

**NLWJC - KAGAN**

**EMAILS RECEIVED**

**ARMS - BOX 009 - FOLDER -007**

**[05/02/1997] [2]**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ingrid M. Schroeder ( CN=Ingrid M. Schroeder/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 2-MAY-1997 18:23:25.00

SUBJECT: LRM #IMS59 - REVISED MOU on Proposed Draft Bill on National Capital Revita

TO: Toni S. Husted ( CN=Toni S. Husted/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Robert W. Schroeder ( CN=Robert W. Schroeder/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Ellen J. Balis ( CN=Ellen J. Balis/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: James C. Murr ( CN=James C. Murr/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Carol Thompson-Cole ( CN=Carol Thompson-Cole/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Daniel M. Tangherlini ( CN=Daniel M. Tangherlini/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Ellen S. Seidman ( CN=Ellen S. Seidman/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: MAZUR\_M ( MAZUR\_M @ A1 @ CD @ LNGTWY [ EOP ] ) (WHO)

READ:UNKNOWN

TO: Dennis K. Burke ( CN=Dennis K. Burke/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Robert G. Damus ( CN=Robert G. Damus/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: James B. Kazel ( CN=James B. Kazel/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Justine F. Rodriguez ( CN=Justine F. Rodriguez/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Mark A. Wasserman ( CN=Mark A. Wasserman/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Mark D. Menchik ( CN=Mark D. Menchik/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Albert Seferian ( CN=Albert Seferian/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Robert B. Rideout ( CN=Robert B. Rideout/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Diane R. Montgomery ( CN=Diane R. Montgomery/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Bradley W. Kyser ( CN=Bradley W. Kyser/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Catherine A. Poynton ( CN=Catherine A. Poynton/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Harry G. Meyers ( CN=Harry G. Meyers/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Janie L. Jeffers ( CN=Janie L. Jeffers/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Randolph M. Lyon ( CN=Randolph M. Lyon/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Christa Robinson ( CN=Christa Robinson/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Harry E. Moran ( CN=Harry E. Moran/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Michael Deich ( CN=Michael Deich/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: G. E. DeSeve ( CN=G. E. DeSeve/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Scott Quehl ( CN=Scott Quehl/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Kumiki S. Gibson ( CN=Kumiki S. Gibson/O=OVP @ OVP [ UNKNOWN ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Ananias Blocker III ( CN=Ananias Blocker III/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Rosalyn J. Rettman ( CN=Rosalyn J. Rettman/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Barry White ( CN=Barry White/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Bruce D. Long ( CN=Bruce D. Long/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Lewis P. Long ( CN=Lewis P. Long/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Larry R. Matlack ( CN=Larry R. Matlack/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Michael L. Goad ( CN=Michael L. Goad/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Nani A. Coloretti ( CN=Nani A. Coloretti/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: David E. Tornquist ( CN=David E. Tornquist/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: David J. Haun ( CN=David J. Haun/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Kathleen M. Turco ( CN=Kathleen M. Turco/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Marcia D. Occomy ( CN=Marcia D. Occomy/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Alan B. Rhinesmith ( CN=Alan B. Rhinesmith/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

CC: M. Jill Gibbons ( CN=M. Jill Gibbons/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

CC: James J. Jukes ( CN=James J. Jukes/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TEXT:

Total Pages: \_\_\_\_\_

LRM ID: IMS59  
EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

Friday, May 2, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference  
OMB CONTACT: Ingrid M. Schroeder  
PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: REVISED MOU on Proposed Draft Bill on National Capital  
Revitalization and Self-Government Improvement Act of 1997

DEADLINE: 11am Monday, May 5, 1997 - FIRM

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The attached MOU was previously circulated on April 7th as LRM

#MJG56. To assist in your review of the MOU, the changes from the April 7th version are in a redline/strikeout format.

We expect the MOU to be signed early next week (the week of May 5th). Therefore the above deadline is firm.

DISTRIBUTION LIST

AGENCIES:

11-Administrative Office of the U.S. Courts - Michael W. Blommer - (202) 273-1120  
33-Environmental Protection Agency - Chris Hoff - (202) 260-5414  
51-General Services Administration - William R. Ratchford - (202) 501-0563  
52-HHS - Sondra S. Wallace - (202) 690-7760  
54-HUD - Jeff Lischer - (202) 708-1793  
59-INTERIOR - Jane Lyder - (202) 208-4371  
61-JUSTICE - Andrew Fois - (202) 514-2141  
62-LABOR - Robert A. Shapiro - (202) 219-8201  
76-National Economic Council - Sonyia Matthews - (202) 45/6-5351  
89-Office of National Drug Control Policy - John Carnevale - (202) 39/5-6736  
92-Office of Personnel Management - James N. Woodruff - (202) 606-1424  
97-Pension Benefit Guaranty Corporation - Gail Sevin - (202) 326-4080  
302-State Justice Institute - David Tevelin - (703) 684-6100  
117 and 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687  
118-TREASURY - Richard S. Carro - (202) 622-0650  
127-US Sentencing Commission - Jonathan Wroblewski - (202) 273-4500

EOP:

Alan B. Rhinesmith  
Harry G. Meyers  
Marcia D. Occomy  
Catherine A. Poynton  
Kathleen M. Turco  
Kenneth L. Schwartz  
David J. Haun  
Bradley W. Kyser  
David E. Tornquist  
Diane R. Montgomery  
Barry T. Clendenin  
Mark E. Miller  
Nani A. Coloretti  
Robert B. Rideout  
Michael L. Goad  
Albert Seferian  
Larry R. Matlack  
Mark D. Menchik  
Lewis P. Long  
Mark A. Wasserman  
Bruce D. Long  
Justine F. Rodriguez  
Barry White  
James B. Kazel  
Roselyn J. Rettman  
Robert G. Damus  
Ananias Blocker III  
Dennis K. Burke  
Elena Kagan  
MAZUR\_M  
Ellen S. Seidman

Christa Robinson  
 Scott Quehl  
 Daniel M. Tangherlini  
 G. E. DeSeve  
 Carol Thompson-Cole  
 Michael Deich  
 James C. Murr  
 Harry E. Moran  
 Ellen J. Balis  
 Robert W. Schroeder  
 Randolph M. Lyon  
 Toni S. Hustead  
 Janie L. Jeffers

LRM ID: IMS59 SUBJECT: REVISED MOU on Proposed Draft Bill on National  
 Capital Revitalization and Self-Government Improvement Act of 1997

RESPONSE TO  
 LEGISLATIVE REFERRAL  
 MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109  
 Office of Management and Budget  
 Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

- \_\_\_\_\_ Concur
- \_\_\_\_\_ No Objection
- \_\_\_\_\_ No Comment
- \_\_\_\_\_ See proposed edits on pages \_\_\_\_\_
- \_\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this reponse sheet

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D79]MAIL456266121.116 to ASCII,  
The following is a HEX DUMP:

FF575043DD070000010A02010000000205000000CF840100000200000B8A7FE48EABB9E48D31414  
DAC9082F027A958C99BD48AE1BF9F1695D566F995F7BAE3295313E6AE1624805353BCEE57B80EA  
5E4F74101B37CE68B599E465F6114DC54EF0FD5EAE26555BD0D2BB1E0F6717F3D61A8866220BA6  
D79FC5FFB82B7D51440212ED110D9142033972050BE1627354E3E3E72A481F45DD234C18B8BD77  
689AEF423F2AFB83C82B707035819AC35797E686F9FBA84ABA3ED46C68B77845C82A97B70C11CE  
2AD60CCEA3E00D4D02D5A1E46D35056E00F70210674BCBB61C5CEEA5FE35564E5F8594A7B6A170  
3F43F52F3DFA83BB64F70E3CD59D2C54E75A18EF3E19405F3281AC1DA452626D2B3DE14ACDB103  
252B0F38328C4A6A61E3057D933243A892783B26801B1920551221E5E633A28BBB0227AE7B7409  
CED5C8396E68FFF4AF7D0533162A96C36C38BAB1F56EF5C04BE452A73DCBB4C023636C905C68C3  
F5C2CC6221905CEPCD5AFE949D562BDAEB12D3453C3E21F653C68E71354F567CBE77D55FF59293  
89A2C17A813CD2CD2366A404EA5FDF37761CF7C5F2DEEE437A9C44AC7C433CF25729657FF3522E  
3EC3DBDBEE4B0FBBF15C957B02E702B78B165BA5530916706E278B1E39FF19C7B7C323F92BA977  
64403C4B7AAD33AB05E4B7AC6F46ACA866394754C8C1771CC7F22CFCB321729E68336336D4EBF9  
7B889B311302001700  
4E0000004D0400000925010000000600000009B0400000B300300000028000000A1040000087701  
00000040000000C9040000083401000000140000000905000000802010000000F0000001D050000  
080501000000080000002C050000005511000000300000003405000000550F0000003C00000064  
05000000550200000028000000A00500000055010000004E000000C80500000055070000004E00  
0000160600000000000000000000000000000000160600000943010000001A000000640600000942010000  
001D0000007E0600000942010000002A0000009B0600000942010000001D000000C50600000942  
010000001D000000E20600000B30010000006C000000FF0600000B3001000000440000006B0700  
000055090000002E000000AF07000000985C005C004F004D0042005F0031005C005C005C003200  
3000300031005F0041005C003300350030005F0042000000000000000000000000000000000000  
00  
00C8003000  
00  
00  
00  
000000000000B0100002800C8196810480D000011090000005A000B010000103600540069006D00  
6500730020004E0065007700200052006F006D0061006E00200052006500670075006C00610072  
0000000000000000000010002005802010000000400280000000000000000000000000000000  
0000011202002400A1000000A1000000A0000006D29020017006E2902005B006F2902005B0070  
2902001700712904005B00722902005900732902005A0074290100020076290100440077291600  
65810FAB232200  
0400020000002A00CF19BE10A60800001109000000600018110000101800430047002000540069  
006D0065007300  
540069006D006500730020004E0065007700000052006F006D0061006E00000000000000002500E4  
1B3214BC0700001641000000600014100000101000480065006C0076000000000000000000002800  
E21978102D0D000011090000005A000B010000103600540069006D006500730020004E00650077  
00200052006F006D0061006E00200052006500670075006C00610072000000000000000000002800  
C8196810480D000011090000005A000B01008B143600540069006D006500730020004E00650077  
00200052006F006D0061006E00200052006500670075006C006100720000000000000000000000  
160004000000000000E00000000000AFFFFF6400020000000001900040000000001100000900  
010B0000090000000000000640000000260004000000FFF1E00001B000020B0000090009000000  
006400000B0000090000000000000640000000190004000000FCFF1100002B00010B00002B0000  
00000000640000000190004000000FBFF1100005800010B00005800000000000640000010000  
000400280000001C0000002800  
10008301040003000200211000DDDD0B0C00003010000040C00DDE0100C00000000008070C00E0F2  
05F2DA0E0B00030100000B00DA30DA0F0A000300000A00DAF305F30100000004002800000000300

**MEMORANDUM OF UNDERSTANDING BETWEEN:**

Automated Records Management System  
Hex-Dump Conversion

**THE DISTRICT OF COLUMBIA**

Marion Barry, Jr., Mayor \_\_\_\_\_

Charlene Drew Jarvis, Council Chairperson Pro Tempore \_\_\_\_\_

Pursuant to Council Resolution 12-XXX, the Memorandum of Understanding on the President's National Capital Revitalization and Self-Government Improvement Plan Emergency Resolution of 1997."

**DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY**

Andrew Brimmer, Chairman \_\_\_\_\_

**OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT**

Franklin D. Raines  
Chair, President's District of Columbia Task Force \_\_\_\_\_

**Dated:** \_\_\_\_\_

## SECTION I. PURPOSE

The parties respect the Home Rule Charter as the fundamental basis for governance in the District. The purpose of this memorandum is to strengthen Home Rule and to agree to work toward the revitalization of the District of Columbia. By providing for additional District government functions, the Federal government will enable the District to focus its resources on the functions that remain. In some cases, however, this memorandum provides for Federal assumption of not only funding for certain government functions, but Federal assumption of management of those functions as well. While this is appropriate in limited circumstances, the parties generally favor the principle of local management over District government functions, regardless of the source of funding for those programs.

This memorandum is intended only to improve the management of, and the relationship between, the District of Columbia and the Federal government, and is not intended to and does not create any right, benefit, trust or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States or the District of Columbia, its agencies, its officers, or any person.

## SECTION II. PUBLIC LAW 104-8, "THE DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE ACT OF 1995"

The parties recognize the effectiveness of PL 104-8 and dedicate themselves to the cooperative implementation of its provisions. Among these provisions:

### *Finance.*

- For each Fiscal Year for which the District is in a control period, the Mayor shall develop and submit to the Financial Responsibility and Management Assistance Authority (the "Authority") and District Council a Budget and Financial Plan for the applicable Fiscal Year and the next three Fiscal Years.
- Expenditures for the District government for each Fiscal Year, beginning in FY1999, may not exceed revenues for that Fiscal Year.
- During Fiscal Years 1996, 1997, and 1998, the District government shall make continuous, substantial progress toward equalizing its expenditures and revenues.
- The District may not borrow money during a control year unless the Authority provides prior certification that the borrowing is consistent with the financial plan and budget for the year.
- For the Secretary of the Treasury to make a short-term advance to the District, an Authority-approved Budget and Financial Plan must be in place, the Mayor must submit a requisition for an advance including a schedule for timing and amounts for advances, the

Inspector General must certify the accuracy of the information provided to the Secretary, and the Secretary determines -- and the Authority certifies -- that the District lacks market access on reasonable terms, and that the Treasury has reasonable assurance of being reimbursed.

***Management.***

- An Office of the Chief Financial Officer will be established in the Executive Branch of the District government, headed by the Chief Financial Officer, and including the Office of the Treasurer, Controller, Budget, Financial Information Services, and Finance and Revenue.
- An Office of the Inspector General will be established in the Executive Branch of the District government.
- During the control period, the Mayor shall submit proposed contracts and leases to the Authority for review, and cannot enter into a contract or a lease unless the Authority determines it is consistent with the Budget and Financial Plan.
- The Authority may submit recommendations to the Mayor, the Council, the President, and Congress on actions the District or Federal governments may take to ensure the District's compliance with a Budget and Financial Plan and promote its

Automated Records Management System  
Hex-Dump Conversion

financial stability, management responsibility, and service delivery efficiency. The Mayor and the Council shall submit a statement to the Authority, President, and Congress providing notice as to whether the District will adopt the recommendations. An affirmative

Automated Records Management System  
Hex-Dump Conversion

statement must include a written implementation plan, with performance measures and a schedule for audit compliance. If the statement rejects the recommendations, the Authority may vote to take what actions it deems appropriate, after consulting with the Senate

Governmental  
Affairs  
Committee  
and the  
House  
Government  
Reform  
and  
Oversight  
Committee.

### SECTION III. GENERAL PROVISIONS

1. ~~1. —~~ **Balanced Budget.** PL 104-8 requires that the District balance its budget by FY1999. By this agreement, the District agrees to present and/or approve a balanced budget for the Fiscal Year beginning October 1, 1997.
2. ~~2. —~~ **Agreement to be Bound.** ~~The District agrees to be bound by and to use its offices and best efforts to implement this agreement.~~

### SECTION IV. SUBMISSION OF LEGISLATION & FEDERALLY ASSUMED FUNCTIONS

As Chair of the President's District of Columbia Task Force, the Director of the Office of Management and Budget intends to recommend the submission of legislation to the Congress that is consistent with the National Capital Revitalization and Self Government Improvement Plan (the "Plan") announced by the President on January 14, 1997.

Once implemented, the Plan will provide the District substantial relief from its operating expenditures, relief which will grow over time. It will also invest considerable resources to improve the District's criminal justice systems and capital infrastructure. If this legislation is enacted, the Federal government will undertake the functions described below. The Federal government will not undertake a function until the District government meets the conditions for that function, described in Section V.

1. **Medicaid.** The Federal government will increase its share of the District's Medicaid payments to 70 percent, thereby reducing the District's share to 30 percent. The Department of Health and Human Services will continue to provide more intensive

technical assistance to help the District improve the management of its Medicaid program.

2. ***Pensions.*** The Federal government will take financial and administrative responsibility for virtually all pension benefits accrued under the plans for all active and retired police and firefighters, and teachers, and will take full responsibility for the pensions of judges. The bulk of the assets of the retirement plans will be transferred to the Federal government and placed with a third party Trustee chosen by the Secretary of the Treasury. A significant amount of assets will be left with the District of Columbia to fund the benefits of participants in the District's plans and to reduce the District's annual contribution. The Trustee will invest funds, manage the existing plans, and make payments on behalf of beneficiaries. The Federal government will pledge its full faith and credit to meet its responsibilities to pay these benefits. Current retirees will have all their benefits paid by the Federal government. Retirement, death, and some disability benefits payable by the Federal government to current employees will be based on service earned as of the date the legislation is introduced. While the Federal government will not be responsible for benefits earned during future years of service by members of the current retirement programs (other than judges), these members will get the benefit of pay increases on the frozen benefits. Frozen benefits will continue to be subject to cost-of-living adjustments under the terms of the existing programs. All future employee contributions (except for judges) will be paid into the new plans.
3. ***Treasury Loans to Eliminate the Deficit.*** The United States Treasury will provide loans of up to 15-year terms to assist the District to eliminate its accumulated fund balance deficit and to manage its liquidity position. The combined amount of the Treasury loans may not exceed \$500 million. The Treasury loans will have an interest rate equal to the prevailing yield on outstanding Treasury marketable securities of comparable maturity plus 1/8th of one percent. The Treasury may also provide intra-year loans for the purposes of seasonal cash-flow management.
4. ***Criminal Justice.*** The Federal and District governments will develop and implement a transition plan which transfers responsibility over a three-to-five-year period for incarcerating felons. The Federal Bureau of Prisons (BOP) will house adult felons convicted of D.C. Code violations and designated in the same manner as Federal inmates in correctional institutions operated or contracted by the BOP. This will occur after BOP's capacity has been increased through new construction at Lorton and other locations selected by BOP, and through renovation of existing facilities at Lorton, Virginia. After October 1, 2001, the BOP will also designate to Federal correctional institutions sentenced D.C. felons in the custody of the D.C. Department of Corrections, as the Director of BOP deems appropriate, in accordance with available capacity, until they have all been designated to Federal institutions. The BOP will accept employment applications from persons currently employed by the D.C. Department of Corrections for existing BOP vacancies, and will process such applications in accordance with existing Federal procedures and standards.

**The Attorney General will select, after consultation with the Mayor, the D.C. City Council, and the Chair of the D.C. Financial Responsibility and Management Assistance Authority, a Trustee to oversee operations of the D.C. Department of Corrections until the BOP assumes responsibility for all incarcerated District felons.**

**The Federal and District governments will develop and implement a framework for changes to the D.C. sentencing system, including the abolition of parole, institution of determinate guideline sentencing and the enactment of the new mandatory minimum drug sentences, which are a prerequisite for the Federal government accepting responsibility for the incarceration of felons convicted of D.C. Code violations. The sentencing system will be enacted within 24 months, or the Federal government will not be required to obligate any funds appropriated for the purpose of incarcerating D.C. Code felons and will have no responsibility for housing such persons.**

**Consulting with representatives of the Federal and District judiciary, the Federal and District governments will also develop and implement a transition plan transferring responsibility for D.C. Code violation offender pretrial, public defender, parole, probation, and post-adjudication/post-conviction adult offender supervision from the District government to the Federal government over a three-to-five-year period. The United States Parole Commission will continue to assume responsibility for all D.C. felons housed in Federal Correctional Institutions who have sentences subject to provisions of parole.**

**The Federal government will take direct responsibility (in consultation with the D.C. judiciary) for funding the D.C. court system and related services (including plans relating to retirement benefits and other personnel matters), and establishing an independent budgetary, financial oversight, and administrative support system for the D.C. courts. The Courts will remain self-managed.**

5. ***Economic Development.*** The Federal government will assist the economic development of the District of Columbia in three ways:

First, a new economic development corporation (EDC) will be established as a public authority of the District of Columbia, with the mission of revitalizing the nation's capital city and benefitting the District's residents and businesses. The EDC will be governed by a board of directors consisting of nine voting members. Six of the board members will be appointed by the President in consultation with the Congress. Of those six, four will be selected from the for-profit business community, and two will be selected from community-based organizations. All six of the appointed board members will be persons who either maintain a primary residence or have a primary place of business in the District. The remaining three board members will be ex officio members, one chosen by the President from the Federal government, a second chosen by the Mayor from the District government, and a third chosen by the Council from the District government. The EDC will be run by a Chief Executive Officer and served by a professional staff.

The EDC will evaluate existing economic development plans and will give expedited consideration to applications for financial assistance for projects contemplated by existing plans that the EDC adopts. The EDC will establish a comprehensive strategic plan for economic development and will consult with the rest of the District government in doing so. The EDC will provide financial assistance for economic development projects, directly or in participation with other sources of financing, by making loans, equity investments, and grants, but not guarantees; by leasing or conveying land; by allocating tax credits for qualified equity investments and loans; by issuing tax-exempt private activity bonds for certified qualified projects; and by issuing project revenue obligations for any economic development project that it approves. The EDC will have ~~the power~~ limited powers to acquire property through condemnation by eminent domain.

Second, the Federal government will provide \$250 million in tax incentives to encourage business investment both downtown and in distressed communities, and to help businesses increase employment of residents of the District. There will be a new 40 percent tax credit on the first \$10,000 of eligible wages in the first year of employment for employers in the District that hire certain residents of the District. Businesses that have a significant portion of their activities in higher poverty areas of the District and that have a work force at least 35 percent of which is made up of District residents will be eligible for expensing (rather than capitalizing) an additional \$20,000 of business equipment and machinery acquired each year. The EDC will be authorized to issue tax-exempt private activity bonds to finance a broader range of business property than under existing District law if the business is located in a higher poverty area of the District and has a work force at least 35 percent of which is made up of District residents. The EDC will be authorized to allocate \$95 million in tax credits for investors in, or lenders to, District businesses for up to 25 percent of the amount invested or loaned.

Third, the District government's borrowing authority will be improved by removing impediments in its borrowing statutes so that the District government will have the same legal capacity to finance projects similar jurisdictions have.

These provisions will be undertaken in a manner consistent with a legislative outline being developed with the District.

6. ***Infrastructure.*** The Department of Transportation will assume responsibility for the funding and oversight of certain National Highway System (NHS) capital projects (including roads, bridges, and transit) and NHS operations and maintenance projects (excluding police authority, National Park Service roads, and transit) in consultation with the District. The District will select the NHS projects to be funded and the Secretary of Transportation will review the District's project selections in accordance with Title 23 planning procedures. Contract administration will be performed by the Federal Highway Administration. In addition, eligibility for Surface Transportation Program (STP) funds will be expanded to include local public roads. To support NHS projects, the National Capital Infrastructure Fund (NCIF) will be established in FY1998 with \$108 million for road, bridge, and transit capital projects. An additional \$17 million will be

provided in FY1998-03 for NHS operations and maintenance. Federal-aid funds for the District's NHS, Interstate Maintenance, and Bridge programs will be transferred to the NCIF in FY1998-03. The Administration also proposes that the NCIF be authorized to accept contributions from other sources.

7. **Personal Income Tax Collection.** At the request of, and at no cost to, the District, the Internal Revenue Service will assume responsibility from the District of Columbia for administering and/or enforcing D.C. individual income ~~and payroll taxes. This would potentially include the processing of those taxes paid by individuals, as well as the payment of related employment and payroll taxes.~~ The District government will maintain processing and collection responsibility for all other taxes.

Upon enactment of the legislation to implement the Plan, the parties to the MOU will review the legislation and confer on whether any revisions to the MOU are necessary to ensure its consistency with the legislation.

## SECTION V. DISTRICT CONDITIONS

The District government understands that it will be expected to undertake significant actions as part of the *National Capital Revitalization and Self-Government Improvement Plan* (the "Plan"). This section sets out the actions that the District government agrees to take as a condition of the Federal government actions under the legislation to carry out the Plan.

1. **Medicaid.** The District agrees to develop and implement plans satisfactory to the Secretary of Health and Human Services to accomplish each of the following:
  - 1.1. To develop an effective system for the identification and collection of amounts owed by third parties for medical care and services furnished to individuals under the District's Medicaid plan.
  - 1.2. To ensure the timely audit and settlement of cost reports of institutional providers (including hospitals, nursing facilities, and intermediate care facilities for the mentally retarded) under the District's Medicaid plan, including prompt elimination of the backlog of such audits and settlements.
  - 1.3. To develop and implement, directly or under contract, a comprehensive health care management information system that will standardize data base development and management, and integrate health care delivery with a public health data system. Such a system shall at a minimum have the capacity to accomplish the following functions:
    - 1.3.1. To assist with eligibility verification;
    - 1.3.2. To create utilization and financial profiles of providers;
    - 1.3.3. To identify services (including preventive services) received by program beneficiaries;

- 1.3.4. To monitor the claims processing and other Medicaid operations of the fiscal agent;
  - 1.3.5. To monitor the quality of care provided under managed care contracts; and
  - 1.3.6. To coordinate information management with respect to the District's Medicaid program and other public health programs and functions.
  - 1.4. To develop a comprehensive behavioral managed health care system, which combines substance abuse and mental health grant programs. Development of such a plan shall include a pilot project for better evaluation of in-patient acute psychiatric patient admissions, and the purchase of a comprehensive, risk-based system for managed care of behavioral health which covers all eligible populations and services.
- 2. *Pensions.*** The District Government agrees: (see Appendix One for definitions)
- 2.1. To establish a Replacement Plan for the current Retirement Program
    - 2.1.1. The Replacement Plan will cover all existing and new employees (except for judges) who are, or would be, covered by the Retirement Program, if the Retirement Program continued unchanged, and will be established by the date specified in legislation.
    - 2.1.2. To the extent required by current law, the Replacement Plan will be established through collective bargaining.
    - 2.1.3. After the Adoption Date, the Replacement Plan may not be amended in any manner that materially increases the cost of the Replacement Plan without provision of a mechanism for funding such increases, in accordance with Section 2.2.
  - 2.2. That the Replacement Plan will use appropriate funding methods and costs that do not exceed the sum available in the District of Columbia Budget and Financial Plan.
    - 2.2.1. The cost of any defined benefit plan will be determined in accordance with the measurement standards of Governmental Accounting Standards Board Statement No. 27 (GASB 27), with the following additional restrictions:
      - 2.2.1.1. funding methods will be limited to *entry age* or *frozen entry age*; and
      - 2.2.1.2. amortization of any unfunded actuarial liability is required over no more than 30 years on a *closed* basis.
    - 2.2.2. The cost of any defined contribution plan is the employer contribution required under the provisions of the plan.

2.2.3. All costs of the Replacement Plan must be reflected in the D.C. Budget and Financial Plan in accordance with the standards described above.

2.2.4. All costs of the Replacement Plan must be paid in accordance with the D.C. Code 1981, Title 1, Chapter 7, subchapter III.

2.2.5. Contributions of all existing and new employees (except judges) will be paid into the Replacement Plan.

2.3. To transfer copies of books and records of the Retirement Program and the Fund and to be financially responsible for errors and omissions, including all necessary records of individual employees.

2.3.1. Copies of any books and records pertaining to the Retirement Program and the Fund required by the Secretary of the Treasury or the Trustee must be made available to the Secretary or Trustee within 30 days after the Secretary or Trustee requests them.

2.3.2. The District will reimburse the Trustee for all costs, including benefit payments, resulting from errors or omissions in the books and records pertaining to the Fund.

2.4. To transfer assets from the Fund

2.4.1. Any and all assets of the Fund required to be transferred to the Trustee shall be transferred on the Transfer Date in a form specified by the Trustee.

2.4.2. The District of Columbia Retirement Board will administer the retirement programs until the Trustee assumes these responsibilities. The District government will reimburse the Fund for any benefits paid out of the Fund between the Freeze Date and the transfer date that exceed payments that would have been the responsibility of the Federal government if the transfer had occurred simultaneously with the freeze.

2.4.3. A significant amount of assets will be left with the District of Columbia to fund the benefits of participants in the District's plans and to reduce its annual contribution.

3. ***Treasury Loans to Eliminate the Deficit.*** The District agrees that:

3.1. Any Treasury loan to eliminate the accumulated fund balance deficit would be for no more than 15 years, with an interest rate equal to the prevailing yield on outstanding Treasury marketable securities of comparable maturities plus 1/8 of one percent.

3.2. The combined amount of the Treasury loans to eliminate the accumulated fund balance deficit and to manage its liquidity position will not exceed the amount of \$500 million, except for intra-year loans.

- 3.3. The Secretary of the Treasury may require early reimbursement if the District can obtain credit in the commercial market on reasonably [beneficial] terms for refinancing as determined by the Secretary.
- 3.4. Before any lending may occur, the **District must provide a requisition for an advance of funds and a promissory note to reimburse the Treasury for the Advance, in forms satisfactory to the Secretary of the Treasury.**
- 3.5. Before any lending may occur, the Treasury shall consider the impact of such lending on the District's obligations to District bond and note holders.
- 3.6. **Before any lending may occur, the Secretary of the Treasury must receive certifications from the Financial Responsibility and Management Assistance Authority and the District of Columbia Inspector General that there is an approved Budget and Financial Plan in effect for the District for the Fiscal Year in which the requisition is made, that the District is in compliance with the Authority-approved Budget and Financial Plan, and that the borrowing and repayment of the loan is consistent with the Authority-approved Budget and Financial Plan.**
- 3.7. **Before any lending can occur, the Secretary of the Treasury must receive certifications from the District government and the Financial Responsibility and Management Assistance Authority that the District is unable to obtain enough credit elsewhere to meet the District government's need for financing.**
- 3.8. The Federal government will work with the District government to amend its general obligation debt limit provisions in order to allow implementation of the District's capital plan in an orderly and sustainable manner.

4. ***Criminal Justice.*** This subsection of the Memorandum of Understanding (MOU) between the Federal government and the District of Columbia government (D.C.) outlines the offer of the Federal government, conditioned wholly on appropriations and D.C.'s acceptance and satisfaction of all other conditions and predicates identified and described herein, to assist D.C. by assuming responsibility for certain traditionally State responsibilities and the conditions that D.C. must agree to and fulfill should it choose to accept that offer as it relates to criminal justice functions, including, but not limited to, certain defendant and offender services, corrections and the judiciary. The MOU sets forth the expectations and responsibilities relating to proposed changes and reforms in the D.C. criminal justice and judicial system and the procedures (including new statutory and regulatory provisions) the Federal government and D.C. will use to implement the MOU. In particular, the MOU is designed to:

- 4.i. provide a framework for changes to the D.C. sentencing system, including the abolition of parole, institution of determinate guideline sentencing and the enactment of the new mandatory minimum drug sentences, which are a prerequisite for the Federal government accepting responsibility for the incarceration of felons convicted of D.C. Code violations.

- 4.ii. ensure that such sentencing system is to be enacted within 24 months after funding has been provided, or the Federal government will not be required to obligate any funds appropriated for the purpose of incarcerating D.C. Code felons and will have no responsibility for housing such persons.
- 4.iii. ensure an appropriate transfer and transition of responsibility from D.C. to the Federal government for pretrial, public defender, parole, probation, and post-conviction supervision and services for adult D.C. Code defendants and offenders.
- 4.iv. ensure an appropriate transfer of responsibility from D.C. to the Federal government for the incarceration of sentenced felons convicted of D.C. Code violations, assuming sufficient resources are provided by Congress to develop necessary bed space to accommodate the resulting increase in the Federal Bureau of Prisons (BOP) population and D.C. Code violators are designated in the same manner as Federal inmates.
- 4.v. provide the basis for establishing an independent budgetary, financial oversight, and administrative support system for the D.C. courts.
- 4.vi. define the respective roles of the D.C. and Federal Governments in relation to lawsuits and resulting liability, as they may be affected by the reforms agreed to in this MOU.
- 4.vii. ensure the development by D.C. and the Federal Governments of transition plans
  - 4.vii.a. (in consultation with the Federal and D.C. judiciaries) for transferring responsibility for pretrial, public defender, parole, probation, and post-conviction supervision and services for adult D.C. Code defendants and offenders over a transition period of one to three years from the enactment of the federal implementing legislation.
  - 4.vii.b. for transferring responsibility for incarcerating sentenced felons convicted of D.C. code violations over a period of approximately three to five years.
  - 4.vii.c. (in consultation with the D.C. judiciary) for transferring responsibility for funding the D.C. court system and related services, including plans relating to retirement benefits and other personnel matters.
  - 4.vii.d. for transferring control of the property at Lorton, Virginia to the Federal Government.
- 4.1. Administration of District of Columbia Pretrial, Parole, Probation, and Post-Conviction Offender Supervision, Housing, and Public Defender Services

4.1.1. *Federal Government Responsibilities*

4.1.1.1. After consultation with the Mayor of D.C., representatives of the D.C. Council, the Chairman of the D.C. Financial Responsibility and Management Assistance Authority (Financial Authority), and members of the affected Federal and D.C. judiciaries, the Attorney General will select an Offender Supervision, Defender and Courts Services Trustee to:

- a) assure the smooth transition and continued operations of D.C.'s Pretrial Services Agency and Public Defender Service;
- b) implement an orderly shutdown of the D.C. Board of Parole in coordination with the U.S. Parole Commission and the Superior Court for the District of Columbia;
- c) establish and operate a new D.C. Offender Supervision, Defender and Courts Services Agency; and
- d) accomplish, without disruption of services, the transfer of the adult offender probation supervision functions of the D.C. Courts Social Services Division,

until the Federal government assumes responsibility for each of these functions.

4.1.1.2. During the transition period, under the general auspices of the Trustee, the D.C. Pretrial Services Agency will continue uninterrupted to provide services and support for both juvenile and adult D.C. Code and Federal defendants and offenders to the U.S. District Court for the District of Columbia, the U.S. Court of Appeals for the District of Columbia, the Superior Court for the District of Columbia, and the District of Columbia Court of Appeals. The Director of Pretrial Services may employ such personnel as shall be necessary pursuant to procedures and standards established by the Trustee to facilitate transition to Federal status.

4.1.1.3. Following the transition period, the D.C. Pretrial Services Agency and the D.C. Public Defender Service will be organizationally housed in a part of a new Federal D.C. Offender Supervision, Defender and Courts Services Agency.

4.1.1.4. The D.C. Board of Parole will be terminated after the Trustee establishes a transition agency with the capacity to provide adequate field supervision to adult D.C. offenders on parole, probation or supervised release, and the U.S. Parole Commission is capable of carrying out parole functions for

D.C. Code felony offenders. Subject to appropriations, the D.C. Board of Parole's functions and jurisdiction *vis a vis* felon parolees will be assumed by the U.S. Parole Commission. Similarly, its functions and jurisdiction *vis a vis* misdemeanor parolees will be assumed by the D.C. court system. Substantive D.C. law will continue to apply to parole determinations for all D.C. Code offenders. The District of Columbia Superior Court Division of Social Services will continue to provide supervision to D.C. Code juvenile offenders and will assume responsibility for the supervision of misdemeanor parolees.

~~4.1.1.5. The Trustee will accept employment applications for new offender field supervision positions in the transition agency from persons currently employed by the D.C. court system and the D.C. Board of Parole. Applications will be processed in accordance with procedures and standards established by the Trustee to facilitate transition to subsequent Federal law enforcement employment in the successor Offender Supervision, Defender and Courts Services Agency. Positions will be advertised prior to hiring.~~

4.1.1.5. The Trustee will accept employment applications for new offender field supervision positions in the transition agency from persons who are currently employed by the District of Columbia Board of Parole or in offender supervision-related capacities by the District of Columbia Court System. Qualified, experienced personnel will be essential to an effective, timely transition and will receive priority consideration. Applications will be processed in accordance with procedures and standards established by the Trustee to facilitate transition to subsequent Federal law enforcement employment in the successor Offender Supervision, Defender, and Courts Services Agency. Positions will be advertised prior to hiring to assure notice to all interested D.C. agency personnel.

4.1.1.6. During the transition period, the Federal government will transfer funds for the Pretrial Services Agency, the Public Defender Service and the supervision of D.C. offenders to the Trustee. The head of any Federal department or agency may provide the services of any personnel on a reimbursable basis to the Trusteeship to assist in carrying out the Trustee's duties.

4.1.1.7. During the transition period, under the general auspices of the Trustee, the Public Defender Service will continue uninterrupted to provide services to D.C. Code defendants and the D.C. court system. The Director of the Public Defender Service may employ such personnel as shall be necessary pursuant to procedures and standards established by the Trustee to facilitate transition to Federal status.

- 4.1.1.8. During the transition period, the employees of and funds allocated to the Trustee and the agencies for which the Trustee is responsible shall not be counted against the personnel and budget ceilings imposed on D.C. by the Financial Authority or Congress.
- 4.1.1.9. The U.S. Marshals Service (USMS) will contract with D.C., at a mutually agreeable rate, to obtain space not needed by D.C. at D.C.'s Correctional Treatment Facility (CTF), to house persons in the custody of the USMS for whom the USMS requires bed space in the D.C. area.
- 4.1.1.10. Subject to appropriations, the Federal government will provide funds to support the D.C. Board of Parole functions during the one to three year transition period culminating in the termination of the D.C. Board of Parole.

*4.1.2. District of Columbia Responsibilities*

- 4.1.2.1. The District of Columbia will maintain responsibility for all D.C. Code juvenile offenders not prosecuted as adults.
- 4.1.2.2. The District of Columbia will have responsibility for housing and supervising persons charged with and/or convicted of misdemeanor violations in the Superior Court for the District of Columbia, both before and after sentencing.
- 4.1.2.3. The District of Columbia will continue to house persons charged with felonies under the D.C. Code and persons convicted of felonies under the D.C. Code but not yet sentenced, in the Superior Court for the District of Columbia. To the extent beds are available, D.C. will continue to house persons charged with felonies under the U.S. Code, and persons convicted of felonies under the U.S. Code but not yet sentenced in the U.S. District Court. D.C. will continue to receive reimbursement, at a mutually negotiated rate, from the Federal government for the costs of housing such persons. "House" and "housing" include subsistence, transportation of persons to and from court appearances, revocation hearings, medical facilities, and the maintenance of necessary prisoner records.
- 4.1.2.4. The District of Columbia will continue to house persons sentenced by the Superior Court and detained pending a hearing for revocation of parole, probation, or supervised release, and will provide suitable facilities for such hearings. To the extent beds are available, D.C. will house persons

sentenced by the U.S. District Court and detained pending a hearing for revocation of parole, probation, or supervised release, will provide suitable facilities for such hearings, and will continue to receive reimbursement by the Federal government at a mutually negotiated rate for the costs of housing such persons and for providing such facilities. "House" and "housing" include subsistence, transportation of persons to and from court appearances, revocation hearings, and medical facilities, and the maintenance of necessary prisoner records.

- 4.1.2.5. The Trustee will be an independent officer of the D.C. Government and can be removed by the Mayor only with the concurrence of the Attorney General. The Attorney General has authority to remove the Trustee only for misfeasance or malfeasance in office.
- 4.1.2.6. The Trustee will propose funding requests for offender supervision and services for inclusion in the President's budget for each Fiscal Year of the transition.
- 4.1.2.7. The Trustee will allocate funds for offender supervision (including adult felon parole and probation) in D.C., including funds for short term improvements, equipment contracts, and salary increases necessary to retain key personnel, maintain and enhance current levels of service, including offender drug testing, and provide for the safety and security of the community.
- 4.1.2.8. Upon receipt of funds identified by Congress or other entities for Pretrial Services, the Trustee will immediately transfer such funds to the Pretrial Services Agency.
- 4.1.2.9. Upon receipt of funds identified by Congress or other entities for the D.C. Public Defender Service, the Trustee will immediately transfer such funds to the Public Defender Service.
- 4.1.2.10. Effectively immediately and in view of the responsibility to be undertaken by the U.S. Parole Commission to carry out the functions of the D.C. Board of Parole pursuant to the parole laws and regulations of D.C., the D.C. Council will not enact legislation that changes or modifies parole laws and regulations as applicable to felony offenders without the concurrence of the Attorney General. D.C. will immediately take steps to modify parole as applicable to misdemeanants to provide for D.C. court supervision of D.C. misdemeanor parolees and the elimination of the D.C. Board of Parole. ~~Following the assumption by the U.S. Parole Commission of the functions of the D.C. Board of Parole, the D.C.~~

~~Council will cede to Congress the sole authority to legislate changes to the D.C. Code pertaining to the parole of D.C. felony offenders.~~

- 4.1.2.11. It is expected that the transition period for these offender, defender and court services will end no sooner than one year but not later than three years after the enactment of the related legislation.
- 4.1.2.12. The D.C. Corporation Counsel will provide representation for the Trustee and Trustee supervised agencies. (see litigation and liability section)

#### 4.2. Administration of District of Columbia and Federal Prisons

##### 4.2.1. *Federal Government Responsibilities*

4.2.1.1. The Federal government will take administrative control of the nine parcels of land, collectively located at or in the vicinity of Lorton, Virginia ("the Lorton property"), and other appropriate sites. After the BOP's capacity has been increased through renovation of existing facilities and new construction at the corrections complex in Lorton and other locations selected by BOP, BOP will house felons who were convicted of D.C. Code violations and sentenced to terms of imprisonment. (A recently completed Congressionally mandated study of the D.C. Department of Corrections revealed that most of the institutions at Lorton have exceeded their useful lifespan and need major renovations or demolition.)

**4.2.1.2. BOP will conduct a thorough preliminary assessment of the Lorton property to determine its environmental condition, including a study of the contamination on the property and an estimation of the costs associated with bringing the property into compliance with environmental and other applicable regulations. Based on preliminary information gathered pursuant to a review of the environmental conditions of a portion of the Lorton property, BOP could begin planning for renovation and construction immediately; actual physical renovations would not begin until Fiscal Year 1998. The estimated date for the completion of the preliminary environmental assessment process is March 21, 1998.**

**4.2.1.3. BOP will oversee the operation of community corrections centers in D.C. as necessary to provide an appropriate transition for inmates who are nearing release from Federal prisons, including those convicted of D.C. Code violations. BOP intends to use existing community corrections centers in D.C. to the extent practicable and will work with D.C. officials to identify prospective sites, as needed to establish new community corrections facilities.**

- 4.2.1.4. **D.C. Code offenders will be housed together with Federal offenders in facilities operated by BOP in Lorton, Virginia and elsewhere. Every effort will be made to house D.C. felons at facilities as close to D.C. as permitted by inmate program and security needs and BOP population management requirements. D.C. felons will be designated in the same manner as Federal inmates, and ordinarily initially assigned to institutions located within a 500-mile radius of their release residence. BOP anticipates that many of the initial designations for D.C. offenders will be within a significantly closer radius. BOP also will work with D.C. officials to identify sites for possible Federal correctional facility construction within D.C.**
- 4.2.1.5. **During the transition period, based upon assurances from D.C. that felons convicted of violating the D.C. Code will, in the future, receive sentences similar to those received by comparable offenders convicted of comparable Federal offenses, BOP will house those sentenced D.C. felons in the custody of the D.C. Department of Corrections as the Director of the BOP deems appropriate in accordance with available capacity. If such a new structure for sentencing under the D.C. Code is in place as of October 1, 2001, BOP will accept D.C. felons sentenced under the new sentencing structure in accordance with the capacity of BOP. By October 1, 2002, and assuming fulfillment of all requisite conditions, BOP will have assumed responsibility for incarcerating all sentenced D.C. felons.**
- 4.2.1.6. **BOP will accept employment applications from persons currently employed by the D.C. Department of Corrections for BOP vacancies and will make hiring selections in accordance with existing Federal procedures and standards. Qualified, experienced personnel will receive priority consideration. Positions for new BOP facilities will be advertised prior to hiring to assure notice to all interested D.C. agency personnel.**
- 4.2.1.7. **After consultation with the Mayor, representatives of the D.C. Council, the Chair of the Financial Authority, members of the judiciary and others, the Attorney General will select a Corrections Trustee to oversee expenditures of the D.C. Department of Corrections relating to sentenced, incarcerated felons, until BOP assumes responsibility for all incarcerated sentenced D.C. felons.**
- 4.2.1.8. **To the extent authorized by law, the Federal government will provide funds for the incarceration of sentenced D.C. felons through the Trustee to the D.C. Department of Corrections. The head of any Federal department or agency may provide on a reimbursable basis**

the services of any personnel to the Trustee to assist in carrying out the Trustee's duties.

- 4.2.1.9. Of the Federal funds received by the Trustee, the Trustee will reimburse BOP for those funds identified by Congress to be used for the construction of new facilities and the major renovation of existing facilities. BOP will be responsible and accountable for determining how these funds will be used, including the type, security level, and location of new facilities.
- 4.2.1.10. During the transition period, the employees of and appropriations allocated to the Trustee and the agencies for which the Trustee is responsible shall not be scored or counted against the personnel and budget ceilings imposed on D.C. by the Financial Authority or Congress.

#### *4.2.2. District of Columbia Responsibilities*

- 4.2.2.1. Offenders convicted of D.C. Code violations will be sentenced pursuant to a new D.C. sentencing system, described below. BOP shall not be required to obligate any funds appropriated for the absorption of D.C. Code felons into the Federal prison system and will have no responsibility to house any persons convicted of felony offenses, if the new sentencing system is not enacted within 24 months of the authorizing legislation's enactment.
- 4.2.2.2. D.C. will continue to house felons sentenced to terms of imprisonment by the Superior Court for the District of Columbia until such persons have been designated by BOP. To the extent beds are available, D.C. will continue to house felons sentenced to terms of imprisonment by the U.S. District Court until such persons have been designated by BOP and will continue to receive reimbursement by the Federal Government, at a mutually negotiated rate, for costs of housing persons sentenced by the U.S. District Court.
- 4.2.2.3. The Trustee will be an independent officer of the D.C. government and can be removed by the Mayor only with the concurrence of the Attorney General. The Attorney General has authority to remove the Trustee only for misfeasance or malfeasance in office.
- 4.2.2.4. The Trustee will propose funding requests for the incarceration of sentenced D.C. felons, for inclusion in the budget submitted by the President to Congress for each Fiscal Year of the transition.
- 4.2.2.5. The Trustee will allocate funds to the D.C. Department of Corrections, including such sums as may be appropriated for short

**term improvements that are necessary for the safety and security of staff, inmates, and the community.**

**4.2.2.6. The D.C. Department of Corrections will implement the short term improvements in physical security identified in the "District of Columbia Department of Corrections Short-Term Improvements Plan (September, 1996)."**

**4.2.2.7. Upon receipt of Federal funds identified by Congress for constructing new prisons and making major renovations to existing facilities for the incarceration of D.C. felons, the Trustee will immediately reimburse BOP for such funds.**

**4.2.2.8. The D.C. Corporation Counsel will provide representation for the Trustee and Trustee supervised agencies. (see litigation and liability section)**

**4.2.2.9. During the transition, D.C. will transfer custody and control of the property at Lorton, Virginia to the Federal Government, though the D.C. Department of Corrections may continue to house D.C. felons at facilities located at Lorton until such time as BOP absorbs such offenders into the Federal prison system.**

4.3. Sentencing. The District of Columbia understands and agrees that the D.C. sentencing system will be changed pursuant to proposed legislation in the following manner:

| 4.3.1. ~~Congress will amend~~ ¶The D.C. Code will be amended to abolish parole for all persons convicted of D.C. felony offenses committed on or after three years from the enactment of the Federal authorizing legislation.

| 4.3.2. ~~Congress will amend~~ ¶The D.C. Code will be amended so that good time calculations for all persons convicted of D.C. felony offenses committed on or after three years from the enactment of the Federal authorizing legislation will be made according to the Federal requirements.

4.3.3. Congress will establish a new D.C. Board of Criminal Sentences (the Board) as an independent body within the D.C. Government. All persons convicted of D.C. felonies committed on or after three years from the enactment of the Act will be sentenced according to a determinate sentencing system promulgated by the Board and transmitted by the Board to the D.C. Council no later than 18 months after enactment of the Federal authorizing legislation.

4.3.4. The Board will develop a sentencing system which shall include binding guidelines and may include such amendments or repeals of provisions in the D.C.

Code relating to the maximum and minimum prison terms as are necessary to accomplish the purposes of the Act. Ninety days after the Board promulgates and transmits the sentencing system to the D.C. Council, the sentencing system, its guidelines, amendments and repeals will become effective unless disapproved in its entirety by an Act of a majority of the Council. ~~If disapproved by the Council, the system may be enacted by Congress.~~

- 4.3.5. The promulgated sentencing system will supersede any inconsistent provision of the D.C. Code.
- 4.3.6. ~~Congress will repeal certain other provisions of the D.C. Code will be to conform with the new sentencing system (D.C. Code Title 24, Chapters 2 and 8), including the Youth Rehabilitation Act. Provisions of the D.C. Code that do not conform with the new sentencing system will be amended or repealed to conform with the new sentencing system.~~
- 4.3.7. ~~Congress will amend~~ D.C. Code Title 33, Section 541 will be amended to adopt certain mandatory penalties necessary to further the Superior Court of the District of Columbia's Drug Intervention Program and effective local law enforcement. The new sentencing system will incorporate these mandatory penalties, thereby excluding local narcotics offenses from the mandate that sentences be similar to those that would be imposed upon comparable offenders in the Federal system.
- 4.3.8. The Board will not have the authority to provide for capital punishment under any law applicable exclusively in D.C.
- 4.3.9. The Board will have seven voting members. All the members of the Board shall have knowledge and responsibilities with respect to criminal justice matters. The Attorney General (or the Attorney General's designee) will chair the Board. The other members will include two judges of the Superior Court for the District of Columbia and one representative each of the following entities: the D.C. Council, the Executive Branch of the D.C. Government, the D.C. Public Defender Service, and the U.S. Attorney for the District of Columbia. One representative each of the D.C. Corporation Counsel and BOP will serve as non-voting, ex officio members.
- 4.3.10. An affirmative vote of at least six Board members will be necessary to promulgate the sentencing system.
- 4.3.11. In developing the sentencing system, the Board will hold two or more public hearings, review other sentencing guideline system models, consult with sentencing reform experts, and solicit written comments from the public.
- 4.3.12. If the Board fails to promulgate a sentencing system within 18 months, the Board will terminate, and the Attorney General will develop a sentencing system to be

transmitted to the D.C. Council for approval. Ninety days after the Attorney General transmits the sentencing system to the D.C. Council, the sentencing system, its guidelines, amendments, and repeals will become effective, unless an Act of the Council disapproves the system in its entirety ~~and Congress, in turn, does not approve it.~~

4.3.13. The Board will have the mandate to ensure that the sentencing system it establishes, among other things:

- 4.3.13.1. will result in sentences for those convicted of D.C. felony offenses similar to those that would be imposed upon comparable offenders convicted of comparable offenses in the Federal system;
- 4.3.13.2. will result in sentences that reflect the seriousness of the offense and provide for just punishment, afford adequate deterrence to potential future criminal conduct of the offender and others, and provide the defendant with needed educational or vocational training, medical care, and other correctional treatment;
- 4.3.13.3. will provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among similar defendants, while maintaining sufficient flexibility to permit individualized sentences;
- 4.3.13.4. will take into account the high volume of sentencing proceedings in the D.C. Superior Court as bearing upon the degree of complexity of the sentencing system; and
- 4.3.13.5. will ensure that the system is neutral as to the race, sex, marital status, ethnic origin, religious affiliation, national origin, creed, socioeconomic status, and sexual orientation of offenders, if not related to the commission of the offense.

4.3.14. As part of the sentencing system, the Board will develop binding guidelines for use in determining the sentence to be imposed upon convicted felons. The guidelines will specify:

- 4.3.14.1. when to impose a sentence of probation, a fine, or a term of imprisonment and the appropriate amount or length, thereof, as well as intermediate sanctions;
- 4.3.14.2. when to impose a term of supervised release following imprisonment, and the appropriate length, thereof; and

4.3.14.3. whether multiple sentences to terms of imprisonment should run concurrently or consecutively.

4.3.15. ~~Ninety days after promulgation of the sentencing system, the Board will be terminated. There will be established a successor, Federally funded agency to amend the guidelines as necessary to achieve the purposes of the Act. The D.C. Council may recommend to Congress whether or not these amendments should be approved. However, the amendments will take effect as prescribed by the successor agency, unless they are modified or disapproved by Congress. The successor agency will have no powers to revise the D.C. Code but will recommend changes to the Code as may be necessary to further the purposes of the Act.~~

Ninety days after promulgation of the sentencing system, The Board shall terminate. There will be established a successor, Federally-funded agency. The successor agency shall be available to advise the Council regarding sentencing-related matters but will have no powers to revise the D.C. Code. The successor agency will recommend to the Council such changes to the D.C. Code as may be necessary to further the purpose of the Act. The D.C. Council will continue to have authority to enact D.C. Code revisions independent of the recommendations of the successor agency. The successor agency also may recommend to the D.C. Council amendments to the D.C. sentencing guidelines as necessary to achieve the purposes of the Act. Such amendments shall articulate sentencing adjustments or new guidelines subject to maximum sentences or ranges established by the D.C. Council in D.C. Code. Guideline amendments that pertain to established D.C. Code provisions will take effect unless disapproved by an Act of the Council that is in turn affirmed by the Congress. Guideline provisions related to proposed changes in the D.C. Code will only take effect under this procedure if the Code change is first adopted by the Council.

4.3.16. The Superior Court for the District of Columbia, D.C. Department of Corrections, and any other agency will submit information about convicted felons as required by the Board and the U.S. Department of Justice. This would permit an assessment of the extent to which sentences imposed by the Superior Court of the District of Columbia are similar to those imposed for comparable offenders in the Federal system. The results of this assessment would be used by the Board in developing the new sentencing system for D.C.

4.3.17. Four years after the enactment of the new sentencing system, there will be an evaluation to determine the extent to which the sentencing system has succeeded in accomplishing the goals set forth in the Act.

4.4. Liability and Litigation Responsibility and Authority

#### 4.4.1. *Federal Government Responsibilities*

4.4.1.1. The Federal government will be responsible for the defense of any claim arising from any alleged act or failure to act on the part of the United States, its agencies and personnel, in connection with pretrial, defender, offender supervision, sentencing reform, corrections, probation and parole services, and for any resulting liability, after responsibility for these services has passed to the Federal government at the end of the transition period.

4.4.1.2. The Federal Government's assumption of responsibility for the defense of claims, and any resulting liability, set forth in paragraph 4.4.1.1. above shall include claims arising from any alleged act or failure to act of BOP, its agencies and personnel in connection with the demolition, repair, renovation, or construction of any building, structure, or other improvement of any kind at the Lorton, Virginia property.

4.4.1.3. At the discretion of the Attorney General, the Attorney General may direct any litigation involving the Trustees appointed pursuant to sections 4.1.1.1. and 4.2.1.6. above, pretrial services, offender supervision services, or sentencing reform during the transitional period, and may provide litigation services for the Trustees and the agencies responsible for pretrial services, offender supervision services, and sentencing reform during the transitional period in lieu of representation by D.C. ~~Exercise of the Attorney General's discretion shall not change the terms of this agreement and shall not otherwise enlarge the liability of the United States, its agencies, or personnel. However, D.C. The District~~ may petition the Attorney General to request reimbursement for litigation costs and liability arising from actions of the Trustees.

#### 4.4.2. *District of Columbia Responsibilities and Liability*

4.4.2.1. D.C. will be responsible for the defense of any claim that has arisen or may arise from any act or alleged failure to act by D.C., its agencies or personnel, in connection with D.C.'s pretrial, defender, offender supervision, sentencing reform, corrections, or probation and parole services, and for any resulting liability. D.C. will remain responsible for defending and bearing any liability resulting from any such claim even if responsibility for the pertinent service has passed to the Federal Government. D.C. will also be responsible for the defense of any claim arising from any activity of D.C., its agencies or personnel as a result of any action agreed to in this MOU, and for any resulting liability.

4.4.2.2.D.C. is, and will remain, responsible for the defense of any and all claims described in paragraph 4.4.2.1. above, including the defense of claims arising from any alleged act or failure to act of the Trustees (see sections 4.1.1.1. and 4.2.1.6.). Except as provided in paragraph 4.5.3. and in paragraph 4.1.3.) above, the D.C. Corporation Counsel will provide litigation services as required to carry out this responsibility.

4.4.2.3. Notwithstanding paragraph 4.4.2.2. above, the Trustees and the agencies responsible for pretrial, defender, offender supervision services, and sentencing reform may choose not to utilize the Corporation Counsel and to engage other litigation services.

4.4.2.4. D.C. is responsible for petitioning the Attorney General to request reimbursement for litigation and liability costs arising from actions of the Trustees. Such a petition should include if appropriate documentation that such litigation resulted from actions of the Trustees and/or the extent to which D.C.'s liability may have been enlarged by actions of the Trustees.

#### 4.5. District of Columbia Courts

4.5.1. ~~Congress will make all necessary amendments to the D.C. Code~~ will be amended and other laws to terminate budgetary control and ~~other involvement~~ of the D.C. Government in the finances and administration of the D.C. court system, including the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

4.5.2. The Joint Committee on Judicial Administration of the D.C. courts will prepare and submit the budget for the D.C. court system, in accordance with section 1105(b) of Title 31 of the U.S.C. Prior to submission to Congress, the budget for the DC court system shall be provided to the Mayor and the Council of the District of Columbia in order that they may develop recommendations on the budget to the Office of Management and Budget and the Congress. The budgetary requests of the D.C. courts system will not be subject to revision by the D.C. Government or the Executive Branch of the Federal Government.

4.5.3. The D.C. court system, through its Executive Office, will be authorized to contract with D.C. agencies, Federal agencies, and other public and private entities, for necessary supplies, equipment, and services.

4.5.4. Expenditures of the D.C. court system will be paid out of funds appropriated for those courts and credited to a Treasury account established for that purpose. Funds received by the D.C. court system will not be part of the funds or budget of D.C.

5. *Economic Development.* The District government will:
  - 5.1. Implement timely and efficient zoning, permitting, and licensing processes by the end of FY1997.
  - 5.2. Offer personnel resources and fully cooperate with the Economic Development Corporation (EDC) in its review and evaluation of existing economic development plans, in the development of the EDC's strategic plan, and in subsequent implementation of the plan.
  - 5.3. Give expedited consideration to the EDC's request for land transfers (including transfers from the Redevelopment Land Agency), zoning adjustments (including variances and special exceptions), and building and other permits and licenses for projects and activities as requested by the EDC.
  - 5.4. Support legislation that:
    - 5.4.1. allocates to the EDC 50 percent of the applicable State ceiling on the authority of the District government to issue private activity bonds in each calendar year after 1997 under section 141 of the Internal Revenue Code, and that any portion of the ceiling allocated to the EDC, but not used by the EDC within the calendar year allocated, reverts back to the District;
    - 5.4.2. authorizes the EDC to acquire property in furtherance of its statutory objectives through certain limited powers of condemnation by eminent domain in the name of the District of Columbia; and
    - 5.4.3. provides that all powers, rights, assets, duties, obligations, and liabilities of the EDC will transfer to the District government upon the EDC's dissolution.

6. *Infrastructure.*

6.1. *Secretary of Transportation Responsibilities.* The Secretary of Transportation (hereinafter in this section referred to as the Secretary) agrees that:

- 6.1.1. **Beginning on October 1, 1997, the Secretary shall assume responsibility for the funding and oversight of certain National Highway System (NHS) capital projects that have been selected by the District of Columbia in accordance with 6.1.2 and shall assume responsibilities for funding operations and maintenance costs related to the NHS within the District of Columbia (exclusive of police authority and exclusive of funding those NHS routes currently under the jurisdiction of the National Park Service) with funds made available under the National Capital**

Revitalization and Self-Government Improvement Act of 1997, to be referred to henceforth in this section as the "Act."

- 6.1.2. The Secretary shall advance NHS projects through the Federal Highway Administration (FHWA) in consultation with the District of Columbia. Projects will be selected by the District of Columbia in accordance with the requirements of Title 23, United States Code, and in particular, the planning requirements of 23 U.S.C. 134 and 135. The Secretary shall fully exercise his current authorities under Title 23 to oversee, approve, and modify these plans and project selections. In reviewing the plans, the Secretary shall consider the District of Columbia Needs Assessment and Strategic Action and Investment Program currently being developed by the FHWA in cooperation with the District of Columbia Department of Public Works. The FHWA shall provide the District of Columbia with technical assistance to improve the planning process.
- 6.1.3. The Secretary, through the FHWA and in consultation with the District of Columbia, shall award and manage the contracts necessary to advance the NHS projects selected in accordance with sections 6.1.2 and 6.1.4.
- 6.1.4. Beginning on October 1, 1997, the District of Columbia shall continue to advance those NHS projects approved prior to that date that are not under construction or under a contract for such construction by October 1, 1997, unless the FHWA and the District of Columbia agree to vest responsibility for such project advancement with the FHWA. Such projects that are transferred under this section shall also be governed by the requirements contained in section 6.2.5.
- 6.1.5. The Secretary, in response to a request by the District of Columbia, may transfer National Capital Infrastructure Funds authorized under the Act and available for capital expenditures and NHS apportioned funds authorized to be transferred under the Act to other Federal-aid highway funding categories, consistent with Title 23, United States Code provisions governing the transfer of NHS funds. In addition, the Secretary must certify that performance measures related to the condition of and congestion on the NHS and any other performance measures, including safety, that may be established by the Secretary of Transportation are met before such transfers may occur.
- 6.1.6. Funds made available to the Secretary for obligation on NHS projects under this Act shall be administered by FHWA. From time to time as work progresses on a project, payments shall be made by FHWA for the costs of construction, operations, maintenance, and other eligible activities under this Act in accordance with applicable procedures under Title 23, United States Code, or as established by the Secretary.
- 6.1.7. For fiscal year 1998, \$108 million shall be authorized to be appropriated to the National Capital Infrastructure Fund (NCIF) which shall be used for construction,

reconstruction, and rehabilitation of the NHS in accordance with 23 U.S.C. 103 ( i ), including transit capital projects eligible for funding under section 103 ( i ).

6.1.8. In each of the fiscal years 1998 through 2003, the Secretary shall retain and deposit into the NCIF:

- (a) 100 percent of the District of Columbia's apportionment for the NHS;
- (b) 100 percent of the apportionments for Interstate Maintenance; and
- (c) 75 percent of the apportionment for the Highway Bridge and Replacement for use consistent with 23 U.S.C. 103 ( i ).

6.1.9. In each of the fiscal years 1998 through 2003, \$17 million shall be authorized to be appropriated to fund operations and maintenance of the NHS within the District of Columbia, exclusive of those NHS routes under the jurisdiction and control of the National Park Service.

6.1.10. The Secretary shall be responsible for funding those operations and maintenance activities and costs to the extent funds are appropriated in accordance with 6.1.9, excluding police services (except for those construction zone, incident management and other police activities that are eligible for Federal-aid highway reimbursement under Title 23, United States Code) associated with the management and operations of NHS highways including the following activities: routine maintenance of roadways and rights-of-way, road repair, snow removal, lighting, signage, and those utilities necessary for the NHS operations. Operating expenses for any transit activities shall not be eligible for funding under this Act.

6.1.11. The Secretary shall continue to provide oversight and technical assistance to the District of Columbia for all Federal-aid projects that remain the responsibility of the District of Columbia.

6.1.12. The Secretary, through the FHWA, will enter into any agreements or contracts with any entity to advance, construct, reconstruct, rehabilitate, repair, maintain, or operate the NHS within the District of Columbia, excluding those NHS roadways under the jurisdiction and control of the National Park Service, consistent with 23 U.S.C. 103 ( i ).

6.1.13. The Secretary shall encourage the hiring of local labor by contractors awarded contracts including welfare to work labor, on NHS projects financed under this Act to the maximum extent possible and consistent with federal law.

6.1.14. Unless reauthorized by Congress on, or prior to, September 30, 2003, the Secretary of Transportation's new responsibilities under this Act, other than the oversight of projects for which funding has been previously received through this Act, would

**cease and no new deposits of Federal funds would be made into the National Capital Infrastructure Fund after September 30, 2003.**

**6.1.15. The Secretary shall provide the District of Columbia with the technical assistance necessary to reassume its NHS responsibilities by September 30, 2003. The April 1996 findings of FHWA's review of the organizational capacity of the District of Columbia's Department of Public Works shall guide the assistance.**

**6.2. *District of Columbia Responsibilities.* The District of Columbia agrees that:**

**6.2.1. The District of Columbia shall retain its current responsibilities under Title 23, United States Code, for NHS project selection.**

**6.2.2. The District of Columbia shall continue to be responsible for providing police services on NHS highways (including, but not limited to civil police functions, crime prevention, investigations including traffic and accident investigation, and emergency traffic direction). The District shall continue to own the right-of-way of NHS highways that are located within the District of Columbia.**

**6.2.3. The District of Columbia will continue to be responsible for all utilities and utility work that are not necessary for operation of the NHS even if such utilities are located within the right-of-way of the NHS.**

**6.2.4. The District of Columbia shall continue to be responsible for non-NHS projects funded with Federal-aid highway funds. Surface Transportation Program (STP) funds will be made available to the District of Columbia for use on local streets, highways, and roadways (except alleys). This authority does not relieve the District of Columbia of the responsibility for the non-Federal matching share for STP funds. The use of other Federal-aid highway apportioned funds by the District of Columbia, other than as provided herein, also requires a non-Federal matching share.**

**6.2.5. Beginning on October 1, 1997, the District of Columbia is relieved of the responsibility to provide the non-Federal match for NHS projects that are funded by the Secretary with monies made available through the NCIF for NHS projects under this Act. The relief from providing the non-Federal match shall not include those projects that were approved by FHWA prior to October 1, 1997 for which Federal-aid highway funds have been obligated. The District of Columbia is responsible for providing the non-Federal match, the Federal-aid funds, and any obligation authority for any such projects transferred to the Secretary for project administration, oversight, or contracting.**

**6.2.6. The District of Columbia shall continue to be responsible for any liability incurred on the basis of the activities of the District of Columbia, its agencies, or personnel as a result of any acts or omissions in carrying out this Act. The United States, its agencies, and personnel will not incur any liability for any such acts or omissions.**

6.2.7. **The District of Columbia shall cooperate with the FHWA in its technical assistance efforts in order to assure that the District of Columbia can reassume its NHS responsibilities by September 30, 2003. The goal of the effort shall be to satisfy the April 1996 findings of FHWA's review of the organizational capacity of the District of Columbia's Department of Public Works.**

7. *Personal Income Tax Administration* The District agrees that:

7.1. General

7.1.1. ~~The District and the Executive Branch will work together to develop a legislative proposal consistent with the intent of Section IV.7. The IRS shall administer and/or enforce the District's individual income and employment taxes.~~

7.1.2. ~~The District shall continue to administer its unemployment benefits program.~~

7.2. Tax Codes

7.2.1. ~~The IRS will administer the District's existing individual income and employment tax laws. The only provision the IRS cannot administer is the District's refundable property tax credit. If the District wishes to retain this provision, it must be transferred to its real estate tax administration.~~

7.2.2. ~~All of the administrative, procedural, and enforcement provisions of the Internal Revenue Code of 1986 and related statutes will govern IRS administration of District taxes. The District will have to amend its own tax code to achieve this to the satisfaction of the Secretary of the Treasury.~~

7.2.3. ~~To avoid the possibility of any inconsistent interpretations of similar provisions, the District will have to amend its definitional provisions to conform them to the Internal Revenue Code to the satisfaction of the Secretary of the Treasury.~~

7.2.4. ~~District must notify the Secretary of the Treasury of any future changes to its individual income and employment tax laws. The Secretary may object if, in his judgement, the prospective change would prove overly burdensome to the IRS, in which case such change shall not be administered or enforced by the IRS. If the Secretary does not object within 60 days after notification, the IRS will administer the provision within a reasonable time after enactment.~~

7.3. Transfers to the District

~~7.3.1. The IRS will set up separate accounting and deposit systems for its collections of District taxes. The District must, in turn, identify the person and/or office authorized to receive transfers of collected amounts and set up related deposit accounts.~~

~~7.4. Effective Date~~

~~7.4.1. The IRS administration of District taxes shall be prospective, starting on January 1 of the calendar year that is at least 18 months after the Secretary certifies that the District of Columbia has met the conditions set forth in the Memorandum of Understanding between the United States and the District of Columbia.~~

*Appendix One*

*DEFINITIONS FOR THE PENSIONS SECTION OF THE MOU*

---

“Adoption Date” means the date the Replacement Plan is adopted by the District Government or, if later, October 1, 1997.

“District Government” means, as appropriate, the “District government” as defined by section 305(5) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Pub. L 104-8) or the District of Columbia Retirement Board as defined in section 102(5) of the Reform Act.

“Freeze Date” means the date of introduction of the Revitalization Act.

“Fund” means the District of Columbia Police Officers and Fire Fighters’ Retirement Fund, the District of Columbia Teachers’ Retirement Fund, and the District of Columbia Judges’ Retirement Fund as defined in section 102(10) of the Reform Act.

“Reform Act” means the District of Columbia Retirement Reform Act (Pub. L. 96-122).

“Replacement Plan” means the plan or plans described under Title I of the Revitalization Act.

“Retirement Program” means any of the retirement programs as described in section 102(7) of the Reform Act as in effect on the day before the freeze date.

“Revitalization Act” means the “District of Columbia Revitalization Act of 1997.”

“Secretary” means the Secretary of the Treasury or the Secretary’s designee.

“Transfer Date” means the date on which the assets and obligations of the Fund are transferred to the Trust.

“Trust” means the District of Columbia Retirement Trust created under Title I of the Revitalization Act.

“Trustee” means the firm designated by the Secretary of the Treasury under Title I of the Revitalization Act.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Scott Quehl ( CN=Scott Quehl/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 2-MAY-1997 20:22:45.00

SUBJECT: DC MOU FINAL DRAFT

TO: Diane R. Montgomery ( CN=Diane R. Montgomery/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Bradley W. Kyser ( CN=Bradley W. Kyser/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Catherine A. Poynton ( CN=Catherine A. Poynton/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Harry G. Meyers ( CN=Harry G. Meyers/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Larry R. Matlack ( CN=Larry R. Matlack/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Mark E. Miller ( CN=Mark E. Miller/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Michael L. Goad ( CN=Michael L. Goad/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Mark A. Wasserman ( CN=Mark A. Wasserman/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Robert G. Damus ( CN=Robert G. Damus/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Barry White ( CN=Barry White/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Bruce D. Long ( CN=Bruce D. Long/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Christa Robinson ( CN=Christa Robinson/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Toni S. Hustead ( CN=Toni S. Hustead/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Robert W. Schroeder ( CN=Robert W. Schroeder/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Harry E. Moran ( CN=Harry E. Moran/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: James B. Kazel ( CN=James B. Kazel/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Barry T. Clendenin ( CN=Barry T. Clendenin/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: David J. Haun ( CN=David J. Haun/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Kathleen M. Turco ( CN=Kathleen M. Turco/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Marcia D. Occomy ( CN=Marcia D. Occomy/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Alan B. Rhinesmith ( CN=Alan B. Rhinesmith/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Nani A. Coloretti ( CN=Nani A. Coloretti/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Robert B. Rideout ( CN=Robert B. Rideout/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Mark D. Menchik ( CN=Mark D. Menchik/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Rosalyn J. Rettman ( CN=Rosalyn J. Rettman/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Ananias Blocker III ( CN=Ananias Blocker III/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Justine F. Rodriguez ( CN=Justine F. Rodriguez/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Dennis K. Burke ( CN=Dennis K. Burke/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: MAZUR\_M ( MAZUR\_M @ A1 @ CD @ LNGTWY [ EOP ] ) (WHO)  
READ:UNKNOWN

TO: Janie L. Jeffers ( CN=Janie L. Jeffers/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Randolph M. Lyon ( CN=Randolph M. Lyon/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Ellen J. Balis ( CN=Ellen J. Balis/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: James C. Murr ( CN=James C. Murr/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TEXT:

----- Forwarded by Scott Quehl/OMB/EOP on 05/02/97 08:18  
PM -----



**MEMORANDUM OF UNDERSTANDING BETWEEN:**

**THE DISTRICT OF COLUMBIA**

Marion Barry, Jr., Mayor \_\_\_\_\_

Charlene Drew Jarvis, Council Chairperson Pro Tempore \_\_\_\_\_

Pursuant to Council Resolution 12-XXX, the Memorandum of Understanding on the President's National Capital Revitalization and Self-Government Improvement Plan Emergency Resolution of 1997."

**DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY**

Andrew Brimmer, Chairman \_\_\_\_\_

**OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT**

Franklin D. Raines  
Chair, President's District of Columbia Task Force \_\_\_\_\_

**Dated:** \_\_\_\_\_

**SECTION I. PURPOSE**

The parties respect the Home Rule Charter as the fundamental basis for governance in the District. The purpose of this memorandum is to strengthen Home Rule and to agree to work toward the revitalization of the District of Columbia. By providing for additional District government functions, the Federal government will enable the District to focus its resources on the functions that remain. In some cases, however, this memorandum provides for Federal assumption of not only funding for certain government functions, but Federal assumption of management of those functions as well. While this is appropriate in limited circumstances, the parties generally favor the principle of local management over District government functions, regardless of the source of funding for those programs.

This memorandum is intended only to improve the management of, and the relationship between, the District of Columbia and the Federal government, and is not intended to and does not create any right, benefit, trust or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States or the District of Columbia, its agencies, its officers, or any person.

**SECTION II. PUBLIC LAW 104-8, "THE DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE ACT OF 1995"**

The parties recognize the provisions of effectiveness of PL 104-8 and dedicate themselves to the cooperative implementation of these its provisions. Among these provisions are:

***Finance.***

- For each Fiscal Year for which the District is in a control period, the Mayor shall develop and submit to the Financial Responsibility and Management Assistance Authority (the "Authority") and District Council a Budget and Financial Plan for the applicable Fiscal Year and the next three Fiscal Years.
- Expenditures for the District government for each Fiscal Year, beginning in FY1999, may not exceed revenues for that Fiscal Year.
- During Fiscal Years 1996, 1997, and 1998, the District government shall make continuous, substantial progress toward equalizing its expenditures and revenues.
- The District may not borrow money during a control year unless the Authority provides prior certification that the borrowing is consistent with the financial plan and budget for the year.
- For the Secretary of the Treasury to make a short-term advance to the District, an Authority-approved Budget and Financial Plan must be in place, the Mayor must submit a requisition for an advance including a schedule for timing and amounts for advances, the

Inspector General must certify the accuracy of the information provided to the Secretary, and the Secretary determines -- and the Authority certifies -- that the District lacks market access on reasonable terms, and that the Treasury has reasonable assurance of being reimbursed.

*Management.*

- An Office of the Chief Financial Officer will be established in the Executive Branch of the District government, headed by the Chief Financial Officer, and including the Office of the Treasurer, Controller, Budget, Financial Information Services, and Finance and Revenue.
- An Office of the Inspector General will be established in the Executive Branch of the District government.
- During the control period, the Mayor shall submit proposed contracts and leases to the Authority for review, and cannot enter into a contract or a lease unless the Authority determines it is consistent with the Budget and Financial Plan.
- The Authority may submit recommendations to the Mayor, the Council, the President, and Congress on actions the District or Federal governments may take to ensure the District's compliance with a Budget and Financial Plan and promote its

**Automated Records Management System  
Hex-Dump Conversion**

financial stability, management responsibility, and service delivery efficiency. The Mayor and the Council shall submit a statement to the Authority, President, and Congress providing notice as to whether the District will adopt the recommendations. An affirmative

**Automated Records Management System  
Hex-Dump Conversion**

statement must include a written implementation plan, with performance measures and a schedule for audit compliance. If the statement rejects the recommendations, the Authority may vote to take what actions it deems appropriate, after consulting with the Senate

Automated Records Management System  
Hex-Dump Conversion

Governmental  
Affairs  
Committee  
and the  
House  
Government  
Reform  
and  
Oversight  
Committee.

**SECTION III. GENERAL PROVISIONS**

1. ~~1.~~ **Balanced Budget.** PL 104-8 requires that the District balance its budget by FY1999. By this agreement, the District agrees to present and/or approve a balanced budget for the Fiscal Year beginning October 1, 1997.
2. ~~2.~~ **Agreement to be Bound.** ~~The District agrees to be bound by and to use its offices and best efforts to implement this agreement.~~

**SECTION IV. SUBMISSION OF LEGISLATION & FEDERALLY ASSUMED FUNCTIONS**

As Chair of the President's District of Columbia Task Force, the Director of the Office of Management and Budget intends to recommend the submission of legislation to the Congress that is consistent with the National Capital Revitalization and Self Government Improvement Plan (the "Plan") announced by the President on January 14, 1997.

Once implemented, the Plan will provide the District substantial relief from its operating expenditures, relief which will grow over time. It will also invest considerable resources to improve the District's criminal justice systems and capital infrastructure. If this legislation is enacted, the Federal government will undertake the functions described below. The Federal government will not undertake a function until the District government meets the conditions for that function, described in Section V.

1. **Medicaid.** The Federal government will increase its share of the District's Medicaid payments to 70 percent, thereby reducing the District's share to 30 percent. The Department of Health and Human Services will continue to provide more intensive

technical assistance to help the District improve the management of its Medicaid program.

2. ***Pensions.*** The Federal government will take financial and administrative responsibility for virtually all pension benefits accrued under the plans for all active and retired police and firefighters, and teachers, and will take full responsibility for the pensions of judges. The bulk of the assets of the retirement plans will be transferred to the Federal government and placed with a third party Trustee chosen by the Secretary of the Treasury. A significant amount of assets will be left with the District of Columbia to fund the benefits of participants in the District's plans and to reduce the District's annual contribution. The Trustee will invest funds, manage the existing plans, and make payments on behalf of beneficiaries. The Federal government will pledge its full faith and credit to meet its responsibilities to pay these benefits. Current retirees will have all their benefits paid by the Federal government. Retirement, death, and some disability benefits payable by the Federal government to current employees will be based on service earned as of the date the legislation is introduced. While the Federal government will not be responsible for benefits earned during future years of service by members of the current retirement programs (other than judges), these members will get the benefit of pay increases on the frozen benefits. Frozen benefits will continue to be subject to cost-of-living adjustments under the terms of the existing programs. All future employee contributions (except for judges) will be paid into the new plans.
3. ***Treasury Loans to Eliminate the Deficit.*** The United States Treasury will provide loans of up to 15-year terms to assist the District to eliminate its accumulated fund balance deficit and to manage its liquidity position. The combined amount of the Treasury loans may not exceed \$500 million. The Treasury loans will have an interest rate equal to the prevailing yield on outstanding Treasury marketable securities of comparable maturity plus 1/8th of one percent. The Treasury may also provide intra-year loans for the purposes of seasonal cash-flow management.
4. ***Criminal Justice.*** The Federal and District governments will develop and implement a transition plan which transfers responsibility over a three-to-five-year period for incarcerating felons. The Federal Bureau of Prisons (BOP) will house adult felons convicted of D.C. Code violations and designated in the same manner as Federal inmates in correctional institutions operated or contracted by the BOP. This will occur after BOP's capacity has been increased through new construction at Lorton and other locations selected by BOP, and through renovation of existing facilities at Lorton, Virginia. After October 1, 2001, the BOP will also designate to Federal correctional institutions sentenced D.C. felons in the custody of the D.C. Department of Corrections, as the Director of BOP deems appropriate, in accordance with available capacity, until they have all been designated to Federal institutions. The BOP will accept employment applications from persons currently employed by the D.C. Department of Corrections for existing BOP vacancies, and will process such applications in accordance with existing Federal procedures and standards.

**The Attorney General will select, after consultation with the Mayor, the D.C. City Council, and the Chair of the D.C. Financial Responsibility and Management Assistance Authority, a Trustee to oversee operations of the D.C. Department of Corrections until the BOP assumes responsibility for all incarcerated District felons.**

**The Federal and District governments will develop and implement** a framework for changes to the D.C. sentencing system, including the abolition of parole, institution of determinate guideline sentencing and the enactment of the new mandatory minimum drug sentences, which are a prerequisite for the Federal government accepting responsibility for the incarceration of felons convicted of D.C. Code violations. The sentencing system will be enacted within 24 months, or the Federal government will not be required to obligate any funds appropriated for the purpose of incarcerating D.C. Code felons and will have no responsibility for housing such persons.

**Consulting with representatives of the Federal and District judiciary, the Federal and District governments will also develop and implement a transition plan transferring responsibility for D.C. Code violation offender pretrial, public defender, parole, probation, and post-adjudication/post-conviction adult offender supervision from the District government to the Federal government over a three-to-five-year period. The United States Parole Commission will continue to assume responsibility for all D.C. felons housed in Federal Correctional Institutions who have sentences subject to provisions of parole.**

**The Federal government will take direct responsibility (in consultation with the D.C. judiciary) for funding the D.C. court system and related services (including plans relating to retirement benefits and other personnel matters), and establishing an independent budgetary, financial oversight, and administrative support system for the D.C. courts. The Courts will remain self-managed, and District involvement in the selection and review of D.C. judges will not be diminished.**

5. ***Economic Development.*** The Federal government will assist the economic development of the District of Columbia in three ways:

First, a new economic development corporation (EDC) will be established as a public authority of the District of Columbia, with the mission of revitalizing the nation's capital city and benefitting the District's residents and businesses. The EDC will be governed by a board of directors consisting of nine voting members. ~~Six~~ Five of the board members will be appointed by the President in consultation with the Congress. Of those ~~six~~ five, four will be selected from the for-profit business community, and ~~two~~ one will be selected from a community-based organizations. One of the board members will be appointed by the Mayor with the advice and consent of the Council, from the for-profit business community or from a community-based organization. All six of the appointed board members will be persons who either maintain a primary residence or have a primary place of business in the District. The remaining three board members will be ex officio members, one chosen by the President from the Federal government, a second who will be the Mayor or such alternatives as the Mayor may from time to time designate

to serve as the Mayor's representative, and a third who will be the Council Chairman's representative. chosen by the Mayor from the District government, and a third chosen by the Council from the District government.—The EDC will be run by a Chief Executive Officer and served by a professional staff. The EDC will receive an initial capitalization of Federal funds.

The EDC will evaluate existing economic development plans and will give expedited consideration to applications for financial assistance for projects contemplated by existing plans that the EDC adopts. The EDC will establish a comprehensive strategic plan for economic development and will consult with the rest of the District government in doing so. The EDC will provide financial assistance for economic development projects, directly or in participation with other sources of financing, by making loans, equity investments, and grants, but not guarantees; by leasing or conveying land; by allocating tax credits for qualified equity investments and loans; by issuing tax-exempt private activity bonds for certified qualified projects; and by issuing project revenue obligations for any economic development project that it approves. All EDC projects will be required to comply with applicable Federal and District law. The EDC will have ~~the power~~ limited powers to acquire property through condemnation by eminent domain in the name of the District of Columbia and furtherance of its statutory objectives.

Second, the Federal government will provide \$250 million in tax incentives to encourage business investment both downtown and in distressed communities, and to help businesses increase employment of residents of the District. There will be a new 40 percent tax credit on the first \$10,000 of eligible wages in the first year of employment for employers in the District that hire certain residents of the District. Businesses that have a significant portion of their activities in higher poverty areas of the District and that have a work force at least 35 percent of which is made up of District residents will be eligible for expensing (rather than capitalizing) an additional \$20,000 of business equipment and machinery acquired each year. The EDC will be authorized to issue tax-exempt private activity bonds to finance a broader range of business property than under existing District law if the business is located in a higher poverty area of the District and has a work force at least 35 percent of which is made up of District residents.

The EDC will be authorized to allocate \$95 million in tax credits for investors in, or lenders to, District businesses for up to 25 percent of the amount invested or loaned.

Third, the District government's borrowing authority will be improved by removing impediments in its borrowing statutes so that the District government will have the same legal capacity to finance projects similar jurisdictions have.

These provisions will be undertaken in a manner consistent with a legislative outline being developed with the District.

6. ***Infrastructure.*** The Department of Transportation will assume responsibility for the funding and oversight of certain National Highway System (NHS) capital projects (including roads, bridges, and transit) and NHS operations and maintenance projects (excluding police authority, National Park Service roads, and transit) in

consultation with the District. The District will select the NHS projects to be funded and the Secretary of Transportation will review the District's project selections in accordance with Title 23 planning procedures. Contract administration will be performed by the Federal Highway Administration. In addition, eligibility for Surface Transportation Program (STP) funds will be expanded to include local public roads. To support NHS projects, the National Capital Infrastructure Fund (NCIF) will be established in FY1998 with \$108 million for road, bridge, and transit capital projects. An additional \$17 million will be provided in FY1998-03 for NHS operations and maintenance. Federal-aid funds for the District's NHS, Interstate Maintenance, and Bridge programs will be transferred to the NCIF in FY1998-03. The Administration also proposes that the NCIF be authorized to accept contributions from other sources.

7. ***Personal Income Tax Collection Administration.*** At the request of, and at no cost to, the District, the Internal Revenue Service will assume responsibility from the District of Columbia for administering and/or enforcing D.C. individual income ~~and payroll~~ taxes. ~~This would potentially include the processing of those taxes paid by individuals, as well as the payment of related employment and payroll taxes.~~ The District government will maintain processing and collection responsibility for all other taxes.

Both during the drafting and upon enactment of the legislation to implement the Plan, the parties to the MOU will review the legislation and confer on whether any revisions to the MOU are necessary to ensure its consistency with the legislation.

## SECTION V. DISTRICT CONDITIONS

The District government understands that it will be expected to undertake significant actions as part of the *National Capital Revitalization and Self-Government Improvement Plan* (the "Plan"). This section sets out the actions that the District government agrees to take as a condition of the Federal government actions under the legislation to carry out the Plan.

1. ***Medicaid.*** The District agrees to develop and implement plans satisfactory to the Secretary of Health and Human Services to accomplish each of the following:
  - 1.1. To develop an effective system for the identification and collection of amounts owed by third parties for medical care and services furnished to individuals under the District's Medicaid plan.
  - 1.2. To ensure the timely audit and settlement of cost reports of institutional providers (including hospitals, nursing facilities, and intermediate care facilities for the mentally retarded) under the District's Medicaid plan, including prompt elimination of the backlog of such audits and settlements.
  - 1.3. To develop and implement, directly or under contract, a comprehensive health care management information system that will standardize data base development and

management, and integrate health care delivery with a public health data system. Such a system shall at a minimum have the capacity to accomplish the following functions:

- 1.3.1. To assist with eligibility verification;
- 1.3.2. To create utilization and financial profiles of providers;
- 1.3.3. To identify services (including preventive services) received by program beneficiaries;
- 1.3.4. To monitor the claims processing and other Medicaid operations of the fiscal agent;
- 1.3.5. To monitor the quality of care provided under managed care contracts; and
- 1.3.6. To coordinate information management with respect to the District's Medicaid program and other public health programs and functions.
- 1.4. To develop a comprehensive behavioral managed health care system, which combines substance abuse and mental health grant programs. Development of such a plan shall include a pilot project for better evaluation of in-patient acute psychiatric patient admissions, and the purchase of a comprehensive, risk-based system for managed care of behavioral health which covers all eligible populations and services.

**2. *Pensions.*** The District Government agrees: (see Appendix One for definitions)

2.1. To establish a Replacement Plan for the current Retirement Program

- 2.1.1. The Replacement Plan will cover all existing and new employees (except for judges) who are, or would be, covered by the Retirement Program, if the Retirement Program continued unchanged, and will be established by the date specified in legislation.
- 2.1.2. To the extent required by current law, the Replacement Plan will be established through collective bargaining.
- 2.1.3. After the Adoption Date, the Replacement Plan may not be amended in any manner that materially increases the cost of the Replacement Plan without provision of a mechanism for funding such increases, in accordance with Section 2.2.

2.2. That the Replacement Plan will use appropriate funding methods and costs that do not exceed the sum available in the District of Columbia Budget and Financial Plan.

- 2.2.1. The cost of any defined benefit plan will be determined in accordance with the measurement standards of Governmental Accounting Standards Board Statement No. 27 (GASB 27), with the following additional restrictions:

- 2.2.1.1. funding methods will be limited to *entry age* or *frozen entry age*; and

- 2.2.1.2. amortization of any unfunded actuarial liability is required over no more than 30 years on a *closed* basis.
- 2.2.2. The cost of any defined contribution plan is the employer contribution required under the provisions of the plan.
- 2.2.3. All costs of the Replacement Plan must be reflected in the D.C. Budget and Financial Plan in accordance with the standards described above.
- 2.2.4. All costs of the Replacement Plan must be paid in accordance with the D.C. Code 1981, Title 1, Chapter 7, subchapter III.
- 2.2.5. Contributions of all existing and new employees (except judges) will be paid into the Replacement Plan.
- 2.3. To transfer copies of books and records of the Retirement Program and the Fund and to be financially responsible for errors and omissions, including all necessary records of individual employees.
  - 2.3.1. Copies of any books and records pertaining to the Retirement Program and the Fund required by the Secretary of the Treasury or the Trustee must be made available to the Secretary or Trustee within 30 days after the Secretary or Trustee requests them.
  - 2.3.2. The District will reimburse the Trustee for all costs, including benefit payments, resulting from errors or omissions in the books and records pertaining to the Fund.
- 2.4. To transfer assets from the Fund
  - 2.4.1. Any and all assets of the Fund required to be transferred to the Trustee shall be transferred on the Transfer Date in a form specified by the Trustee.
  - 2.4.2. The District of Columbia Retirement Board will administer the retirement programs until the Trustee assumes these responsibilities. The District government will reimburse the Fund for any benefits paid out of the Fund between the Freeze Date and the transfer date that exceed payments that would have been the responsibility of the Federal government if the transfer had occurred simultaneously with the freeze.
  - 2.4.3. A significant amount of assets will be left with the District of Columbia to fund the benefits of participants in the District's plans and to reduce its annual contribution.
3. ***Treasury Loans to Eliminate the Deficit.*** The District agrees that:
  - 3.1. Any Treasury loan to eliminate the accumulated fund balance deficit would be for no more than 15 years, with an interest rate equal to the prevailing yield on outstanding Treasury marketable securities of comparable maturities plus 1/8 of one percent.

- 3.2. The combined amount of the Treasury loans to eliminate the accumulated fund balance deficit and to manage its liquidity position will not exceed the amount of \$500 million, except for intra-year loans.
- 3.3. The Secretary of the Treasury may require early reimbursement if the District can obtain credit in the commercial market on reasonably [beneficial] terms for refinancing as determined by the Secretary.
- 3.4. **Before any lending may occur, the District must provide a requisition for an advance of funds and a promissory note to reimburse the Treasury for the Advance, in forms satisfactory to the Secretary of the Treasury.**
- 3.5. Before any lending may occur, the Treasury shall consider the impact of such lending on the District's obligations to District bond and note holders.
- 3.6. **Before any lending may occur, the Secretary of the Treasury must receive certifications from the Financial Responsibility and Management Assistance Authority and the District of Columbia Inspector General that there is an approved Budget and Financial Plan in effect for the District for the Fiscal Year in which the requisition is made, that the District is in compliance with the Authority-approved Budget and Financial Plan, and that the borrowing and repayment of the loan is consistent with the Authority-approved Budget and Financial Plan.**
- 3.7. **Before any lending can occur, the Secretary of the Treasury must receive certifications from the District government and the Financial Responsibility and Management Assistance Authority that the District is unable to obtain enough credit elsewhere to meet the District government's need for financing.**
- 3.8. The Federal government will work with the District government to amend its general obligation debt limit provisions in order to allow implementation of the District's capital plan in an orderly and sustainable manner.

4. ***Criminal Justice.*** This subsection of the Memorandum of Understanding (MOU) between the Federal government and the District of Columbia government (D.C.) outlines the offer of the Federal government, conditioned wholly on appropriations and D.C.'s acceptance and satisfaction of all other conditions and predicates identified and described herein, to assist D.C. by assuming responsibility for certain traditionally State responsibilities and the conditions that D.C. must agree to and fulfill should it choose to accept that offer as it relates to criminal justice functions, including, but not limited to, certain defendant and offender services, corrections and the judiciary. The MOU sets forth the expectations and responsibilities relating to proposed changes and reforms in the D.C. criminal justice and judicial system and the procedures (including new statutory and regulatory provisions) the Federal government and D.C. will use to implement the MOU. In particular, the MOU is designed to:

- 4.i. provide a framework for changes to the D.C. sentencing system, including the abolition of parole, institution of determinate guideline sentencing and the enactment of the new mandatory minimum drug sentences, which are a prerequisite for the Federal government accepting responsibility for the incarceration of felons convicted of D.C. Code violations.
- 4.ii. ensure that such sentencing system is to be enacted within 24 months after funding has been provided, or the Federal government will not be required to obligate any funds appropriated for the purpose of incarcerating D.C. Code felons and will have no responsibility for housing such persons.
- 4.iii. ensure an appropriate transfer and transition of responsibility from D.C. to the Federal government for pretrial, public defender, parole, probation, and post-conviction supervision and services for adult D.C. Code defendants and offenders.
- 4.iv. ensure an appropriate transfer of responsibility from D.C. to the Federal government for the incarceration of sentenced felons convicted of D.C. Code violations, assuming sufficient resources are provided by Congress to develop necessary bed space to accommodate the resulting increase in the Federal Bureau of Prisons (BOP) population and D.C. Code violators are designated in the same manner as Federal inmates.
- 4.v. provide the basis for establishing an independent budgetary, financial oversight, and administrative support system for the D.C. courts.
- 4.vi. define the respective roles of the D.C. and Federal Governments in relation to lawsuits and resulting liability, as they may be affected by the reforms agreed to in this MOU.
- 4.vii. ensure the development by D.C. and the Federal Governments of transition plans
  - 4.vii.a. (in consultation with the Federal and D.C. judiciaries) for transferring responsibility for pretrial, public defender, parole, probation, and post-conviction supervision and services for adult D.C. Code defendants and offenders over a transition period of one to three years from the enactment of the federal implementing legislation.
  - 4.vii.b. for transferring responsibility for incarcerating sentenced felons convicted of D.C. code violations over a period of approximately three to five years.
  - 4.vii.c. (in consultation with the D.C. judiciary) for transferring responsibility for funding the D.C. court system and related services, including plans relating to retirement benefits and other personnel matters.

4.vii.d. for transferring control of the property at Lorton, Virginia to the Federal Government.

4.1. Administration of District of Columbia Pretrial, Parole, Probation, and Post-Conviction Offender Supervision, Housing, and Public Defender Services

4.1.1. *Federal Government Responsibilities*

4.1.1.1. After consultation with the Mayor of D.C., representatives of the D.C. Council, the Chairman of the D.C. Financial Responsibility and Management Assistance Authority (Financial Authority), and members of the affected Federal and D.C. judiciaries, the Attorney General will select an Offender Supervision, Defender and Courts Services Trustee to:

- a) assure the smooth transition and continued operations of D.C.'s Pretrial Services Agency and Public Defender Service;
- b) implement an orderly shutdown of the D.C. Board of Parole in coordination with the U.S. Parole Commission and the Superior Court for the District of Columbia;
- c) establish and operate a new D.C. Offender Supervision, Defender and Courts Services Agency; and
- d) accomplish, without disruption of services, the transfer of the adult offender probation supervision functions of the D.C. Courts Social Services Division,

until the Federal government assumes responsibility for each of these functions.

4.1.1.2. During the transition period, under the general auspices of the Trustee, the D.C. Pretrial Services Agency will continue uninterrupted to provide services and support for both juvenile and adult D.C. Code and Federal defendants and offenders to the U.S. District Court for the District of Columbia, the U.S. Court of Appeals for the District of Columbia, the Superior Court for the District of Columbia, and the District of Columbia Court of Appeals. The Director of Pretrial Services may employ such personnel as shall be necessary pursuant to procedures and standards established by the Trustee to facilitate transition to Federal status.

4.1.1.3. Following the transition period, the D.C. Pretrial Services Agency and the D.C. Public Defender Service will be organizationally housed in a part of a

new Federal D.C. Offender Supervision, Defender and Courts Services Agency.

4.1.1.4. The D.C. Board of Parole will be terminated after the Trustee establishes a transition agency with the capacity to provide adequate field supervision to adult D.C. offenders on parole, probation or supervised release, and the U.S. Parole Commission is capable of carrying out parole functions for D.C. Code felony offenders. Subject to appropriations, the D.C. Board of Parole's functions and jurisdiction *vis a vis* felon parolees will be assumed by the U.S. Parole Commission. Similarly, its functions and jurisdiction *vis a vis* misdemeanor parolees will be assumed by the D.C. court system. Substantive D.C. law will continue to apply to parole determinations for all D.C. Code offenders. The District of Columbia Superior Court Division of Social Services will continue to provide supervision to D.C. Code juvenile offenders and will assume responsibility for the supervision of misdemeanor parolees.

~~4.1.1.5. The Trustee will accept employment applications for new offender field supervision positions in the transition agency from persons currently employed by the D.C. court system and the D.C. Board of Parole. Applications will be processed in accordance with procedures and standards established by the Trustee to facilitate transition to subsequent Federal law enforcement employment in the successor Offender Supervision, Defender and Courts Services Agency. Positions will be advertised prior to hiring.~~

4.1.1.5. The Trustee will accept employment applications for new offender field supervision positions in the transition agency from persons who are currently employed by the District of Columbia Board of Parole or in offender supervision-related capacities by the District of Columbia Court System. Qualified, experienced personnel will be essential to an effective, timely transition and will receive priority consideration. Applications will be processed in accordance with procedures and standards established by the Trustee to facilitate transition to subsequent Federal law enforcement employment in the successor Offender Supervision, Defender, and Courts Services Agency. Positions will be advertised prior to hiring to assure notice to all interested D.C. agency personnel.

4.1.1.6. During the transition period, the Federal government will transfer funds for the Pretrial Services Agency, the Public Defender Service and the supervision of D.C. offenders to the Trustee. The head of any Federal department or agency may provide the services of any personnel on a reimbursable basis to the Trusteeship to assist in carrying out the Trustee's duties.

- 4.1.1.7. During the transition period, under the general auspices of the Trustee, the Public Defender Service will continue uninterrupted to provide services to D.C. Code defendants and the D.C. court system. The Director of the Public Defender Service may employ such personnel as shall be necessary pursuant to procedures and standards established by the Trustee to facilitate transition to Federal status.
- 4.1.1.8. During the transition period, the employees of and funds allocated to the Trustee and the agencies for which the Trustee is responsible shall not be counted against the personnel and budget ceilings imposed on D.C. by the Financial Authority or Congress.
- 4.1.1.9. The U.S. Marshals Service (USMS) will contract with D.C., at a mutually agreeable rate, to obtain space not needed by D.C. at D.C.'s Correctional Treatment Facility (CTF), to house persons in the custody of the USMS for whom the USMS requires bed space in the D.C. area.
- 4.1.1.10. Subject to appropriations, the Federal government will provide funds to support the D.C. Board of Parole functions during the one to three year transition period culminating in the termination of the D.C. Board of Parole.

*4.1.2. District of Columbia Responsibilities*

- 4.1.2.1. The District of Columbia will maintain responsibility for all D.C. Code juvenile offenders not prosecuted as adults.
- 4.1.2.2. The District of Columbia will have responsibility for housing and supervising persons charged with and/or convicted of misdemeanor violations in the Superior Court for the District of Columbia, both before and after sentencing.
- 4.1.2.3. The District of Columbia will continue to house persons charged with felonies under the D.C. Code and persons convicted of felonies under the D.C. Code but not yet sentenced, in the Superior Court for the District of Columbia. To the extent beds are available, D.C. will continue to house persons charged with felonies under the U.S. Code, and persons convicted of felonies under the U.S. Code but not yet sentenced in the U.S. District Court. D.C. will continue to receive reimbursement, at a mutually negotiated rate, from the Federal government for the costs of housing such persons. "House" and "housing" include subsistence, transportation of persons to and from court appearances, revocation

hearings, medical facilities, and the maintenance of necessary prisoner records.

- 4.1.2.4. The District of Columbia will continue to house persons sentenced by the Superior Court and detained pending a hearing for revocation of parole, probation, or supervised release, and will provide suitable facilities for such hearings. To the extent beds are available, D.C. will house persons sentenced by the U.S. District Court and detained pending a hearing for revocation of parole, probation, or supervised release, will provide suitable facilities for such hearings, and will continue to receive reimbursement by the Federal government at a mutually negotiated rate for the costs of housing such persons and for providing such facilities. "House" and "housing" include subsistence, transportation of persons to and from court appearances, revocation hearings, and medical facilities, and the maintenance of necessary prisoner records.
- 4.1.2.5. The Trustee will be an independent officer of the D.C. Government and can be removed by the Mayor only with the concurrence of the Attorney General. The Attorney General has authority to remove the Trustee only for misfeasance or malfeasance in office.
- 4.1.2.6. The Trustee will propose funding requests for offender supervision and services for inclusion in the President's budget for each Fiscal Year of the transition.
- 4.1.2.7. The Trustee will allocate funds for offender supervision (including adult felon parole and probation) in D.C., including funds for short term improvements, equipment contracts, and salary increases necessary to retain key personnel, maintain and enhance current levels of service, including offender drug testing, and provide for the safety and security of the community.
- 4.1.2.8. Upon receipt of funds identified by Congress or other entities for Pretrial Services, the Trustee will immediately transfer such funds to the Pretrial Services Agency.
- 4.1.2.9. Upon receipt of funds identified by Congress or other entities for the D.C. Public Defender Service, the Trustee will immediately transfer such funds to the Public Defender Service.
- 4.1.2.10. Effectively immediately and in view of the responsibility to be undertaken by the U.S. Parole Commission to carry out the functions of the D.C. Board of Parole pursuant to the parole laws and regulations of D.C., the D.C. Council will not enact legislation that changes or modifies parole

laws and regulations as applicable to felony offenders without the concurrence of the Attorney General. D.C. will immediately take steps to modify parole as applicable to misdemeanants to provide for D.C. court supervision of D.C. misdemeanor parolees and the elimination of the D.C. Board of Parole. ~~Following the assumption by the U.S. Parole Commission of the functions of the D.C. Board of Parole, the D.C. Council will cede to Congress the sole authority to legislate changes to the D.C. Code pertaining to the parole of D.C. felony offenders.~~

- 4.1.2.11. It is expected that the transition period for these offender, defender and court services will end no sooner than one year but not later than three years after the enactment of the related legislation.
- 4.1.2.12. The D.C. Corporation Counsel will provide representation for the Trustee and Trustee supervised agencies. (see litigation and liability section)

#### 4.2. Administration of District of Columbia and Federal Prisons

##### 4.2.1. *Federal Government Responsibilities*

4.2.1.1. The Federal government will take administrative control of the nine parcels of land, collectively located at or in the vicinity of Lorton, Virginia ("the Lorton property"), and other appropriate sites. After the BOP's capacity has been increased through renovation of existing facilities and new construction at the corrections complex in Lorton and other locations selected by BOP, BOP will house felons who were convicted of D.C. Code violations and sentenced to terms of imprisonment. (A recently completed Congressionally mandated study of the D.C. Department of Corrections revealed that most of the institutions at Lorton have exceeded their useful lifespan and need major renovations or demolition.)

**4.2.1.2. BOP will conduct a thorough preliminary assessment of the Lorton property to determine its environmental condition, including a study of the contamination on the property and an estimation of the costs associated with bringing the property into compliance with environmental and other applicable regulations. Based on preliminary information gathered pursuant to a review of the environmental conditions of a portion of the Lorton property, BOP could begin planning for renovation and construction immediately; actual physical renovations would not begin until Fiscal Year 1998. The estimated date for the completion of the preliminary environmental assessment process is March 21, 1998.**

- 4.2.1.3. BOP will oversee the operation of community corrections centers in D.C. as necessary to provide an appropriate transition for inmates who are nearing release from Federal prisons, including those convicted of D.C. Code violations. BOP intends to use existing community corrections centers in D.C. to the extent practicable and will work with D.C. officials to identify prospective sites, as needed to establish new community corrections facilities.
- 4.2.1.4. D.C. Code offenders will be housed together with Federal offenders in facilities operated by BOP in Lorton, Virginia and elsewhere. Every effort will be made to house D.C. felons at facilities as close to D.C. as permitted by inmate program and security needs and BOP population management requirements. D.C. felons will be designated in the same manner as Federal inmates, and ordinarily initially assigned to institutions located within a 500-mile radius of their release residence. BOP anticipates that many of the initial designations for D.C. offenders will be within a significantly closer radius. BOP also will work with D.C. officials to identify sites for possible Federal correctional facility construction within D.C.
- 4.2.1.5. During the transition period, based upon assurances from D.C. that felons convicted of violating the D.C. Code will, in the future, receive sentences similar to those received by comparable offenders convicted of comparable Federal offenses, BOP will house those sentenced D.C. felons in the custody of the D.C. Department of Corrections as the Director of the BOP deems appropriate in accordance with available capacity. If such a new structure for sentencing under the D.C. Code is in place as of October 1, 2001, BOP will accept D.C. felons sentenced under the new sentencing structure in accordance with the capacity of BOP. By October 1, 2002, and assuming fulfillment of all requisite conditions, BOP will have assumed responsibility for incarcerating all sentenced D.C. felons.
- 4.2.1.6. BOP will accept employment applications from persons currently employed by the D.C. Department of Corrections for BOP vacancies and will make hiring selections in accordance with existing Federal procedures and standards. Qualified, experienced personnel will receive priority consideration. Positions for new BOP facilities will be advertised prior to hiring to assure notice to all interested D.C. agency personnel.
- 4.2.1.7. After consultation with the Mayor, representatives of the D.C. Council, the Chair of the Financial Authority, members of the judiciary and others, the Attorney General will select a Corrections Trustee to oversee expenditures of the D.C. Department of

Corrections relating to sentenced, incarcerated felons, until BOP assumes responsibility for all incarcerated sentenced D.C. felons.

- 4.2.1.8. To the extent authorized by law, the Federal government will provide funds for the incarceration of sentenced D.C. felons through the Trustee to the D.C. Department of Corrections. The head of any Federal department or agency may provide on a reimbursable basis the services of any personnel to the Trustee to assist in carrying out the Trustee's duties.
- 4.2.1.9. Of the Federal funds received by the Trustee, the Trustee will reimburse BOP for those funds identified by Congress to be used for the construction of new facilities and the major renovation of existing facilities. BOP will be responsible and accountable for determining how these funds will be used, including the type, security level, and location of new facilities.
- 4.2.1.10. During the transition period, the employees of and appropriations allocated to the Trustee and the agencies for which the Trustee is responsible shall not be scored or counted against the personnel and budget ceilings imposed on D.C. by the Financial Authority or Congress.

#### **4.2.2. *District of Columbia Responsibilities***

- 4.2.2.1. Offenders convicted of D.C. Code violations will be sentenced pursuant to a new D.C. sentencing system, described below. BOP shall not be required to obligate any funds appropriated for the absorption of D.C. Code felons into the Federal prison system and will have no responsibility to house any persons convicted of felony offenses, if the new sentencing system is not enacted within 24 months of the authorizing legislation's enactment.
- 4.2.2.2. D.C. will continue to house felons sentenced to terms of imprisonment by the Superior Court for the District of Columbia until such persons have been designated by BOP. To the extent beds are available, D.C. will continue to house felons sentenced to terms of imprisonment by the U.S. District Court until such persons have been designated by BOP and will continue to receive reimbursement by the Federal Government, at a mutually negotiated rate, for costs of housing persons sentenced by the U.S. District Court.
- 4.2.2.3. The Trustee will be an independent officer of the D.C. government and can be removed by the Mayor only with the concurrence of the Attorney General. The Attorney General has authority to remove the Trustee only for misfeasance or malfeasance in office.

- 4.2.2.4. **The Trustee will propose funding requests for the incarceration of sentenced D.C. felons, for inclusion in the budget submitted by the President to Congress for each Fiscal Year of the transition.**
- 4.2.2.5. **The Trustee will allocate funds to the D.C. Department of Corrections, including such sums as may be appropriated for short term improvements that are necessary for the safety and security of staff, inmates, and the community.**
- 4.2.2.6. **The D.C. Department of Corrections will implement the short term improvements in physical security identified in the "District of Columbia Department of Corrections Short-Term Improvements Plan (September, 1996)."**
- 4.2.2.7. **Upon receipt of Federal funds identified by Congress for constructing new prisons and making major renovations to existing facilities for the incarceration of D.C. felons, the Trustee will immediately reimburse BOP for such funds.**
- 4.2.2.8. **The D.C. Corporation Counsel will provide representation for the Trustee and Trustee supervised agencies. (see litigation and liability section)**
- 4.2.2.9. **During the transition, D.C. will transfer custody and control of the property at Lorton, Virginia to the Federal Government, though the D.C. Department of Corrections may continue to house D.C. felons at facilities located at Lorton until such time as BOP absorbs such offenders into the Federal prison system.**

4.3. Sentencing. The District of Columbia understands and agrees that the D.C. sentencing system will be changed pursuant to proposed legislation in the following manner:

| 4.3.1. ~~Congress will amend~~ ¶The D.C. Code will be amended to abolish parole for all persons convicted of D.C. felony offenses committed on or after three years from the enactment of the Federal authorizing legislation.

| 4.3.2. ~~Congress will amend~~ ¶The D.C. Code will be amended so that good time calculations for all persons convicted of D.C. felony offenses committed on or after three years from the enactment of the Federal authorizing legislation will be made according to the Federal requirements.

4.3.3. Congress will establish a new D.C. Board of Criminal Sentences (the Board) as an independent body within the D.C. Government. All persons convicted of D.C. felonies committed on or after three years from the enactment of the Act will be

- sentenced according to a determinate sentencing system promulgated by the Board and transmitted by the Board to the D.C. Council no later than 18 months after enactment of the Federal authorizing legislation.
- 4.3.4. The Board will develop a sentencing system which shall include binding guidelines and may include such amendments or repeals of provisions in the D.C. Code relating to the maximum and minimum prison terms as are necessary to accomplish the purposes of the Act. Ninety days after the Board promulgates and transmits the sentencing system to the D.C. Council, the sentencing system, its guidelines, amendments and repeals will become effective unless disapproved in its entirety by an Act of a majority of the Council. ~~If disapproved by the Council, the system may be enacted by Congress.~~
- 4.3.5. The promulgated sentencing system will supersede any inconsistent provision of the D.C. Code.
- 4.3.6. ~~Congress will repeal certain other provisions of the D.C. Code will be to conform with the new sentencing system (D.C. Code Title 24, Chapters 2 and 8), including the Youth Rehabilitation Act. Provisions of the D.C. Code that do not conform with the new sentencing system will be amended or repealed to conform with the new sentencing system.~~
- 4.3.7. ~~Congress will amend~~ D.C. Code Title 33, Section 541 will be amended to adopt certain mandatory penalties necessary to further the Superior Court of the District of Columbia's Drug Intervention Program and effective local law enforcement. The new sentencing system will incorporate these mandatory penalties, thereby excluding local narcotics offenses from the mandate that sentences be similar to those that would be imposed upon comparable offenders in the Federal system.
- 4.3.8. The Board will not have the authority to provide for capital punishment under any law applicable exclusively in D.C.
- 4.3.9. The Board will have seven voting members. All the members of the Board shall have knowledge and responsibilities with respect to criminal justice matters. The Attorney General (or the Attorney General's designee) will chair the Board. The other members will include two judges of the Superior Court for the District of Columbia and one representative each of the following entities: the D.C. Council, the Executive Branch of the D.C. Government, the D.C. Public Defender Service, and the U.S. Attorney for the District of Columbia. One representative each of the D.C. Corporation Counsel and BOP will serve as non-voting, ex officio members.
- 4.3.10. An affirmative vote of at least six Board members will be necessary to promulgate the sentencing system.

- 4.3.11. In developing the sentencing system, the Board will hold two or more public hearings, review other sentencing guideline system models, consult with sentencing reform experts, and solicit written comments from the public.
- 4.3.12. If the Board fails to promulgate a sentencing system within 18 months, the Board will terminate, and the Attorney General will develop a sentencing system to be transmitted to the D.C. Council for approval. Ninety days after the Attorney General transmits the sentencing system to the D.C. Council, the sentencing system, its guidelines, amendments, and repeals will become effective, unless an Act of the Council disapproves the system in its entirety ~~and Congress, in turn, does not approve it.~~
- 4.3.13. The Board will have the mandate to ensure that the sentencing system it establishes, among other things:
- 4.3.13.1. will result in sentences for those convicted of D.C. felony offenses similar to those that would be imposed upon comparable offenders convicted of comparable offenses in the Federal system;
  - 4.3.13.2. will result in sentences that reflect the seriousness of the offense and provide for just punishment, afford adequate deterrence to potential future criminal conduct of the offender and others, and provide the defendant with needed educational or vocational training, medical care, and other correctional treatment;
  - 4.3.13.3. will provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among similar defendants, while maintaining sufficient flexibility to permit individualized sentences;
  - 4.3.13.4. will take into account the high volume of sentencing proceedings in the D.C. Superior Court as bearing upon the degree of complexity of the sentencing system; and
  - 4.3.13.5. will ensure that the system is neutral as to the race, sex, marital status, ethnic origin, religious affiliation, national origin, creed, socioeconomic status, and sexual orientation of offenders, if not related to the commission of the offense.
- 4.3.14. As part of the sentencing system, the Board will develop binding guidelines for use in determining the sentence to be imposed upon convicted felons. The guidelines will specify:

- 4.3.14.1. when to impose a sentence of probation, a fine, or a term of imprisonment and the appropriate amount or length, thereof, as well as intermediate sanctions;
  - 4.3.14.2. when to impose a term of supervised release following imprisonment, and the appropriate length, thereof; and
  - 4.3.14.3. whether multiple sentences to terms of imprisonment should run concurrently or consecutively.
- 4.3.15. ~~Ninety days after promulgation of the sentencing system, the Board will be terminated. There will be established a successor, Federally funded agency to amend the guidelines as necessary to achieve the purposes of the Act. The D.C. Council may recommend to Congress whether or not these amendments should be approved. However, the amendments will take effect as prescribed by the successor agency, unless they are modified or disapproved by Congress. The successor agency will have no powers to revise the D.C. Code but will recommend changes to the Code as may be necessary to further the purposes of the Act.~~
- Ninety days after promulgation of the sentencing system, The Board shall terminate. There will be established a successor, Federally-funded agency. The successor agency shall be available to advise the Council regarding sentencing-related matters but will have no powers to revise the D.C. Code. The successor agency will recommend to the Council such changes to the D.C. Code as may be necessary to further the purpose of the Act. The D.C. Council will continue to have authority to enact D.C. Code revisions independent of the recommendations of the successor agency. The successor agency also may recommend to the D.C. Council amendments to the D.C. sentencing guidelines as necessary to achieve the purposes of the Act. Such amendments shall articulate sentencing adjustments or new guidelines subject to maximum sentences or ranges established by the D.C. Council in D.C. Code. Guideline amendments that pertain to established D.C. Code provisions will take effect unless disapproved by an Act of the Council that is in turn affirmed by the Congress. Guideline provisions related to proposed changes in the D.C. Code will only take effect under this procedure if the Code change is first adopted by the Council.
- 4.3.16. The Superior Court for the District of Columbia, D.C. Department of Corrections, and any other agency will submit information about convicted felons as required by the Board and the U.S. Department of Justice. This would permit an assessment of the extent to which sentences imposed by the Superior Court of the District of Columbia are similar to those imposed for comparable offenders in the Federal system. The results of this assessment would be used by the Board in developing the new sentencing system for D.C.

4.3.17. Four years after the enactment of the new sentencing system, there will be an evaluation to determine the extent to which the sentencing system has succeeded in accomplishing the goals set forth in the Act.

#### 4.4. Liability and Litigation Responsibility and Authority

##### 4.4.1. *Federal Government Responsibilities*

4.4.1.1. The Federal government will be responsible for the defense of any claim arising from any alleged act or failure to act on the part of the United States, its agencies and personnel, in connection with pretrial, defender, offender supervision, sentencing reform, corrections, probation and parole services, and for any resulting liability, after responsibility for these services has passed to the Federal government at the end of the transition period.

4.4.1.2. The Federal Government's assumption of responsibility for the defense of claims, and any resulting liability, set forth in paragraph 4.4.1.1. above shall include claims arising from any alleged act or failure to act of BOP, its agencies and personnel in connection with the demolition, repair, renovation, or construction of any building, structure, or other improvement of any kind at the Lorton, Virginia property.

4.4.1.3. At the discretion of the Attorney General, the Attorney General may direct any litigation involving the Trustees appointed pursuant to sections 4.1.1.1. and ~~4.2.1.6. 4.2.1.7.~~ above, pretrial services, offender supervision services, or sentencing reform during the transitional period, and may provide litigation services for the Trustees and the agencies responsible for pretrial services, offender supervision services, and sentencing reform during the transitional period in lieu of representation by D.C. ~~Exercise of the Attorney General's discretion shall not change the terms of this agreement and shall not otherwise enlarge the liability of the United States, its agencies, or personnel. However, D.C.~~ The District may petition the Attorney General to request reimbursement for litigation costs and liability arising from actions of the Trustees.

##### 4.4.2. *District of Columbia Responsibilities and Liability*

4.4.2.1. D.C. will be responsible for the defense of any claim that has arisen or may arise from any act or alleged failure to act by D.C., its agencies or personnel, in connection with D.C.'s pretrial, defender, offender supervision, sentencing reform, corrections, or probation and parole services, and for any resulting liability. D.C. will remain responsible for defending and

bearing any liability resulting from any such claim even if responsibility for the pertinent service has passed to the Federal Government. D.C. will also be responsible for the defense of any claim arising from any activity of D.C., its agencies or personnel as a result of any action agreed to in this MOU, and for any resulting liability.

4.4.2.2. D.C. is, and will remain, responsible for the defense of any and all claims described in paragraph 4.4.2.1. above, including the defense of claims arising from any alleged act or failure to act of the Trustees (see sections 4.1.1.1. and ~~4.2.1.6. 4.1.2.7.~~). Except as otherwise in this MOU provided in paragraph 4.5.3. and in paragraph 4.1.3.) above, the D.C. Corporation Counsel will provide litigation services as required to carry out this responsibility.

4.4.2.3. Notwithstanding paragraph 4.4.2.2. above, the Trustees and the agencies responsible for pretrial, defender, offender supervision services, and sentencing reform may choose not to utilize the Corporation Counsel and to engage other litigation services.

4.4.2.4. D.C. is responsible for petitioning the Attorney General to request reimbursement for litigation and liability costs arising from actions of the Trustees. Such a petition should include if appropriate documentation that such litigation resulted from actions of the Trustees and/or the extent to which D.C.'s liability may have been enlarged by actions of the Trustees.

#### 4.5. District of Columbia Courts

4.5.1. ~~Congress will make all necessary amendments to the~~ D.C. Code will be amended and other laws to terminate budgetary control and ~~other involvement~~ of the D.C. Government in the finances and administration of the D.C. court system, including the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

4.5.2. The Joint Committee on Judicial Administration of the D.C. courts will prepare and submit the budget for the D.C. court system, in accordance with section 1105(b) of Title 31 of the U.S.C. Prior to submission to Congress, the budget for the DC court system shall be provided to the Mayor and the Council of the District of Columbia in order that they may develop recommendations on the budget to the Office of Management and Budget and the Congress. The budgetary requests of the D.C. courts system will not be subject to revision by the D.C. Government or the Executive Branch of the Federal Government.

- 4.5.3. The D.C. court system, through its Executive Office, will be authorized to contract with D.C. agencies, Federal agencies, and other public and private entities, for necessary supplies, equipment, and services.
- 4.5.4. Expenditures of the D.C. court system will be paid out of funds appropriated for those courts and credited to a Treasury account established for that purpose. Funds received by the D.C. court system will not be part of the funds or budget of D.C.

4.5.5. District involvement in the selection and review of D.C. judges will not be diminished.

5. *Economic Development.* The District government will:

- 5.1. Implement timely and efficient zoning, permitting, and licensing processes by the end of ~~FY1997~~ 1998.
- 5.2. Offer personnel resources and fully cooperate with the Economic Development Corporation (EDC) in its review and evaluation of existing economic development plans, in the development of the EDC's strategic plan, and in subsequent implementation of the plan.
- 5.3. Give expedited consideration to the EDC's request for land transfers (including transfers from the Redevelopment Land Agency), zoning adjustments (including variances and special exceptions), and building and other permits and licenses for projects and activities as requested by the EDC.
- 5.4. Support legislation that:
  - 5.4.1. allocates to the EDC 50 percent of the applicable State ceiling on the authority of the District government to issue private activity bonds in each calendar year after 1997 under section 141 of the Internal Revenue Code, and that any portion of the ceiling allocated to the EDC, but not identified for specific projects by the EDC within the calendar year allocated, reverts back to the District;
  - 5.4.2. authorizes the EDC to acquire property in furtherance of its statutory objectives through certain limited powers of condemnation by eminent domain in the name of the District of Columbia; and
  - 5.4.3. provides that all powers, rights, assets, duties, obligations, and liabilities of the EDC will transfer to the District government upon the EDC's dissolution.

6. *Infrastructure.*

**6.1. Secretary of Transportation Responsibilities.** The Secretary of Transportation (hereinafter in this section referred to as the Secretary) agrees that:

- 6.1.1.** Beginning on October 1, 1997, the Secretary shall assume responsibility for the funding and oversight of certain National Highway System (NHS) capital projects that have been selected by the District of Columbia in accordance with 6.1.2 and shall assume responsibilities for funding operations and maintenance costs related to the NHS within the District of Columbia (exclusive of police authority and exclusive of funding those NHS routes currently under the jurisdiction of the National Park Service) with funds made available under the National Capital Revitalization and Self-Government Improvement Act of 1997, to be referred to henceforth in this section as the "Act."
- 6.1.2.** The Secretary shall advance NHS projects through the Federal Highway Administration (FHWA) in consultation with the District of Columbia. Projects will be selected by the District of Columbia in accordance with the requirements of Title 23, United States Code, and in particular, the planning requirements of 23 U.S.C. 134 and 135. The Secretary shall fully exercise his current authorities under Title 23 to oversee, approve, and modify these plans and project selections. In reviewing the plans, the Secretary shall consider the District of Columbia Needs Assessment and Strategic Action and Investment Program currently being developed by the FHWA in cooperation with the District of Columbia Department of Public Works. The FHWA shall provide the District of Columbia with technical assistance to improve the planning process.
- 6.1.3.** The Secretary, through the FHWA and in consultation with the District of Columbia, shall award and manage the contracts necessary to advance the NHS projects selected in accordance with sections 6.1.2 and 6.1.4.
- 6.1.4.** Beginning on October 1, 1997, the District of Columbia shall continue to advance those NHS projects approved prior to that date that are not under construction or under a contract for such construction by October 1, 1997, unless the FHWA and the District of Columbia agree to vest responsibility for such project advancement with the FHWA. Such projects that are transferred under this section shall also be governed by the requirements contained in section 6.2.5.
- 6.1.5.** The Secretary, in response to a request by the District of Columbia, may transfer National Capital Infrastructure Funds authorized under the Act and available for capital expenditures and NHS apportioned funds authorized to be transferred under the Act to other Federal-aid highway funding categories, consistent with Title 23, United States Code provisions governing the transfer of NHS funds. In addition, the Secretary must certify that performance measures related to the condition of and congestion on the NHS and any other performance measures, including safety, that may be established by the Secretary of Transportation are met before such transfers may occur.

- 6.1.6. Funds made available to the Secretary for obligation on NHS projects under this Act shall be administered by FHWA. From time to time as work progresses on a project, payments shall be made by FHWA for the costs of construction, operations, maintenance, and other eligible activities under this Act in accordance with applicable procedures under Title 23, United States Code, or as established by the Secretary.**
- 6.1.7. For fiscal year 1998, \$108 million shall be authorized to be appropriated to the National Capital Infrastructure Fund (NCIF) which shall be used for construction, reconstruction, and rehabilitation of the NHS in accordance with 23 U.S.C. 103 ( i ), including transit capital projects eligible for funding under section 103 ( i ).**
- 6.1.8. In each of the fiscal years 1998 through 2003, the Secretary shall retain and deposit into the NCIF:**
- (a) 100 percent of the District of Columbia's apportionment for the NHS;**
  - (b) 100 percent of the apportionments for Interstate Maintenance; and**
  - (c) 75 percent of the apportionment for the Highway Bridge and Replacement for use consistent with 23 U.S.C. 103 ( i ).**
- 6.1.9. In each of the fiscal years 1998 through 2003, \$17 million shall be authorized to be appropriated to fund operations and maintenance of the NHS within the District of Columbia, exclusive of those NHS routes under the jurisdiction and control of the National Park Service.**
- 6.1.10. The Secretary shall be responsible for funding those operations and maintenance activities and costs to the extent funds are appropriated in accordance with 6.1.9, excluding police services (except for those construction zone, incident management and other police activities that are eligible for Federal-aid highway reimbursement under Title 23, United States Code) associated with the management and operations of NHS highways including the following activities: routine maintenance of roadways and rights-of-way, road repair, snow removal, lighting, signage, and those utilities necessary for the NHS operations. Operating expenses for any transit activities shall not be eligible for funding under this Act.**
- 6.1.11. The Secretary shall continue to provide oversight and technical assistance to the District of Columbia for all Federal-aid projects that remain the responsibility of the District of Columbia.**
- 6.1.12. The Secretary, through the FHWA, will enter into any agreements or contracts with any entity to advance, construct, reconstruct, rehabilitate, repair, maintain, or operate the NHS .**

within the District of Columbia, excluding those NHS roadways under the jurisdiction and control of the National Park Service, consistent with 23 U.S.C. 103 (i).

6.1.13. The Secretary shall encourage the hiring of local labor by contractors awarded contracts including welfare to work labor, on NHS projects financed under this Act to the maximum extent possible and consistent with federal law.

6.1.14. Unless reauthorized by Congress on, or prior to, September 30, 2003, the Secretary of Transportation's new responsibilities under this Act, other than the oversight of projects for which funding has been previously received through this Act, would cease and no new deposits of Federal funds would be made into the National Capital Infrastructure Fund after September 30, 2003.

6.1.15. The Secretary shall provide the District of Columbia with the technical assistance necessary to reassume its NHS responsibilities by September 30, 2003. The April 1996 findings of FHWA's review of the organizational capacity of the District of Columbia's Department of Public Works shall guide the assistance.

6.2. *District of Columbia Responsibilities.* The District of Columbia agrees that:

6.2.1. The District of Columbia shall retain its current responsibilities under Title 23, United States Code, for NHS project selection.

6.2.2. The District of Columbia shall continue to be responsible for providing police services on NHS highways (including, but not limited to civil police functions, crime prevention, investigations including traffic and accident investigation, and emergency traffic direction). The District shall continue to own the right-of-way of NHS highways that are located within the District of Columbia.

6.2.3. The District of Columbia will continue to be responsible for all utilities and utility work that are not necessary for operation of the NHS even if such utilities are located within the right-of-way of the NHS.

6.2.4. The District of Columbia shall continue to be responsible for non-NHS projects funded with Federal-aid highway funds. Surface Transportation Program (STP) funds will be made available to the District of Columbia for use on local streets, highways, and roadways (except alleys). This authority does not relieve the District of Columbia of the responsibility for the non-Federal matching share for STP funds. The use of other Federal-aid highway apportioned funds by the District of Columbia, other than as provided herein, also requires a non-Federal matching share.

6.2.5. Beginning on October 1, 1997, the District of Columbia is relieved of the responsibility to provide the non-Federal match for NHS projects that are funded by the Secretary with monies made available through the NCIF for NHS projects

under this Act. The relief from providing the non-Federal match shall not include those projects that were approved by FHWA prior to October 1, 1997 for which Federal-aid highway funds have been obligated. The District of Columbia is responsible for providing the non-Federal match, the Federal-aid funds, and any obligation authority for any such projects transferred to the Secretary for project administration, oversight, or contracting.

- 6.2.6. The District of Columbia shall continue to be responsible for any liability incurred on the basis of the activities of the District of Columbia, its agencies, or personnel as a result of any acts or omissions in carrying out this Act. The United States, its agencies, and personnel will not incur any liability for any such acts or omissions.
- 6.2.7. The District of Columbia shall cooperate with the FHWA in its technical assistance efforts in order to assure that the District of Columbia can reassume its NHS responsibilities by September 30, 2003. The goal of the effort shall be to satisfy the April 1996 findings of FHWA's review of the organizational capacity of the District of Columbia's Department of Public Works.

7. *Personal Income Tax Administration* The District agrees that:

~~7.1. General~~

~~7.1. The District and the Executive Branch will agree to develop a mutually acceptable legislative proposal consistent with the intent of Section IV.7. The IRS shall administer and/or enforce the District's individual income and employment taxes.~~

~~7.1.2. The District shall continue to administer its unemployment benefits program.~~

~~7.2. Tax Codes~~

~~7.2.1. The IRS will administer the District's existing individual income and employment tax laws. The only provision the IRS cannot administer is the District's refundable property tax credit. If the District wishes to retain this provision, it must be transferred to its real estate tax administration.~~

~~7.2.2. All of the administrative, procedural, and enforcement provisions of the Internal Revenue Code of 1986 and related statutes will govern IRS administration of District taxes. The District will have to amend its own tax code to achieve this to the satisfaction of the Secretary of the Treasury.~~

~~7.2.3. To avoid the possibility of any inconsistent interpretations of similar provisions, the District will have to amend its definitional provisions to conform them to the Internal Revenue Code to the satisfaction of the Secretary of the Treasury.~~

~~7.2.4. District must notify the Secretary of the Treasury of any future changes to its individual income and employment tax laws. The Secretary may object if, in his judgement, the prospective change would prove overly burdensome to the IRS, in which case such change shall not be administered or enforced by the IRS. If the Secretary does not object within 60 days after notification, the IRS will administer the provision within a reasonable time after enactment.~~

~~7.3. Transfers to the District~~

~~7.3.1. The IRS will set up separate accounting and deposit systems for its collections of District taxes. The District must, in turn, identify the person and/or office authorized to receive transfers of collected amounts and set up related deposit accounts.~~

~~7.4. Effective Date~~

~~7.4.1. The IRS administration of District taxes shall be prospective, starting on January 1 of the calendar year that is at least 18 months after the Secretary certifies that the District of Columbia has met the conditions set forth in the Memorandum of Understanding between the United States and the District of Columbia.~~

*Appendix One*

*DEFINITIONS FOR THE PENSIONS SECTION OF THE MOU*

---

“Adoption Date” means the date the Replacement Plan is adopted by the District Government or, if later, October 1, 1997.

“District Government” means, as appropriate, the “District government” as defined by section 305(5) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Pub. L 104-8) or the District of Columbia Retirement Board as defined in section 102(5) of the Reform Act.

“Freeze Date” means the date of introduction of the Revitalization Act.

“Fund” means the District of Columbia Police Officers and Fire Fighters’ Retirement Fund, the District of Columbia Teachers’ Retirement Fund, and the District of Columbia Judges’ Retirement Fund as defined in section 102(10) of the Reform Act.

“Reform Act” means the District of Columbia Retirement Reform Act (Pub. L. 96-122).

“Replacement Plan” means the plan or plans described under Title I of the Revitalization Act.

“Retirement Program” means any of the retirement programs as described in section 102(7) of the Reform Act as in effect on the day before the freeze date.

“Revitalization Act” means the “District of Columbia Revitalization Act of 1997.”

“Secretary” means the Secretary of the Treasury or the Secretary’s designee.

“Transfer Date” means the date on which the assets and obligations of the Fund are transferred to the Trust.

“Trust” means the District of Columbia Retirement Trust created under Title I of the Revitalization Act.

“Trustee” means the firm designated by the Secretary of the Treasury under Title I of the Revitalization Act.