The original documents are located in Box 11, folder "General Revenue Sharing and Civil Rights, 1975" of the Stanley Scott Papers at the Gerald R. Ford Presidential Library.

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Department of the Treasury

Under Secretary

to: Mr. Stanley Scott

room: ________ date: 8/11/75

Re: The attached New York Times editorial on revenue sharing and civil rights enforcement

Stan

I thought you would like to have the enclosed memorandum that we recently prepared at Treasury. ~~I will call you on this subject later this afternoon or tomorrow morning~~.

Ed

Attachments

P.S. — Per our conversation today, please give me a call

Edward C. Schmults
room 3430
ext. 5363

THE NEW YORK TIMES
August 10, 1975

Revenues and Rights

Since its inception three and a half years ago, the $30-billion, 5-year general revenue sharing program has developed a large and powerful claque of supporters: the local government officials responsible for running the units of government which receive the money.

As next year's deadline for renewal of the program approaches, many of those officials are arguing that

GENERAL REVENUE SHARING

AND

CIVIL RIGHTS

Department of the Treasury
July 24, 1975

The State and Local Fiscal Assistance Act and Civil Rights

Section 122 of the Act provides comprehensive and strong nondiscrimination protections. The coverage involved goes a step further than that established by Title VI of the Civil Rights Act of 1964 for other activities funded with Federal assistance, in that sex discrimination is included. Further, the jurisdictional breadth and operation of the revenue sharing program as general fiscal support lead it to have more extensive implications for employment practices of local governments.

Section 122 provides that: "No person in the United States shall, on the gounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part with funds made available under Subtitle A." (Subtitle A provides for the allocation of shared revenues.)

The Act also broadly outlines the authority of the Secretary of the Treasury and the Attorney General in seeking compliance with the nondiscrimination requirements. The Secretary, once he has given notice and reasonable time to secure compliance to the chief executive officer of the noncomplying government and to the Governor of the State in which the alleged noncomplying unit is located, may: (a) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (b) exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964; or (c) take such other action as may be provided by law.

When a matter is referred to the Attorney General or whenever he has reason to believe that a recipient government is engaged in a pattern or practice in violation of Section 122, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be proper, including injunctive relief.

In his message urging renewal, President Ford reiterated the commitment of the Executive Branch that General Revenue Sharing should not be used as a means of avoiding the civil rights standards attached to Federal assistance. Clearly, this is what Congress intended in adopting the General Revenue Sharing program in 1972.

Amendments to Section 122
Sought by the Administration
in the State and Local Fiscal
Assistance Act Amendments of 1975

The Administration feels that the present statute is generally adequate for providing protection against discrimination. Its efforts to strengthen this protection will be largely of an administrative nature. However, the Administration has proposed that the existing legislation be clarified to specify that the Secretary of the Treasury may (1) withhold all funds or that portion used in a discriminatory activity or program; (2) require repayment of revenue sharing funds expended in a discriminatory program; and (3) terminate the eligibility of a recipient jurisdiction found to be in violation to receive one or more future payments.

Two important purposes would be served by these changes. First, it is arguable that the present statute, through its reference to Title VI, limits withholding and termination to the GRS funding utilized in the local program for which there is a finding of noncompliance. It can also be contended that since Title VI does not specifically authorize repayment of funds that have been expended in a discriminatory manner, existing law does not permit such remedy in the case of revenue sharing. An argument can therefore be made that the present revenue sharing regulations, which allow withholding of the entire entitlement and repayment, exceed what is permitted under the statute. The change proposed would remove any ambiguity about this point.

The related end to be served by the proposed amendment is the creation of a more flexible and usable tool for civil rights enforcement. The present regulations authorize withholding of only a jurisdiction's entire entitlement. The proposed amendment to the statute would make it clear that the Secretary has authority to withhold all shared revenues or only the amount being expended in a discriminatory manner. Such flexibility is needed because of the nature of the revenue sharing program. We think that a reasonable approach to civil rights compliance is to pinpoint, where appropriate, fund use and cut off only those funds being used in discriminatory programs. Such an approach, where sufficient to correct the conduct in issue, avoids unnecessary harm caused to those citizens of the jurisdiction benefiting from other GRS funded programs that are fully in compliance. Where it is not possible to pinpoint funding or where recipients willfully manipulate allocations to avoid compliance, presumably all revenue sharing funds would be withheld.

The Office of Revenue Sharing Compliance Program

The Office of Revenue Sharing is working to expand and perfect its civil rights compliance program. It is important to remember that the compliance responsibilities associated with revenue sharing are unique because of the nature and the breadth of impact of the program. In the 2-1/2 years that revenue sharing has been in effect, ORS has made significant progress in putting together an effective and efficient compliance mechanism.

The program has been influenced by two important considerations. It is a goal of the Office of Revenue Sharing to effectively enforce the antidiscrimination protections of the Act without subjecting recipient jurisdictions to unnecessary restrictions and red tape so contradictory to the philosophy of the program. The second consideration is that wherever possible, the Office of Revenue Sharing has tried to secure compliance voluntarily rather than to invoke penalties at the outset. Often the best means to correct a situation involves explanation of the law's requirements and voluntary agreement that corrective action will be taken.

The ORS approach to carrying out the law seeks to achieve full compliance with the nondiscrimination provisions of the law. There are four general elements in the approach: prevention, detection of possible violations, determination of actual violations, and remedial action to end discrimination.

Prevention

Each of the 39,000 recipient governments bears the responsibility for compliance with the nondiscrimination provision of the Act. In the belief that the vast majority of these governments do not wish intentionally to discriminate, we place heavy emphasis on ensuring that the chief executive officers of each government are aware of the nondiscrimination requirement of the law and of their obligation to make certain that there is no discrimination in the use of shared revenues. For every entitlement period, ORS requires the chief executive officer of each recipient government to assure in writing the Secretary of the Treasury that the funds will not be used in discriminatory programs or activities. ORS has provided each recipient government with copies of the law, the regulations, legal opinions, and specially prepared booklets on civil rights and on citizen participation. With each quarterly entitlement check, ORS provides a technical assistance letter that includes up-to-date information on civil rights requirements, enforcement actions and affirmative action programs. The ORS newsletter - which goes to over 2,000 addressees, including associations of government officials, State agencies, university urban studies centers, and interest groups - regularly provides expanded coverage of civil rights responsibilities and actions.

ORS staff have personally participated in several hundred national and regional conferences and workshops to explain General Revenue Sharing and its civil rights requirements to State and local government officials. By telephone and in person they have advised thousands of local and State officials about their responsibilities and the actions required of their jurisdictions.

ORS has several new and important programs underway which will greatly assist in preventing discrimination and achieving full compliance. In the past, there has been no adequate affirmative action handbook covering employment practices for use by State and local governments. EEOC, however, has had an affirmative action handbook covering employment for private corporations. Therefore, a new affirmative action handbook for State and local governments is now being prepared jointly by ORS and EEOC. This practical handbook will cover both employment, for which EEOC and ORS each have responsibilities, and service delivery and benefits for which ORS has responsibility. The handbook will be completed by late summer and will be distributed to recipient governments. It will also be made widely available to Federal and State agencies with compliance responsibilities and to national and regional organizations interested in civil rights issues.

Immediately upon publication of the handbook, ORS will issue revised versions of its popular and widely used booklets on civil rights and on citizen participation. These will be published in both English and Spanish. An improved version of the ORS Audit Guide will also be published for use by all governmental and private auditors.

It should be noted that more than 100 national organizations are major users of these information resources and are important contributors to achieving awareness and appropriate action by State and local government officials. These organizations include all the major associations of elected and appointed officials of State and local governments, the civil rights organizations, and organizations interested in citizen participation in decision making, as well as the media.

Detection

Audits. GRS has developed an extensive audit program. While audits also are essential to ensure compliance with financial and other requirements of the Act, ORS considers its audit programs as an integral part of its civil rights activities. Audits of GRS funds, conducted according to the ORS Audit Guide (which includes important civil rights items), are conducted in several ways. In a unique Federal initiative, ORS has entered into formal agreements with the principal audit officials of 42 States through which more than 15,000 local governments and State agencies are audited on a regular basis by, or under the control of, State audit agencies. Also, several thousand local governments are regularly audited by independent public accounting firms following the ORS Audit Guide and reporting any discrepancies to the Office of Revenue Sharing.

In carrying out its own responsibility under the Act, the General Accounting Office also conducts independent audits and reviews of governments throughout the Nation and reports discrepancies to ORS for corrective action. ORS, with its own staff and with assistance from the audit staff of the U.S. Customs Service of the Treasury Department, is auditing a systematically selected sample of all jurisdictions not otherwise audited. These audit activities, taken together, provide audit coverage of the majority of revenue sharing recipients, all major revenue sharing recipients, and over 90 percent of the funds distributed.

ORS audit staff, in addition, devotes substantial staff time to audits of jurisdictions in direct support of civil rights investigations by the ORS compliance staff and the Justice Department.

Reviews and Investigations. Given this broad and effective capability for determining where General Revenue Sharing funds are being used, civil rights compliance further requires indentifying those situations where patterns or practices of discrimination may exist. ORS has developed a comprehensive approach to identifying such instances of possible discrimination. Major elements in this approach include assistance from Federal and State civil rights compliance agencies, civil rights reviews of a representative sample of all governments, analysis of employment reports and work force statistics, and complaints by individuals and citizen groups.

ORS has executed formal cooperation agreements for civil rights investigations and joint action (as well as exchange of information) with the Equal Employment Opportunity Commission and the Department of Health, Education, and Welfare. Pending signature of formal agreements, ORS is cooperating closely with the Departments of Justice, Housing and Urban Development, and Labor.

The EEOC cooperation is especially important because in 1972 EEOC responsibility in employment matters was extended to include approximately 10,000 State and local governments -- all those with 15 of more full-time employees. EEOC has well over 2,000 staff members throughout the United States working in civil rights. Since EEOC is not a program agency, and thus provides no funds to State and local governments, its own ability to enforce compliance has been limited to instituting proceedings where voluntary compliance action is not achieved. ORS also has responsibility for discrimination in employment in these same 10,000 governments, and further has the authority to exercise sanctions over more than $6 billion in funds each year through administrative hearings or court action. Both EEOC and ORS believe that combining their organizational capabilities, legal powers, and funding control into a unified action approach represents an extremely significant means of ensuring nondiscrimination.

In addition, EEOC makes available to the Office of Revenue Sharing their complete computer files of the detailed employment data which they collect from State and local governments. ORS is in the process of developing a new sample of recipient governments weighted in terms of the statistical probability of discriminatory patterns and practices in State and local government employment. Each jurisdiction in this national sample will be reviewed for civil rights compliance by ORS staff or by civil rights investigators of other Federal and State agencies. Such investigations have already been begun with close cooperation between Department of Justice civil rights investigators and ORS audit and compliance staff.

ORS is vigorously implementing a system of cooperative agreements with recognized State human rights agencies which parallels the agreements with State audit agencies. Already, several States have entered into formal agreements with the Office of Revenue Sharing, and more have indicated their intention to execute agreements in the near future. ORS is meeting with all such State agencies by the end of the summer and anticipates executing agreements this year with the 33

State agencies that have been found acceptable as to authority and competence by the Equal Employment Opportunity Commission. Under these agreements, State agencies provide ORS information as to potential or determined civil rights violations within their States, conduct investigations on behalf of ORS, and engage in joint enforcement action with ORS.

Complaints. In addition to the audits and investigations conducted by ORS or cooperating Federal and State agencies, and in addition to analysis of reports and related statistics, ORS also has developed an extensive information program to assist the citizens and interested organizations in detecting and reporting possible civil rights violations. ORS uses this "complaint" system as an important component in an overall approach to identifying possible instances of discrimination involving GRS funds.

The information booklets described earlier were developed and distributed with the assistance of the principal national civil rights and citizen participation organizations. These include organizations such as NAACP, the Urban League, the American GI Forum, LaRaza, the League of Women Voters, and many others. ORS participates in the national, regional and State conferences of many of these organizations. The organizations also have produced their own informational materials on revenue sharing and civil rights for use by their local membership. Civil rights information is also regularly distributed to all major regional newspapers as well as the national media through press releases, copies of booklets and newsletters, and through press interviews and meetings.

ORS also uses the annually required Planned and Actual Use Reports, which must be published in local newspapers by all recipient governments, to advise citizens that there are nondiscrimination requirements and that any individual may complain directly to the Office of Revenue Sharing. Interested citizens are also informed of where they may examine documentation on the recipient government's uses of funds. ORS will accept a complaint even if it is handwritten on a postcard, and carefully guards the identity of complainants, a protection which is becoming increasingly widely known.

ORS believes that these several major components in identifying possible discrimination -- interagency cooperation, federally initiated sample reviews, reviews initiated on the basis of reports and statistical information, and investigations in response to citizen and organizational complaints -- are essential to a fully effective, comprehensive program for achieving civil rights compliance in all 39,000 recipient governments.

Determination of Violations

When the Office of Revenue Sharing obtains from any of the sources discussed above information that indicates discrimination involving revenue sharing funds might exist, it proceeds to determine what, if any, violations actually do exist. This factual determination is made by field investigation in the jurisdiction involved, either by ORS compliance staff, investigators of other Federal agencies, or investigators of cooperating State agencies.

When discrimination involving revenue sharing funds is found, a violation determination letter is issued by the Director of the Office of Revenue Sharing to the jurisdiction defining the violation and the remedial actions required, and providing up to sixty (60) days for voluntary action to remedy the violation. The Governor of the State is provided a copy of the determination letter and requested to assist in assuring compliance. The cooperating State human rights agency and the State agency concerned with intergovernmental relations are also notified and requested to assist. In the majority of instances to date, the jurisdiction involved has voluntarily taken affirmative action to correct the discriminatory pattern or practice.

When a jurisdiction is unwilling or unable to take corrective action, ORS may refer the case to the Justice Department for civil action as has been done in cases involving the City of Chicago, and the State of Michigan and the Ferndale School District. ORS also may convene an administrative hearing, or take other action permitted by law.

Further, when a jurisdiction has been issued a violation determination letter and has yet to take acceptable remedial action at the time when assurances are required for the forthcoming entitlement period, ORS requires detailed evidence of affirmative action to ensure civil rights compliance in any program or activity which may be funded in the future with revenue sharing funds. Funds for future entitlement periods are not paid until a satisfactory detailed assurance has been provided to ORS as regards those future funds. Meanwhile, of course, necessary action to remedy past discriminatory uses of funds is forcefully pursued.

The following table provides an indication of the way in which the compliance effort has worked. The fact that most cases have been closed by the Office of Revenue Sharing rather than proceeding to later stages reflects the effort that has been made to secure compliance voluntarily.

Total received thru June 30, 1975	-	171
Resolved	-	44
Referred to Justice	-	2
Active	-	125

Resources

The ORS program for assuring compliance with the nondiscrimination provisions of the Act was designed and is being vigorously implemented in full recognition of the extensive governmental and private resources already committed to achieving civil rights compliance. The nondiscrimination requirements incorporated in the revenue sharing Act previously existed under the Constitution, the several civil rights acts passed by the Congress, civil rights laws of the States, and an extensive body of case law developed by Federal and State courts.

Given the breadth of the nondiscrimination provisions of the Act which apply to all 39,000 State and local governments, and given the strong Congressional and Administration view that General Revenue Sharing should operate with maximum efficiency to provide vitally needed financial resources to State and local governments without excessive overhead cost, ORS is fully committed to using every available existing public and private resource to help accomplish its nondiscrimination responsibility. At the same time, ORS retains full responsibility and accountability for necessary enforcement actions and for success of the effort.

The Federal agencies with which ORS has cooperation agreements have over 3,000 staff members assigned full time to civil rights compliance. Clearly, these extensive Federal resources have first responsibility to their own agency programs. Nevertheless, because a large part of their own agency programs are directed toward precisely the same objectives and cover the same subject matter for which ORS has responsibility, the potential benefits of close cooperation and joint enforcement action are enormous.

More than 1,000 staff persons of the State human rights agencies bring to the combined effort a detailed and extensive knowledge of conditions and events within their own States as well as bringing to bear the considerable compliance powers of the States themselves.

The more than 3,000 local chapters and offices of the principal civil rights and public participation organizations similarly represent an invaluable additional means of facilitating civil rights compliance and communicating instances of possible violations to ORS. Further, the ability of an aggrieved citizen or a group of citizens to readily seek redress at the national level is believed to be of great importance in and of itself.

Within the Office of Revenue Sharing, a total of 85 positions have been authorized for the administration of General Revenue Sharing. Of these, 30 have been authorized in the Compliance Division, which is the largest single unit within the Office of Revenue Sharing. ORS considers these 30 positions to be inadequate to fulfill its compliance responsibilities. In the Fiscal Year 1975 budget, the Administration requested 51 compliance positions for the Office of Revenue Sharing, an increase of 26 positions over the 25 which had previously been authorized. The Congress authorized only five additional compliance positions, bringing the total to 30. Again in the Fiscal Year 1976 budget, the Administration requested the additional 21 positions in compliance which had been cut from the Fiscal Year 1975 budget. These 21 positions are critical to the effectiveness and success of the ORS program to achieve compliance with the civil rights requirements of the Act. All other members of the small Office of Revenue Sharing staff already are fully committed to activities in support of the Compliance Division. The 21 new compliance positions which it is hoped Congress will authorize will more than double the ability of the Office of Revenue Sharing to achieve the full potential for civil rights compliance possible through General Revenue Sharing.

GRS and Civil Rights: Issues and Responses

A. Deferral or Withholding of Funds

Essentially, the issue here is whether the Office of Revenue Sharing (ORS) has the authority and responsibility to defer General Revenue Sharing (GRS) entitlement funds on the basis of a probable cause determination of the Secretary (ORS Director) pending a full administrative hearing on the facts or a finding of discrimination by a court. Civil rights groups insist that he has such authority and responsibility under Title VI of the Civil Rights Act of 1964 (and the "Fountain Amendment" to it) and the Fifth Amendment to the Constitution, and that the ability to take such action is a necessary tool with which to bring about compliance. These groups would ground such action by ORS on an investigation by the agency, a civil action by the Attorney General, or the institution of a proceeding by a State agency.

The Treasury Department has maintained that the requirements of due process demand that funds not be deferred without a finding of discrimination after a full hearing on the merits by an administrative law judge or such a determination by a Federal court. A determination made solely by the program administrator is inadequate grounds, in Treasury's view, for such drastic action with all its implications for State and local public finances. Additionally, the Treasury Department maintains that its authority to institute administrative action must be discretionary in a matter where the Attorney General has brought a civil action in court or one which has been referred to him by Treasury. The court and the Justice Department are in a better position to determine the remedies required in such situations and the court possesses greater authority to grant relief through deferral of funds or other means.

The Federal District Court for the District of Columbia in Robinson v. Shultz held that the GRS Act gave Treasury such deferral power pending the outcome of an administrative proceeding (pursuant to Title VI of the Civil Rights Act of 1964). However, it did not order ORS to halt payments to the City of Chicago until the Illinois court had made a finding of discrimination. The Court held that this deferral power was discretionary when a case which ORS has referred to the Attorney General is pending.

The Treasury Department also maintains that an important difference exists between the applicability of Title VI to revenue sharing as compared to its application to other Federal assistance programs. Congress did not intend that State and local governments be required to complete complex and lengthy applications in order to obtain their revenue sharing entitlements. Such requirements were limited to the submission of a Planned Use Report and the provision of certain assurances. Consequently, in practice there is really no normal application procedure during which pre-award audit can be conducted and sanctions applied. The difficulties of the application of sanctions become clear when one seeks to decide which funds, at what point in time, and for how long, should be deferred. While the Court in Robinson v. Shultz concluded that incorporation of Title VI into the revenue sharing Act conferred deferral power on the Secretary, it did not state that revenue sharing funds are directly subject to Title VI.

Federal agencies generally restrict the withholding and repayment of funds, when this is required as a nondiscrimination compliance tool, to those funds being used in discriminatory activity. It is felt that such an approach applied in the GRS program generally offers a more usable tool, as well as avoiding injury to programs untainted by discrimination. The amendments proposed by the President to the State and Local Fiscal Assistance Act of 1972 will help assure that such a flexible approach can be taken. The Office of Revenue Sharing would likely withhold all entitlement funds where egregious discrimination is practiced, when a government declines to take remedial action, where such "pinpointing" of discriminatory use is impossible, or where accounting manipulations were being utilized to avoid compliance.

B. Degree to which Complaints Should Be Relied upon in Civil Rights Compliance

The United States Commission on Civil Rights (Civil Rights Commission) and certain civil rights groups have stated that the Office of Revenue Sharing relies excessively on complaints to direct its civil rights activities. They would prefer more self-initiated activity and more assistance to potential complainants in understanding their rights.

The section of this paper on "The Office of Revenue Sharing Compliance Program" [p. 3] provides an outline of the ORS compliance apparatus, which clearly goes far beyond reliance on complaints and provides a network for the assessment of compliance status, independent of the complaint process. ORS agreements for cooperation in carrying on compliance reviews and for exchange of information with other Federal and State agencies, its network of audit agreements with States and independent public auditors for which it provides guidelines and oversees, and its own sample field audits and reviews and full-scale compliance reviews are essential parts of this process.

ORS also, through such efforts as its publications "General Revenue Sharing and Civil Rights" and "Getting Involved", seeks to give potential complainants adequate information with which to protect their rights. The revised Planned Use Report, which must be published, notes that discrimination complaints may be directed to ORS and provides the Office's address. The instructions accompanying the report also state that the minority and bilingual media must be advised of its publication. Further, the complaint process is quite easy to utilize. The requirement that a complaint be written, which is contained in the Title VI regulations of other agencies, is administered so that it provides no serious obstacle to complainants. In fact, complaints written on postcards have been investigated. ORS further seeks to explain to recipient governments their civil rights responsibilities. Recipients are prohibited by current regulations from intimidating or otherwise harassing those who file civil rights complaints.

C. The Processing of Complaints Takes Too Long

The Civil Rights Commission and the Leadership Conference raise this issue. ORS is making every effort to expedite its complaint resolution process through such measures as automation of its compliance workload system. The Administration feels that the Act requires ORS to attempt to obtain compliance voluntarily prior to seeking or invoking various penalties as a means of gaining remedial action. Explanation of the requirements of the laws and regulations and negotiation of a satisfactory compliance schedule are often the most effective means to achieve compliance. Such an approach, of course, takes some time, but it is generally much faster than the litigation which may be required should voluntary action not be taken.

Given the special characteristics of the revenue sharing program, as well as its impact on some 39,000 jurisdictions, ORS took early action to develop and implement a complaint system which both protects the interests of complainants and treats recipient governments fairly.

D. ORS Depends Too Much on Negotiated Settlements

This contention has been made by the Civil Rights Commission. As stated above under section C, the Administration feels that fairness and efficiency, as well as compliance with Section 122 of the GRS Act, justify initial efforts to educate and negotiate with governments in bringing about civil rights compliance. The Administration does not conclude that the record of complaint resolution indicates, as suggested by some, that the interests of complainants and minorities generally have been injured by this approach. In fact, all complaints where violation of the nondiscrimination requirement were found (about one-third of the complaint cases thus far closed), have resulted in some form of remedial action. The others are in court, the hands of other agencies, were found to have no substance, or were outside of ORS jurisdiction.

E. ORS Depends Too Much on Assurances Which Its Regulations Do Not Make Explicitly Subject To Judicial Enforcement of the Federal Government

To some extent, this issue raised by the Civil Rights Commission relates to that discussed under section A above. Across-the-board pre-audits are to a considerable degree contrary to the philosophy of this program, are not provided for in the GRS Act, and clearly would be most difficult to conduct from a practical standpoint. Consequently, assurances are a useful compliance device.

The assurances required by the Revenue Sharing Act do not include nondiscrimination in use of funds, which is an administrative initiative of ORS. False assurances are violations of 18 U.S.C. 1001, a criminal statute of the United States Code. That statutory section was reprinted in full on the first assurance form used by ORS. Further, the substantive nondiscrimination provisions in the GRS Act and regulations are expressly subject to judicial enforcement. Consequently, the enforceable status of the nondiscrimination assurance is clear. ORS requires augmented assurances with specific evidence of ability to comply with the law from those places determined to be in violation as to prior periods and which have yet to complete corrective actions at the time assurances are required for a new entitlement period.

F. ORS Should Make a Greater Effort to Inform Citizens of Their Civil Rights Under the General Revenue Sharing Act

The Civil Rights Commission and staff and members of the House Subcommittee on Civil Rights have raised this issue. ORS has made significant efforts in this direction. Its pamphlet, "General Revenue Sharing and Civil Rights", has been widely viewed as most useful in accomplishing this objective. The publication, "Getting Involved", serves the similar but broader purpose of informing all citizens about their rights under the program and helping them to effectively participate in decisions about the use of entitlements. The regulations applicable to GRS also outline a number of types of discriminatory acts, much as do regulations of other agencies. These regulations, along with other informational efforts made by ORS, help recipient jurisdictions to understand their responsibilities. The Treasury Department has recently proposed improvements in the ORS regulations which would set more explicit standards for civil rights compliance, especially as such relates to employment and sex discrimination.

G. The Collection of Data by ORS Is Inadequate for Civil Rights Compliance Purposes

The Civil Rights Commission, the staff of the House Subcommittee on Civil Rights, and some civil rights groups desire that ORS regulations include a provision requiring recipients to compile and furnish racial and ethnic data, by sex, in relation to programs funded in whole or part with GRS funds.

By the terms of the State and Local Fiscal Assistance Act itself, the Office of Revenue Sharing can require such data from recipient units. In fact, ORS requires by recent regulation that this data be available on call when it is needed for the purpose of sample reviews, and for dealing with agency referrals or complaints.

Since shared revenues can be expended in an extremely wide range of governmental programs, the burden on recipients of providing, and on ORS of processing, such data would be enormous. A general requirement for the provision of such data, especially if qualification for entitlements depended on it, would be a step in the direction of encumbering GRS with the complex requirements associated with categorical grants. One of the objectives of the agreements which ORS is making with such agencies as EEOC, HEW, and State human rights agencies, is to gain access to data already available. In fact, ORS has obtained EEOC data showing employment statistics of the type discussed.

H. The ORS Audit and Compliance Review Process Is Inadequate for Nondiscrimination Purposes

The Civil Rights Commission staff and members of the House Subcommittee on Civil Rights, and civil rights groups, are critical of what they see as insufficient Federal presence in its audit system, lack of civil rights expertise by auditors, and lack of real full-fledged ORS compliance reviews.

The section of this paper on "The Office of Revenue Sharing Compliance Program" [p. 3] outlines the ORS audit process which is steadily being improved. Currently a new audit guide is being readied for publication. ORS is also cooperating with EEOC in the preparation of a pamphlet to help recipient governments know how to meet their equal employment opportunity responsibilities. Reliance on State and local government audits is only one aspect of ORS's audit program. EEOC data and referrals, joint efforts with the Justice Department, a cooperative agreement with HEW and probably other departments in the future, audits by independent public accountants, and agreements for provision of data and investigative assistance with State 706 agencies, are also involved. Additionally, ORS oversees this whole audit process through establishing its own audit guidelines, through requiring a certification procedure for State agencies, through monitoring of State and independent public auditor audits, and through its own sample audits of units not otherwise audited. It is important to note that ORS was the first agency to incorporate significant civil rights elements into its regular audit guidelines.

Since there is no normal application procedure associated with GRS, it is impractical to conduct pre-award compliance reviews. Even if such a step could practically be taken, it could well be damaging to the basic concepts of the program, as well as contrary to the GRS Act. It is, of course, not difficult to envision the administrative burden on both Federal and recipient governments of applying such a process across-the-board.

ORS does itself conduct sample post-award field audits and reviews of governments not audited by States or independent public auditors. It has further conducted full-scale compliance reviews in 17 cases -- 14 in association with the Justice Department. It is also important to note that ORS launched its general compliance program in May-June of 1973 with compliance visits to 103 of the jurisdictions receiving the largest GRS entitlements (accounting for over 50% of all entitlement funds). These visits, which were to help plan the ORS compliance network, included civil rights inquiries.

I. ORS Has Inadequate Civil Rights Compliance Staff

The Civil Rights Commission, the Leadership Conference on Civil Rights, the Lawyers' Committee for Civil Rights Under Law, and members and staff of the House Subcommittee on Civil Rights and Constitutional Rights have questioned whether ORS had adequate staff devoted to civil rights compliance work. Their concerns have centered around total number of staff, its lack of organizational independence, and its training in civil rights compliance matters.

To begin with, the Treasury Department agrees that some additional staff is required for revenue sharing compliance work. In fiscal year 1975 the Administration requested 26 additional compliance positions, but only five of these were approved by the Congress. Twenty-one additional positions were requested for FY 1976.

Of the small staff, five professionals are civil rights specialists, whose efforts are wholly devoted to civil rights compliance and who receive extensive assistance from other ORS staff also committed to meeting ORS's civil rights responsibilities. ORS civil rights compliance staff is supplemented by:

Efforts of the rest of the ORS staff -- especially the compliance, legal, intergovernmental relations, and public affairs staffs. This includes the use of non-civil rights compliance professionals for special projects; participation by the Director, Deputy Director, and Compliance Manager in civil rights policy development and case activity; commitment of 35% of the auditors' time to the civil rights aspects of revenue sharing audits; support from the Chief Counsel's staff to civil rights specialists, auditors, and other staff working on discrimination problems; participation of the Public Affairs and Intergovernmental Relations Divisions in a nationwide public information effort directed at government officials, interest groups, and individuals. The Treasury Department is convinced that an effective antidiscrimination program requires such cooperation among staff divisions and that proposals to give civil rights compliance more organizational independence are unrealistic.

Support from and coordination with other Federal and State and local agencies has been described in the section on "The Office of Revenue Sharing Compliance Program" [p. 3] and below in section J.

J. <u>ORS Has Inadequately Coordinated Its Nondiscrimination Activities with other Federal and State/Local Agencies</u>

This issue is raised by the Civil Rights Commission. The section of this paper on "The Office of Revenue Sharing Compliance Program" [p. 3] describes the cooperative arrangements ORS has worked out with State governments to perform audits, State human rights agencies for the interchange of data and for investigative support, EEOC for the exchange of information, HEW for similar purposes, and the Department of Justice, which serves as an integral part of the GRS antidiscrimination effort. Additionally, GAO has been involved in the formulation of ORS audit standards, as well as several efforts to evaluate the impacts of the program. Agreements are being negotiated with other agencies, such as HUD and the Department of Labor, with which ORS is already cooperating on an informal basis.

While ORS is fully aware of the need for coordination, it does not feel that it can relinquish ultimate responsibility for the resolution of compliance cases, either to other agencies with related responsibilities, or to State agencies. It is the Administration's position that the final decisions in GRS compliance cases should remain with the Federal agency to which that responsibility is assigned by Federal statute. In addition, to splinter ultimate civil rights compliance responsibility among a number of Federal agencies would probably prove to be inefficient with no agency being ultimately responsible for GRS compliance.

Other agencies which implement Title VI of the Civil Rights Act of 1964 are not necessarily equipped with the expertise needed for enforcing Section 122(a) of the GRS Act. The nondiscrimination task as related to revenue sharing is different from most other programs in that sex discrimination is more fully covered in the GRS Act and employment discrimination is more greatly affected by the nature and jurisdictional extent of the program. There are few, if any, other Federal programs where money can be applied to so many different uses. Moreover, GRS funds are spent in certain functional areas (fire departments, other municipal services) in which few other agencies have civil rights responsibilities. It is also important to note that some of the other agencies with civil rights compliance responsibility have considerable backlogs of their own cases.

The Department of Justice has independent authority to bring civil actions in GRS discrimination cases when it has reason to believe that a recipient government is engaged in a pattern or practice of discrimination. It also can bring such actions when cases are referred to it by the Secretary of the Treasury. Another relevant authority of the Attorney General is his power to intervene under Title IX of the Civil Rights Act of 1964 in any Federal court action seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment on account of race, color, religion, sex, or national origin. He further has authority to seek injunctions to bring an end to discrimination when termination of Federal funding of a program has not brought corrective action.

The Office of Revenue Sharing has a close-working relationship with the Civil Rights Division of the Justice Department. Joint investigations and reviews, supportive staff assistance provided to ORS, and primary Justice responsibility for court action are among the forms of ORS-Justice cooperation.

K. <u>ORS Should Seek 110% Recovery of Funds as Is Provided by Regulation for Violation of the Local Priorities Expenditure Requirement</u>

The Administration's position is that it is more important in the long run to change behavior rather than to increase already adequate penalties. Further, general Title VI practice does not permit recovery of funds, especially in excess of the funds involved in discrimination. Any effort to take such an approach would have to be supported by statutory change, since Congress itself provided for the 110% recovery penalty only in cases where the local priorities expenditures requirement was violated.

L. <u>The GRS Act Should Be Amended To Grant Private Individuals Subjected To Discrimination Involving the Expenditure of Shared Revenues Authority To Initiate Litigation in Federal District Court for Appropriate Relief</u>

Private individuals do have such authority. Citizens groups have brought actions under the GRS Act, Title VI of the 1964 Civil Rights Act, the Fourteenth Amendment to the Constitution, the Civil Rights Act of 1871, and other Federal statutes. The cases have been brought against recipient governments, the Treasury, or both. The option of court action already exists for those who are not satisfied with the results of administrative actions.

M. There Are Inadequate Protections Provided Against Discriminatory Action by Contractors and Those To Whom Real Property Acquired and Improved with GRS Has Been Transferred

The issue of discrimination in use of transferred property is raised by the Civil Rights Commission. Existing ORS regulations cover expenditures of revenue sharing entitlement funds by private contractors, and ORS audits concern themselves with funds transferred by governments. Revised regulations recently proposed by the Treasury Department address themselves to the property transfer problem raised by the Civil Rights Commission.

N. ORS Should Apply Its Nondiscrimination Standards To All Expenditures of Recipient Jurisdictions, Given the Fungibility of Shared Revenues

The Civil Rights Commission and Leadership Conference on Civil Rights, along with the Comptroller General, have made this suggestion in one form or another.

The Administration, although aware of the impact of fungibility, opposes this proposal on the following grounds:

1. Congress, by the language of the State and Local Fiscal Assistance Act, clearly intended Section 122 to apply only to "any program or activity funded in whole or part with funds made available" through GRS. Where Congress intended that indirect use be specifically considered, as in the case of the no-matching requirement, the Act explicitly so states.

2. In the Mathews v. Massell case, a Federal court held that recipients could not use sham financial transactions to avoid the local priority expenditures requirement set out in the Act. However, the court did not apply this restriction to legitimately "freed up" funds. A similar distinction is appropriately made in the application of the nondiscrimination requirement.

3. The Office of Revenue Sharing is actively pursuing its civil rights responsibilities as they relate to the use of GRS funds by recipient governments, their contractors, or those to whom funds are transferred. Civil rights audits concern themselves with all areas where shared revenues are involved, not only activities mentioned in complaints. The broad jurisidictional impact of the program, its incorporation of more extensive sex equality requirements, its greater implications for equal employment opportunity, and ORS's effort to educate recipients in their civil rights responsibilities, all make it possible for the GRS program to broadly advance nondiscrimination goals.

4. General Revenue Sharing, while not permitting avoidance of Federal nondiscrimination standards, was not created primarily as a civil rights program. EEOC, the Justice Department, and the Title VI and VII efforts of other agencies, as well as the possibility of individuals initiating court action, all contribute to the protection of civil rights in the provision of Federal assistance. The efforts of these other organizations already involve programs of GRS recipients, whether or not such programs are also funded with shared revenues.

5. In keeping with the philosophy of GRS, the Office of Revenue Sharing effectively carries out a large portion of its nondiscrimination responsibilities through formal and informal cooperative arrangements with other Federal, and with State, compliance agencies. This approach avoids unnecessary red tape and the creation of an additional expensive bureaucracy.

6. The reporting and review requirements and other procedures necessary to properly enforce a provision covering all expenditures would hinder GRS's ability to provide efficient Federal fiscal assistance.

7. Our experience indicates that there is not a great deal of conscious effort on the part of governments to avoid their civil rights duties. It appears that recipients are already largely aware of their responsibilities to avoid discriminatory practices. It thus appears unnecessary to impose the substantial Federal intrusion into State and local affairs which would occur if all expenditures were to be monitored.

O. <u>Improvements in Regulations Suggested by the Civil Rights Commission and Others</u>

Among the suggested changes and additions to the regulations which have not been discussed earlier are:

1. Fuller treatment of employment and sex discrimination.

2. Clearer coverage by nondiscrimination requirements of services provided in facilities made available in part or whole with shared revenues.

3. Prohibition of discrimination in the membership of local revenue sharing advisory bodies.

4. Clearer statement that the list of discriminatory acts included in the regulations is not exhaustive.

5. Requirement of affirmative action to overcome past discrimination.

6. Fuller guidance as to what constitutes discrimination.

7. Regulations relevant to withholding pursuant to a court order should be broader than Treasury has contemplated in the past.

8. An agency in each State should be required to be assigned to work with ORS.

Quite extensive revisions in the Office of Revenue Sharing nondiscrimination regulations have been considered by the Treasury Department and most of the concerns raised above are addressed in the revisions that have been proposed.

The State and Local Fiscal Assistance Act, as well as other Federal civil rights laws, prohibit the use of shared funds in programs where the effects of past discrimination still exist. When jurisdictions are found to be in noncompliance in the direct or indirect (secondary) use of their entitlements, affirmative action programs are required of them by ORS. While ORS encourages all recipients to voluntarily undertake affirmative action programs, the requirement that such plans be formulated by all recipient governments, regardless of whether they were found in noncompliance, is not contemplated. Such would contradict the function of GRS as unencumbered aid, would be a bureaucratic nightmare (given the number of jurisdictions involved and the lack of a normal application process), and may well not be contemplated by the GRS Act itself.

P. <u>ORS Should Make More Use of Justice Department and EEOC Discrimination Cases against State and Local Governments To Direct Its Compliance efforts</u>

ORS does utilize EEOC information. It further cooperates closely with the Department of Justice in its compliance efforts. ORS does not have jurisdiction in cases where revenue sharing funds are not involved. It must be kept in mind that under the GRS Act the Attorney General has independent civil rights authority. The Treasury Department has maintained that normally when Justice has initiated court action on its own or after referral of a case from ORS, the court and Justice Department are in the best position to determine and apply remedies. It could be viewed as "whip sawing" of a recipient were both court and administrative action directed against a defendant at once. Deferral by ORS on the basis of allegations, before the court has made a determination of discrimination, could further be viewed as denial of due process. Judge Smith in Robinson v. Shultz, stated that pending the outcome of court action, ORS authority to defer funds was clearly discretionary.

APPENDIX

Issues Raised in
Civil Rights Cases Involving
General Revenue Sharing

Most of the discrimination complaints that have resulted in court action to date involve allegations of the use of shared revenues in activities where discriminatory employment practices exist. However, at least three court actions brought by citizens against recipient governments, ORS, or both, involve charges of discrimination in provision of services. A fourth is a school segregation case. These four cases can be summarized as follows:

Cain, et al v. Simon, Watt, and Murphy. This case grows out of a long-standing ORS complaint case in Ouachita Parish, Louisiana. The complainants, supported by the Lawyers' Committee for Civil Rights Under Law, are seeking to have the District Court of the District of Columbia invalidate ORS's determination that the Parish is in compliance and order certain further actions on the part of the Parish. ORS had earlier (August 1974) sent a violation determination letter to Ouachita, but has since found that the Parish had come into compliance, or was attempting to do so, where discrimination had been found. Besides allegations of discrimination in provision of roads, fire protection, and library facilities, charges of employment discrimination in the fire and highway departments were made. In June of 1975, the court refused to enjoin ORS from making payments to Ouachita. However, the court still has not issued a final ruling.

Bogalusa Voters' League v. City of Bogalusa and Graham Watt. This case brought in the Federal District Court for the Eastern District of Louisiana in June of 1975 alleges employment and service discrimination. ORS is involved since it is said to have provided funds used in a discriminatory manner. The case is brought under the GRS Act, Title VI of the Civil Rights Act of 1964, and Sections 1981 and 1983 of 42 USC (1870 and 1871 Civil Rights Acts). ORS expects that the city will soon submit a plan of action in response to an ORS letter of determination of violation.

Danville Citizens Committee v. Vermillion County Board, Simon, Watt, HUD, Treasury, and HEW. This case, brought in January of 1975 under Title VI, 42 USC 1981, and 28 USC 1345, alleges service and employment discrimination on the part of the city of Danville, Illinois. ORS is charged with funding discriminatory activity and a cutoff of funds is demanded. ORS received no complaint prior to the case being brought.

U.S. v. State of Michigan and Ferndale School District, et al. Brought by the Justice Department in Federal District Court in May of 1975, this case results from referral to Justice by ORS. ORS sent a letter of violation determination in November of 1974. The case is brought under Title IV of the Civil Rights Act of 1964 and alleges segregation in the school system of Ferndale, Michigan, whose teachers benefit from shared revenues placed by the State of Michigan in the teachers' retirement fund.

Court actions involving complaints about the discriminatory use of revenue sharing funds in employment practices can be summarized thusly:

Robinson v. Shultz

This case, the most prominent involving discriminatory use of GRS entitlement funds, was the result of a complaint filed in February 1974 in the U.S. District Court for the District of Columbia (before Judge John L. Smith, Jr.) by the Afro-American Patrolmen's League of Chicago and the National Association for the Advancement of Colored People of Chicago against the Treasury Department. The plaintiffs sought, among other things, to have the court order the deferral of Chicago's revenue sharing entitlements until its police department was found to be in compliance with the nondiscrimination provisions of the GRS Act. This complaint was buttressed by the fact that the Law Enforcement Assistance Administration (LEAA) of the Justice Department in 1972 had found discriminatory employment practices in the Chicago Police Department. Plaintiffs in Robinson v. Shultz had, in September 1973, filed a complaint with ORS and were dissatisfied with the administrative actions taken by ORS in response. ORS's response was largely guided by its desire to cooperate with the approach taken by the Justice Department, which itself had brought suit against Chicago in August of 1973. It was felt that it would be improper to cut off funds by administrative action while a suit brought by the government was being tried in court on the same facts.

The issue of discrimination in employment practices (hiring and promotion) was the subject of action brought by the Justice Department in the U.S. District Court for the Northern District of Illinois before Judge Prentice H. Marshall in August of 1973 (U.S. v. City of Chicago). The Justice Department argued that the Chicago police employment practices violated the Equal Employment Opportunity Act of 1972 and regulations of the Justice Department and LEAA. On November 7, 1974, the Illinois District Court found racial and sexual discrimination in Chicago police employment practices and enjoined the city from following such practices. Since then, efforts to work out an agreement on these issues, subject to the review of the court, have continued.

The case brought in the District of Columbia Court had proceeded as follows:

> On April 4, 1974, Judge Smith ordered the Secretary of the Treasury to begin his administrative procedure by notifying the Mayor of Chicago and Governor of Illinois of his determination of noncompliance and requesting the Governor to seek compliance. The court, while stating that the Secretary had authority to defer payments pending the outcome of administrative proceedings, concluded that it was premature for the court to order such deferral. This latter conclusion was based on the facts that the Governor had not been notified and that civil litigation brought by the Justice Department was pending. The Treasury Department (Office of Revenue Sharing) maintained that deferral was inappropriate since it would not be based on due process and that the Illinois court which was then considering the facts of the matter along with the Justice Department were in the best position to determine and apply remedies.
>
> After writing to the Governor of Illinois and exchange of letters with the City of Chicago, ORS on May 22, 1974, referred the matter to the Attorney General -- one of the options open under Section 122 of the GRS Act. On June 28, Judge Smith again refused to order ORS to defer Chicago's GRS payments, stating that Treasury had met its responsibility by referring the matter to the Attorney General. The Judge further stated that in this situation, the Treasury's deferral authority was discretionary and that automatic deferral could jeopardize the orderly progress of pending Justice Department litigation.

Based upon the November 7, 1974, finding of discrimination of the Illinois court, on December 18, 1974, Judge Smith ordered the ORS to make no further GRS payments to Chicago pending further order of the court. This deferral was also to continue until ORS assured the court that Chicago was subject to a final order of the Illinois Federal court and had assured compliance, and ORS had monitored this compliance and reported to the District of Columbia court on it. Judge Smith denied a request of Robinson, et al, to order ORS to promulgate deferral regulations.

The City of Chicago then requested the Illinois court to void the District of Columbia order, which was denied. On January 3, 1975, the Court of Appeals for the circuit encompassing Illinois refused to review Judge Smith's order.

On January 6, 1975, the City of Chicago was allowed to intervene in the District of Columbia action. After failing to obtain dismissal or grant of a motion to vacate Judge Smith's deferral order of December 18, 1974, Chicago did obtain the transfer and consolidation of the District of Columbia case to the Illinois court.

United States v. the City of Tallahassee

On December 13, 1974, the Justice Department brought action in the U.S. District Court for the Northern District of Florida alleging discriminatory employment practices in violation of the GRS Act and Title VII of the Civil Rights Act of 1964. The case was settled by a consent decree, whereby Tallahassee agreed to undertake remedial action.

Montclair, New Jersey

Here a complaint was filed with ORS alleging discriminatory employment practices in the police and fire departments. The New Jersey Division of Civil Rights on June 17, 1974, made a finding of discrimination which was accepted by ORS. ORS then negotiated a settlement with Montclair, which has been the subject of criticism by those who sought stronger affirmative action requirements. On May 13, 1975, a New Jersey State Appeals Court voided the section of the State Division of Civil Rights ruling which required minority hiring quotas. This decision did not affect the ORS settlement since it had not included the provision to which the court objected.

Morse v. Krepel

In this case, black citizens in Alton, Illinois, initiated court action against the city, which was using shared revenues to increase the number of police officers and firefighters. The Federal District Court on November 20, 1973, restrained the city from making police and fire department appointments from an eligibility list to which it had found blacks did not have adequate access.

U.S. v. City of Memphis

The Justice Department brought this case in April 1974, alleging violations of Title VII of the Civil Rights Act of 1964 and the GRS Act in the hiring and promotion practices of the city departments and a city-owned utility. Shared revenues were utilized by the city departments. The issues involving the city departments were settled by a consent decree in November 1974, but those concerning the utility are as yet unsettled.

U.S. v. City of Los Angeles

Brought in August 1972, under Title VII of the 1964 Civil Rights Act, this action charged hiring discrimination on the basis of race and national origin in the fire department. Later on, violations of the sex discrimination provisions of the GRS Act were also alleged. The case was settled in June of 1974 by a consent decree.

U.S. v. City of Buffalo

Two cases alleging discrimination on the basis of race, sex, and national origin in hiring and assignment in the police and fire departments were consolidated here. Violations of Title VII and the GRS Act were alleged. Although the trial has been completed, no decision has been issued.

Other Public Employment Cases

As of June 1974, the Justice Department had filed 27 lawsuits under the Equal Employment Act, more than 75 had been filed by private parties, and the Equal Employment Opportunity Commission had received around 3,000 complaints. (Cited by Morton H. Sklar, "The Impact of Revenue Sharing on Minorities and the Poor", Harvard Civil Rights, Civil Liberties Law Review (Winter 1975, p. 119).) Many of these cases involve police and fire departments receiving shared revenues.

Department of the Treasury

Assistnat to the Under Secretary

to: Stan Scott

room: ______ date: 8/28

For your information. We furnished this to our press office to respond to the 8/21 stories.

JA

Joseph J. Adams

room 3425

ext. 8286

Articles in "Washington Post", "Wall Street Journal", and "New York Times" (August 21, 1975) Referring to National Clearinghouse on Revenue Sharing Report.

1. Minorities and women underrepresented in certain program and agencies of State and local government.

   - There is a legacy of discrimination in public employment which existed before General Revenue Sharing (GRS) and which GRS has only some ability to remedy. Such discrimination is often the result of broad social causes, and not necessarily conscious policy on the part of State and local officials.

   - The Comptroller General's report on 26 jurisdictions recently concluded that while the legacy of discrimination has continued (primarily in terms of level of position and type of work), efforts were being made by many jurisdictions to change this situation.

   - The Office of Revenue Sharing (ORS), the Justice Department, and the Equal Employment Opportunity Commission (through agreement with ORS) all are involved in the attempt to enforce the nondiscrimination standards of the GRS Act as it relates to employment practices.

   - The Office of Revenue Sharing has recently published new regulations for comment which spell out more clearly the responsibilities of recipient governments in assuring non-discrimination in public employment on the grounds of sex.

   - ORS requires that affirmative action programs be put into effect by jurisdictions found to discriminate.

   - Citizens and civil rights organizations can also bring lawsuits, as they have, to protect their rights.

2. Minorities and poor do not receive a fair share of services provided through shared funds.

   - Again, this is a matter with which ORS and the Justice Department concern themselves and upon which citizens also bring suits.

   - ORS regulations currently apply to contractors and audits concern themselves with funds which are transferred.

Proposed regulations will further clarify the applicability of non-discrimination standards to transferred property. The location and use of facilities are also currently covered by regulations and the definition of a facility is being clarified in proposed regulations.

- Revenue sharing funds are of great benefit to the poor and minorities, even though this category of use may not show up strongly on the use reports governments provide. This is because: States spend over 1/2 of their GRS money on education (which is of benefit to poor and minorities); GRS frees-up other funds for use to help the poor; construction expenditures are often of benefit to the poor (hospitals, schools, etc); and fund reported as used in other functional areas may be of benefit to the poor and minorities (subsidized bus transportation for the elderly reported as "transportation" expenditures).

- It should be remembered that many revenue sharing recipients (especially local ones) do not have legal responsibility to provide extensive social services. The GRS Act itself prohibits use for direct welfare payments. Further, there are categorical programs to solve specific social problems. Revenue sharing is designed to provide general support to governments. It reaches many needy small units which do not benefit much from other Federal programs.

3. <u>The Office of Revenue Sharing Compliance Effort is Inadequate.</u>

- The program is only two and a half years old. We are aware of some problems and are trying to steadily improve the system. Monitoring compliance under the program is difficult since the number of jurisdictions, areas of public activity and fungibility of entitlements are so great. Improvements are being made through cooperative agreements with other Federal agencies and agreements with State human rights agencies, and establishment of a system of State audit agreements so that other existing compliance case control system in now in operation and new regulations have been proposed.

- As of June 30, 1975, 44 civil rights compliance cases had been resolved. Between December 17, 1974, and that date, the number of active cases grew from 69 to 118, a big jump in workload.

- Congress has been hesitant in the past to grant the manpower needed to do all that we wish in the compliance area. (About 13 positions of 21 compliance positions requested were granted for FY 1976).

- Treasury's desire is to effectively respond to complaints and utilize its own and outside resources to identify discriminatory use of shared revenues. To some extent this must be an "educating" process, since resources do not exist to minutely police all recipients.

- It is probably impractical to suggest that some other agency should be responsible for revenue sharing compliance. ORS would still have to be involved and the difficulties of coordination could result in no one being responsible for revenue sharing compliance. Since GRS affects more jurisdictions and areas of public activity and is more fungible, and has broader civil rights impact (sex and public employment) than other programs, other agencies may not be prepared to deal with it. Further, they are usually fully occupied already. Treasury tries to utilize the efforts of other agencies, while maintaining ultimate responsibility with itself.

- Cases sometimes take time to resolve because we seek to settle rather than penalize. Treasury seeks, where possible, to achieve voluntary compliance because of the tremendous impact which sanctions involving a fund cutoff have. We further think it necessary to protect due process, not disrupt Justice Department court action, and protect recipients from being "whipsawed" between two agencies in applying sanctions.

THE UNDER SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

AUG 28 1975

MEMORANDUM FOR: Paul Myer

FROM: Edward C. Schmults E.C.S./jd

SUBJECT: General Revenue Sharing - Non-Discrimination Provisions

Thank you for the copy of former Treasury General Counsel Pierce's speech on the effect of revenue sharing on minorities, as placed into the Congressional Record by Representative Rangel.

We have had to deal with the broad issue of the impact of revenue sharing on the poor and minorities on a number of previous occasions when the issue was raised by civil rights organizations in various reviews of the General Revenue Sharing program. I attach a copy of a "question and answer" which we prepared that can serve as a generalized response.

Also, please find enclosed an analysis of the non-discrimination provisions of Senator Muskie's counter-cyclical aid bill.

I will be happy to further discuss these questions with you.

Attachments (2)

cc: Stan Scott
Jim Falk

Fund Uses and Restrictions

Question

Why do the Administration proposals not address what some claim is a "failure" of the program to more adequately assist the poor and minorities? Shouldn't guidelines be imposed to require recipients to use larger portions of their entitlements to meet social objectives as opposed to capital expenditures, tax reduction or stabilization, debt avoidance, employees salaries, or public safety needs?

Answer

To begin with, we believe that revenue sharing has had significant benefits for the poor and minorities and has contributed to meeting social goals in general. Those funds reported to ORS as spent directly upon the poor and the aged (two percent of the amount available to local governments) are not an accurate reflection of the total social impact of the program.

States report using well over half of their GRS funds for education - an expenditure which certainly must be considered of great social impact for people of all social groups. Funds reported as spent on health, transportation, public safety, environment, and recreation often are of assistance to the underprivileged. For instance, there are cases of GRS money being used to subsidize transportation for the elderly - which would be reported as a transportation expenditure. Drug abuse programs may also be reported as public safety.

Capital expenditures may be for hospitals, schools, low cost housing or they may be for equipment. Consequently, it is not safe to assume that this category of use is automatically unrelated to the social needs of people. Construction projects may be badly needed, since they are often the first items set aside in times of fiscal crisis, and may also be delayed by debt limits placed on local governments.

It should be kept in mind that recipient governments cannot spend GRS funds on direct welfare payments to individuals by the terms of the GRS Act itself. In some States, certain social responsibilities are not legally placed at the local level. There is also the possibility that as States and localities come to feel they can rely on the continuation of GRS and as their fiscal situation worsens under pressure of the recession, they will devote more GRS money to the recurring costs of social programs. In fact, data just released by Brookings covering FY 1974 indicate a shift by localities away from new capital spending toward program maintenance.

Regardless of any present hesitance to direct GRS monies into programs to aid the poor and minorities, there is little doubt that the presence of these funds releases other recipient funds for these uses. It may be that ORS will need to make it clearer to recipients that the restriction against use for matching of other Federal funds only applies to the minimal required matching amount, and does not prohibit use of shared funds to supplement Federal funds in a matching program nor relates to non-matching social programs. Again, experience with the program should help to clear up any confusion about this restriction.

It is true that GRS entitlements have been widely used for tax reduction and stabilization, debt avoidance, and public safety needs. If the Brookings findings are generally applicable, it does not seem that GRS has been widely used for increases in employee pay benefits thus far.

Jurisdictions are justified in using GRS to reduce excessively high local taxes. Such taxes are often highly regressive and harmful to the economic life of the community and Nation as a whole. They may, for instance, drive industry and middle class citizens from center cities, seriously eroding the tax base of the jurisdiction and placing an even greater burden on the remaining poorer population. Some of these tax reductions also are designed to lighten the burden on the elderly. Public safety expenditures are also justifiable and of benefit to all citizens in many places.

The whole idea of GRS is to provide Federal assistance, as a part of a larger balanced system of aid, which can be used to meet needs defined by States and localities themselves. If we attach additional guidelines, GRS will not be able to serve that function. There are now categorical grants targeted to the specific needs of certain groups and problem areas. Many who now benefit from revenue sharing funds do not benefit from these other aids. Furthermore, any additional guidelines applied to revenue sharing would of necessity have to be very restrictive and burdensome to be effective, given the mingling of GRS entitlements with other funds.

Finally, the greater per capita entitlements which poorer States and large center cities receive help mean that a higher level of GRS money is going to where the poor and minorities are.

Non Discrimination Provisions of Senator Muskie's
"Intergovernmental Anti-Recession Act of 1975" (S.1359)

In general, Section 8 of S.1359 much more explicitly defines the powers and responsibilities of the Secretary of the Treasury in seeking compliance than does the current Act or the proposed Administration bill. In effect, S.1359, like Representative Drinan's H.R. 8329, makes the Secretary's course of action less discretionary, and specifically grants individuals broad standing to bring civil actions against recipient governments. These requirements seek to respond to criticisms which civil rights groups have directed against the current manner in which the program is administered. As a consequence, some of the proposed provisions, if otherwise determined to be desirable, would be better promulgated through regulation than as a part of the statute.

The major aspects of the Muskie non-discrimination procedures are:

1. Same broad general prohibition of discrimination on the grounds of race, color, national origin or sex in programs or activities funded in whole or part with GRS funds, as in the GRS Act and the President's proposal.

2. Sets time limits for actions of the Secretary, not included either in the current Act or the President's proposal:

   - Ten days to notify the Governor and the recipient unit that the Secretary has determined that non-compliance exists.

   - If within thirty days, compliance is not achieved, the Secretary has ten days to exercise one of three options (using the powers of title VI of the Civil Rights Act of 1964, referral to the Attorney General, or such other action as may be permitted by law).

3. Explicit statement that the Secretary "upon his finding of discrimination", shall have full authority to withhold funds or exercise other Title VI authority. This would allow administrative deferral, a procedure which Treasury has not favored as contrary to due process and the nature of GRS (no regular application procedure during which deferral could be exercised).

4. Explicit provision that individuals can bring civil action to protect their civil rights in the administration of the program under provisions of the Civil Rights Act of 1871, Title VII (equal employment opportunity) of the Civil Rights Act of 1964, and provisions of the 1964 Act, as amended in 1972 (relating to situations where an individual has not been satisfied by Equal Employment Opportunity Commission or associated Justice Department action).

5. Unlike the present law, the Muskie proposal does not grant the Attorney General independent authority to bring civil actions where he finds a pattern or practice of discrimination.

Representative Drinan's bill also prescribes time limits (although different), allows administrative deferral (required in certain instances), and provides broad standing in court for individuals. In addition, it mandates action by the Secretary once an administrative hearing has been held which results in a finding of non-compliance (hearing to be held within 30 days of when funds are deferred). The Drinan bill also would set time limits and procedures for action by cooperating agencies and apply the non-discrimination restrictions to all the funds of a jurisdiction.

The provisions of both the Muskie and Drinan proposals are attempts to deal through legislation with perceived administrative failures. The ORS compliance process should better specify time limits for various actions, but this should not be mandated through legislation. ORS should have the ability to make adjustments of its rules as its compliance process is further refined. Requiring certain administrative actions of the Secretary may also conflict at times with Justice Department court actions. A Federal judge has ruled that when Justice is litigating, the Secretary's power must be discretionary.

As for the matter of administrative deferral, its usefulness as a compliance tool must be weighed against considerations of due process, other legal considerations, and its practical applicability to the program. In the past, the withholding of funds without an administrative hearing or Federal court finding has been rejected by the Treasury.

It does not appear that the statute need grant individuals authority to initiate civil actions, since they have such authority under the GRS Act, Title VI, the Fourteenth Amendment, the Civil Rights Act of 1871, and other Federal statutes. A number of cases have been brought by individuals against recipient governments, the Treasury, or both.

Finally, we do not regard Representative Drinan's proposal to apply the non-discrimination provisions to all resources of a jurisdiction as desirable. Our views on this issue are set forth in the Treasury Department's recent paper "General Revenue Sharing and Civil Rights" (pp.20-21).