file HHS

THE WHITE HOUSE
WASHINGTON

April 22, 1981

To: Red Cavaney

FROM: Morton Blackwell

I would like to send this memo to Secretary Schweiker but want to clear it with you before doing so.

Is that ok?

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 22, 1981

TO: Secretary Richard Schweiker

FROM: Morton Blackwell, Special Assistant to the President

I have read with great concern the controversy surrounding Warren Richardson's former association with Liberty Lobby.

The conservative groups with whom I am the White House liaison have the very highest regard for Warren Richardson's competence, integrity and good sense. To my knowledge no conservative movement activist has ever heard Warren make any kind of statement which could be interpreted as a racial or ethnic slur. Specifically, I have never known him to criticize Jewish people or the state of Israel and in years of dealing with him I have never heard him speak the word Zionist. I am particularly sensitive to the obligation of responsible activists to disassociate themselves from anyone with an anti-semitic or anti-Israeli viewpoint and have taken successful steps in the past to exclude such people (i.e. one who expressed sympathies with the PLO) from any conservative coalition meeting.

Charges that he harbors the viewpoint of the now very kooky Liberty Lobby are a bum rap.

Warren is particularly important to the major conservative movement new right groups which did so much to help elect President Reagan and a Republican senate. It was he more than any other person who taught philosophically hard core conservatives how to work effectively in the legislative process.

Warren guided the massive conservative efforts in the fight against the confirmation of Paul Warnke, Common Situs picketing fight, "Labor Law reform" fight and the Panama Canal Treaty battles.

Your selection of Warren was viewed by most conservative movement leaders as one of the best decisions of the incoming Reagan Administration. The abandonment of Warren in the face of these charges will be taken hard by these same leaders.

I strongly urge you to stick by Warren in this crisis. I am confident that such a course will be in the best interest of the Administration.

EYES ONLY

M E M O R A N D U M

TO: David Newhall, III

FROM: Warren Richardson

SUBJECT: My Tenure with the Liberty Lobby (1969-73)

In response to your request for additional information focusing on the nature and length of my service with Liberty Lobby as chief lobbyist, the following facts, statements and sequence of events are presented.

First, I condemn unequivocally the anti-Jewish and racist actions of the Liberty Lobby and some of its employees and officers. I find morally repugnant their statements, publications and views--expressed or unexpressed--which are anti-Jewish, anti-black or discriminatory in any way to any group by virtue of race, color, creed or national origin. I never at any time personally subscribed to those views; nor did I assist in any way in their preparation or dissemination.

Racist and discriminatory views divide and detract from any society, and the anti-Jewish and racist actions of the Liberty Lobby and some of its employees and officers are not only reprehensible, they undermine public confidence in legitimate conservative policies advocated by responsible organizations.

My tenure at the Liberty Lobby occured during a period of financially stressful family circumstances. While I have reflected in the eight years since quitting that I should have resigned promptly upon learning of actions and views there which I found personally abhorrent, the fact is I did not. In retrosect it became clear to me long ago that it was wrong not to have quit earlier. I apologize for my inaction to all who have felt the vicious racist and ethnic stings of the Liberty Lobby. I never participated in those Liberty Lobby activities. I never agreed with them. I found them then, as I do now, to be vile.

In September 1968, my 14 year-old daughter enrolled at the University of Maryland. Because she lived at home and was not of driving age, I had to take her to and from college virtually every day. In February 1969, my wife, daughter and two sons were involved in a serious automobile accident necessitating five major operations, three on the spine, on my wife over the next seven years. The medical costs were massive.

At that time, I was Comptroller of a small home construction firm near my Maryland home and had been seeking to re-enter the lobbying profession. The financial burden of the accident intensified our need. I learned of the job opening

at Liberty Lobby (paying 50% more than my current salary) and applied knowing nothing more about the organization's activities than its general conservative stance and opposition to American involvement in Vietnam.

Following my interview, I was presented a copy of the booklet "The How" (which you have seen) setting forth the then current legislative program of the Liberty Lobby which I would be responsible for pursuing. It did not contain any of the racist or anti-Jewish views or goals which I later found to be a part of Liberty Lobby activities or those of some officers or employees.

The first day on the job I was asked if I objected to using the title General Counsel since I am an attorney. I did not object provided my function of being chief lobbyist remained unchanged. Throughout my tenure I functioned as a technical professional employee. I did not participate in policy making nor did I perform in the "traditional" mode of counsel. The Liberty Lobby used outside counsel from time to time as they saw fit and that counsel did not, as a rule, operate under my supervision.

After some time on the job I discovered that some of the employees and officers held what I consider to be anti-Jewish and racist views. Of course, the wise and principled action would have been to resign, but at that time, I felt the pressing

needs of my family were compelling. Without the promise of another position--although I did begin to search--I determined I must hold on to what I had.

In September 1971, my 13 year-old son also entered the University of Maryland giving me two non-driving children to take to and from college on a daily basis. That restriction limited the job opportunities I could pursue since my employers at Liberty Lobby allowed me the flexible work schedule necessary to meet this need but few prospective new employers could be expected to do so.

When my daughter received her second degree in June 1973 and went to work in Takoma Park, she began to assume an increasing share of the burden of driving her brother to the University.

One month later, in July 1973, I resigned from the Liberty Lobby to become a lobbyist for a trade association in Washington, D.C. In the eight years since, I have not had any dealings with the Liberty Lobby and, I believe, have proven myself to be a capable, professional lobbyist of high integrity.

I believe a lobbyist's greatest asset is his reputation for honesty and fair dealings. I trust that this revelation of the events and circumstances surrounding my tenure at the Liberty Lobby will enlighten those for whom it is of interest.

April 19, 1981

Mr. David Newhall III
Executive Assistant to the Secretary/
Executive Secretary of the Department
Department of Health & Human Services
Suite 606-G
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Newhall:

I write this as an American Jew and a friend of Warren Richardson and to express my strong disagreement with the allegations of anti-Semitism made against Warren Richardson as reported in the Washington Post of April 17, 1981.

At the outset, I would stress that as a Jew, I have known anti-Semites and experienced their hatred first hand. I have known Warren Richardson for over 25 years (since December 1955) and state that Warren has never by word or deed shown or expressed anti-Semitism. On the contrary, Warren Richardson is one of the most fair-minded, objective persons I have known.

This is not to say that Warren and I agree about everything. On the contrary, we have argued together, disagreed in certain areas, and agreed in others. But never has there been acrimony or hatred shown by Warren and I have always considered him a friend.

During the period December 1955 through September 1959, Warren and I, as attorneys at the General Accounting Office, were close. We ate lunch together, had many talks on life, religion, raising children, and almost any other subject that close friends discuss. Warren is a man of strong convictions, but even if you disagree with him (as I did on some matters), you recognize him as an honest, straightforward person. As a political liberal I saw this in Warren's conservatism.

Our contacts have not been restricted to the office. Warren and his wife, Nancy and myself and my wife have socialized together. In fact, Warren held my first-born son in his arms at my son's bris (circumcision ceremony) and participated in our religious celebration. This was not the act of an anti-Semite.

And so, as a matter of conscience, I have written this on my Passover and Warren's Easter to refute the allegations of anti-Semitism against Warren Richardson. These allegations have no basis in substance or fact.

Sincerely yours,

Irwin Richman

Irwin Richman

10831 Margate Rd.
Silver Spring, Md. 20901

ALBERT A. RAPOPORT
ATTORNEY AT LAW
SUITE 701
2025 EYE STREET, N.W.
WASHINGTON, D. C. 20006

(202) 783-1140

April 19, 1981

Mr. David Newhall III
Executive Assistant to the Secretary/
Executive Secretary of the Department
Department of Health & Human Services
Suite 606-G
200 Independence Avenue, S. W.
Washington, D. C. 20201

Dear Mr. Newhall:

As an American citizen of Jewish descent, I could not think of anyone I would rather have as the Assistant Secretary for Legislation than Mr. Warren Richardson.

Today's story in The Washington Post by Spencer Rich is outrageous. His story in Friday's edition of the Post was no better. The gist of the allegations is that Mr. Warren Richardson is anti-Semitic and, therefore, unfit for public office. I consider the charge absolutely false, and I object to the methods which have been utilized to smear him.

I am an American of the Jewish faith. In the past, I have been a member of B'nai B'rith, B'rith Sholom, and the Jewish War Veterans. Because of my background, education, and practice as a lawyer for over 27 years, I feel well-qualified to judge whether a person is anti-Semitic or not. Anti-Semitism is a condition of a person's character. It cannot be imputed. It either exists, or it doesn't exist.

Warren is not anti-Semitic in any way, shape or form. This judgment is based on the many years I have known him as a friend, and to be a sensitive human being. We met in September of 1951, at law school in Washington, D. C. Warren and I went to classes together, studied together, and endured the trauma of studying for and taking the bar examination together. We socialized at parties and family gatherings. During all of these years, I have never heard Warren utter an anti-Semitic remark; tell a racist story of any kind; or speak unfeelingly of a person, because of his race, religion, or national origin. You can understand my sense of

outrage at seeing groundless allegations that Warren is anti-Semitic. The only obvious thing to be gleaned from these Post articles is that Warren is being used as a political football for the selfish interests of others, regardless of consequences to a really decent human being, and his family. Is it any wonder that we have difficulty in getting the best people for government service when they have to bear unfounded slings and arrows?

I am indignant that this is a media smear campaign, using innuendo to achieve a political purpose. In Friday's article, Post writer Rich quotes Nathan Perlmutter that he "believes" that Liberty Lobby was anti-Semitic for the last 20 years. So what? The critical issue is whether Warren is anti-Semitic!

Today's Post article of Sunday, April 19th, is more of the same. Mr. Rich refers to code words which I have never heard. Warren was probably just as surprised to learn that he spoke some kind of code language not taught us at law school.

Warren and I were in law school during the McCarthy era. We were almost alone in our opposition to McCarthyism. In the after-class discussions and arguments, which are so much a part of the law school experience, Warren and I would go against as many as 15 to 20 other students, expressing our immense distaste for Senator McCarthy's tactics. How ironic that one of the great anti-McCarthy debaters is now being subjected to "McCarthyism" by the very institution which deplored that reprehensible tactic! If Warren's nomination is stopped because of guilt by association, I shall be in the forefront of a defense committee, organized to stop this terrible disease of McCarthyism, which I thought had been done away with years ago.

Another innuendo which I object to strongly in the Rich articles, is that Warren should have somehow silenced others from voicing their opinions. During our law school years, both in and out of classes (and particularly during the McCarthy debates), Warren reminded us that we are not entitled to freedom of speech if we deny it to others. It is entirely within Warren's character to let others say whatever suits their fancy.

I have always thought of Warren as a brilliant, intellectual type, who cared about the problems of people. In nearly thirty years of our knowing each other, and discussing matters ranging from politics, to religion, to sports, to social problems and

foreign affairs, Warren has never expressed an extremist view; on the contrary, they are balanced, rational and moderate.

Respectfully yours,

Albert A. Rapoport

file — To Kathy for Agent Orange project

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OFFICE OF THE GENERAL COUNSEL

June 12, 1981

Note to: See Attached List

From : Chair, Interagency Work Group John A. Platt for

Subject: Work Group Meeting

The next meeting of the Interagency Work Group is scheduled for Friday, June 19 at 10:00 a.m. in room 722A, HHH Building, 200 Independence Avenue, S.W., Washington, D.C. Your attendance at this meeting is particularly encouraged as we will be honored by the visit to the Work Group of the Australian Minister of Veterans' Affairs and there are several important items on the agenda.

The tentative agenda for the meeting is as follows:

1. Report from the Science Panel, including a review of all ongoing activities.

2. Overview report from the Veterans Administration on its activities.

3. Overview report from the Defense Department on its activities.

4. Discussion with the Australian Minister of Veterans' Affairs, including a review of the Australian program of Agent Orange-related research.

5. Review of congressional activities.

6. Discussion of future Work Group plans.

Please telephone any additions to or modifications of the agenda to Leslie Platt (245-7542) by c.o.b., Wednesday, June 17, 1981. Also, please notify Mr. Platt if you will be unable to attend.

Interagency Work Group Representatives

Dr. John A. Moore
Deputy Director, National
Toxicology Program
P.O. Box 12233
Res. Triangle Park, N.C. 27709

Dr. David Rall
Director, National Institute
of Environmental Health Sciences
P.O. Box 12233
Res. Triangle Park, N.C. 27709

Dr. Patricia A. Honchar
EIS Officer
NIOSH
Robert A. Taft Laboratories
4647 Columbia Pkwy.
Cincinnati, Ohio 45226

John Abbott
Program Analyst
NIH-Division of Legislative
Analysis
Building 1-Room 207
Bethesda, Maryland 20205

Dr. Harold Margulies
Special Assistant for
Environmental Affairs
OASH Parklawn Bldg. Rm 9A55
5600 Fishers Lane
Rockville, Maryland 20857

Robert E. Coy (02)
Acting General Counsel
Veterans Administration
810 Vermont Avenue, N.W.
Washington, D. C. 20420

Frederic Conway (023A)
Deputy Assistant General Counsel
Veterans Administration
810 Vermont Avenue, N.W.
Washington, D. C. 20420

Jane O'Connell
Policy Coordinator
OS/ES
Room 635G
HHH Building

Dr. William J. Jacoby, Jr. (10-A)
Deputy Chief Medical Director
Veterans Administration
810 Vermont Avenue, N.W.
Washington, D. C. 20420

Dr. Barclay Shepard (102)
Special Assistant to the
Chief Medical Director
Veterans Administration
810 Vermont Avenue, N.W.
Washington, D. C. 20420

Dr. Clark W. Heath, Jr.
Director, Chronic
Disease Division
Center for Disease Control
Chamblee Facility
1600 Clifton Road, NE
Atlanta, Georgia 30333

Captain Peter Flynn
Special Assistant
for Professional Activities
OASD (Health Affairs)
Room 3E182, Pentagon
Washington, D. C. 20301

Dr. Philip C. Kearney
Chief, Pesticide Degradation Lab
U.S. Department of Agriculture
BARC-West
Building 050-Room 100
Beltsville, Maryland 20705

Dr. Jerome G. Bricker
Special Assistant for Legislation
OASD (Health Affairs)
Room 3E182, Pentagon
Washington, D. C. 20301

Major Phillip G. Brown
Asst. for Bioenvironmental
Engineering
USAF/SGES
Bolling Air Force Base
Washington, D. C. 20232

Dr. Michael Gough
Office of Technology Assessment
United States Congress
Washington, D. C. 20007

Dr. David Logan
Research and Medical Officer
OSHA, Room N-3656
200 Constitution Avenue, N.W.
Washington, D. C. 20210

Stephen Mallinger
Industrial Hygienist
OSHA-OSC
Room N-3603
200 Constitution Avenue, N.W.
Washington, D. C. 20210

Dr. Peter Beach
Director, Veterans Affairs
OHHS
Reporters Building
Room 623
7th & D Street, S.W.
Washington, D. C. 20201

Jacky Simon
NIOSH
Room 805
Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Dr. Donald Barnes
Office of Pesticides and
Toxic Substances
Environmental Sciences
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Maj. Gen. William S. Augerson, MC, USA
Deputy Asst. Secretary of Defense
(Health Resources and Programs)
Room 3E334, Pentagon
Washington, D. C. 20301

Dr. Denis Prager
Associate Director for Human
Resources and Social Services
Office of Science & Technology Policy
Executive Office of the President
Rm. 360, Old Executive Office Bldg.
Washington, D. C. 20500

American Legislative Exchange Council
418 C Street, N.E.,
Washington, D.C. 20002 (202) 547-4646

THE STATE FACTOR

BLOCK GRANTS AND THE STATES

April, 1981

BACKGROUND

On April 6, 1981, the U.S. Department of Health and Human Services sent to Congress draft legislative details of a plan to return to states discretionary power over 25 Federal categorical grant programs. The plan is significant: it removes Federal regulations and spending mandates from $2 billion worth of Federal-State HHS programs. HHS is also awaiting approval (by the Office of Management and Budget) of two more grant consolidations. The pending proposals involve almost $5 billion in public aid and would consolidate 18 other categorical grants.

The U.S. Department of Education (DOE) is also proposing block grant consolidations. The statutory language for the consolidation will not be available until the end of April, but testimony by DOE officials indicates that the grants will involve 45 separate grant awards totalling $5 billion.

The DOE and HHS plans are but the top of a legislative iceberg posing far-reaching questions for state legislators: When will the grant be enacted? How much money will the grants involve? Which programs will the grants affect? How will the states implement the grants?

IMPORTANCE TO STATES

The transformation of categorical grants into block grants offers an historic opportunity to states to streamline public aid programs. The logic is familiar: since the states finance and enforce the programs devised at the federal level, and since the states are more sensitive to the needs and resources of its people than is the Federal government, then states ought to have the discretionary flexibility to administer the programs. If the monies for those programs are transferred to states and localities, the cost of excessive overhead incurred through Federal fiat is reduced or eliminated.

To insure that the grant consolidation process does result in savings, the grant portion of the Administration's proposed FY 1982 budget is less than the levels for FY 1981:

PROPOSED GRANTS TO STATE AND LOCAL GOVERNMENTS
(in billions of dollars)

	FY 1980 Actual	FY 1981 January	FY 1981 Revised	FY 1982 January	FY 1982 Revised
BUDGET AUTHORITY	105.0	110.6	101.1	116.9	86.2
OUTLAYS	91.5	95.3	94.4	99.8	86.4

On the average, the funding for the block grant proposals represents 25% less than the amount that would have been spent if the grouped categorical grants continued to be financed at FY 1981 levels. The 25% reduction does not mean that payments and services to recipients will also decrease by 25%. Almost one-half of that reduction may be recouped through reduced overhead (see White House citation below). The other half of the reduction is made up through amelioration of Federal spending mandates which require states to make payments and program changes that may not be necessary. Should states require more money than is provided in a particular block grant, the proposed grants allow a transfer of up to 10% of money from one block grant to another.

It should be noted that the increasing cost of categorical grant programs is principally caused by Federal mandates, which are eliminated under the proposed block grants. The mandates stipulate varying criteria by which states must write eligibility and benefit standards. The significance of these mandates is underscored in the February 18, 1981 White House Report containing an outline of the President's Economic Recovery Plan:

> Under block grants, there will be no requirements for matching funds and no demands that Federal funds "supplement rather than supplant" local funding. There will be no endless Byzantine squabbles over myriad accounting [sic] regulations that aid bureaucrates, not children. Approximately 13% of the Federal funds in programs to be consolidated are now used for administrative expenses by state and local agencies. This overhead will be drastically reduced under the consolidation proposals.

Currently, there are Federal categorical grant awards in 14 different areas. These include national defense, energy, agriculture housing and community development. However, details of block grant proposals are known only for the education and health programs, and even in those areas the block grants do not comprise the entirety of categorical grant awards.

HEALTH AND HUMAN SERVICES

The U.S. Department of Health and Human Services (HHS) released details of two block grant programs on April 7. Two more grants will be announced by the third week of April, and the U.S. Senate Finance Committee and Senate Labor & Human Resources Committee may announce a fifth HHS block grant shortly after Congress' Easter Recess.

The largest of the HHS block grants is called a "Social Service Block Grant." The grant is set at $3.8 billion, or $1.2 billion below the FY 1981 level of $5.0 billion. The grant covers funding for 12 programs: Day Care, Child Abuse and Prevention and Treatment, Adoption Assistance, Development Disabilities, Runaway and Homeless Youth, Community Services Administration and Rehabilitation Services. In addition to these programs, states can use the block grant money to finance state offices of The Legal Services Corporation — an entity for which no Federal money is provided in the Administration's proposed FY 1982 budget.

The second largest grant is the "Energy and Emergency Assistance Grant." The purpose of this grant, as explained in the official HHS summary, is to allow "complete flexibility to determine programs of fuel assistance and other crisis or emergency needs activity for low-income households." Only two programs are directly covered under this grant — Emergency Assistance (from Social Security) and the Low-Income Energy Assistance. The grant allows states the option to fund five other categorical grants. Those discretionary programs are Home Energy Costs, Low-Cost Weatherization, Temporary Financial Assistance, Emergency Medical Care and Emergency Social Services. The FY 1982 budget for this grant is set at $1.4 billion, which is $50 million below the FY 1981 level.

A third HHS grant is called the "Health Services Block Grant." Fifteen categorical grants are consolidated into one block for $1.1 billion. The funding is $400 million below the FY 1981 level for the combined programs. The grant covers the following programs: Community Health

Centers, Primary Health Care Centers, Black Lung Clinics, Migrant Health, Home Health Services, Maternal and Child Health, SSI Payments to Disabled Children, Hemophilia, Sudden Infant Death, Mental Health Services, Drug Abuse, and Alcoholism.

The smallest of the HHS block grants is the "Preventive Health Service Block Grant." The Administration proposes to fund this grant at $242 million or $93 million below the FY 1981 level. The grant consolidates 10 programs: High Blood Pressure Control, Health Incentive, Risk Reduction and Health Education, Venereal Disease, Flouridation, Rat Control, Lead-Based Paint Poisoning Prevention, Genetic Disease, Family Planning Services, and Adolescent Health Services.

HHS BLOCK GRANT REGULATIONS

According to HHS, there are three pro forma regulations that will be attached to that Department's block grant program. The first regulation simply requires states to draft details of plans to utilize Federal funds. The plan does not need the approval of a Federal agency, and there is no indication that this requirement will be used as a Federal lever to force revision of a state-local program, priorities or criteria -- a practice widespread within the current, categorical grant system.

The second requirement is that states prepare an annual audit of block grant implementation. This regulation is a standard requirement of almost every Federal, State or Local grant award, and the appropriation process of states usually requires some auditing of grant programs anyway. The requirement is designed to keep the HHS Department posted of the progress of the block grant programs.

A third, more serious requirement is the proviso that block grant monies be spent only for those programs listed under the block grant heading. This requirement canonizes a measure of accountability to the block grant plan. States still have discretion regarding the implementation of the programs; but states that decide to terminate a program covered under the block grant may not use the extra dividend to finance a non-germane program, e.g., using a Preventive Health Services grant to finance a construction project.

The distinction between these three block grant regulations and the regulations that now accompany categorical grants is that the latter exacts considerable time and revenue that ought to be directed towards the recipients of public aid. The dollar savings from regulatory attrition are not known, but there is an awesome regulatory burden that is eliminated under block grants. There are now 437 pages of law and 1200 pages of regulations for the 40 HHS categorical grants. Under those 40 categorical grants, there is an additional 5800 separate grants that are transferred to 24,000 separate grant sites. To implement the programs under the current system, state-local governments expend an annual 7 million man-hours filling out Federally-mandated reports.

EDUCATION

There are two block grant proposals for education programs. The only similiarity between these grants and the HHS grants is the magnitude of the consolidation. All told, some $4 billion is shifted from the Federal level to the state level. The distinctive feature of the education block grants is that, in spite of the high dollar transfer involved, it represents a relatively small fraction of the total money spent on education. States and localities now provide over 90% of the money directed to education; the Federal share is 8%, and the block grant proposals affect about 1% of the total.

The biggest of the education block grants is called the "Local Education Agency (LEA) Block Grant." The LEA grant (not to be confused with the Law Enforcement Education Program) involves $3.6 billion in Federal monies. Twelve education programs are covered under the grant, as indicated in the following table:

PROGRAMS INCLUDED IN LOCAL EDUCATION AGENCY BLOCK GRANTS (Budget Authority for FY 1981 in millions of dollars)

Categorical Grant	FY 1981 Funding
Title I ESEA* Basic Grants	$2,822.7
Title I ESEA Programs for Migrants	288.0
Title I ESEA Concentration Grants	145.0
Handicapped State Grant Program	922.0
Preschool Incentive Grants (Handicapped)	25.0
Adult Education Grants to States	120.0
Bilingual Education	137.9
Bilingual Vocational Education	4.8
Basic Skills/School Improvement	18.2
Emergency School Aid (3 programs)	204.9
TOTAL.....	$4,688.5

*(Elementary and Secondary Education Act)

If enacted by Congress, the grant outlined above would reduce the categorical funding level of the previous fiscal year by $1.4 billion. The grant proposal assumes annual budget increases of 5% through 1986.

The second education grant is a block transfer to state education agencies. Although this grant is nominally smaller than the LEA grant, the grant affects a considerably higher number of programs. A total of 35 programs, outlined below, are directly affected:

PROGRAMS INCLUDED IN BLOCK GRANTS TO STATES
(Budget authority for FY 1981 in million of dollars)

Categorical Grants	FY 1981 Funding
Title I ESEA Prog. for Handicapped	$165.0
Title I ESEA (Neglected & Indigent)	37.8
Title I ESEA State Administration	47.0
Title I Technical Assistance Centers	8.0
Support and Innovation	91.4
State Education Agency Management	51.0
Severely Handicapped Projects	5.0
Regional Resources Centers	10.0
Early Childhood Education	20.0
Regional Vocational.Adult/Post-Secondary	2.0
Handicapped Innovation & Development	8.0
Special Education Personnel Development	58.0
Gifted and Talented	5.4
Emergency School Aid Special Projects	8.5
Emergency School Aid Non-Profit Organization	7.5
Educational Television	6.5
Training & Advisory Services (CRA IV)	45.7
School Libraries/Instructional Resources	171.0
Basic Skills Improvement	13.4
Arts in Education	1.7

Metric Education	1.8
Cities in Schools	3.1
PUSH for Excellence	1.0
Follow-Through	39.2
Professional Development: Teacher Corps	29.0
Pre-College Science Teacher Training	2.5
Bilingual Educationl Training Grants	37.1
Career Education Incentives	15.0
Community Schools	10.0
Consumer Education	3.6
Law-Related Education	1.0
Alcohol & Drug Abuse Education	3.0
Ethnic Heritage Studies	3.0
Women's Educational Equity	10.0
TOTAL.....	$922.2

The SEA block grant totals $714.6 million, again representing a 25% reduction form the funding level for relevant categorical grants in FY 1981.

PRELIMINARY ISSUES FOR STATE LEGISLATORS

The movement to return power to state governments signals the dawn of a new era in Federal-State relations — presenting both opportunity and challenge. The opportunity lies with the chance to enact meaningful, lasting reforms in eligibility, duration, benefits and priorities of public aid programs. The challenge lies with the logistics of implementing a block grant program. The initial implementation problem concerns the timing of the awards. Key legislative leaders in the Congress have agreed to complete work on the President's proposals by August 3. However, nearly one-half of the state legislatures will finish their legislative sessions by mid-May. Fewer than a dozen will be in session by the end of June. By the time Congress enacts a budget for FY 1982 — which will incorporate block grant budget changes and program reordering — the vast majority of states will have already enacted state budgets based on invalid assumptions about Federal-State revenue transfers.

Another problem concerns the control of block grant monies that are finally awarded to states. Should the monies be allocated through the state legislatures, or should the state governors be allowed to arbitrarily decide the funding levels of particular programs in the block grants? The issue is a basic political problem, since the appropriations processes of the states are usually more deliberate and open than the executive fiat promulgated by governors. The problem may also be academic, since the statutory details of the education and HHS block grants allow the governors, not the state legislators, to transfer 10% of the funds from any one of the block grants to another.

A third problem is the issue of accountability. Because the Federal mandates that are attached to the block grants are peripheral, states will have a very flexible power to decide matters of coverage ands funding. The prospect of unbridled state discretion has evoked a flurry of attacks on the block grant concept. A typical comment was made by a representative of The Children's Defense Fund, who told a Washington Star reporter: "the regulations and [categorical] programs were constructed to respond to specific needs and abuses. The special needs of low-income and disadvantaged families are unlikely to be met by turning over more less money to states with no accountability, priorities or directions.... These programs will pit families against the elderly, handicapped advocates against poarents concerned about child care, in a bitter competition for reduced resources."

SUMMARY

Final passage of block grants is contingent on two factors. First, states must demonstrate a willingness and ability to accept the administrative and financial responsibility that comes of grant consolidation. Second, Federal Legislators must recognize the difference between budget reductions and budget consolidation. The purpose of block grants is not to reduce the Federal budget, but rather to allow state and local governments the opportunity to implement the Federal programs which they both enforce and finance. Budget reductions is not a goal of grant consolidation, but it is a comparative advantage over the categorical system, and is born of the historical efficiency of state-local administration.

The focal point for the national debate over block grants is the U.S. House of Representatives. House Budget Committee Chairman James Jones (D-OK) has presented an "alternative budget" that ostensibly has the same goals as the White budget proposals. State Legislators should be aware that the Jones proposals do not embrace the Reagan Administration's block grant concept, nor does it offer the amelioration of spending and regulatory mandates now written into Federal law. State Legislators should also be aware that the proper focal point for block grant proposals is the state legislatures — the deliberative bodies upon which the lies the ultimate responsibility for grant programs.

****

This information has been provided as background material. Nothing written here is to be construed as necessarily reflecting the views of The American Legislative Exchange Council or as an attempt to aid or hinder passage of any bill before Congress or the State Legislatures.

ALEC

418 C Street, N.E., Suite 200
Washington, D.C. 20002

HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALL CONTENTS STRICTLY EMBARGOED
UNTIL: 10:30 A.M., EDT
Tuesday, May 12, 1981

Contact: Laura Genero--(202) 245-6343 (OS)
Jim Brown --(202) 472-3060 (SSA)

Statement of HHS Secretary Richard S. Schweiker

I am today announcing social security reform proposals which will keep the system from going broke, protect the basic benefit structure, and reduce the tax burden of American workers.

---We will stand by the traditional retirement age of 65; we will not raise it.

---We will not propose raising social security taxes for the 114 million working men and women now contributing to the system. In fact we propose future tax reductions.

---We will phase out the retirement earnings test, thus ending the penalty now in law which discourages senior citizens from remaining in the labor force to supplement their social security income.

---These proposals do not remove from the rolls, or cut benefits for, those currently receiving benefits.

Restoring social security to financial health and high public confidence will stay at the top of my agenda until legislation is enacted to turn the system away from bankruptcy and toward long term solvency.

The crisis is inescapable. It is here. It is now. It is serious. And it must be faced. Today we move to face it head-on and solve it. If we do nothing, the system would go broke as early as Fall, 1982, breaking faith with the 36 million Americans depending on social security.

Our package consists of major changes to restore equity to social security benefits and to restrain the growth of non-retirement portions of the program which are out of control.

Some of the changes will be difficult. But as things now stand, without changes, the social security trust fund deficit could climb as high as $111 billion in the next five years and have a long-term deficit of 1.52% of total payroll over the next 75 years.

To turn this around, our amendments would address the major causes of the social security crisis facing us today:

---We must reduce the welfare oriented elements which duplicate other programs and which have been introduced over the years into the social security system;

(More)

---We must relate disability insurance more closely to a worker's earnings history and medical condition;

---We must reduce the opportunity for "windfall" benefits which now can mean higher monthly benefit checks to a short-term double-dipper worker than to a low-wage earner who has spent a lifetime contributing to the system;

---We must do more to encourage workers to stay on the job until the traditional social security retirement age of 65;

---We must restrain the benefit growth rate for future retirees by altering temporarily the initial benefit formula computation which takes into account the prior overindexing in the system.

The sole impact today's proposals would have on the 36 million beneficiaries now on the rolls would be a three-month delay in the automatic cost-of-living increase scheduled for July, 1982. This change would end the anomaly of social security, the largest single federal program, still operating on the pre-1976 fiscal year calendar.

If these proposals are enacted, we will not only put social security back on sound financial ground indefinitely, but also we will be able to significantly lessen the taxes of those currently supporting the system.

We will be able to reduce the social security tax rate increase now scheduled for 1985, and to actually decrease social security tax rates by 1990 below what they are today.

This means that the young person entering the labor force next year would pay an average of $33,600 less in social security taxes over his/her lifetime, a reduction of over 10%.

This Administration is acting now to solve both the short-term and long-range financing crisis with steps that will at once ensure the system's fiscal integrity and redirect social security to its original purpose as a stable base around which working men and women can plan for their retirement years.

It is vital that we make these hard choices---and make them now. We cannot postpone any longer the day of reckoning for social security.

# # #

HHS FACT SHEET

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALL CONTENTS STRICTLY EMBARGOED
UNTIL: 10:30 A.M., EDT
Tuesday, May 12, 1981

PROVISIONS OF THE SOCIAL SECURITY PROPOSAL

I. CHANGES TO ENCOURAGE WORK BETWEEN 62-65

--Change Benefit Computation Point from Age 62 to 65

The benefit formula treats early retirement the same as waiting until age 65. After 65, there is an annual incentive to continue working. Early retirees at 62 get 80% of what they would get at 65.

Proposal would discourage early retirement by assigning zero value to the age 62-64 period, thus reducing benefits in such cases while rewarding those who elect to work until age 65. This returns the program to the formula used before the age of retirement for women was lowered to 62 in 1956.

--Reduce Benefits for Early Retirement

Workers electing early retirement at 62 now receive benefits equal to 80 percent of what they would receive if they delayed retirement to age 65.

Proposal would reduce early retirement benefits to 55 percent of the maximum, thus strongly encouraging workers to remain in the work force until age 65.

II. CHANGE TO REDUCE OPPORTUNITY FOR "WINDFALL" BENEFITS

--Eliminate "Windfall" Benefits for Non-Covered Employment

The benefit formula now makes it possible for a person, such as a retired Federal employee, who enters Social Security-covered employment for only a few years to receive disproportionately high benefits, in some cases exceeding those paid to low-wage earners who have spent a lifetime in covered employment.

Proposal would have formula take pension resources from non-covered employment into account in such cases, thus sharply lowering the Social Security benefit in such cases.

III. CHANGES TO RELATE DISABILITY INSURANCE CLOSER TO WORK HISTORY AND MEDICAL CONDITION

--Require "Medical Only" Determination of Disability

Workers can now qualify for disability benefits on combinations of medical and non-medical factors, such as age, education and work experience. More than one-third of disability cases age 60 to 65 involve non-medical factors.

Proposal would limit qualification to medical factors alone, thus restoring program to original purposes.

--Increase Waiting Period to Six Months

Under a 1972 liberalization of the program, the waiting period for disability benefits was reduced from six to five months on the assumption that ample funds would be available.

Proposal would restore the six-month waiting period previously in law. This conforms to the terms of most private disability insurance programs.

--Require Prognosis of 24-Plus Months of Disability

Workers now seeking disability benefits must show only that disability claimed will exceed 12 months or will result in death. The 12-month test, enacted in 1965, replaced a test of "long-continued and indefinite duration" in prior law.

Proposal would restore the original intent of the law, requiring that the prognosis of disability be of long duration, at least 24 months, a more reasonable definition of disability.

--Increase Requirement for Insured Status to 30 Quarters

Workers may now qualify for disability benefits even if they have been in the work force only 20 out of the past 40 quarters. Therefore a person could be out of covered employment for 5 years and still qualify.

Proposal would set the minimum at 30 out of the past 40 quarters, thus more closely tying benefits to the principle that they are replacement for wages recently lost.

IV. CHANGES TO REDUCE WELFARE ELEMENTS

--Eliminate Children's Benefits in Early-Retirement Cases

Children under 18 or under 22 if in school are now eligible for benefits on the basis of a retired parent's wage record. Thus a retiree with a child receives a dependent's benefit, whereas a retiree with no children gets only his own benefit.

Proposal would end this inequity in early-retirement cases and thus encourage the worker to continue work until 65.

--Extend Disability Maximum Family Benefit to Retirement and Survivors Cases

Benefits for families of retired and deceased workers can now actually exceed that worker's net take-home pay.

Proposal would extend the maximum limitation on benefits to families in disability cases enacted in 1980 to retirement and survivor cases. This would return the program closer to its original purpose as a "floor" of protection.

V. OTHER AMENDMENTS FOR SHORT-TERM

--Increase Bend Points by 50% Instead of 100% of Wage Increases For 1982-87

In 1977, the "bend points" (dollar amounts referred to in the weighted benefit formula) were made subject to automatic wage indexing. This change was adopted in legislation intended in part to offset the cost impact of earlier legislation and the faulty benefit computation procedure adopted in the 1972 amendments. However, benefit levels today remain disproportionately high (by about 10 percent) compared with the pre-1972 levels.

Proposal would restore the traditional relative benefit levels for future beneficiaries by increasing the "bend points" by 50% (instead of 100%) of increases in average wage earnings for the years 1982-87, after which the 100% factor would be restored to the formula.

--Move Date for Automatic Benefit Increases from June to September and Use 12-Month CPI Average

Under the 1972 amendments (as modified in 1974), annual Social Security benefit increase have been automatic each June (payable beginning in July). The increase is based on changes in the Consumer Price Index as measured between the first quarter of the current calendar year and the corresponding quarter of the preceding year, a provision which can unduly inflate or deflate the increase, depending on economic conditions in those quarters.

Proposal would correct the anomaly of having benefit increases initiated on the pre-1976 Federal Fiscal Year basis and change the CPI computation to cover a full year (July-June) period, thus making the measurement a more accurate reflection of economic trends and measuring living costs in a period ending closer to the initiation of benefit increases.

VI. CHANGE IN COVERAGE

--Extend Coverage to First Six Months of Sick Pay

Most sick pay is not taxed due to complex exclusion which forces employers to track sick pay on daily, even hourly basis, and leads some to unwittingly break the law.

Proposal would extend tax to all sick pay during first six months of an employee's illness. This would eliminate the administrative burden and would treat sick pay in the same way as vacation pay.

VII. PHASE OUT RETIREMENT EARNINGS TEST BY 1986

Under current law, 1981 Social Security benefits payable to persons aged 65 through 71 are reduced by $1 for each $2 of annual earnings in excess of $5,500, a level which rises each year in relation to average wage earnings. However, benefits are not reduced for those aged 72 and over (70 and over beginning in 1982).

Proposal would phase out the retirement test over a three-year period, permitting $10,000 in earnings in 1983, $15,000 in 1984, $20,000 in 1985 and unlimited earnings thereafter.

VIII. REDUCE LONG-RANGE SOCIAL SECURITY TAXES

Assuming enactment of these proposals, and those introduced in the Administration's Budget proposals, it will be possible to lessen the Social Security tax increase now scheduled for 1985 and to actually decrease Social Security taxes below the current level in 1990. (See chart below). Note that while an increase will again become necessary in 2020 due to the aging of the population, the rate will still be lower than the 1990-and-after rate scheduled under current law.

SOCIAL SECURITY TAX RATES UNDER PROPOSAL

PERIOD	PRESENT LAW	PROPOSAL	
		UNDER BUDGET ASSUMPTIONS	UNDER WORST-CASE ASSUMPTIONS
	TAX SCHEDULE		
1981	6.65%	6.65%	6.65%
1982-84	6.70	6.60	6.70
1985	7.05	6.45	6.95
1986-89	7.15	6.45	7.05
1990-2019	7.65	6.45	6.45
2020 AND AFTER	7.65	7.55	7.55

COST ANALYSIS OF EFFECT OF VARIOUS SOCIAL SECURITY OPTIONS

(Positive numbers indicate savings; negative numbers indicate added costs or amounts needed to meet cost of present program)

Item	Short-Range Effect CY 1982-86 a/	Long-Range Effect b/
Status of Present System, Deficit	-$11.0(-110.8)	-1.52%(100%
Effect of Budget Proposal	35.5(36.8)	.20 (15)
Status of Program After Budget Proposals Enacted	(-74.0)	-1.32 (87)
Proposal		
(1) Cover Sick Pay in First 6 Months	2.6(2.6)	.02 (1)
(2) Change Computation Points for Average Indexed Monthly Earnings from Age 62 to Age 65	1.3(1.4)	.39 (26)
(3) Increase Bend Points in Primary Benefit Formula by 50% (instead of 100%) of Wage Increases, 1982-87	4.2(4.7)	1.30 (86)
(4) Benefit Rate of 55% of Primary Benefit for Retired Workers (and 27 1/2% for Spouses) at Age 62	17.6(20.3)	.85 (56)
(5) Eliminate Benefits for Children of Retired Workers Aged 62-64	1.9(2.0)	.02 (1)
(6) Disability Maximum Family Benefit Applicable to Survivor and Retirement Cases	2.9(3.3)	.10 (7)
(7) Eliminate Windfall Portion of Benefits for Persons with Pensions from Non-Covered Employment	.6(.6)	.10 (7)
(8) Require "Medical Only" Determination of Disability (i.e., exclude vocational factors)	7.7(9.0)	.06 (4)
(9) Increase Disability Waiting Period from 5 Months to 6 Months	1.4(1.5)	.03 (2)
(10) Require Disability Prognosis of 24+ Months Duration (instead of 12+ months)	2.8(3.4)	.07 (5)
(11) Require 30 QC Out of Last 40 Quarters for Disability Benefits (instead of 20/40)	10.0(11.5)	.21 (14
(12) Move Date for Automatic Benefit Increases from June to September (and Use 12-Month Average)	6.3(27.8)	.14 (9
(13) Raise Retirement-Test Exemption for Age 65+ to $10,000 in 1983, $15,000 in 1984, $20,000 in 1985, and Eliminate Test in 1986	-6.5(-7.4)	-.14 (-9
TOTAL EFFECT	46.4(75.0)d/	2.86 (18

a/ In billions. Figures in parentheses are based on "worst case" assumptions; other figure are based on the expected economic assumptions (those in the President's Budget).

b/ Average-cost over 75-year period, in percentage of taxable payroll. Figure in parenthes is long-range effect of this item as percentage of actuarial deficiency of present progr

c/ Amount necessary to restore financial soundness of program over the long range.

d/ Including effect of additional net income to Hospital Insurance program.

ESTIMATED SHORT-RANGE EFFECT OF PROPOSAL AS COMPARED WITH PRESENT LAW, FUND RATIOS AT START OF YEAR a/

Calendar Year	Expected Economic Conditions		Worst-Case Economic Conditions	
	Present Law	Proposal	Present Law	Proposal
1981	23%	23%	23%	23%
1982	21	22	21	22
1983	18	23	16	22
1984	16	25	6 b/	19
1985	14	28	c/	17
1986	16	30	c/	18
1987	22	35 d/	c/	21 e/

a/ Balance in combined Old-Age and Survivors Insurance Trust Fund, Disability Insurance Trust Fund, and Hospital Insurance Trust Fund at beginning of year as percentage of outgo from trust funds in coming year (i.e., assumes availability of inter-fund borrowing).

b/ Funds have insufficient balance to pay monthly benefits (actually, this situation would occur several months earlier).

c/ Funds exhausted.

d/ By 1990, the fund ratio would be about 50%.

e/ By 1990, the fund ratio would be about 30%, and by 1995 it would be about 50%.

YEAR-BY-YEAR COST ANALYSIS OF PROPOSAL

(In billions)

Calendar Year	Proposal	
	Under Expected Economic Assumptions	Under Worst-Case Economic Assumptions
1981	$ .9	$ .9
1982	9.1	11.3
1983	11.8	16.2
1984	15.7	21.7
1985	20.5	28.1
1986	23.9	33.6
1981-86	81.9	111.8

ILLUSTRATIVE BENEFITS FOR WORKERS RETIRING AT AGES 62 AND 65
UNDER PROPOSAL AND UNDER PRESENT LAW a/

Earnings Category b/	Present Law	Proposal
	Age 62 at Retirement in 1/82	
Low	$247.60	$163.90
Average	372.80	246.80
Maximum	469.60	310.50
	Age 65 at Retirement in 1/82	
Low	$355.30	$355.30
Average	535.40	535.40
Maximum	679.30	679.30
	Age 62 at Retirement in 1/87	
Low	$384.40	$225.20
Average	580.70	348.30
Maximum	755.60	430.00
	Age 65 at Retirement in 1/87	
Low	$477.10	$447.40
Average	719.00	691.90
Maximum	942.80	860.30

a/ Includes effect of (1) 55% benefit rate (instead of 80%) for retirement at age 62, (2) age-65 computation point (instead of age 62) for all ages at retirement, and (3) increasing bend points in primary-benefit formula by 50% (instead of 100%) of wage increases in 1982-87. Benefit amounts are for worker only. Worker is assumed to reach exact age shown in January.

b/ "Low earnings" are defined as the Federal Minimum Wage in each past year, and the 1981 Minimum increased by the change in average wages in future years. "Average earnings" are defined as the average wage for indexing purposes in each year. "Maximum earnings" denote the contribution and benefit base in each year.

Assumptions:

(1) Worker entered covered employment in 1956 and worked steadily thereafter.
(2) Future earnings (for retirement in 1/87) follow trend under intermediate assumptions in 1980 Trustees Report.

# # #

JO ANN GASPER
Deputy Assistant Secretary for
Social Services Policy

Office of the Assistant Secretary for Planning & Evaluation
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Tel.: (202) 245-6443

f/l/e
HHS

Per our conversation, attached are my comments on the Working Group Partial Recommendations Based on Draft Quarterly Report of the Attorney General under Executive Order 12336, with Additional Suggestions. (also attached)

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

JUL 15 1982

MEMORANDUM

TO : Michael Uhlmann, Elizabeth Dole

FROM : Jo Ann Gasper
Deputy Assistant Secretary for Social Services Policy

SUBJECT: Working Group Partial Recommendations Based on Draft Quarterly Report of the Attorney General Under Executive Order 12336, with Additional Suggestions

The following are comments regarding the document transmitted to you by Barbara Honegger on June 29.

1. Action to facilitate the staffing of Executive Order 12336

The title of the issue paper is inappropriate and self-serving and suggests that the goal of reviewing regulations for potential discriminatory provisions is to increase Justice Department staff.

No evidence is presented in this issue paper to indicate that a current problem exists concerning gender inequities in proposed Federal regulations. Routine Department of Health and Human Services analysis of the impact of all regulations now includes the consideration of any differential impact on a specific group. During the past year, no gender discriminatory language or effect has been identified in regulations promulgated by this Department, which amounts for a substantial fraction of total Federal regulations. Without a substantiated government-wide problem, no action is needed.

If a real problem does exist, this paper recommends the wrong solutions. The Department of Justice proposes to review only "major" NPRMs. Very few regulations are major regulations. Obviously, the potential for gender discriminatory provisions is not limited to major regulations, and the vast majority of regulations would still not be reviewed under the options proposed.

If a problem does exist, we suggest two possible solutions:

- The Director of the Office of Management and Budget should notify all Federal departments and agencies to pay special attention to this issue in the review of all regulations and to report any problems to the appropriate office in the Department of Justice.

- The Department of Justice staff person assigned to this function can read all Federal Register NPRMs each day in a few hours, and if any gender based inequities are identified, initiate appropriate formal or informal comments from the Department of Justice to the proposing agency.

2. Social Security: Earning Sharing Proposal

The options presented to the Cabinet Council on Legal Policy are three variations for sending a particular earnings sharing proposal for social security to the National Commission on Social Security Reform -- transmit with endorsement; transmit with assurance that the changes are consistent with Administration policy; transmit with no comment. The particular earnings sharing proposal under discussion is one developed by the "Civil Rights Division Task Force" (CRDTF) of the Justice Department; this proposal was recently published in the Attorney General's first quarterly report under Executive Order 12336. Considering the controversial nature of this kind of proposal, a more exhaustive listing of policy choices for the Cabinet Council might have included:

- transmission of the CRDTF proposal with general statements about the differences of opinion and judgment that exist about the seriousness of the perceived equity problems in social security and information about earnings sharing proposals in general and, especially, this particular variant;

- transmission of the CRDTF proposal with a statement of disapproval of its particulars;

- transmission of a statement disapproving the entire concept of earnings sharing in social security;

- not transmitting the CRDTF proposal at all, but instead a statement that the National Commission should be sensitive to equity issues in any long-run redesign of the system's key parameters. That statement might contain appendicies outlining the equity issues as perceived from different vantage points and the different approaches, including earnings sharing, that have been put forward from time to time.

Because of the many problems and issues that the concept of earnings sharing in social security raises, we recommend the last option outlined above, i.e., not transmitting the specific CRDTF proposal at all. Some of those problems and issues are listed below.

To the best of our knowledge, the Civil Rights Division Task Force has engaged in no formal discussions with either the Social Security Administration or components of the DHHS Office of the Secretary in developing their latest version of earnings sharing. (Apparently, they also have ignored all the problems raised in a 1980 SSA report concerning an even more limited earnings sharing proposal made by the 1979 Advisory Council.)

The National Commission is already very well equipped to consider questions of equity in social security. SSA staff who have been detailed to it include individuals who, to a degree unmatched by others, are expert on the general subject of horizontal equity in social security and the specific issues in various earnings sharing proposals.

Issues and Problems with Earnings Sharing

Earnings sharing is a concept for organizing the distribution of benefits within social security. It is, however, a very general concept. In attempting to work out its details, very specific choices have to be made, which choices involve complex social policies. The Task Force's particular proposal presumes a great many of those complex choices, e.g., inheritance of earnings credits by divorced spouses, the non-inheritance of credits earned outside any marriage, that the disablilty of a homemaker should become an insurable event in social security. There exists a substantial literature on these questions both within the earnings sharing context and, more generally, within the context of discussions of alternative proposals. An excellent summary volume is A Challenge to Social Security: The Changing Roles of Women and Men in American Society, edited by Burkhauser and Holden, Academic Press, 1982. Before the Administration undertakes any actions in this area, it should consult that literature and review all the prior proposals made in this area. Below are just some of the issues to be considered:

- The perceived problem of inequity between one and two-earner couples depends critically on one's measure of equity. Because women workers benefits are increasingly dominating their ancillary entitlements as spouses, many have argued that the problem — if, indeed, it is a problem — is diminishing rapidly. (Some have concluded that this phenomemon will accelerate at an even more rapid rate than now officially estimated.) Thus, it is not clear that equity demands a change in the program. The argument that the dual entitlement rules operate as a labor disincentive is belied by the very substantial increase in the labor force participation of women in recent years.

- The perceived inequity between one and two earner couples in retirement could be more easily solved, and at substantially less cost, by phasing down the dependent spouse's benefit percentage from it current 50% to around 35% -- just enough to give the tilt in the PIA formula twice to the one-earner couple so that it treated the same as the two-earner couple with the same earnings history. (Some would argue that even this reduction for one earner families would be anti-family and, therefore, not consistent with this Administration's pro-family stance).

- It should be recalled that the system is in financial trouble in the 80's, and it is not evident that the projected surpluses in 90's and early 21st century should be spent on a costly transition scheme as outlined in the Task Force proposal. The surpluses may be necessary to ease the transition to a new, higher dependency ratio in the later 21st century.

- It is not evident that only the survivors of some, not all, two-earner couples should be made better off as happens in this particular earnings sharing proposal. If poverty among aged widows is a problem -- and, arguably, it continues to be -- then perhaps an even greater general portion of the social security system's benefits should be reallocated toward very old surviving spouses. Within that group of older beneficiaries it is not clear that one sub-group is more deserving than another.

- The system contains the current anomaly that a surviving divorced spouse is better off when her former spouse -- usually a man with whom she has no continuing economic or social relationship -- dies. By allowing inheritance of wage credits to divorced surviving spouses, that anomaly would be continued and enhanced. This is not a necessary feature of earnings sharing, and should be separately assessed.

- This particular proposal would also make various surviving spouses much worse off relative to the current system -- thus, defeating the proposal's purported primary objective. For example, by not allowing the last surviving spouse to inherit wage credits of the decedent earned outside any marriage, those credits disappear from any calculation and, in comparision to current law, many surviving spouses would be substantially worse off.

- This particular earnings proposal apparently (details are sketchy) would have effects on young survivors and disability benefits that might be unintended and, if separately considered, judged undesirable. See the 1980 SSA report on the 1979 Advisory Council proposal.

- Because we lack specifics, we are uncertain how the plan would address the retirement of different spouses who are not the same age and how that would interact with the so-called retirement test, especially for those between ages 62 and 65. Some variants of this proposal could create increased labor force disincentives in that critical age range.

- Most earnings sharing proposals demand coverage of currently uncovered, especially government, workers. That may or may not be a good idea, but it should be judged on its own merits.

- The current system does not well handle divorce, but there do exist alternatives to full-scale (or even limited) earnings sharing proposals to address that problem.

Finally, a basic presumption in the discussion surrounding this CRDTF proposal should be addressed -- that the system is unfair to women, especially working women. The system almost entirely ignores age distinctions in calculating both young survivors protection and aged surviviors benefits. In distinction to systems that would take combined life expectencies into account, the current system has a substantial and inherent bias to the benefit of women. That bias may reflect a general social judgment to allocate benefits to those whom, on average, society believes need them more than others. It would be wrong, however, to think that bias is anything but extremely favorable to women as a class.

6. Gender Equity for Women Business Owners Doing Business with the Federal Government

We would recommend that the age from contracting be age 18 for both men and women, since this is more consistant with other Federal statues and regulations regarding the emancipation of minors.

7. Equal Equal Opportunity for Women Small Business Owners Wishing to do Business with the Federal Government

The materials presented by the Justice Department present evidence of Congressional intent. The background paper references sex discrimination conducted under the Carter Administration. Since this Administration is unequovically committed to the advancement of women, it is hard to accept that this issue had not already been administratively remedied by this Administration.

9. Elimination of Gender Discrimination in Federal Programs and Activities Due to the use of Sex-based Actuarial Tables

10. Elimination of Use of Sex-based Actuarial Data in Determining Payments to Health Maintenance Organizations

Our comments on issues 9 and 10 are consolidated since the issue is similiar.

The implications of the issues raised under 9 and 10 are not clearly spelled out. In general, in insurance and annuity calculations, companies attempt to find easily measurable characteristics which predict well how long an individual will live. One that has been found and tested is gender. When two individuals are otherwise similar, including age, health status, job pressure, marital status, etc., but one is male and the other female, the probabilities are high that the female will outlive the male. Hence it will cost more to pay the woman a pension if both man and woman retire at the same age. On the other hand, the woman will pay premiums longer and earn interest longer on those premiums if both buy life insurance at the same age. These differences have long been recognized in insurance and pension computations in private industry. They were formerly recognized in such calculations in government; legislation over the last several years has eliminated most separate sex-based actuarial tables in government.

Elimination of the sex-based tables transfers income from men to women in the case of pensions, and from women to men in the case of life insurance. Men pay more than an "actuarially fair" premium for pension benefits, and women pay less; women pay more than an "actuarially fair" premium for life insurance, and men pay less. To say, as the issue paper does, that the use of gender-based actuarial tables has an "inevitable discriminatory effect" is misleading and wrong, as the authors clearly are using discrimination in its pejorative sense; that is, in the sense of actions which treat people differently, when there is no real grounds for the separate treatment. In the case of gender-based tables, there is a real basis in insurance and pension experience. For any moderately large group of people with otherwise similar characteristics, the gender-based actuarial tables will produce a careful balancing of premiums and payments, and this balancing is time-tested and accurate. Hence it differs from job discrimination, or discrimination in education or housing, areas in which gender has been shown to have little real effect for otherwise similar individuals.

For this reason, the analogy to job quotas by sex is not really an accurate one, and the further comments on life-shortening illnesses and perfect driving records are not apropos. It is possible that people with life-shortening illnesses should be paid different annuities than those without; this issue does not deal with that, but whether men and women in equivalent circumstances should be treated differently. Certainly, men with perfect driving records should be (and are) treated differently than men with poor driving records; at issue is whether men should be treated differently than women with similar driving records, and automobile insurance experience indicates they should, in an "actuarially fair" sense.

To comment specifically on the issues at hand; if the Pension Benefit Guarantee Corporation is valuing the assets of a terminated pension plan, and the pension plan provided for separate benefit rates for men and women, it should be desirable to use gender-based tables in valuation. If the plan had continued, benefits would have been paid from such tables. Why should the Federal insurance program alter those terms, on which the employment contract had been based? For the IRS changes, there is no reason a priori to favor one position or the other. If the current provisions result in smaller periodic annuities for women and smaller allowable deductions for women than for men, then changing the provisions will transfer some income from men to women. The decision should be made on the grounds that this is a desirable transfer, not because of negative feelings about discrimination or the mistaken argument that this is similar to "quotas" in jobs, education or housing.

On issue 10, concerning payments to HMOs, gender-based tables for health insurance also have sound actuarial backing. Some of the differences arise from maternity costs, but differences at older ages in susceptibility to certain illnesses also affect costs. As before, if the use of gender-based tables are eliminated, there will be some transfer from men to women and vice-versa. The desirability of these transfers should be the basis for decision, rather than charges of discrimination. Acceptance of an endorsement of HR 100 implies that the Cabinet Council on Legal Policy wishes to endorse the requirement of transfer from men to women in private pension programs, and from women to men in private life insurance programs.

11. Elimination of Sex Discrimination in Farmer's Home Administration State Supplements Consistent with Effected Reforms in FMHA Rules and Regulations

We defer to the Farmer's Home Administration.

12. Elimination of Gender Inequities in U.S. Code Relating to the Immigration and Naturalization Service

We defer to the Justice Department on this issue.

cc: Barbara Honegger