

Privatization

THE WHITE HOUSE
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MEMORANDUM FOR GENE SPERLING

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FROM KAREN A. TRAMONTANO

SUBJECT GUIDING PRINCIPLES FOR PRIVATIZATION

Months ago many of you gathered for a discussion with John Podesta, Secretary Herman and others on how we should try to get ahead of various "requests" for privatization and develop principles that the Administration could adopt. As next steps, we worked with the labor community and asked them to develop a set of principles for our consideration. Current events i.e. Michigan's effort to privatize its employment services, forced our process to the "back burner." Nonetheless, the labor community did develop principles that we considered as we resolved Michigan. Those principles are attached for your review and comment. Your comments on both substance and process/next steps would be helpful. I know John would like to respond to the Departments' request for guidance in this matter.

GUIDING PRINCIPLES FOR STATE WAIVERS

Currently most federal programs of assistance to needy individuals require that public civil servants play key roles. Statutory and regulatory provisions prohibit federal agencies from allowing states to use private contractors to serve in these roles. The policy concerns that motivated these Congressional and administrative mandates also require that, when a federal agency is asked to exercise the limited authority that it might have to waive certain of these mandates on an experimental, sub-state basis, it must carefully scrutinize proposals to ensure that these concerns are adequately addressed, avoiding harm to intended beneficiaries of the program and inefficiencies resulting in reduced services to those beneficiaries. Programs that are fully federally funded and/or are designed to serve the most vulnerable populations, in particular, require the utmost oversight by the federal government and accountability for program goals. Therefore, federal agencies will review any requests to waive the design elements of such programs with the highest standards. To that end:

- * States must prove that proposals to waive important statutory requirements will not result in harm to claimants or customers.

- * States must justify the need for an experiment.

Experiments should be justified by insufficient public performance, fraud, cost savings, or vendor expertise that cannot be efficiently replicated. States should explain why they have been unable to rectify problems through public sector interventions within current legal boundaries. Experiments should not be based solely on an interest in exploring private provision.

- * States must show evidence of labor-management cooperation in design.

In both the public and private sector, the definition of "high performance" includes extensive coordination between front line workers and managers. The insights of all parties, particularly those who will implement change, must be brought to bear in decision-making from the beginning of the re-design process.

- * The experiment should be designed through extensive public input.

States should be held to a high standard for public input. Evidence of stakeholder support should be required. Vendors should have proven capacity and experience, with documentation available for public evaluation.

- * Evaluation should be on-going, with state monitoring, benchmarks, and reporting.

Experiments should not be evaluated only at completion. This will requires "sunshine" provisions and non-proprietary information sources. Employees of vendor organizations must be guaranteed "whistle blower" protections in the interest of full disclosure. As a means to ensure accountability and due process, clients should be guaranteed face-to-face options where new technology is being implemented.

* Plans must provide structures which avoid conflict of interest.

Experiments should never be designed to create new incentives that discourage vendors from providing services or encourage vendors to determine that clients are ineligible.

* Plans must ensure privacy and confidentiality.

* Public employees should retain discretionary decision-making around eligibility and policy determination.

* Public "failsafe" provisions.

Related to the on-going monitoring, states should be required to show that they can return programs to state provision without interruption of benefits or services to clients. Vendors should be made aware, from the beginning, that they will be required to facilitate the return to public provision should the experiment fail.