy Council by September 3, 1993. Although you indicate that President Clinton has announced that he would form such a group, you do not say specifically whether the President or the Domestic Policy Council will establish the Working Group you describe. Second, you do not state specifically whether the President or the Council will utilize the Working Group; that is, whether the Working Group is intended to advise the President or the Council. These kinds of facts would normally be important to the questions of whether or not the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2, applies and why, and further, if it does apply, what rules must then be followed. However, as you will note from our responses below, your statement that the Working Group's membership will be confined to full-time federal employees, is dispositive of the FACA-applicability question.

Our analysis and advice assume that the President will establish the Working Group, much as he did with the National Health Care Reform Task Force, which will be comprised solely of full-time federal employees and utilized by the President and/or the Council. We have ruled out an assumption that the Secretary of Health and Human Services ("HHS") will establish the Working Group under the Department's auspices. If we are incorrect, please let us know because the answers to some of your questions would be different.

You also state that a separate entity of about 21 teams ("issue groups") comprised of current full-time Department of Health and Human Services ("HHS") and other federal agency employees will be organized to provide support services to the Working Group. We assume that these teams will be organized under HHS's auspices/leadership. Based on your description of their activities, we assume that these teams will not be subcommittees or subgroups of the Working Group. We make note of this because the FACA's definition of "advisory committee" makes plain that a "subcommittee" or "subgroup" of an advisory committee can itself be subject to the FACA. FACA § 3 (2). Even if our assumption be incorrect, you will note from our response to your question one, that the functions of a particular group are critical to determining whether it is a FACA-subject committee.

In addition to engaging the services of full-time federal employees to form the teams, you propose to call upon temporary employees, Intergovernmental Personnel Act assignees/detailees, other detailees, contractors, consultants, volunteers and others hired for short periods to support the Working Group effort. From the information you provided, it appears that the non-federal personnel will be providing factual information rather than developing or offering consensus advice to the Working Group and will interact primarily, if not exclusively, with members of the issue groups. Moreover, it appears from your material that the teams, regardless of their membership, will not in any case be "advising" the "utilizers" of the Working Group; namely, the President and/or the Domestic Policy Council.

You seek advice to ensure that any actions taken in connection with the Working Group and support teams comply with the FACA and other federal laws that may apply.

Before responding to your questions seriatim, I want to advise caution at the outset on one matter raised in the material. You indicate that you expect that the Working Group will conduct a series of public forums and you are soliciting foundation support to help organize and finance such events. As a general rule, an agency must operate within the limits of its appropriated funds and may not augment it appropriations from outside sources without specific statutory authority. See, e.g., 55 Comp. Gen. 1293 (1976) and 70 Comp. Gen. 597, 598 (1991). This prohibition derives from the constitutional requirement that "[n]o money may be drawn from the Treasury, but in Consequence of Appropriations made by Law..." U.S. Const. art. I, § 9, cl. 7.

The interdiction against "augmentation" is a corollary to the "separation of powers" doctrine. When Congress makes an appropriation, it is establishing an authorized program level which also operates as the funding ceiling. Accordingly, the "augmentation" prohibition seeks to ensure that the Executive Branch limits its expenditures to the appropriations it receives, unless specifically authorized by law to receive "donations" or "gifts." Simply stated, we follow the rule that an agency may not accept gifts of money or property in the absence of specific statutory authority. 16 Comp. Gen. 911 (1937).

Congress has vested HHS with several gift acceptance authorities, but they are for the benefit of the Public Health Service and the Social Security Trust Funds. Except for the statutory authorities to accept travel reimbursement from outside sources at 31 U.S.C. § 1353 and 42 U.S.C. § 3506, which apply HHS-wide, neither the Office of the Secretary nor the Administration for Children and Families has any authority to accept or solicit gifts.[1] Based on the facts you present, it is our view that HHS's soliciting outside financial support to help meet the costs of the proposed public forums would likely be an impermissible augmentation of funds.[2]

Though it is clear that accepting gifts of cash or property without statutory authority is impermissible, it is less clear whether any agency's acceptance of outside services without statutory authority would also produce an impermissible augmentation of its appropriations. The Comptroller General's decisions have not been consistent on this issue. Under various circumstances, which do not necessarily follow any clear pattern, the Comptroller General has found that in the absence of gift acceptance authority, an agency's acceptance of some services amounts to an illegal augmentation while its acceptance of other services does not. 11 Comp. Gen. 622 (1905) (Navy could accept installation of appliance); B-211079.2 (Jan. 2, 1987) (agency

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[1] Also, because the authority to accept gifts is an exceptional one, the Office of the General Counsel narrowly construes any such authority and has consistently advised agency officials that gift acceptance authority does not ordinarily include gift solicitation authority. See, e.g., Mem. from the General Counsel to the Secretary, Feb. 20, 1991. (Attached at Tab A.)

[2] We wish to make very clear that our analysis and advice on this matter are confined to HHS actions. We defer to White House Counsel with respect to whether the Office of the President has any gift acceptance authority on which the Working Group as a Presidential Advisory Committee could rely to achieve the aims you mention. Likewise, we defer to the Counsels of other federal agencies whose officials may make up part of the Working Group and whose agencies may also be operating under less restrictive statutory authorities and could do what HHS cannot.

cannot accept work of "workfare" participants). Of major significance in these cases is whether the agency would normally provide the service in question with its own personnel. If so, acceptance of the offered services may amount to an impermissible augmentation of appropriations. Accordingly, we recommend that offers to provide intangible gifts, such as services, be reviewed on a case-by-case basis and that you consult with us if any such offer arises involving HHS as the recipient.

Despite the limits on using outside resources, HHS may co-sponsor an event with a non-government entity under some circumstances. Co-sponsorship refers to the joint development and/or presentation of a conference, seminar, symposium, etc. by the Department and one or more non-federal entities which share a mutual interest in the subject matter. It generally involves a co-funding arrangement between the parties; that is, HHS typically makes grant or other funds available to the other party to help defray the costs of a co-sponsored forum or conference. Your office has considerable experience in such matters. If you consider co-sponsoring an event, I nonetheless recommend that you consult with us further on any FACA implications and contact the Ethics Division of this Office for specific guidance on ethical issues involved in co-sponsorship. Attached (Tab B) for your information is our Ethics Division's guidelines on co-sponsorship, which though in draft form, are currently being applied.

FEDERAL ADVISORY COMMITTEE ACT

1. What is the general rule for determining whether FACA applies?

ANSWER: We rely chiefly on three legal sources in determining whether the Federal Advisory Committee Act applies to any particular group: (a) the statute -- Federal Advisory Committee Act ("FACA" or "Act"), Pub. L. No. 92-463, as amended, 5 U.S.C. App. 2; (b) the sole Supreme Court decision construing the Act, Public Citizen v. United States Dep't of Justice, 109 S. Ct. 2558 (1989); and (c) the government-wide FACA regulations issued by the Administrator of the General Services Administration ("GSA"), 41 C.F.R. Subpart 101-6.10. The FACA vests the GSA Administrator with focal point authority for the Executive Branch's administration of the Act. FACA § 7. (HHS has also published Advisory Committee regulations which appear at 45 C.F.R. Part 11; however, they are not current in some key respects. Also, insofar as the Working Group appears to be a Presidential Advisory Committee, the HHS regulations would not apply to it.)

By way of introduction, FACA was enacted to stem the proliferation of advisory committees through which private individuals outside the government were able to influence governmental decision making to the exclusion of the general public. See FACA § 2; see also, H. Rep. No. 92-1017, 92d Cong., 2d Sess. 2, 6 (1972), reprinted in U.S.C.C.A.N. 3491, 3492, 3496; Public Citizen, 109 S. Ct. at 2562. Accordingly, the FACA establishes a means to ensure that the need for such committees is properly justified, FACA § 2(b)(1)-(3), and increases the accountability of such committees by making their meetings open to the public and requiring disclosure of their purposes, membership, costs and activities, FACA § 2(b)(4)-(6).[3]

The Act defines the term "advisory committee" broadly as "any committee, board, commission, council, conference, panel, task force, or other similar group" that is--

- established by statute or reorganization plan, or
- established or utilized by the President, or
- established or utilized by one or more agencies

in the interest of obtaining advice or recommendations. FACA § 3(2).

It excludes from its coverage, however, "any committee which is composed wholly of full-time officers or employees of the Federal Government" because they are not the government "outsiders" Congress was concerned about whose private interests could color the advice provided federal policy makers. FACA § 3(2)(iii), S. Rep. No. 92-1098, 92d Cong., 2d Sess. at 17. The FACA does not define "officers or employees of the Federal Government."[4] However, there is general agreement that at least the definitions

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[3] In a similar vein, President Clinton issued Executive Order 12838, "Termination and Limitation of Federal Advisory Committees," on February 10, 1993, directing a comprehensive Executive Branch review of existing committees with a view toward their reduction. Pursuant to the Executive Order, Director Panetta issued OMB Bulletin No. 93-10 on April 10, 1993 spelling out the procedures for implementing the Executive Order.

[4] Indeed, the question, for example, of whether the First Lady is a government officer or employee or the equivalent for purposes of the FACA's application to the President's Health Care Reform Task Force is before the Court of Appeals for the District of Columbia Circuit on the government's appeal of the district court's holding that she is not. Association of Am. Physicians and Surgeons v. Clinton, No. 93-0399 (D.D.C. Mar. 10, 1993), appeal docketed, No. 93-5086 (D.C. Cir. Mar. 22, 1993).

of "officer" and "employee" set forth at 5 U.S.C. §§ 2104 and 2105 apply. Those sections provide in relevant part as follows:

> <u>Section 2104 - Officer</u>
> (a) For the purpose of this title [5], "officer,"... means ... an individual who is -
>
> (1) required by law to be appointed in the civil service by one of the following acting in an official capacity -
>
> (A) the President;
> (B) a court of the United States;
> (C) the head of an Executive agency; or
> (D) the Secretary of a military department;
>
> (2) engaged in the performance of a Federal function under the authority of law or an Executive act; and
>
> (3) subject to the supervision of an authority named by paragraph (1) ... while engaged in the performance of the duties of his office.
>
> <u>Section 2105 - Employee</u>
> (a) For the purposes of this title [5], "employee," ... means an officer and an individual who is -
>
> (1) appointed in the civil service by one of the following acting in an official capacity -
>
> (A) the President;
> (B) ...
> (D) an individual who is an employee under this section;
> (E) ...
>
> (2) engaged in the performance of a Federal function under authority of law or an Executive act; and
>
> (3) subject to the supervision of an individual named by paragraph (1) of this section while engaged in the performance of the duties of his position ...

5 U.S.C. §§ 2104 and 2105.

As noted above, the FACA defines an advisory committee as a committee establish or utilized "<u>in the interest of obtaining advice or recommendations</u>" for federal agencies or officers. FACA §3(2). Thus to the extent that a committee's function is to provide a forum for the exchange of information and data -- not advice and recommendations -- the committee by definition will not be an "advisory committee." A committee may also not be an advisory committee if its functions are oriented toward the performance of "operational" not advisory responsibilities, meaning that the "committee" will ordinarily do or perform practical work just as federal staff perform; for example, gathering information, developing work plans, performing studies and other analyses or drafting reports.

GSA regulations expressly recognize these interpretations in exempting from the FACA any committee which is established "to perform primarily operational as opposed to advisory functions." The regulations also recognize that a committee may have "mixed functions", some advisory, others not, in their provision that such a committee is still not subject to the FACA so long as it does not, during the course of its operations, become primarily advisory in nature. 41 C.F.R. § 101-6.1004(g).[5] The courts have also upheld this construction of the FACA. See, e.g., National Anti-Hunger Coalition v. Executive Comm., 711 F.2d 1071, 1075 (D.C. Cir. 1983) ("NAHC"); Association of Am. Physicians and Surgeons v. Clinton, No. 93-399, slip. op. 12-15 (D.D.C. Mar. 10, 1993) ("Association of Am. Physicians").

GSA's regulations also provide that certain meetings of advisory committees are not subject to the FACA, regardless of whether the committee is subject to FACA. 41 C.F.R. § 101-6.1004. The FACA does not apply to any meeting initiated by a Federal official with one individual to obtain that individual's advice or recommendations. 41 C.F.R. § 101-6.1004(h). Nor does the FACA cover a Federal official's meeting with more than one individual to obtain the advice of individual attendees, but not to use the "group to obtain consensus advice or recommendations." 41 C.F.R. § 101-6.1004(i). Finally, the rules make the FACA inapplicable

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[5] HHS's Advisory Committee regulations contain a similar exclusion:

> The functions of an advisory committee are to be solely advisory. Where a group provides some advice to the Department, but the group's advisory function is incidental and inseparable from other (e.g., operational) functions, the provisions of this part do not apply. However, if the advisory function is separable, the group is subject to this part to the extent that the group operates as an advisory committee.

45 C.F.R. § 11.2(b)(2).

to any meeting with a group initiated "for the purpose of exchanging facts or information." 41 C.F.R. § 101-6.1004(1).

With respect to the question of whether the FACA applies to the Working Group, we would generally defer to White House Counsel for the controlling opinion because it appears in the first instance that a Presidential task force is contemplated. For your information, however, based on the government's arguments and the court's decision in the Association of Am. Physicians case, which concerns whether the FACA applies to the President's National Health Care Reform Task Force, we feel comfortable in stating that we believe that the Working Group is exempt from FACA because it will be comprised wholly of full-time federal employees.[6] The prospective members of the Working Group whom you identify meet the title 5, U. S. Code, definitions we set out above.[7]

We also defer to White House Counsel on any question about whether the Working Group's actions in connection with any of its meetings could make that meeting subject to the FACA; for example, if the Working Group holds a meeting attended by a participant who is not a full-time federal employee.

With regard to the issue teams, based on your description of their proposed activities, we believe that the teams or issue groups are not advisory committees under the FACA because (a) they are intended to provide a forum for the exchange of information, not to be utilized by federal officials for the provision of advice; and (b) they will be engaged in operational activities, that is, performing assigned tasks -- performing staff, not advisory, functions for the Working Group. Please note that our conclusion derives from your characterization of

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[6] The district court's conclusion that the President's National Health Care Reform Task Force was at all subject to the FACA stemmed entirely from its holding that Hillary Rodham Clinton was not a federal officer or employee and thus the Task Force did not meet the FACA exemption for committees comprised wholly of federal employees. Association of Am. Physicians, slip op. at 11-12.

[7] Also, if the Working Group were to be created and utilized by the Domestic Policy Council, rather than the President, we believe that an additional argument for exempting the Group from the FACA could be asserted; namely, that the Domestic Policy Council is not an agency for FACA purposes, and therefore, an agency neither created nor utilized the Working Group. See Kissinger v. Reporters' Comm. on Freedom of the Press, 100 S. Ct. 960, 971 (1980).

their functions; it is not based on the same reasoning as our conclusion on the Working Group -- namely, that the latter would be comprised entirely of full-time federal employees.

With regard to the composition of the teams, detailees who are full-time employees from other federal agencies and individuals on detail or assignment under the Intergovernmental Personnel Act, 5 U.S.C. §§ 3371-3376 would be considered full-time federal employees for FACA purposes in any case. However, others, such as contractors and contractor employees, would not. Thus in disposing of the FACA question, we rely on the teams' functions as you describe them. See NAHC, 711 F.2d 1071, 1075; see also Association of Am. Physicians, No. 93-399, slip op. 12-15.

2. If FACA applies, what are the requirements that we are subject to?

ANSWER: If the FACA applies to the Working Group, the Act requires that the President must charter the Committee and file the Charter with the GSA Administrator. FACA § 9. If the FACA applied to the teams and they were to be organized under HHS's auspices, the Secretary must, in consultation with the GSA Administrator, make a determination that the "committee" is in the public interest, approve and send a Charter to OMB for its approval, and then file the Charter with the relevant Senate and House legislative oversight committees. FACA § 9; OMB Bulletin No. 93-10, Apr. 9, 1993.

Any Charter must set out the name of the Committee, its objectives and scope of activity, the time period needed to carry out its purposes, the agency official to whom it reports, estimated operating costs and the estimated number and frequency of meetings. FACA § 9(c). Notice of each meeting of a FACA-subject advisory committee must be published in the Federal Register at least fifteen days before the meeting; meetings must be open to the public unless closed in accordance with subsection (c) of the Government in the Sunshine Act, 5 U.S.C. § 552b(c) (that is, the authority for closing meetings subject to the Government in the Sunshine Act also controls for FACA meetings); interested persons must be permitted to attend, appear before or file statements with the committee; detailed minutes of each meeting must be kept; and records, reports, transcripts, minutes, working papers, drafts, etc., which were "made available to or prepared for or by" an advisory committee must be made available to the public in accordance with the FOIA. FACA §§ 9 and 10.

3. We are especially concerned about using outside personnel who are not employees of the federal government. What is the criteria for determining whether someone is a federal employee?

ANSWER: As noted above, the Act exempts from coverage advisory committees made up entirely of "full-time officers or employees of the Federal Government." FACA § 3(3). Generally, for purposes of the FACA, a full-time federal officer or employee is an individual appointed in the civil service who is employed on a full-time basis or a commissioned officer of a uniformed service. 5 U.S.C. §§ 2104, 2105. "Full-time Federal employee" does not include individuals employed on an intermittent or when-actually-employed basis, but does include individuals on full-time assignment to the federal government pursuant to the Intergovernmental Personnel Act, 5 U.S.C. §§ 3371-3376. That statute authorizes us to accept individuals on assignment or detail from state and local governments and colleges and universities to work for up to two years. However, as noted above, from your description, the outside people you propose to use would be performing operational responsibilities or tasks, as opposed to giving advice, and in such a case, FACA would not be implicated.

4. Specifically, how does FACA apply to the following types of people who we may want to include in the Working Group or team meetings?

a. Expert hired under IPA authority.
b. Detailees from other federal agencies.
c. Contractors.
d. Consultants.
e. Volunteers.
f. Student interns.

ANSWER: We interpret this question as asking whether a meeting of the Working Group or a committee composed of Federal employees and one or more individuals from the above categories would render such committee meeting subject to the FACA. As a general rule, including certain types of individuals in a meeting with an advisory committee comprised of federal employees entirely could nonetheless make that meeting subject to the FACA. This is so because the premise that the group is not subject to FACA is that it is composed entirely of full-time Federal employees. If that composition changes the premise changes and makes meetings subject to attack as being a FACA-subject meeting taking place without the procedural and open meeting requirements being observed.

With regard to the Working Group, again since it appears to be a Presidentially-appointed group, we defer to White House Counsel. Nonetheless, to assist you, in our view, if one of the following categories of individuals were a member of the Working Group, as opposed to the issue groups, it would make the Group subject to the FACA and thus make it subject to certain procedural requirements: contractors or contractor employees; less than full-time experts or consultants; and student interns, if not full-time. Also, inclusion of part-time federal employees, whether permanent employees or not, would render the same result. The issue groups may, however, meet with outside individuals or groups for the purpose of gathering facts, information or opinions without regard to FACA. NAHC, 711 F.2d at 1075.

With respect to using volunteers, 31 U.S.C. § 1342 generally prohibits federal agencies from accepting volunteer services. We defer to White House Counsel on whether the Office of the President may accept volunteer services, and to counsel for the other federal agencies with respect to their agency authorities. However, if the issue groups are housed at HHS, you should know that the Office of the Secretary has no statutory authority to accept volunteer services except student volunteers providing services pursuant to 5 U.S.C. § 3111. Section 3111 authorizes Federal agencies to accept volunteer services of students (high school, trade or technical school or college) with the consent of their educational institution. They are not considered Federal employees except for limited purposes which are not relevant here. 5 U.S.C. § 3111(c)(1). Only certain Public Health Service agencies in HHS have broad authority to accept volunteer services. Therefore, we recommend that you not permit volunteer services.

5. Can experts who are contacted for their opinion or advice, but not hired by the agency, sit in on closed meetings?

ANSWER: We defer to White House Counsel on questions regarding meetings of the Working Group; however, the Government has taken the position before the Court of Appeals in Association of Am. Physicians that it would be Constitutionally impermissible to make the open-meetings provision of the FACA apply to any meeting of the Health Care Task Force including meetings attended by outsiders. Appellant's Brief at 36-38. In our view, such experts may attend meetings of the proposed issue teams. As noted above, the issue teams are operational and not subject to the FACA. Even if they were deemed to be FACA committees, the work they would be conducting would not entail open meetings because they would fall into one of the exceptions cited in the GSA regulations. 41 C.F.R. § 101-6.1004.

6. At what point does contact with someone outside the federal government become a meeting that is subject to FACA? For example, one or two people might want to meet with an IBM representative to discuss the feasibility of new computer systems for child support enforcement. Is that a meeting? What about talking with people with foundations or academia about such things as modeling, income dynamics, etc.?

ANSWER: As noted above, not all meetings between Federal employees and others are advisory committee meetings. For example, meetings between Federal employees and other individuals for the purpose of exchanging facts or information, as opposed to soliciting or obtaining the non-federal individuals' consensus advice, would not constitute a FACA advisory committee meeting.

We also wish to advise caution, however, in light of your example of meeting with private enterprise or actual or potential recipients of federal grants to discuss a matter that may result in a future procurement or grant of federal funds. Such sessions may give a potential contractor or potential grantee (including expansion of funds to an existing grantee for a particular purpose) an unfair competitive advantage thereby tainting any subsequent procurement or grant process. 48 C.F.R. § 5.401 and HHS Grants Admin. Manual, Chapter 1-62.

7. Does it matter if people are simply providing the agency with information as opposed to providing advice, recommendations or opinions?

ANSWER: As discussed above, the FACA draws that distinction so that the provision of information only and not advice does not implicate the FACA. NAHC, 711 F.2d at 1075, aff'g, 557 F. Supp. 524 (D.D.C. 1983) ("The Act does not cover groups performing staff functions such as those performed by the so-called task forces.")

8. Would there be problems in having closed meetings with key state government groups, advocacy and interest groups, providers or business leaders?

ANSWER: Again we defer to White House Counsel regarding meetings of the Working Group. However, in our view, such meetings, especially if done on a one-time basis, would not necessarily constitute an FACA meeting. 41 C.F.R. § 101-6.1004(f). However, any meetings attended by one or more outside individuals is subject to challenge and you may want to avoid even an occasion for a challenge by not having them. As discussed above, the Government is arguing in the Court of Appeals that such meetings would not be subject to the FACA because that would intrude on the President's ability to get advice he needs. If it is the issue groups or members thereof who would be conducting these meetings, we do not think they would be FACA-subject meetings. Public Citizen, 109 S.Ct. 2558.

9. If a person who is not considered a federal employee attends a meeting that is closed to the public, what is the possible remedy, sanction, or penalty that the agency could face?

ANSWER: As discussed above, we defer to White House Counsel regarding the Working Group. In our view, however, if a meeting is a FACA meeting properly closed to the public, or a non-FACA meeting to which the public does not have access (such as we believe meetings of the Working Group and issue groups are), an individual who is not a member of that committee may attend either to observe or to provide information to the committee. As noted above such participation <u>may</u> result in a challenge from an individual arguing that the group or the meeting is subject to FACA without the individual or group seeking an injunction prohibiting further meetings of the group until the FACA is observed or an order expunging any recommendations made by the group.

10. What should we know or do to avoid being sued by an outside interest group, as was the case for the Health Reform Task Force?

ANSWER: Generally, we cannot always avoid court challenges to any action and we defer to White House Counsel on this matter with regard to the Working Group. However, our best advice on avoiding suit by an interest group is either to ensure that all meetings of the Working Group are restricted to full-time federal employees or to consider the Working Group as an advisory committee subject to the FACA and to comply with the requirements of the FACA such as chartering the committee, etc. Any other action, although perhaps defensible, may render the activities of the Working Group subject to challenge. This is really a policy not a legal call.

I have attached a copy of the General Services Administration FACA regulation for your information. (Tab C).

FREEDOM OF INFORMATION ACT

1. In general, what are the rules for determining whether information must be made available to the public under the FOIA?

ANSWER: The Freedom of Information Act ("FOIA"), 5 U.S.C. § 551, is really a misnomer; it does not really apply to matters of information except with respect to matters of agency organization, functions and delegations of authority, which it requires be published. Otherwise it requires that **<u>records</u>** be made available to the public upon request unless they fall within one of nine specific exemptions. In discussing records, you should distinguish between agency records, i.e., HHS records, and Working Group records, which are not HHS records unless they are incorporated into HHS's records. Records of Working Group members do not become Department records simply by being physically located in Department offices.

One of the FOIA exemptions is the so-called deliberative process exemption for pre-decisional inter- and intra-agency memoranda or letters containing opinion, advice or recommendations from staff to a decision maker. 5 U.S.C. § 552(b)(5); see Weber Aircraft Corp. v. United States, 565 U.S. 792 (1984)(discussing the parameters of this exemption). In all likelihood, much of the documentation produced by or for the Working Group would fall within this exemption. (Other exemptions that may be applicable are those for confidential commercial information and for information, release of which would result in a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(4) and (6)). You should be aware that before the district court decision in Association of Am. Physicians holding that the deliberative process privilege is available to withhold pre-decisional records of the Health Care Task Force, slip op. at 25-26, the Department of Justice had taken a contrary view.

2. How should the work product of the group be organized or written so that it is not subject to disclosure to the public because disclosure might inhibit open and frank examination of options?

ANSWER: Assuming that most of the documents generated by or for the Working Group would constitute pre-decisional advice and recommendations which would be properly withheld under the deliberative process exemption discussed above, it would be advisable to segregate to the extent feasible any factual content from the discussion and recommendation portions of the document. This would ease the separation of exempt material from non-exempt material in the event of a request for the document. For example, if you are preparing a decision memorandum you should start with a recitation of relevant facts and then go to sections on discussion and recommendation in such a way that any facts cited in those portions are intertwined with the advice and recommendations.

3. Are there distinctions between various types of work products such as drafts, opinions, advice, analysis, facts, issue papers, preliminary recommendations or plans, final plans submitted to the White House, manuals, instructions to employees about the task group's work, etc? If so, what advice do you have for the agency to best protect the confidentiality of its product? Are there certain types of work products to be solicited or ways that work products should be written that are preferable?

ANSWER: The primary exemption for the types of documents described is that for pre-decisional advice, recommendations, opinions, etc. 5 U.S.C. § 552(b)(5). The documents containing such matters are exempt regardless of the character or characterization of the document and the content, if exempt, is exempt currently and in the future. That is, exempt material does not lose its exempt character as a result of the lapse of time or of a decision being made. Materials such as manuals and instructions to employees may be exempt under other exemptions depending on content and would have to be reviewed on a case by case basis.

4. At what points in the process, if any, are we especially vulnerable to application of FOIA access rules?

ANSWER: We are always subject to the application of the FOIA to agency records. There is, however, a two step process -- identifying records subject to a request and application of the exemptions to those records; that is, just because we have a requested record does not mean we must disclose it. The Department's FOIA regulation, 45 C.F.R. Part 5, defines agency record as "any handwritten, typed or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punch cards, magnetic tapes, cards or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm and motion pictures)". 45 C.F.R. § 5.5. Agency records include preliminary and subsequent drafts, as well as final products.

Agency records do not, however, include handwritten notes made for and used solely by an individual. That is, if you make personal notes for your use in performing your job and do not share these notes with others, they do not become agency records regardless of the context in which such notes are made. Because they are not considered agency records they are not subject to the FOIA and in some circumstances would not be subject to a subpoena. Also, as noted above, you should be alert to distinguish between agency records (i.e., HHS records) and Working Group records. Requests for Working Group records should be referred to the White House.

5. What about the products produced by contractors and grantees that may be performing part of the work for federal agencies?

ANSWER: Although certain materials produced by contractor employees and consultants may be withheld under the deliberative process privilege, most cannot. As a rule of thumb, you should consider all such material as subject to release to a FOIA requester. In HHS, only the authorized FOIA Officers may respond to FOIA requests. Therefore, I recommend that you consult with the Freedom of Information/Privacy Act Division of the Office of

Public affairs in regard to all requests for records from members of the public on a request by request basis.

OTHER FEDERAL LAWS

The FOIA specifically provides that none of the exemptions provides authority to withhold records from Congress and we have long interpreted that provision to include the General Accounting Office. (GAO operates under the same view of the law.) Traditionally, we have provided records requested by the heads of Congressional committees and subcommittees. Those requests are coordinated by the Assistant Secretary for Legislation.

I hope this clarifies some matters for you. We will be pleased to provide whatever further assistance you may require.

Eileen Bradley

Attachments

cc: w/attachments
Harriet Rabb
Beverly Dennis, III
Frank Dell'Acqua
Steven Pigeon, OS
Marcie Oppenheimer, OS
Emily Bromberg, ACF

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

February 20, 1991

MEMORANDUM

TO : The Secretary
Through: US ______
COS ______
ES ______

FROM : General Counsel

SUBJECT : Strategic Plans for Elimination of Lead Poisoning--Solicitation of Funds From Private Sources--**INFORMATION**

PURPOSE

To respond to your inquiry as to whether there are legal limitations upon the Department's authority to solicit non-governmental sources for funds to supplement appropriations that the Department intends to use to address the problem of childhood lead poisoning.

INFORMATION TEXT

As a general rule, Federal agencies must operate within the limits of appropriated funds and may not supplement their appropriations with funds from other sources. 16 Comp. Gen. 911. A major exception to that rule is provided by section 2601 of the Public Health Service (PHS) Act, which authorizes you to accept gifts to carry out any of the functions of the Service. However, because this gift authority is exceptional, it has been narrowly construed and this office has consistently advised agency officials that the authority to accept gifts would not ordinarily include the authority to actively solicit private parties to make such gifts. On the other hand, we have also advised that there are specific authorities within the PHS Act which appear to invest the Secretary with more latitude in this regard. More particularly, section 1703 of the PHS Act provides that the Secretary may support and encourage others to support new and innovative programs in health information and health promotion, preventive health services, and education in the appropriate use of health care.

In construing the statutory phrase "encourage others to support," we have concluded that it would reasonably include the encouragement of monetary support. While we do not believe that section 1703 authorizes the solicitation of funds for the gift fund or the donation of money into the Federal Treasury to be commingled with Federal appropriations, we see no reason why private parties could not be encouraged to work in close cooperation with the Federal initiative, so that their contributions to costs might supplement Federal contributions. Certainly the lead poisoning prevention initiative outlined in the Strategic Plan would seem to fit rather easily within the intent of the above-quoted provisions of section 1703.

Accordingly, we believe that you may:

(1) Accept gifts designated to promote the Strategic Plan. Cash gifts are deposited in a separate account in the U.S. Treasury, and thereafter may be expended by you in accordance with the terms of the gift. (Naturally, however, you are always free to reject gifts which would impose conditions unacceptable to the Department.) We recognize that there may be a fine line between activities which acquaint potential donors with the existence of the gift fund, which we believe would be acceptable, and, on the other hand, activities which are active solicitations, which, as we have already explained, we do not believe are permissible. Such decisions may have to be reviewed on a case-by-case basis, and we would be happy to discuss them further as they arise.

(2) Encourage others to support the Plan. In this regard, you may suggest that private supporters coordinate their expenditures with the Federal expenditures, thereby providing a supplementary source of funds. We would, however, add a cautionary note. Seeking the commitment of funds from what are in another context referred to as "prohibited sources" (i.e., companies or other entities which the Department, in another capacity, may regulate or award funds to) could create an appearance of impropriety. This authority should, therefore, be used only after careful review.

If you have any further questions, we are available to discuss them with you.

Michael J. Astrue /MJA

DRAFT

Draft of March 5, 1993

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of the General Counsel
Office of the Special Counsel for Ethics

INTERNAL GUIDELINES ON CO-SPONSORSHIP

Preamble

In the course of administering the programs of its various member agencies, the Department of Health and Human Services (HHS) has increasingly recognized the benefits derived from co-sponsoring events with non-federal groups and entities. Proper use of such co-sponsorship benefits HHS by providing the opportunity to combine non-federal experience and resources with federal Government expertise and capabilities.

As used in these guidelines, the term "co-sponsorship" refers to the joint development and/or presentation of a conference, seminar, symposium, public information program, or any other event related to the mission of the Department, by HHS and one or more non-federal entities who share a mutual interest in the subject matter. A non-federal entity that would provide only funding for an event, but not otherwise participate in, or take any responsibility for, the development or presentation of the event, is not, for purposes of these guidelines, a "co-sponsor," and the event would not be considered a "co-sponsored" event. Such a funds-only contribution might constitute an augmentation of appropriations and, therefore, would be impermissible, unless authorized by an applicable agency gift acceptance statute. Furthermore, a non-federal entity that does not have a demonstrated substantive interest in the subject matter of the event is not considered a "co-sponsor," for purposes of these guidelines. An outside entity with no demonstrated substantive interest in the subject matter of the event will be allowed to contribute services and goods only pursuant to a contract, an applicable agency gift acceptance statute, or other appropriate legal mechanism.

Because laws and regulations applicable to the conduct of federal employees and to the expenditure of federal money are not applicable to the non-federal co-sponsor, HHS' involvement in these co-sponsored events may sometimes present problems. It is particularly important that any HHS involvement in a co-sponsored event not give the appearance that HHS endorses the general policies and activities of the co-sponsor or that the co-sponsor's support will improperly influence the Department. Therefore, HHS must follow certain guidelines when co-sponsoring

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an event with a non-federal entity to avoid illegal or unethical conduct by the Department and its employees, as well as to avoid even the appearance of improper conduct. In part, the following guidelines reflect statutory and regulatory restrictions; however, some of these provisions exceed legal requirements as a matter of policy, in order to hold the Department and those employees associated with a co-sponsored event to a high ethical standard and to avoid thereby any hint of impropriety.

Basic Policy

Subject to the restrictions below, HHS, or any HHS component, may co-sponsor an event with a non-federal entity. Permissible events include educational seminars, conferences, and other informative programs permitted under the relevant authorizing legislation.

General Legal Rules

As a federal agency, HHS is subject to certain legal limitations that are not applicable to non-federal entities. These limitations apply both when HHS is co-sponsoring an event and when the Department is the sole sponsor of an event.

(1) Any registration fee collected by HHS, absent other authority, must be deposited in the Treasury of the United States, without deduction for any charge or claim. 31 U.S.C. § 3302. However, if a co-sponsor is arranging for the event, or a portion of the event, the co-sponsor may collect a mandatory fee from participants to cover expenses incurred for rental of the facilities, production of the event, and food and refreshments.

[(2) **PROVISION MAY CHANGE--PENDING RESOLUTION OF OUTSTANDING GIFT ACCEPTANCE ISSUE** If the co-sponsor charges registration fees, HHS personnel may not attend the event for free unless free attendance would be permissible under the Standards of Ethical Conduct for Employees of the Executive Branch recently promulgated by the Office of Government Ethics (the Standards of Conduct), <u>see</u> 5 C.F.R. §2635.204(g)(1)-(4), and would not violate any federal prohibition against augmentation of appropriations. For these purposes, "free attendance" would include the provision of food, refreshments, entertainment, and materials furnished to attendees at the event.]

(3) HHS equipment, supplies, or penalty envelopes may not be made available for use by a co-sponsor unless used to assist in the development or presentation of the co-sponsored event.

(4) HHS staff may not engage in fundraising or solicitations for donations of any kind to support an event, except as may be

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orized by law. (HHS may, however, actively seek out
ntial co-sponsors, subject to restrictions noted below.)

(5) HHS may not co-sponsor an event where attendance at the
t is limited to HHS staff.

(6) HHS may spend appropriated funds, including contract
s, to pay for the costs of food and refreshments for HHS
oyees attending a co-sponsored event only if:

(a) the event is an authorized training program conducted
uant to the Government Employees Training Act, 5 U.S.C. §4101
eq., and the provision of food and refreshments is considered
ssary to achieve the objectives of the training program; or

(b) the food and refreshments are incidental to the event;
serving of the food and refreshments is necessary for HHS
oyees to fully participate in the event; and the HHS
oyees attending the event would miss essential formal
ussions, lectures, or speeches concerning the purpose of the
: if they took their meals elsewhere.

(7) HHS may not spend any appropriated funds, including
ract funds, to pay for the costs of food and refreshments for
HS attendees at a co-sponsored event unless the event is
ucted pursuant to the Government Employees Training Act and
attendees are officially participating as speakers in the
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Policy Guidelines

There are additional restrictions which, while not required
w, apply as a matter of policy to all events which HHS co-
sors with a non-federal entity.

(1) HHS may not co-sponsor an event with an entity created
y for involvement in that particular event.

(2) Whenever practicable, records concerning co-sponsored
s should fully and accurately account for each sponsor's
ammatic and financial responsibilities and activities.
ds should clearly describe separately any portion of an
exclusively sponsored by HHS or exclusively sponsored by an
de co-sponsor. Records concerning the amount, sources, and
of the funds should generally be made publicly available.
enerally should not co-sponsor an event with an organization
will not make information concerning funding publicly
able.

(3) While it is not prohibited, HHS should review in

particular detail any proposed co-sponsorship with an entity that would be considered a "prohibited source" pursuant to the Standards of Conduct. A "prohibited source" is any person or entity who: (a) is seeking official action by the agency planning to co-sponsor the event; (b) does business or seeks to do business with that agency; (c) conducts activities regulated by that agency; (d) has interests that may be substantially affected by the performance or nonperformance of the official duties of an employee of that agency; or (e) is an organization a majority of whose members are described in (a) through (d) above.

Although there is no de minimis standard in determining whether or not a source is "prohibited," the degree to which a person or entity falls within one of the categories of prohibited sources listed above may properly be considered in determining whether HHS should co-sponsor an event with that person or entity. In determining whether it is appropriate to co-sponsor an event with a prohibited source, the following factors should be considered in determining whether co-sponsorship of an event with a "prohibited source" would be inappropriate because it would result in a conflict of interest or would create an appearance of a conflict of interest:

*Is the event one which serves an important mission of the Department?

*Would another co-sponsor be available that is not a prohibited source, or does the prohibited source have a special expertise that would make it a preferred co-sponsor of the event?

*What would be the nature of the prohibited source's involvement in the event? To what extent will the prohibited source take an active role in the development of the substantive portions of the event?

*Would co-sponsoring an event with the prohibited source create an appearance of partiality toward that source?

*Does the prohibited source regularly apply for contracts or other funding from HHS or the component agency co-sponsoring the event? If so, an agency or operating division of HHS may not co-sponsor an event with that prohibited source unless the benefits to the Department in participating in the event clearly outweigh any appearance of preferential treatment.

*Do HHS grants represent a significant percentage of the source's overall budget? If so, an agency or operating division of HHS may not co-sponsor an event with that prohibited source unless the benefits to the Department in participating in the event clearly outweigh any appearance of preferential treatment.

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*Is the prohibited source regulated by an agency or component of the Department? If so, the agency or operating component directly responsible for regulating the activities of the prohibited source may not co-sponsor an event with that prohibited source unless the benefits to the Department in participating in the event clearly outweigh the potential appearance of preferential treatment.

(4) HHS may not co-sponsor an event where the event is primarily devoted to promoting a product and/or sales of that product. However, educational materials prepared for, and utilized during a seminar or workshop conducted as part of a co-sponsored event, may be sold to participants at cost. Also, audio or video tape recordings of a co-sponsored seminar, conference, or workshop may be sold at cost after the event is concluded, as may transcripts or other summaries of the proceedings.

(5) HHS staff may not use or provide HHS equipment, supplies, or penalty envelopes to promote an independent portion of the event that is clearly not sponsored by HHS. However, HHS can prepare and mail fliers and brochures which contain factual references to the existence and scheduling of the entire event.

(6) HHS staff may not assist the co-sponsor in planning or otherwise organizing any discrete portion of an event exclusively and totally sponsored by a co-sponsor, except to the extent necessary to coordinate the total program.

(7) HHS may not co-sponsor an event which is developed by the co-sponsor as a profit-making endeavor. Any registration fees charged to attendees of a co-sponsored event should not, therefore, be designed to exceed the co-sponsor's costs for the event.

(8) Once a co-sponsored event has been approved, the co-sponsor may only use its name in connection with HHS, or a component agency, in factual publicity for that event. Factual publicity includes dates, times, locations, purposes, agendas, fees, and speakers involved with the event. Such factual publicity should not imply that the involvement of HHS, or a component agency, in the event serves as an endorsement of the general or non-event policies or activities of the co-sponsor, and, where confusion could result, should be accompanied by a disclaimer to that effect.

(9) HHS may not co-sponsor an event that is purely social, unless the event is one that is paid for out of the Secretary's official reception and representation fund. Events that have a social component may be co-sponsored by HHS only if there is also an educational or instructional purpose to the event and the

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event would be related to a mission of the Department.

[(10) HHS may actively seek out or solicit co-sponsors for a contemplated event. However, the Department must be careful to avoid the appearance that it is coercing an outside entity to become a co-sponsor. This consideration sometimes may counsel against actively seeking out co-sponsors who are prohibited sources with interests that could be adversely affected by pending agency action. Furthermore, the Department must take care that there is no appearance that it is showing favoritism by only approaching certain entities, even though an entire class of similarly situated entities could derive a benefit from entering into the co-sponsorship with the Department. Where practicable, the Department should make the opportunity for a co-sponsorship known to all similarly situated entities who would be likely to benefit from a co-sponsorship with the Department and who would be qualified to participate in such co-sponsorship. In some instances, for example, the Department may want to consider a Federal Register announcement of the opportunity for a co-sponsorship.]

Examples

This section provides hypothetical examples illustrating some common proposals for co-sponsorship and how the legal and policy restrictions listed above would affect each scenario.

(1) The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) and the California Conference of Local Mental Health Directors (CCLMHA) propose to co-sponsor a symposium focusing on the mental health of the homeless in the United States. HHS proposes to provide speakers from ADAMHA and will mail fliers advertising the theme of the symposium as well as the scheduled speakers. The CCLMHA would provide speakers from various private sector groups and academic institutions, and would pay for refreshments and the facilities for the day-long symposium. This proposal would be approved because it represents a true joint effort where the co-sponsor is not just responsible for the costs of the event, but is also involved in a substantive portion of the event; namely, arranging for outside speakers.

(2) The Social Security Administration (SSA) and the American Association of Retired Persons (AARP) propose to co-sponsor a one-day seminar on "How to Maximize Your Social Security Benefits." The seminar would include a variety of government and private sector experts in the field, selected jointly by SSA and AARP. SSA would be responsible for assembling speakers and setting the agenda. AARP would be responsible for the printed materials and a lunch. AARP plans to charge private participants a fee for the lunch and the costs of the printed materials; HHS employees would be admitted free of charge. This

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proposal would be allowed, provided the fees collected by AARP are not expected to exceed the costs of the lunch and the printed materials. It would be proper for HHS employees to be admitted free of charge if: (a) they are speakers or panel participants in the event, see Standards of Conduct, 5 C.F.R. §2635.204(g)(1); or (b) the employees' attendance has been determined by the appropriate officials to be in the best interest of the agency. See Standards of Conduct, 5 C.F.R. §2635.204(g)(2).

(3) The Pharmaceutical Manufacturers Association (PMA) proposes to co-sponsor a gala dinner with the Administration on Aging to celebrate the anniversary of the Older Americans Act. The costs of the event would be paid for entirely by PMA. Unless the event has an underlying educational or instructional purpose related to a mission of the Department, HHS would not be allowed to co-sponsor this event with PMA.

(4) The Health Care Financing Administration (HCFA) and the Ripon Society propose to co-sponsor a conference on reducing health care costs. The two-day conference includes speakers from HCFA, various health insurance companies, and academic institutions. The Ripon Society, in addition to co-sponsoring and participating with HCFA in the joint presentation of several seminars, plans separately to organize and present several seminars on a third day focusing exclusively on the concerns of the insurance industry. Participation in the conference is by invitation only and includes two box lunches, a continental breakfast, and a buffet dinner, the costs of which will be paid for by the Ripon Society; all other costs will be covered by HCFA. This proposal would be allowed because the Ripon Society, in addition to paying for the costs of food and refreshments, is actively participating in the substantive portion of the conference. However, the costs paid by HCFA and by the Ripon Society should be clearly separated and delineated in the records of the proposal of the event. In addition, HCFA could not provide HHS equipment, supplies, or penalty envelopes for those portions of the conference independently organized and presented by the Ripon Society.

(5) The National Institutes of Health (NIH) and the Association of Biotechnology Companies (ABC) propose to co-sponsor a two-day conference on technology transfer. ABC would pay for, and handle all the arrangements for, renting the conference rooms, providing lunches, and copying and distributing promotional and informational materials. ABC would also be responsible for promoting the conference to other organizations, while NIH would be responsible for contacting HHS and other federal employees. NIH would provide speakers, although representatives of several ABC members would serve as panel moderators. The agenda for the conference would be mutually developed by NIH and ABC. ABC would charge all participants a

registration fee to defray its costs. This event would be approved. Although ABC is a prohibited source, it is making a significant contribution to the planning and presentation of the entire event, including developing the agenda and providing panel moderators. The dissemination of information regarding the benefits of technology transfer between the government and the private sector would be considered a part of NIH's mission, and ABC--with so many member organizations that would benefit from such a conference--would be a particularly well-suited co-sponsor.

Subparts 101-6.5—101-6.9—[Reserved]

Subpart 101-6.10—Federal Advisory Committee Management

AUTHORITY: Sec. 205(c), 63 Stat. 390: 40 U.S.C. 486(c); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR 1977 Comp., p. 158.

SOURCE: 52 FR 45929, Dec. 2, 1987, unless otherwise noted.

§ 101-6.1001 Scope.

(a) This subpart defines the policies, establishes minimum requirements, and provides guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership activities, and cost of these advisory committees are also included.

(b) The Act and this subpart do not apply to advisory meetings or groups listed in § 101-6.1004.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1002 Policy.

The policy to be followed by Federal departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is as follows:

(a) An advisory committee shall be established only when it is essential to the conduct of agency business. Decision criteria include whether committee deliberations will result in the creation or elimination of, or change in regulations, guidelines, or rules affecting agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint impacting agency operations;

(b) An advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished: the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity within the Federal Government; or the agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(c) An advisory committee shall be fairly balanced in its membership in terms of the points of view represented and the functions to be performed; and

(d) An advisory committee shall be open to the public in its meetings except in those circumstances where a closed meeting shall be determined proper and consistent with the provisions in the Government in the Sunshine Act, 5 U.S.C. 552(b).

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1003 Definitions.

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities.

Agency has the same meaning as in section 551(1) of title 5 of the United States Code.

Committee Management Secretariat (*Secretariat*), established pursuant to the Act is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024.

Committee member means an individual who serves by appointment on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

Presidential advisory committee means any advisory committee which advises the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendations for the President. "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

Staff member means any individual who serves in a support capacity to an advisory committee.

Utilized (or *used*), as referenced in the definition of *Advisory committee* in this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the agency seeking its advice which the President or agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

§ 101-6.1004 Examples of advisory meetings or groups not covered by the Act or this subpart.

The following are examples of advisory meetings or groups not covered by the Act or this subpart:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(b) Any advisory committee specifically exempted by an Act of Congress;

(c) Any advisory committee established or utilized by the Central Intelligence Agency;

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies:

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(k) Meetings of two or more advisory committee or subcommittee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee; or

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

§ 101-6.1005 Authorities for establishment of advisory committees.

An advisory committee may be established in one of four ways:

(a) By law where the Congress specifically directs the President or an agency to establish it;

(b) By law where the Congress authorizes but does not direct the President or an agency to establish it. In this instance, the responsible agency head shall follow the procedures provided in § 101-6.1007;

(c) By the President by Executive Order; or

(d) By an agency under general agency authority in title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided in § 101-6.1007.

§ 101-6.1006 [Reserved]

§ 101-6.1007 Agency procedures for establishing advisory committees.

(a) When an agency head decides that it is necessary to establish a committee, the agency must consider the functions of similar committees in the same agency before submitting a consultation to GSA to ensure that no duplication of effort will occur.

(b) In establishing or utilizing an advisory committee, the head of an agency or designee shall comply with the Act and this subpart, and shall:

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee of the agency, or other means such as a public hearing; and

(iii) A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

(3) Subcommittees that do not function independently of the full or parent advisory committee need not follow the requirements of paragraphs (b)(1) and (b)(2) of this section. However, they are subject to all other requirements of the Act.

(4) The requirements of paragraphs (b)(1) and (b)(2) of this section shall apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the full or parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(c) The Secretariat will review the proposal and notify the agency of GSA's views within 15 calendar days of receipt, if possible. The agency head retains final authority for establishing a particular advisory committee.

(d) The agency shall notify the Secretariat in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101-6.1013 shall be considered appropriate written notification in this instance. The date of filing constitutes

the date of establishment or renewal. The agency head shall then comply with the provisions of § 101-6.1009 for an established advisory committee: or

(2) The advisory committee is not being established. In this instance, the agency shall also advise the Secretariat if the agency head intends to take any further action with respect to the proposed advisory committee.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1008 The role of GSA.

(a) The functions under section 7 of the Act will be performed for the Administrator by the Secretariat. The Secretariat assists the Administrator in prescribing administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting these guidelines. In exercising internal controls over the management and supervision of the operations and procedures vested in each agency by section 8(b) of the Act and by § 101-6.1009 and § 101-6.1017 of this rule, agencies shall conform to the guidelines prescribed by GSA.

(b) The Secretariat may request comments from agencies on management guidelines and policy issues of broad interagency interest or application to the Federal advisory committee program.

(c) In advance of issuing informal guidelines, nonstatutory reporting requirements, and administrative procedures such as report formats or automation, the Secretariat shall request formal or informal comments from agency Committee Management Officers.

(d) The Secretariat shall assure that follow-up reports required by section 6(b) of the Act are prepared and transmitted to the Congress as directed by the President; either by his delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated pursuant to paragraph (c) of § 101-6.1011. In performing this function, GSA may solicit the assistance of the Office of Management and Budget and other appropriate organizations, as deemed appropriate.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1009 Responsibilities of an agency head.

The head of each agency that uses one or more advisory committees shall ensure:

(a) Compliance with the Act and this subpart;

(b) Issuance of administrative guidelines and management controls which apply to all advisory committees established or used by the agency;

(c) Designation of a Committee Management Officer who shall carry out the functions specified in section 8(b) of the Act;

(d) Provision of a written determination stating the reasons for closing any advisory committee meeting to the public;

(e) A review, at least annually, of the need to continue each existing advisory committee, consistent with the public interest and the purpose and functions of each committee;

(f) Rates of pay are justified and levels of agency support are adequate;

(g) The appointment of a Designated Federal Officer for each advisory committee and its subcommittees;

(h) The opportunity for reasonable public participation in advisory committee activities;

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives;

(j) That the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government Ethics in 5 CFR parts 734, 735, and 737, and additional requirements, if any, established by the sponsoring agency pursuant to Executive Order 12674, the conflict-of-interest statutes, and the Ethics in Government Act of 1978, as amended; and

(k) Unless otherwise specified by the President, the preparation and transmittal of a follow-up report to the Congress detailing the disposition of the public recommendations of a Presidential advisory committee supported by the agency, in accordance with sections 6(b) of the Act.

[52 FR 45929. Dec. 2. 1987. as amended at 54 FR 41215. Oct. 5. 1989]

§ 101-6.1010 [Reserved]

§ 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

The chairperson of an independent Presidential advisory committee shall comply with the Act and this subpart and shall:

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer;

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d), (h) and (j) of § 101-6.1009; and

(c) Unless otherwise specified by the President, consult with the Administrator regarding the designation of an agency or organization responsible for implementing section 6(b) of the Act.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

§ 101-6.1012 [Reserved]

§ 101-6.1013 Charter filing requirements.

No advisory committee may operate, meet, or take any action until its charter has been filed as follows:

(a) *Advisory committee established, used, reestablished, or renewed by an agency.* The agency head shall file—

(1) The charter with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency;

(2) A copy of the filed charter with the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540; and

(3) A copy of the charter indicating the Congressional filing date, with the Secretariat.

(b) *Advisory committee specifically directed by law or authorized by law.* Procedures are the same as in paragraph (a) of this section.

(c) *Presidential advisory committee.* When either the President or the Congress establishes an advisory committee that advises the President, the responsible agency head or, in the case of an independent Presidential advisory committee, the President's designee shall file—

(1) The charter with the Secretariat;

(2) A copy of the filed charter with the Library of Congress; and

(3) If specifically directed by law, a copy of the charter indicating its date of filing with the Secretariat, with the standing committees on the Senate and the House of Representatives having legislative jurisdiction of the agency or the independent Presidential advisory committee.

§ 101-6.1014 [Reserved]

§ 101-6.1015 Advisory committee information which must be published in the Federal Register.

(a) *Committee establishment, reestablishment, or renewal.* (1) A notice in the FEDERAL REGISTER is required when an advisory committee, except a committee specifically directed by law or established by the President by Executive Order, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat in accordance with paragraph (c) of § 101-6.1007, the agency shall publish a notice in the FEDERAL REGISTER that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also describe the nature and purpose of the committee and the agency's plan to attain fairly balanced membership, and shall include a statement that the committee is necessary and in the public interest.

(2) Establishment and reestablishment notices shall appear at least 15 calendar days before the committee charter is filed, except that the Secretariat may approve less than 15 days when requested by the agency for good cause. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

(b) *Committee meetings.* (1) The agency or an independent Presidential advisory committee shall publish at least 15 calendar days prior to an advisory committee meeting a notice in the FEDERAL REGISTER, which includes:

(i) The exact name of the advisory committee as chartered;

(ii) The time, date, place, and purpose of the meeting;

(iii) A summary of the agenda; and

(iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552(b)) as the basis for closure.

(2) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the FEDERAL REGISTER.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

§ 101-6.1016 [Reserved]

§ 101-6.1017 Responsibilities of the agency Committee Management Officer.

In addition to implementing the provisions of section 8(b) of the Act, the Committee Management Officer will carry out all responsibilities delegated by the agency head. The Committee Management Officer should also ensure that section 10(b), 12(a) and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records include, but are not limited to:

(a) A set of approved charters and membership lists for each advisory committee;

(b) Copies of the agency's portion of the Annual Report of Federal Advisory Committees required by paragraph (b) of § 101-6.1035;

(c) Agency guidelines on committee management operations and procedures as maintained and updated; and

(d) Agency determinations to close advisory committee meetings as required by paragraph (c) of § 101-6.1023.

§ 101-6.1018 [Reserved]

§ 101-6.1019 Duties of the Designated Federal Officer.

The agency head or, in the case of an independent Presidential advisory committee, the Administrator shall designate a Federal officer or employee, who may be either full-time or permanent part-time, to be the Designated Federal Officer for each advisory committee and its subcommittees, who:

(a) Must approve or call the meeting of the advisory committee;

(b) Must approve the agenda;

(c) Must attend the meetings;

(d) Shall adjourn the meetings when such adjournment is in the public interest; and

(e) Chairs the meeting when so directed by the agency head.

(f) The requirement in paragraph (b) of this section does not apply to a Presidential advisory committee.

§ 101-6.1020 [Reserved]

§ 101-6.1021 Public participation in advisory committee meetings.

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that—

(a) Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;

(b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee; and

(d) Any member of the public may speak at the advisory committee meeting if the agency's guidelines so permit.

§ 101-6.1022 [Reserved]

§ 101-6.1023 Procedures for closing an advisory committee meeting.

(a) To close all or part of a meeting, an advisory committee shall submit a request to the agency head or, in the case of an independent Presidential advisory committee, the Administrator, citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552(b)) which justify the closure. The request shall provide the agency head or the Administrator sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by § 101-6.1015(b).

(b) The general counsel of the agency or, in the case of an independent Presidential advisory committee, the general counsel of the General Services Administration should review all requests to close meetings.

(c) If the agency head or, in the case of an independent Presidential advisory committee, the Administrator agrees that the request is consistent with the provisions in the Government in the Sunshine Act and the Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting be closed.

(d) The agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Make a copy of the determination available to the public upon request; and

(2) State the reasons why all or part of the meeting is closed, citing the specific exemptions used from the Government in the Sunshine Act in the meeting notice published in the FEDERAL REGISTER.

§ 101-6.1024 [Reserved]

§ 101-6.1025 Requirement for maintaining minutes of advisory committee meetings.

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson shall ensure that detailed minutes of each advisory committee meeting are kept. The minutes must include:

(1) Time, date, and place;

(2) A list of the following persons who were present:

(i) Advisory committee members and staff;

(ii) Agency employees; and

(iii) Members of the public who presented oral or written statements;

(3) An estimated number of other members of the public present;

(4) An accurate description of each matter discussed and the resolution, if any, made by the committee of such matter; and

(5) Copies of each report or other document received, issued, or approved by the committee.

(b) The chairperson of each advisory committee shall certify to the accuracy of all minutes of advisory committee meetings.

§ 101-6.1026 [Reserved]

§ 101-6.1027 Termination of advisory committees.

(a) Any advisory committee shall automatically terminate not later than 2 years after it is established, reestablished, or renewed, unless:

(1) Its duration is otherwise provided for by law;

(2) The President or agency head renews it prior to the end of such period; or

(3) The President or agency head terminates it before that time by revoking or abolishing its establishment authority.

(b) If an agency head terminates an advisory committee, the agency shall notify the Secretariat of the effective date of termination.

§ 101-6.1028 [Reserved]

§ 101-6.1029 Renewal and rechartering of advisory committees.

(a) Advisory committees specifically directed by law:

(1) Whose duration extends beyond 2 years shall require rechartering by the filing of a new charter every 2 years after the date of enactment of the law establishing the committee. If a new charter is not filed, the committee is not terminated, but may not meet or take any action.

(2) Which would terminate under the provisions of section 14 of the Act, and for which renewal would require reauthorization by law, may be reestablished by an agency provided that the agency complies under general agency authority with the provisions of § 101-6.1007.

(b) Advisory committees established by the President may be renewed by appropriate action of the President and the filing of a new charter.

(c) Advisory committees authorized by law or established or used by an agency may be renewed, provided that at least 30 but not more than 60 days before the committee terminates, an agency head who intends to renew a

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committee complies with the provisions of § 101-6.1007.

§ 101-6.1030 [Reserved]

§ 101-6.1031 Amendments to advisory committee charters.

(a) *Committees specifically directed by law or authorized by law; or established by the President.* The agency head shall be responsible for ensuring that any minor technical changes made to current charters are consistent with the relevant statute or Executive Order. When the Congress by law, or the President by Executive Order, changes the authorizing language which has been the basis for establishing an advisory committee, the agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Amend those sections of the current charter affected by the new law or Executive Order; and

(2) File the amended charter as specified in § 101-6.1013.

(b) *Committees established or used by an agency.* The charter of an advisory committee established under general agency authority may be amended when an agency head determines that the existing charter no longer accurately reflects the objectives or functions of the committee. Changes may be minor, such as revising the name of the advisory committee, or modifying the estimated number or frequency of meetings. Changes may also be major such as those dealing with the objectives or composition of the committee. The agency head retains final authority for amending the charter of an advisory committee. Amending any existing advisory committee charter does not constitute renewal of the committee under § 101-6.1029.

(1) To make a minor amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary, and

(ii) File the amended charter as specified in § 101-6.1013.

(2) To make a major amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary;

(ii) Submit the proposed amended charter with a letter to the Secretariat requesting GSA's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat will review the proposed changes and notify the agency of GSA's views within 15 calendar days of the request, if possible; and

(iii) File the amended charter as specified in § 101-6.1013.

§ 101-6.1032 [Reserved]

§ 101-6.1033 Compensation and expense reimbursement of advisory committee members, staffs and consultants.

(a) *Uniform pay guidelines for members of an advisory committee.* Nothing in this subpart shall require an agency head to provide compensation, unless otherwise provided by law, to a member of an advisory committee. However, when compensation is deemed appropriate by an agency, it shall fix the pay of the members of an advisory committee to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated under 5 U.S.C. 3109. In determining an appropriate rate of pay for the members, an agency shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. An agency may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS-15 under the General Schedule, unless a higher rate is mandated by statute, or the head of the agency has personally determined that a higher rate of pay under the General Schedule is justified and necessary. Such a determination must be reviewed by the head of the agency annually. Under this subpart, an agency may not fix the pay of the members of an advisory committee at a rate of pay higher than the daily equivalent of a rate for a GS-18, as provided in 5 U.S.C. 5332.

(b) *Pay for staff members of an advisory committee.* An agency may fix the pay of each advisory committee staff member at a rate of the General

Schedule in which the Staff member's position would appropriately be placed (5 U.S.C. chapter 51). An agency may not fix the pay of a staff member at a rate higher than the daily equivalent of the maximum rate for GS-15, unless the agency head has determined that under the General Schedule the staff member's position would appropriately be placed at a grade higher than GS-15. This determination must be reviewed annually by the agency head.

(1) In establishing rates of compensation, the agency head shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(2) A staff member who is a Federal employee shall serve with the knowledge of the Designated Federal Officer and the approval of the employee's direct supervisor. If a non-Federal employee, the staff member shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(c) *Pay for consultants to an advisory committee.* An agency shall fix the pay of a consultant to an advisory committee after giving consideration to the qualifications required of the consultant and the significance, scope, and technical complexity of the work. The compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109, and shall be in accordance with any applicable statutes, regulations, Executive Orders and administrative guidelines.

(d) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart shall prevent an agency from accepting the gratuitous services of an advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(e) *Travel expenses.* Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(f) *Services for handicapped members.* While performing advisory committee duties, an advisory committee member who is blind or deaf or who qualifies as a handicapped individual may be provided services by a personal assistant for handicapped employees if the member:

(1) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(2) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(g) *Exclusions.* (1) Nothing in this section shall prevent any person who (without regard to his or her service with an advisory committee) is a full-time Federal employee from receiving compensation at a rate which he or she otherwise would be compensated as a full-time Federal employee.

(2) Nothing in this section shall prevent any person who immediately before his or her service with an advisory committee was a full-time Federal employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

(3) Nothing in this section shall affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the General Schedule classification and pay system in chapter 51 and chapter 53 of title 5, United States Code.

§ 101–6.1034 [Reserved]

§ 101–6.1035 Reports required for advisory committees.

(a) Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report will be prepared and transmitted to the Congress as determined under paragraph (d) of § 101-6.1008, detailing the disposition of the committee's recommendations in accordance with section 6(b) of the Act. Reports shall be consistent with specific instructions issued periodically by the Secretariat;

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat. Agency reports shall also include information requested to enable the Secretariat to carry out the annual comprehensive review of each advisory committee as required by section 7(b) of the Act. These reports have been cleared in accordance with FIRMR subpart 201-45.6 in 41 CFR chapter 201 and assigned interagency report control number 0304-GSA-XX.

(c) In accordance with section 10(d) of the Act, advisory committees holding closed meetings shall issue reports at least annually, setting forth a summary of activities consistent with the policy of section 552(b) of title 5, United States Code.

(d) Subject to section 552 of title 5, United States Code, eight copies of each report made by an advisory committee, including any report on closed meetings as specified in paragraph (c) of this section, and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress as required by section 13 of the Act, for public inspection and use at the location specified in paragraph (a)(2) of § 101-6.1013.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

Subparts 101-6.11—101-6.20 [Reserved]

Subpart 101-6.21—Intergovernmental Review of General Services Administration Programs and Activities

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended Apr. 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29329, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, Dec. 23, 1982, 48 FR 17101, Apr. 21, 1983, and 48 FR 29096, June 24, 1983.

§ 101-6.2100 Scope of subpart.

This subpart implements Executive Order 12372, "Intergovernmental Review of Federal Programs", for Federal financial assistance and direct Federal development programs of the General Services Administration (GSA).

§ 101-6.2101 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovenmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of GSA, and are not intended to create any right or benefit enforceable at law by a party against GSA or its officers.

§ 101-6.2102 What definitions apply to these regulations?

GSA means the U.S. General Services Administration.

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

Administrator means the Administrator of General Services or an official or employee of GSA acting for the Administrator under a delegation of authority.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

This Facsimile is from the

Office of Family Assistance

370 L'Enfant Promenade, SW
Aerospace Building 5th Floor
East Wing
Washington, DC 20447-0001

Date: 8/06

This transmission consists of this cover page plus 1 *pages.*

To:	From:
Kathy Way	Leonard Rubin
Nancy Theodore	ACF/OFA
Alisa Adorno	
Phone:	Phone: 4(202) 401-5066

Message: The fax transmissions you received yesterday did not include page 15 of the Iowa terms + conditions. The entire set of Iowa terms consists of 17 pages of text. Please accept our apologies for the confusion and for the very short turn-around time. We look forward to your comments. Thanks.

Office of Family Assistance
Fax no. (202) 205-5887.

AUG-06-1993 09:40 FROM HHS/ACF/POLICY&EVALUATION TO 94567739 P.01/02

Reconciliation of Costs or Savings

4.9 For the first four quarters of the demonstration, the Federal government will provide Federal financial participation (FFP) and will not recover excess costs.

4.10 Starting with the 5th quarter ending after the deemed beginning date of the demonstration, FFP will be limited so that excess costs will be recovered from the State and eliminated by the end of the demonstration. The State will not be allowed to owe the Federal government more than an allowable overage for any quarter. For the 5th through the 10th quarters, the allowable overage is $10 million. The allowable overage for the remaining quarters is:

(1) the excess costs at the end of the 10th quarter of the demonstration (adjusted for any net amount of excess costs reimbursed in prior quarters);

(2) multiplied by the ratio of the number of quarters remaining in the demonstration to 10.

In no case will the allowable overage be less than zero.

Reimbursement will be made for the 5th through the 20th quarters such that the cumulative Federal payments through the quarter in question will not exceed the lesser of:

(1) the cumulative actual costs, or

(2) the cumulative actual costs, minus excess costs, plus the allowable overage for that quarter.

4.11 A report showing the allowable actual costs of the demonstration to date and calculations of the cumulative excess costs or savings shall be submitted to the Departments within 60 days following the end of each quarter.

4.14 Within 60 days after the end of the demonstration period (i.e., the 20th quarter), a final reconciliation will be done to ensure that there are no remaining excess costs. If there are savings at the time of final reconciliation, the Departments agree to authorize Federal financial participation as measured by the extent of such savings for approved and matchable demonstration expenses. If there are remaining excess costs at the time of reconciliation the State agrees to repay the excess costs in equal quarterly amounts over the next four quarters. The

WORKING GROUP ON WELFARE REFORM,

FAMILY SUPPORT AND INDEPENDENCE

July 21, 1993

Issues for Discussion

1. What does a transitional welfare program look like? Who gets exempted from the time limit?

2. What kinds of post-transitional support/jobs should be available and for how long?

3. What can/should be done to prevent welfare in the first place?

4. Assuming limited budgetary resources for welfare reform, how much emphasis should be devoted to (a) prevention, (b) transitional support, and (c) post-transitional support?

5. What is the scope of welfare reform? How many existing programs (e.g., food stamps, housing assistance) should be reassessed as part of this effort?

6. How much flexibility should be allowed the states in answering all of the above questions?

7. How quickly should the new system be phased in (or who should it apply to)?

July 20, 1993

Dear Kathi:

This is the memo we spoke about today on the telephone. While I will continue to try to fax your office a copy of the enclosed, I wanted to insure a copy got to your office before tomorrow's 4:00 pm Welfare Reform Working Group meeting.

Thank you for your assistance.

Michelle Rodman Fenster

Michelle Rodman Fenster
Administration on Aging
401-4541

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Administration on Aging

Washington, D.C. 20201

MEMORANDUM

JUL 19 1993

TO: David Ellwood, Bruce Reed, Mary Jo Bane
Co-Chairs, Welfare Reform Working Group

FROM: Fernando Torres-Gil
Assistant Secretary for Aging

RE: Welfare Reform Working Group Concerns/Recommendations

In keeping with the mission and goals of this new office, I would like to make some recommendations and identify several concerns that will have a direct impact on some of the populations I serve (the elderly, persons with disabilities and minorities.) I know you will agree that welfare affects every member of the family and that all issues that may pertain to our focus should be raised in the larger discussion. I also realize that ultimately our Welfare Reform Proposal will involve trade-offs, but until such time, I would like to raise a variety of issues for our working group:

GRANDPARENTS AS CARETAKERS

The issue of grandparents raising grandchildren is one that is rapidly gaining attention. More and more grandparents are raising their grandchildren as parents are increasingly unable to care for their children due to financial hardships, incarceration, drug addictions, or chronic illnesses.

o Grandparents caring for grandchildren are entitled to AFDC benefits if they meet the financial criteria. A 1992 Brookdale Foundation statement reports "there is no way to estimate the number of children being raised by their grandparents who have not been identified by social service agencies." We should consider increasing education and outreach efforts to grandparents regarding entitlement to AFDC and other benefits.

o Grandparents raising grandchildren are meeting many challenges including how to address contemporary problems such as drugs, crime, and AIDS. In low-income, poorly educated families, there may be other compounding issues such as illiteracy and homelessness. Programs designed to address these social issues must be created with the perspective of this population as potential caretakers.

o Both populations (the elderly and children) have historically received little attention in terms of designing public policy. I have concerns about both populations losing much-needed assistance (AFDC, SSI, SSA and Food Stamps) when consolidating different programs and benefits under one household. Please consider insuring that the benefits of the elderly remain intact when adding AFDC and other benefits to the household. For example, if an elderly person applies for AFDC, his/her own benefits should not be tabulated in determining eligibility.

o Support for foster care tends to be much higher than AFDC benefits. We should consider whether grandparents or relatives raising grandchildren should be entitled to the same benefits as state-appointed foster parents.

o We should also consider whether grandparents raising grandchildren should be targeted as a group particularly needy for public housing assistance, especially if a grandparent is already living on a fixed income, is a "single" person (widowed), is disabled, or is unable to participate in the workforce.

o Any efforts to secure child support from missing parents should also be continued if the child is living with a grandparent. Parental responsibility should still apply.

o While there will certainly be a significant amount of discussion and attention paid to the needs of "welfare moms," I would like to encourage the group to think of the broader needs of "welfare caretakers." About one quarter of a million households receiving AFDC are headed by someone over 65.

<u>MINORITY POPULATIONS</u>

o While all of the recommendations regarding grandparents rasing grandchildren may apply to minority and/or ethnically diverse populations, bilingual services and programs should be created to actively reach these groups for education, prevention, and all services related to moving people through the welfare system.

o Immigrant populations are currently a strong focus of the media and a target of strong public opinions. While sentiment toward these groups gets emotionally charged on both sides, we should attempt to design public policies that provide the fairest welfare assistance to these groups, particularly American-born children, allowed by law.

DISABILITY CONCERNS

My staff is participating on the Disability Subgroup of the Transitional Assistance Group. This group is in the process of determining the various needs of persons with disabilities in a time-limited system. I would like to raise several issues related to persons with disabilities:

o We should consider a broad definition of "disability" in any welfare reform discussions.

o 22% of women on AFDC report themselves as disabled.

o Regarding the two-year time limit proposal:
Those individual with disabilities need extra supports/extensions to allow them to enter the workforce. Also, for parents who are caring for children with disabilities or aging relatives with late-onset disabilities, the issue becomes even more complex. Parents may need to stay home and care for either or both of these family members indefinitely.

o Care assessment should certainly play a big role in determining the types of services/supports these individuals need.

o For the temporarily incapacitated, the two-year time limit will have to be modified.

MULTIGENERATIONAL APPROACHES

o By protecting and preserving Social Security and Medicare, we can help assure that assistance will span the generations and provide security in later years to children today.

o Children and elderly people share use of the dependent tax credit, Medicaid, Title XX Social Services Block Grant, and SSI. We should consider the negative impact on any multigenerational household that would receive a reduction in any of these benefits.

o The "sandwich generation" (those who are caring for children and aging parents) are a group of AFDC moms to whom we must give close attention. The dual demands looming ahead for many "baby-boomer" females must be addressed.

o We need to get a better understanding of the mutual supports and intergenerational dependencies that shape families.