

WAIVERS

DRAFT LANGUAGE FOR WAIVER FOR DISTRESSED COMMUNITIES

(a) **IN GENERAL.** -- At the request of a governmental entity that (1) has applied for designation as an enterprise community or an empowerment zone pursuant to Subchapter C of Title XIII of the Omnibus Budget Reconciliation Act of 1993 or (2) has developed a strategic plan for the purpose of (i) revitalizing a community with pervasive poverty, unemployment, and general distress or (ii) revitalizing a community experiencing out-migration equal to a decrease in the population of an area (as determined by the most recent census data available) by 10 percent or more between 1980 and 1990, the Community Enterprise Board ("Board") may waive any provision of Federal law or regulation administered by any member of the Board (the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Transportation, the Secretary of Treasury, the Administrator of the Environmental Protection Agency, the Director of the Office on National Drug Control Policy, the Administrator of the Small Business Administration, or the Attorney General) where, unless prohibited by Section (b), "Limitations on Waivers":

(1) the Secretary charged with administering that provision of Federal law or regulation consents to the waiver;

(2) the Board determines that the public interest that would be served by granting the proposed waiver outweighs the public interest that would be served in adhering to the applicable statute or regulation if the proposed waiver is denied; and

(3) where the program involves the expenditure of Federal funds only, the Board finds that, if the waiver is granted, the funds will be spent solely in accordance with a plan that advances the purposes of that program.

(b) **LIMITATIONS ON WAIVERS.** -- The following limitations shall apply to the Board's waiver authority:

(1) The Board has no authority to waive any provision of Federal law or regulation that governs programs that would have the effect of directing Federal funds to enterprise communities or empowerment zones that could not have received the funds absent the waiver.

(2) The Board has no authority to waive (i) any provision of the Social Security Act or the Food Stamp Act that pertains to eligibility and benefits; (ii) any Federal law or regulation that pertains to public or individual health or safety, civil rights and non-discrimination, environmental protection, labor relations, labor standards, occupational health or safety,

pensions, taxation, banking standards; or (ii) any Federal law or regulation deemed non-waivable by the Attorney General.

(3) The Board has no authority to grant a request for a waiver where such waiver would have the effect of increasing direct Federal spending above levels that would have occurred in the absence of the waiver.

(c) **PROCEDURE.** -- Any Secretary who receives a request for a waivers under Section (a) shall forward the request to the Board and to the Secretary charged with administering the program for which the waiver is sought. The appropriate Secretary shall inform the requesting party of the disposition of the request for waiver.

(d) **REVOCATION.** -- The appropriate Secretary, in consultation with the Community Enterprise Board, may revoke a waiver where the governmental entity fails to comply with the authorized strategic plan, fails to achieve the benchmarks set forth in a strategic plan, and fails to spend the funds in accordance with the authorized plan. The Attorney General shall issue regulations setting forth the procedures for revocation under this Section.

(e) **IMPLEMENTATION.** -- In consultation with the Community Enterprise Board, the Attorney General shall, by notice jointly published in the **Federal Register**, establish such requirements as may be necessary to carry out the provisions of this Act. Such notice shall describe the criteria and procedures to be used by the Board in considering the waivers authorized by Section (a) of this Act.

(f) **SUNSET.** -- This section shall expire on September 30 of the first fiscal year that begins 4 years after the date of enactment.

MEMORANDUM

*Banner
TNS*

Waivers

THE WHITE HOUSE
WASHINGTON

October 19, 1993

MEMORANDUM FOR THE VICE PRESIDENT

FROM: Paul Weinstein
Domestic Policy Council

SUBJECT: Conyers/Clinger bill to permit waivers of Federal regulations for local governments that have a plan to assist low-income residents.

In your meeting today with Members of the House Government Operations Committee, you may be asked for your views on H.R. 2856, legislation introduced jointly by the Chairman and Ranking Minority Member of the Committee, Reps. John Conyers and William Clinger. H.R. 2856 is similar in concept to the Administration's original empowerment zone legislation, in that it provides for waivers for local communities who prepare a comprehensive strategic plan. There are, however, some substantive differences. These include:

- H.R. 2856 would create a new entity, the Interagency Review Council (Council), to approve waiver requests. The Administration has established the Community Enterprise Board for this purpose.
- The Council would be comprised of ten agencies and the chairperson would be appointed by the President. The Community Enterprise Board is made up of 15 agencies in addition to yourself, and the Assistants to the President for Economic and Domestic Policy. Agencies which serve on the Community Enterprise Board but would not serve on the Council include Treasury, the Small Business Administration, the Office of National Drug Control Policy, the Council of Economic Advisers, and the Office of Management and Budget.
- H.R. 2856 would grant the Council the authority to grant waivers from Federal regulations in six areas: education, employment training, health, housing, nutrition, and other social services. However, It is important that economic development programs, as proposed in the Administration's original bill, also be subject to waiver authority.
- H.R. 2856 exempts only anti-discrimination statutes from waiver authority. The Administration's bill would also have exempted rules eligibility and benefits under the Social Security Act and Food Stamp Act, and laws and

regulations concerning public or individual health, safety, civil rights, environmental protection, labor relations, labor standards, occupational health or safety, pensions, taxation, and any other law specifically excluded by the Attorney General.

Waiver authority was not included in the empowerment zone legislation adopted by Congress in the Budget Reconciliation Act. The Conyers/Clinger bill, with modifications, would give the Administration the kind of waiver authority envisioned in the President's original proposal. I recommend that we explore the possibility of working with the Committee in seeking passage of compromise legislation.

THE WHITE HOUSE

WASHINGTON

December 16, 1993

MEMORANDUM FOR ELAINE KAMARCK

FROM: Paul Weinstein

SUBJECT: Conversation with Julian Epstein of House
Government Operations Committee

Per our discussion, I talked with Julian Epstein of House Government Operations yesterday. Julian stated that he would be happy to work with the Administration on making some changes in the Local Flexibility Act -- Congressmen Conyers' and Clinger's waiver legislation for distressed communities. He says his two concerns are that 1) we not make changes that will upset some of the more liberal Members such as Representative Waxman, who are fearful that waiver authority will be used to chip away at environmental and safety standards, and 2) that nothing we propose will open up the legislation to amendments that would ban future Federal unfunded mandates.

We both agreed that a meeting between his staff and us would be useful if we decided to proceed with an approach to revise the Conyers/Clinger bill.

I also talked with Jim Jukes of OMB today, and asked him to circulate our waiver legislation within his agency. He said he would and we would agreed to talk next week about feedback. He is also going to raise the waiver issue with Rivlin because if we decide to move ahead on legislation, it will have to be accounted for in the FY95 budget.

cc: Carol Rasco
Bruce Reed

Beane: This is a discussion about the budget we need to do. - PJW

PRIVILEGED & CONFIDENTIAL

DETERMINED TO BE AN ADMINISTRATIVE MARKING Per E.O. 12958 as amended, Sec. 3.2 (c)
Initials: Djs Date: 10/12/93



DRAFT

OFFICE OF THE VICE PRESIDENT

WASHINGTON

October 12, 1993

MEMORANDUM FOR THE VICE PRESIDENT

THROUGH: Jack Quinn

FROM: Kumiki Gibson
Paul Weinstein

SUBJECT: Unfunded Mandates and Waiver Authority

On Tuesday, October 7, 1993, we met with staff from the Senate Committee on Government Affairs; its Subcommittee on Oversight of Government Management; its Subcommittee on General Services, Federalism, and the District of Columbia; and its Subcommittee on Regulation and Government Information. The purpose of the meeting was to discuss the issue of unfunded mandates and the upcoming Unfunded Mandates Day on October 27, 1993. These staffers are concerned that when the Administration's package of budget cuts and rescissions is considered on the floor of the Senate, Senator Kempthorne of Idaho will offer as an amendment his legislation on unfunded mandates. The Kempthorne bill would require the Federal Government to pay to State and local governments the direct costs incurred by these governmental entities in complying with (future) Federal mandates. Needless to say, Senator Kempthorne's legislation would make the passage of health, safety, and environmental initiatives difficult because of prohibitive costs.

Because of the obvious problems with Kempthorne's bill and the desire of many in Congress to address the issue of unfunded mandates, these Senate staffers urged the Administration to develop a reasonable alternative to the Kempthorne bill. These staffers believe the leadership will be unable to prevent Kempthorne from offering his legislation as an amendment to the Administration's budget reduction bill and that the Kempthorne bill is likely to pass unless the Administration and the leadership can offer an alternative.

We think that Kempthorne's impending legislation presents us with an excellent opportunity to promote the passage of some of the recommendations of the National Performance Review (NPR) on empowering State and local governments as well as the proposal on waiver authority crafted by the working group on community empowerment. Specifically, we may now be able to obtain, among other things, legislative authority to grant temporary, programmatic waivers for empowerment zones and for States and localities

seeking relief from unfunded mandates. Last spring, Democrats in the Senate and the House were not interested in such legislation. According to the staffers with whom we met, the environment on the Hill has changed and as a result of Kempthorne's (extreme) legislation, they believe a waiver proposal, as part of a bigger strategy to address unfunded mandates, would be welcome in the Senate. It is unclear at this juncture, however, the extent to which Members of the House will welcome such legislation.

Background

When the working group on community empowerment first introduced the Administration's empowerment zone legislation, we included language that would have provided to the Enterprise Board broad waiver authority for all localities designated as empowerment zones and enterprise communities. (Attached is a copy of the Administration's proposed legislation.) Under our proposal, the Board would have been authorized to waive any provision of Federal law or regulation, administered by the Secretaries of HUD, Agriculture, HHS, Labor, or Education, where the Board determined such waiver to be necessary for the successful implementation of a designated community's strategic plan. Under our proposal, the Board would consult with the relevant agency before granting any waivers. We excluded from this waiver authority rules for eligibility and benefits under the Social Security Act and Food Stamp Act, and laws and regulations concerning public or individual health, safety, civil rights, environmental protection, labor relations, labor standards, occupational health or safety, pensions, taxation, and any other law specifically excluded by the Attorney General.

Unfortunately, this piece of the President's empowerment legislation was not included in the final version of the bill adopted by Congress. Without such legislation, it will be difficult to effectively respond to the needs of empowerment zones and enterprise communities, as well as to the problems created by unfunded mandates. Most existing waiver authority is focused in the areas of welfare and health care, not economic development or spending flexibility.

Discussion

In our meeting with Senate staff, we discussed several alternatives that could be embraced in an unfunded mandates package, including the following:

- **Issue a presidential directive limiting the use of unfunded mandates** -- In its report, the NPR recommends that the President issue a directive limiting the use of unfunded mandates by the Administration. To this end, Steve Warnath is drafting an Executive Order which will underscore this Administration's commitment to addressing State and local government's concerns in this area. Specifically, this Executive Order will, among other things, (1) revise and supersede the existing Reagan Executive Order on federalism; (2) assign each agency's Chief Operating Officer the responsibility of ensuring agency

compliance with the federalism considerations and requirements contained in the Executive Order; (3) direct agencies to look for opportunities, to the extent permitted by law, to make their waiver process less burdensome and more flexible; and (4) identify an appropriate forum — perhaps the Enterprise Board or the President's Management Council — to hear federalism concerns presented by representatives of State and local governments about particular administration policy initiatives.

- **Give Cabinet secretaries and agency heads authority to grant States and localities selective waivers from Federal regulations or mandates** — In its report, NPR also recommends that Cabinet secretaries and agency heads be given legislative authority to waive selected Federal mandates. This proposal would provide the Executive branch with broad programmatic waiver authority. In order for such legislation to pass, the authority may have to be limited to waivers from unfunded mandates and for the purpose of community empowerment. The waiver authority will also have to include a sunset provision and some level of performance measures. Finally, we believe the following areas should be excluded from waiver authority: rules for eligibility and benefits under the Social Security Act and Food Stamp Act, and laws and regulations concerning public or individual health, safety, civil rights, environmental protection, labor relations, labor standards, occupational health or safety, pensions, taxation, and any other law excluded specifically by the Attorney General.
- **Allow States and localities to consolidate separate grant programs from the bottom up** — NPR also has recommended that we seek legislation that would allow States and localities to consolidate separate grant programs. The Senate staffers with whom we met appeared to be sympathetic to the idea of allowing States to consolidate grant programs under \$10 million into one block grant. This would permit States and localities to more flexibly, and efficiently, use their Federal funds, allowing them to shift dollars to areas where there is a need to cover the costs of Federal unfunded mandates.
- **Targeted Federal assistance** — Senator Sasser is apparently considering establishing a targeted assistance program for States and localities burdened by direct unfunded mandates, authorized at \$1 or \$2 billion per year. The Sasser legislation would allocate funds based on the financial needs of the State or locality and on the extent of the direct mandate. The problem with this approach is its cost, which may be higher than the costs associated with the Kempthorne bill. In order to pay for such a new program, OMB would have to find some off-sets.

- **Federal technical assistance for implementing new regulation imposing unfunded mandates** -- Another approach, which would be less costly than targeted assistance, would be to provide to States and localities technical assistance for the implementation of new Federal regulations imposing unfunded mandates.
- **One-year moratorium on unfunded Federal mandates** -- Another idea discussed at the meeting was a one-year moratorium on new Federal mandates. This is likely to be quite controversial, could potentially disrupt many of the Administration's initiatives in the areas of health care and environmental protection, and is likely to impede good and necessary Federal mandates as well as bad.

Obviously, these staffers only represent a few senior Democratic Members. Before taking any action, including developing recommendations, the Office of Legislative Affairs or Goody Marshall will need to discuss with the Majority Leader to see if the views presented to us on October 7, 1993 are consistent with those of the Senate Leadership. We will need to conduct the same consultation with the Speaker of the House.

Recommendation

We would like to develop by Unfunded Mandates Day a strategy encompassing some or all of the recommendations outlined above. Please indicate below how you would like us to proceed:

- ___ Develop entire package -- Presidential directive, legislative authority for waivers, consolidate grant programs, etc. -- for your review
- ___ Develop presidential directive to limit use of unfunded mandates
- ___ Develop legislation regarding waivers
- ___ Develop legislation regarding grant programs
- ___ Develop legislation regarding targeted Federal assistance
- ___ Develop legislation regarding technical assistance
- ___ Develop presidential directive to implement a one-year moratorium
- ___ Let's discuss

Thank you.

cc: Carol Rasco
Bob Rubin

*Source:
E-I
Pgw*

WALVERS

THE WHITE HOUSE
WASHINGTON

DATE: 10/20/93

THE VICE PRESIDENT
CAROL RASCO

NOTE FOR:

The President has reviewed the attached, and it is forwarded to you for your:

Information
Action x

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc: Kumiki Gibson
Marcia Hale

THE WHITE HOUSE

WASHINGTON

October 20, 1993

MR. PRESIDENT:

The attached memo from Carol Rasco and the Vice President discusses the need to develop an Administration proposal on unfunded mandates that would serve as a viable alternative to a draconian unfunded mandate bill that Senator Kempthorne of Idaho apparently plans to offer as an amendment to the Administration's October package of budget cuts and rescissions.

Carol and the Vice President would like to be able to announce an Administration alternative by October 27 -- Unfunded Mandates Day.

The memo sets forth five suggestions, some or all of which could make up, or be included in, the Administration alternative.

Carol and the Vice President do not make specific recommendations concerning the five suggestions. Rather, they are seeking your guidance on which of the five to include in an Administration package.

Marcia Hale has also reviewed this memo.

John Podesta

Todd Stern

cc: George Stephanopoulos
Leon Panetta
Mack McLarty

THE WHITE HOUSE
WASHINGTON

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October 19, 1993

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Support Bill?
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MEMORANDUM FOR THE PRESIDENT

FROM: THE VICE PRESIDENT
CAROL RASCO

SUBJECT: Unfunded Mandates and Waiver Authority

On Tuesday, October 7, 1993, representatives from our staff met with staff from the Senate Committee on Government Affairs; its Subcommittee on Oversight of Government Management; its Subcommittee on General Services, Federalism, and the District of Columbia; and its Subcommittee on Regulation and Government Information. The purpose of the meeting was to discuss the issue of unfunded mandates and the upcoming Unfunded Mandates Day on October 27, 1993. These staffers are concerned that when the Administration's package of budget cuts and rescissions is considered on the floor of the Senate, Senator Kempthorne of Idaho will offer as an amendment his legislation on unfunded mandates. The Kempthorne bill would require the Federal Government to pay to State and local governments the direct costs incurred by these governmental entities in complying with (future) Federal mandates. Needless to say, Senator Kempthorne's legislation would make the passage of health, safety, and environmental initiatives difficult because of prohibitive costs.

Because of the obvious problems with Kempthorne's bill and the desire of many in Congress to address the issue of unfunded mandates, these Senate staffers urged the Administration to develop a reasonable alternative to the Kempthorne bill. These staffers believe the leadership will be unable to prevent Kempthorne from offering his legislation as an amendment to the Administration's budget reduction bill and that the Kempthorne bill is likely to pass unless the Administration and the leadership can offer an alternative.

We think that Kempthorne's impending legislation presents us with an opportunity to promote the passage of some of the recommendations of the National Performance Review (NPR) on empowering State and local governments as well as the proposal on waiver authority crafted by the working group on community empowerment. Specifically, we may now be able to obtain, among other things, legislative authority to grant temporary, programmatic waivers for empowerment zones and for States and localities seeking relief from unfunded mandates. Last spring, Democrats in the Senate and the House were not

interested in such legislation. According to the staffers with whom we met, the environment on the Hill has changed and as a result of Kempthorne's (extreme) legislation, they believe a waiver proposal, as part of a bigger strategy to address unfunded mandates, would be welcome in the Senate. It is unclear at this juncture, however, the extent to which Members of the House will welcome such legislation.

Background

When the working group on community empowerment first introduced the Administration's empowerment zone legislation, we included language that would have provided to the Community Enterprise Board broad waiver authority for all localities designated as empowerment zones and enterprise communities. Under our proposal, the Board would have been authorized to waive any provision of Federal law or regulation, administered by the Secretaries of HUD, Agriculture, HHS, Labor, or Education, where the Board determined such waiver to be necessary for the successful implementation of a designated community's strategic plan. Under our proposal, the Board would consult with the relevant agency before granting any waivers. We excluded from this waiver authority rules for eligibility and benefits under the Social Security Act and Food Stamp Act, and laws and regulations concerning public or individual health, safety, civil rights, environmental protection, labor relations, labor standards, occupational health or safety, pensions, taxation, and any other law specifically excluded by the Attorney General.

Unfortunately, this piece of the your empowerment legislation was not included in the final version of the bill adopted by Congress. Without such legislation, it will be difficult to effectively respond to the needs of empowerment zones and enterprise communities, as well as to the problems created by unfunded mandates. Most existing waiver authority is focused in the areas of welfare and health care, not economic development or spending flexibility.

Discussion

The Senate staff discussed several alternatives that they believed should be considered as part of an unfunded mandates package, including the following:

Issue a presidential directive limiting the use of unfunded mandates -- In its report, the NPR recommends that you issue a directive limiting the use of unfunded mandates by the Administration. To this end, NPR is drafting an Executive Order that will underscore this Administration's commitment to addressing State and local governments' concerns in this area. Specifically, this Executive Order will, among other things, (1) assign each agency's Chief Operating Officer the responsibility of ensuring agency compliance with the federalism considerations and requirements contained in the Executive Order; (2) direct agencies to look for opportunities, to the extent permitted by law, to make their waiver process less burdensome and more flexible; and (3) identify an appropriate forum -- perhaps the Community Enterprise Board or the

President's Management Council -- to hear federalism concerns presented by representatives of State and local governments about particular administration policy initiatives.

Give Cabinet secretaries and agency heads authority to grant States and localities selective waivers from Federal regulations or mandates -- In its report, NPR also recommends that Cabinet secretaries and agency heads be given legislative authority to waive selected Federal mandates. This proposal would provide the Executive branch with broad programmatic waiver authority. In order for such legislation to pass, the authority may have to be limited to waivers from unfunded mandates and for the purpose of community empowerment. The waiver authority should include a sunset provision and some level of performance measures. Finally, we believe the following areas should be excluded from waiver authority: rules for eligibility and benefits under the Social Security Act and Food Stamp Act, and laws and regulations concerning public or individual health, safety, civil rights, environmental protection, labor relations, labor standards, occupational health or safety, pensions, taxation, and any other law excluded specifically by the Attorney General.

Allow States and localities to consolidate separate grant programs from the bottom up -- NPR also has recommended that we seek legislation that would allow States and localities to consolidate separate grant programs. The Senate staffers with whom we met appeared to be sympathetic to the idea of allowing States to consolidate grant programs under \$10 million into one block grant. This would permit States and localities to more flexibly, and efficiently, use their Federal funds, allowing them to shift dollars to areas where there is a need to cover the costs of Federal unfunded mandates.

Targeted Federal assistance -- Senator Sasser is apparently considering establishing a targeted assistance program for States and localities burdened by direct unfunded mandates, authorized at \$1 or \$2 billion per year. The Sasser legislation would allocate funds based on the financial needs of the State or locality and on the extent of the direct mandate. The problem with this approach is its cost, which may be higher than the costs associated with the Kempthorne bill. In order to pay for such a new program, OMB would have to find some off-sets.

Federal technical assistance for implementing new regulation imposing unfunded mandates -- Another approach, which would be less costly than targeted assistance, would be to provide to States and localities technical assistance for the implementation of new Federal regulations imposing unfunded mandates.

Handwritten notes: "Special Projects Director Eligibility"

Handwritten notes: "Marty Hill Admins Non Convin"

Obviously, these staffers represent only a few senior Democratic Members. Before taking any action, including developing recommendations, the Office of Legislative Affairs will discuss this issue with the Majority Leader to see if the views presented to us on October 7, 1993 are consistent with those of the Senate Leadership. The Office of legislative Affairs will also need to conduct the same consultation with the Speaker of the House.

Recommendation

Provided that the leadership in the House and Senate agree, we would like to develop by Unfunded Mandates Day a strategy encompassing some or all of the recommendations outlined above. Please indicate below how you would like us to proceed:

- Develop entire package -- Presidential directive, legislative authority for waivers, consolidate grant programs, etc. -- for your review
 - Develop presidential directive to limit use of unfunded mandates
 - Develop legislation regarding waivers
 - Develop legislation regarding grant programs
 - Develop legislation regarding targeted Federal assistance
 - Develop legislation regarding technical assistance
 - Discuss further
- Summary PS*
Summary
NOTES
→ Mawley

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TO: Bruce Reed
FROM: Stephen Warnath *scw*
SUBJECT: Executive Order On Unfunded Mandates And Waivers
DATE: October 20, 1993

FYI -- Attached is a draft of a proposed Executive Order regarding unfunded mandates and waivers. I wanted you to have an opportunity to review it before OMB circulates it formally to the agencies for comment. I would appreciate receiving any thoughts that you may have about it. You can reach me at x6586 or return your comments to me in Room 217 OEOB.

You will note that it does not address the Reagan federalism Executive Order. The thirteen page draft that was prepared to supersede the Reagan Order revealed that there were a number of complex issues -- such as the scope of permissible preemption of state law and recasting the Reagan version of Constitutional federalism principles -- that we would have had a very difficult time resolving with the agencies prior to the 27th. Thus, it was decided to address only the specific issues of unfunded mandates and waivers and leave the revision of the Reagan federalism E.O. for another day after we had time to get everyone on board.

I look forward to receiving any comments you may have. Thanks.

Bruce -

*Paul has already seen this and a copy was forwarded to Carol. Let me know if you want any changes made. Thanks,
Steve*

EXECUTIVE ORDER

PRIVILEGED & CONFIDENTIAL

ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP

State, local, and tribal governments should have more flexibility to design solutions to the problems faced by citizens in this country without excessive micromanagement and unnecessary regulation from the Federal government. Unfunded federal mandates, in particular, have increasingly strained the budgets of State, local, and tribal governments. In addition, the cost, complexity, and delay in applying for and receiving waivers from federal requirements in appropriate cases have hindered State, local and tribal governments from tailoring Federal programs to meet the specific or unique needs of their communities.

Accordingly, by the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the imposition of unfunded mandates upon State, local, and tribal governments; to streamline the application process for and increase the availability of waivers to State, local, and tribal governments; and to establish regular and meaningful consultation and collaboration with State, local, and tribal governments on matters that significantly or uniquely affect their communities, it is hereby ordered:

Section 1. Reduction Of Unfunded Mandates.

(a) Each agency shall develop an effective mechanism to permit representatives of State, local, and tribal governments to provide meaningful input in the development of regulatory or legislative proposals containing significant unfunded mandates.

(b) To the extent possible and permitted by law, each agency shall not promulgate any regulation not required by statute, nor propose legislation or amendments thereto, that creates a Federal mandate upon a State, local, or tribal government unless (1) funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the Federal government or (2) the agency, prior to the formal proposal of legislation or promulgation of regulations containing the proposed mandate, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of effected State, local, and tribal governments, the nature of their concerns, and the agency's position supporting the need to issue the mandate(s).

Sec. 2. Increasing Flexibility For State And Local Waivers.

(a) Each agency shall review its waiver application process and take appropriate steps to streamline that process.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State, local, or tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State, local and tribal level where the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the fullest extent practicable and permitted by law, render a decision upon an application for a

waiver within 120 days of receipt of such application by the agency.

(d) This subsection applies only to statutory or regulatory requirements of the programs that are discretionary and subject to waiver by the agency.

Sec. 3. Responsibility For Agency Implementation.

The Chief Operating Officer of each agency shall be responsible for ensuring the implementation of and compliance with this Order.

Sec. 4. Executive Order No. 12866.

Agencies shall comply with the requirements of this Order in addition to the requirements contained in Executive Order No. 12866 ("Regulatory Planning and Review") and other applicable law.

Sec. 5. Effective Date.

The effective date of this Executive Order shall be _____.

Sec. 6. No Private Right of Action Created.

This Order is intended only to improve the internal management of the Executive branch, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE