

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Bruce Reed and Elena Kagan to the President re: DPC Weekly Report (partial) (1 page)	04/03/99	P5
002. fax	Jim Ivery to Rice re: Talking Points on Prior Approval Issue (3 pages)	02/19/99	P5
003. memo	Terry Coleman to John J. O'Shaughnessy re: Prior Approval for Granting Federal Financial Participation for State Automatic Data Processing System Developments and Application (attachment) (5 pages)	05/08/95	P5

**COLLECTION:**

Clinton Presidential Records  
 Domestic Policy Council  
 Cynthia Rice (Subject Files)  
 OA/Box Number: 15428

**FOLDER TITLE:**

Child Support Enforcement-Computer Systems-Prior Approval

rx 15

### RESTRICTION CODES

**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

March  
29th

Copied  
Reed  
Kagan  
Podesta

THE WHITE HOUSE  
WASHINGTON

4-5 99

April 3, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Health Care -- Democratic Patients' Bill of Rights Event:** You are scheduled to join Democratic members of Congress in Philadelphia on Friday to highlight the need for strong, enforceable patients' bill of rights legislation -- and to contrast the proposal we favor with the weak version of the bill reported out of the Senate Labor Committee just before recess. At the event, you can announce an Internet-based petition, which is intended to attract over one million signatories, in support of a strong, enforceable patients' rights bill. You also can announce the OPM "call letter" that takes the final step in requiring all participating FEHBP insurers to come into full compliance with the patients' bill of rights.

**2. Health Care -- Medicare Annual Cap on Rehabilitative Services:** You recently asked about the \$1500 annual cap on Medicare payments for outpatient physical therapy and other rehabilitative services. This cap was included in the Balanced Budget Act at Congressman Thomas's insistence; we had opposed it for fear that it would have an adverse impact on chronically ill beneficiaries. Providers and advocates are now arguing that the cap has had just such an impact, pointing to a recent study showing that almost 13 percent of Medicare beneficiaries incur significant out-of-pocket expenditures as a result of the cap. Senator Grassley has proposed legislation that would allow Medicare beneficiaries to exceed the cap if they have an illness that clearly requires additional services. This proposal, however, may prove very costly; we are scoring it now as well as reviewing alternatives.

**3. Health Care -- Medicare Toll-Free Line:** HHS instituted on Thursday a new nationwide toll-free telephone line, 1-800-MEDICARE, to help Medicare beneficiaries learn about the new health care options available to them under Medicare+Choice. Callers can talk to a customer service representative in English or Spanish to get information about the Medicare program generally and/or about particular Medicare health plans in a community.

**4. Tobacco -- Medicaid Recoupment:** We met this week with the major public health groups to discuss ways to build support for our proposal to ensure that a portion of the tobacco settlement funds goes to prevent youth smoking. We urged them to develop a political and communications plan focused on the effectiveness of such programs and the refusal of many states to use settlement money for this purpose. To use just a few examples: the Oklahoma legislature is considering using the money to eliminate highway tolls; Louisiana's governor has

Wynne  
Ed  
Sondra  
about  
DPC  
with to have  
will raise  
pay to cover  
fully call off  
and a certain  
and then  
to have a  
CAPP

# Withdrawal/Redaction Marker

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proposed paying off state debt and funding gene therapy research with the funds; and Rhode Island's governor has proposed using the first installment to balance the budget (which has set off a fierce debate in the legislature). In addition, many states purporting to spend the tobacco funds on public health or tobacco use prevention are merely supplanting current spending, effectively freeing these funds for other uses. The public health community so far has been utterly ineffectual on this issue, but we hope participants in the meeting emerged with a better understanding of the political situation we face and some more effective strategies for dealing with it.

**5. Tobacco -- Oregon Verdict:** A jury in Oregon last week ordered Philip Morris to pay \$81 million in damages (including \$79.5 million in punitives) to the family of a man who died of lung cancer after smoking for 40 years. The verdict was the largest ever against a tobacco company, exceeding the \$51.5 million verdict awarded by a California jury against Philip Morris earlier this year. Shares of tobacco companies fell sharply this week as a result of the verdict.

**6. Welfare -- Child Support Computer Systems:** You recently asked about an HHS policy denying federal reimbursement to states that entered into contracts for child support and child welfare computer systems without first receiving federal approval. HHS has applied this policy strictly, refusing federal payments even when the federal government clearly would have approved the contracts. In the past, HHS has denied federal funds to California, Hawaii, Kansas, Nevada, and Pennsylvania on these grounds. In recently reviewing this policy, however, HHS officials discovered that it is in conflict with the department's current policy on Medicaid computer systems -- even though the two policies are interpretations of the same regulation. When it comes to Medicaid computer contracts, HHS provides reimbursement even in the absence of prior approval if the contract meets departmental requirements and the state institutes controls to ensure that it will seek advance approval in the future. HHS officials are now trying to reconcile the two policies; they probably will decide to adopt an agency-wide policy similar to the policy that now is applied in the Medicaid program.

**7. Welfare -- Food Assistance:** You recently asked what we could do to ensure that families obtain needed food assistance, in light of some reports that more working families are seeking help from private food banks. We are working to address these issues on two fronts: first, to ensure that states follow the current food stamp law by providing assistance to all eligible individuals who seek assistance; and second, to develop and implement new initiatives to make the food stamp program more accessible to working families.

We have taken numerous steps in recent months to ensure that states follow the food stamp law. USDA has launched a number of investigations of state and local practices, including an inquiry in New York City which found that local welfare offices were not allowing individuals to apply for food stamps on their first visit to the office. (USDA issued a formal warning to New York that it would impose penalties if the city were to continue these practices; around the same time, a federal district court judge issued an injunction prohibiting the practices and requiring the

P5(5)

get  
secret



bill you signed last year. We expect that the GAO will criticize earlier NHTSA studies, but confirm the soundness of the new studies and conclude that .08 BAC laws can be effective in reducing alcohol-related deaths, especially in combination with ALR laws.

● J. Eric Gould

04/12/99 09:17:35 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: Child Support /FFP Prior Approval

HHS now has a preferred policy option for FFP prior approval, which will be described as a combination of the ACF/HCFA policy. It is really more a modified version of the HCFA approach where prior approval is required but there are exceptions where:

1. State action was inadvertent;
2. The contract would have been approved if it had been submitted on time; and
3. The request is made by a high level state official to a high level fed. official so that this is not a normal means of business the normal course of business.

At this point, the trick is announcing and implementing this policy prospectively so to pick up states where a **final** adjudication has not been made but where other states can not reach back and expose HHS to liability.

They are taking this option to Kevin this week.

3/31

ACF to recommend to Kevin a policy  
like HCFA on prospective basis

New policy

HCFA plus some FNS process  
e.g. lead of state agency would  
have to contact lead of HHS agency

Next steps

Thursday = meeting w/ HCFA  
Next week w/ Thurm

[50 mi NY Child Welfare]

[Want new rule to apply to Arkansas  
+ old rule to NY]

Child Support Computers

3/29

Possible option

Charge plan by quarter or year

Create process that is high level

→ like FNS

~~Propertive only~~

Child support

Foster care

Cost going forward probably

unsustainable →

Some systems being

approved that

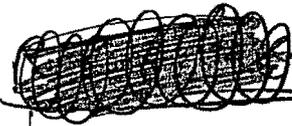
would not transfer

MTBul/Kern on Thursday

Retrospective \$100mil in

HTCS has turned down

in part



Kevin wants to conclude mid-wk not wk

- ① Determine if move toward HCFA  
could we make prospective?  
→ minimize financial impact
- ② Tighten out budget effects
- ③ Check out other computer systems  
rules that are inconsistent

Re: child welfare = enforced it very strictly  
(UA / pending \$50m. NY)

HEF: Medicaid, CSE, child welfare,  
AFDC

John M

3/22

ACF policy diff from HCFA + FNS

HCFA has exception (a la lawsuit we have)

FNS no stated policy  
cont review request  
18

Lawyers met late Fri + Mon am

Both ACF + HCFA interpretation  
is permissible

ACF better, HCFA also permissible

---

Option #1 HCFA adopt ACF

~~Diff~~

- diff from FNS
- still arguable
- no help

Option #2 ARF adopts HCPA policy

→ could be \$100 million more

Option #3 Joint m-between policy  
Perhaps graduated penalty

→ 1st time

90% FFP

→ 2nd violation

75% FFP

---

Could we adopt new policy progressively

---

Sent signal to Ark 4D direct

→ a lot of work going on

Maria Echaveste

03/18/99 02:42:01 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP  
cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, J. Eric Gould/OPD/EOP  
bcc:  
Subject: Re: NEW Update on Arkansas child support 

Very interesting--it is always amazing how if you keep asking questions, you keep finding out more. Keep me posted--and I'll just let Him know that you all are working on it, and pushing hard on it.  
Cynthia A. Rice



Cynthia A. Rice

03/18/99 02:07:08 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
bcc:  
Subject: NEW Update on Arkansas child support 

In response to our questions, HHS has discovered an embarrassing (to them) fact but one that should help us provide the President a response more to his liking: Since 1992, HCFA has been interpreting the same regulation differently in Medicaid cases than ACF has been for child support. HCFA has been allowing federal match for computer systems without prior approval in certain limited circumstances (if the transaction would have been approved had prior approval been sought and if the state agrees to institute controls to ensure prior approval requirements are met in the future.) Rather astounding that they didn't discover this before Kevin met with the Governor. Anyway, HHS is pulling together their key people now to work through the implications of having a uniform agency wide policy (if ACF uses the HCFA rules for Arkansas, they may be subject to lawsuits from states they've turned down in the past). We've suggested some other possibilities too (using TANF or SSBG funds, spreading payments out over 10 quarters) for which they are examining the implications. I'll push them and keep you posted. Call me if you'd like to discuss (62846)

Cynthia A. Rice



Cynthia A. Rice

03/18/99 12:33:15 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, J. Eric Gould/OPD/EOP

Subject: Update on Arkansas child support

Bruce asked me to send you a note on Arkansas child support. We're finishing a memo to the President but are pushing HHS to come up with some more responsive options.

Here's where things stand.

HHS policy since 1986 has been to deny federal match for contracts for which states have not received prior approval. They have never made an exception -- in fact during the last year, they've taken this position with California, Hawaii, Kansas, Nevada, Pennsylvania, South Dakota, and West Virginia. The contracts under dispute are for child support computer systems. The rationale for requiring federal approval is to ensure the contracted services meet basic programmatic requirements before the federal government commits to pay 66 percent or more of their costs.

Arkansas does not dispute that they didn't submit the contract for federal review early enough. But they've asked that the penalty be reduced or waived. HHS agrees that if the contract had been submitted earlier they would have approved it. However, HHS strongly opposes making an exception, even in this case.

As I said, we are working with HHS to develop some better options ASAP -- we'll send you more on that shortly. One issue to consider: there is apparently an on-going FBI investigation of child support contracts in Arkansas, related to contracts being awarded to members of the state legislature. The Lexis/Nexis search I did pulled up dozens of articles mentioning the investigation, which apparently began in November 1997 with a raid of State Senator Nick Wilson's office. As a result of the publicity surrounding this investigation, the legislature passed and Huckabee has signed into law new ethics rules. However, according to the press, the investigation is on-going, under the direction of US Attorney Paula Casey. I'm not saying that I have any indication that there's a connection between the contracts for which the state didn't see federal approval and this investigation, but I just wanted to flag for you that the issue of child support enforcement contracts in the state is under a great deal of scrutiny right now.

Message Sent To:

Maria Echaveste/WHO/EOP  
Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Laura Emmett/WHO/EOP  
J. Eric Gould/OPD/EOP



## FACSIMILE TRANSMISSION

ADMINISTRATION FOR CHILDREN AND FAMILIES  
OFFICE OF THE ASSISTANT SECRETARY  
370 L'ENFANT PROMENADE. S.W.  
WASHINGTON, D.C. 20447

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DATE: 3/18/99  
Name: C. Rice  
Telephone: 456-2846  
Fax: 456-7431  
Number of Pages (excluding cover): 8

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FROM: JOHN MONAHAN  
Office of the Assistant Secretary

Telephone: (202) 401-5180  
Fax: (202) 401-4678

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MESSAGE:



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Health Care  
Financing Administration**Memorandum**

Refer to: FMC-11

Date **NOV 9 1992**

From **Director  
Office of Medicaid Management**

Subject **Retroactive Approval of Transactions Requiring Prior Approval--ACTION**

To **All Associate Regional Administrators  
Division of Medicaid**

This memorandum prescribes Health Care Financing Administration (HCFA) policy in administering Federal requirements for Medicaid State agency transactions when mandatory HCFA prior approval was not secured.

The Department of Health and Human Services (HHS) Grants Administration Manual (GAM), Chapter 1-105-60 B.1 (Attachment) provides that a transaction requiring prior approval under the provisions of an award may be approved retroactively if (a) the transaction would have been approved had the organization requested approval in advance; (b) the transaction is approved by an official who has the authority to grant such approvals; and (c) the organization agrees to institute controls to ensure that prior approval requirements are met in the future. The Departmental Appeals Board (DAB) held in Decision No. 1340, dated June 19 and previous decisions that the HHS GAM authorizes retroactive approval in lieu of the prior approval required by the applicable regulations and manual issuances. The DAB also held that the agency must articulate a reasonably persuasive substantive basis for denying retroactive approval.

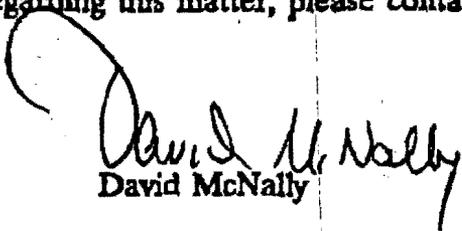
Please advise all the States in your region that HCFA is adopting the policy contained in the HHS GAM regarding retroactive approvals of transactions. However, we must emphasize that if States do not implement policies to ensure that prior approval requirements are met, as noted in (c) above, the costs of all subsequent procurements will not be reimbursed. We recommend that whenever

- ① Relying on ~~the~~ ~~an~~ ~~opposite~~ DAB decision
- ② " " using part of GAM

Page 2 - All ARAs

this situation arises you formally notify the State that corrective action is necessary and that all subsequent prior approval requirements must be met in order for Federal financial participation to be available.

If you have any questions regarding this matter, please contact Wanetah Soden of my staff at (410) 966-3273.



David McNally

Attachment

cc:

All Regional Administrators

Attachment 1



# DEPARTMENTAL GRANTS ADMINISTRATION MANUAL

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**HHS Staff Manual for the Administration of  
Grant Programs**

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**Issued by The Office of the Secretary, Assistant  
Secretary for Management and Budget**

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HHS Introduction 0-1  
Grants Administration Manual  
HHS Transmittal 81.03 (11/30/81)

Page 1

## I N T R O D U C T I O N

**PURPOSE AND SCOPE.** The Grants Administration Manual is designed to provide guidance on the various aspects of grant management to all granting agencies of the Department. It is expected that the Department-wide policies and procedures in this Manual will be implemented by each of the granting agencies in accordance with the requirements of their particular grant programs and the characteristics of their respective organizations.

The Manual is intended to serve as a basic reference for those who are operationally engaged in the administrative and financial management of grants, as well as those program directors and others within the granting agencies who are involved in the award, review, or other program management aspects of grants.

The policies and procedures included in the Manual will be developed in a manner which seeks to achieve greater consistency in the Department's dealings with grantees while affording its granting agencies sufficient flexibility to manage their programs in accordance with the specific requirements of their programs. The policies will emphasize techniques which are designed to strengthen grantee institutions and to provide incentives for improved management. They will exemplify the partnership relation between the Department and the grantee community by attempting to strike a proper balance between the requirements of accountability and the necessity for freedom and flexibility to pursue program objectives.

**APPLICABILITY.** The material in this Manual is applicable to all granting agencies of the Department unless otherwise specified.

**AUTHORITY FOR ISSUANCE.** Chapter AMG of the Organization Manual.



Henry G. Kirschenmann, Jr.  
Deputy Assistant Secretary  
for Procurement, Assistance  
and Logistics

1-105-80            **RESOLUTION OF MONETARY FINDINGS**

**A. General Rules on Cost Allowability**

1. Except as otherwise provided in Subsection B of this Section, all decisions to allow or disallow costs must be based solely on whether they are allowable or unallowable under the applicable cost principles and other provisions of the awards. Action Officials and Approving Officials (see Subparagraph 1-105-120A.1.b) have responsibility and authority (subject to appeal) for determining whether costs are allowable or unallowable, and for determining the dollar amount of any unallowable costs. In making these determinations, Action and Approving Officials have some discretion on matters of interpretation. However, such discretion does not include the authority to ignore applicable laws, regulations or policies; or authoritative interpretations issued by the courts, GAO, the Office of General Counsel, responsible policy offices or other appropriate authorities.
2. In the resolution of the findings, a clear distinction must be made between the determination of whether a cost is allowable or unallowable and the actual collection of a disallowance. As noted above, Action and Approving Officials have the authority to determine whether a cost is allowable or unallowable and have some discretion in making this determination. However, if a determination is made that a cost is unallowable, the Action and Approving Officials do not have the authority to "waive" (forgive) collection of the disallowance. These disallowances constitute claims by the Government, and may be waived or reduced only under the limited conditions prescribed in the Federal Claims Collection Act (Public Law 89-508) and implementing procedures (see General Administration Manual Chapters 4-50, 4-60 and 4-70).
3. In determining whether a cost is allowable or unallowable, factors such as the good faith of the organization, its successful accomplishment of program objectives or its ignorance of the provisions of the awards, although important for other purposes, shall not be used as a basis for allowing costs which are unallowable under the provisions of the awards. The organization's ability to make restitution also has no bearing on the allowability of a cost, but should be considered, where necessary, in establishing recovery periods and in determining whether there is justification for reducing or waiving collection of a claim under the Federal Claims Collection Act and implementing procedures.

**B. Exceptions**

As stated in Subsection A of this Section, the decision to allow or disallow a cost must be based on whether it is allowable under the provisions of the award. There are two situations, however, where an exception to this rule may be permitted.

**HHS Chapter 1-105  
Grants Administration Manual  
HHS Transmittal 83.01 (3/25/83)**

**Page 13**

- 1. If a transaction requiring prior approval under the provisions of an award is questioned because the approval was not requested, the transaction may be approved retroactively. Retroactive approvals may be granted, however, only where:**
    - a. The transaction would have been approved had the organization requested approval in advance;**
    - b. The transaction is approved by an official who has the authority to grant such approvals (usually the grants officer or the contracting officer); and**
    - c. The organization agrees to institute controls to ensure that prior approval requirements are met in the future.**
  - 2. In truly exceptional cases, where strict adherence to an original provision of an award would result in a clear inequity to the organization, the provision may be waived. These waivers may be granted only in highly unusual situations and only where all of the following conditions are met:**
    - a. The provision is not mandated by law;**
    - b. The waiver is granted by the official who has authority over the provision (usually the grants officer or the contracting officer) and is approved by a higher level official (unless the original official is the head of the OPDIV);**
    - c. If the waiver constitutes a deviation from an established regulation or policy (e.g., 45 CFR Part 74, the Grants Administration Manual), it is approved under applicable deviation control procedures; and**
    - d. The Office of General Counsel has concurred that the waiver is legal.**
- C. Determinations and Computation of Dollar Amounts**

**1. General**

**As indicated in Subsection A of this Section, the Action Official is responsible for determining whether costs are allowable or unallowable, and for determining the dollar amount of any unallowable costs. To make these determinations, the Action Official must have a clear understanding of the applicable regulations, the auditor's findings and the organization's position on the findings; and should obtain whatever additional information he/she feels is necessary to reach an informed conclusion on the issues.**



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Financing Administration

## Memorandum

Date **JAN 25 1993**

From **Director  
Office of Medicaid Management, MB**

Subject **Retroactive Approval of Transactions Requiring Prior  
Approval (Your memorandum, 12/29/92)--INFORMATION**

To **Associate Regional Administrator  
Division of Medicaid  
Denver**

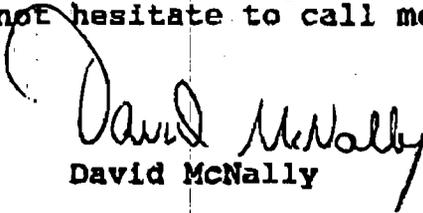
On November 3, I wrote to all ARAs for Medicaid concerning enforcement of Federal "prior approval" requirements. I advised that we are adopting the policy currently found in Chapter 1-105-60 B.1 of the Department's Grants Administration Manual (GAM). The policy is that a transaction requiring prior approval may be approved retroactively if (a) the transaction would have been approved had the State requested approval in advance; (b) the approving HCFA official has the authority to grant such approvals; and (c) the State agrees to institute controls to ensure that prior approval requirements are met in the future. In effect, the policy permits us to give a State one bite of the apple: any subsequent violation would trigger disallowance of the related costs.

Your memorandum seeks clarification on several points related to the new policy. First, as you surmised, the policy described above is applicable to both ADP and non-ADP transactions requiring prior approval. The only exception is HMO contracts subject to prior approval pursuant to section 1903(m)(2)(A) of the Social Security Act. The policy does not modify any of the prior approval requirements found in law, regulations or policy. Rather, it addresses HCFA enforcement where prior approval violations surface. As you are aware, it can be difficult to support disallowing the entire cost of a State acquisition on the basis solely that the State failed to obtain HCFA's prior approval. It is another matter, of course, if we decide the transaction would not have been approved if submitted timely, or if HCFA in fact denied approval but the State proceeded with the acquisition anyway. We would consider all relevant circumstances in each instance. For example, we could decide to deny the one-time retroactive approval if convinced the State intentionally failed to seek HCFA prior approval on the particular acquisition, in order to take maximum advantage of our "one bite" policy. No one-time retroactive approval should be granted in any instance prior to HCFA receiving the State's formal assurance of future compliance.

Page 2

Your memorandum asks about the applicability of the GAM generally to Medicaid, since it has been your understanding that the GAM applies only to discretionary grant programs. It is true that the GAM is designed primarily for discretionary grants. However, the Division of Grants Policy and Oversight in ASMB/HHS, which is responsible for the GAM, notes that sections of the GAM are applicable to mandatory or entitlement as well as to discretionary grant programs: a statement at the beginning of each GAM chapter indicates its coverage. Chapter 1-105, for example, is applicable to all audit findings. The director of that division also feels strongly that the Departmental Appeals Board holds the same view, as evidenced in a number of decisions - most not involving Medicaid - that the DAB has issued over the past decade. The ASMB announced last fall that the GAM will be replaced over time by a series of ASMB "Grants Policy Directives". The ASMB does not anticipate changing the policy on prior approval violations, except to make more explicit its applicability to mandatory as well as discretionary grant programs.

Again, our new policy reflects our desire to balance equity and reasonableness with consistent, effective enforcement of applicable prior approval requirements. If you have any further questions, please do not hesitate to call me at (410) 966-3254.

  
David McNally

cc: ARAs, Division of Medicaid  
Regions I-VII, IX-X

Charles Gale, Director  
Division of Grants Policy and Oversight, ASMB



# FAX

Date: 2-19-99

Number of pages including cover sheet: \_\_\_\_\_

To:

Cynthia Rice

Phone: \_\_\_\_\_

Fax phone: 456-7431

CC: \_\_\_\_\_

From:

Jim Ivery

Phone: (202) 401-5781

Fax phone: (202) 690-5672

Internet Address: JIVERY@OS.DHHS.GOV

REMARKS:

Urgent

For your review

Reply ASAP

Please comment

*As requested.  
John Swonahan will meet w/ Gov Huckabee on  
Monday.*

# Withdrawal/Redaction Marker

## Clinton Library

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002. fax	Jim Ivery to Rice re: Talking Points on Prior Approval Issue (3 pages)	02/19/99	P5

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Domestic Policy Council  
Cynthia Rice (Subject Files)  
OA/Box Number: 15428

### FOLDER TITLE:

Child Support Enforcement-Computer Systems-Prior Approval

rx15

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

J. Eric Gould

03/12/99 06:40:00 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: HHS / Prior Approval

Kevin Thurm wants to inform Gov. Huckabee next week that HHS was unable to find a legal basis for providing prior approval for the contract costs. However, the official denial of the FFP will not occur until this summer.

Questions we need to look at:

1. Does HHS have any permissive authority to allow the FFP? The State suggests that the law HHS is citing states that they "may" disallow. *what's in statute/what's in reg*

*-> what was 185-186 Grant Appeals Board decision*

2. Is this a situation where the letter of the regulation actually could allow for relief but Grants Appeals Boards decisions have ruled differently?

3. If the ruling itself is nonnegotiable:

A. Is it possible to impose a reduced penalty?

B. Is it possible to let the formal disallowance stand but not impose a penalty at all if the state does not appeal and complies with federal requirements.

4. Since it's not really a penalty but the withholding of reimbursement, what alternatives exist to spread the cost out over time, i.e., over what period of time could we spread reduced federal contribution's to child support enforcement, administrative payments (in 1996, Arkansas received \$19m in fed. admin. payments)?

*66%*

*\$3m fed include \$4m state share retained collector \$28 total*

5. Does HHS agree they would have approved contracts if they had been submitted?

6. Which other states have had FFP denied because they did not get pre-approval of contracts and how much and when

*-> is it true -> HHS has made no exception to rule since 1986 true for case dealing for Missouri*



This Facsimile is from the

Administration for Children and Families  
 370 L'Enfant Promenade S.W.  
 Washington, D.C. 20447-0001

Date: 3/16/99

This transmission consists of this cover plus 20 pages

To: Cynthia Rice

From: Krishn Siebenaler

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: 456-7431

401-9229

Messages: Here is the additional info. re:  
Arkansas child support - Call me  
if you can't read ~~the~~ parts (it's  
old stuff!)

Administration for Children and Families

Phone: 401-9200

Fax: 401-5770

Ex. Sec.: 401-9211

Fax: 205-4891

**LIST OF STATES DENIED FEDERAL FINANCIAL PARTICIPATION (FFP)  
BECAUSE OF FAILURE TO OBTAIN REQUIRED FEDERAL PRIOR APPROVAL**

3/15/99

Office of Child Support Enforcement  
Denial of FFP Because of State's Failure to Obtain Prior Approval  
(during the past 12 months)

Arkansas- June 15, 1998, also February 1998 and September 15, 1998. -- Denied approximately \$6.5 million in contracts and contract amendments submitted after their execution and, in some cases, after completion of the contract.

California - July 28, 1998 - Denied California's request for \$11 million for a contract amendment for SACCS transition costs that the State never submitted for prior approval. California's lawyers have spoken to Robert Keith of OGC and we are awaiting the additional documentation that they promised in the teleconference call and follow-up letter. California argues that this contract action was not an amendment subject to prior approval.

Hawaii - May 11, 1998 - OCSE limited FFP for three different contract amendments submitted after their execution to costs incurred after the date of OCSE's approval.

Kansas -- Dec 4, 1998 - The letter specifies that the FFP approval is from date of letter forward but that OCSE cannot retroactively approve task orders issued prior to OCSE's approval, nor approval funding for costs incurred prior to this date. Dollar amount not determined.

Nevada - August 5, 1998 - The State submitted two amendments after their execution. OCSE limited FFP to costs incurred after the date of its approval. Amount not determined.

Pennsylvania - July 2, 1998 -- Request for reconsideration of earlier decision limiting funding for a contract to costs incurred after date of approval. Appeal denied.

South Dakota - October 21, 1998 OCSE didn't deny any FFP, but reiterated our policy on master contracts and waiver of prior approval for future tasks.

West Virginia - November 16, 1998 -- In this letter, we included a reminder that we can't approve FFP for costs incurred prior to the date of this approval. It appeared likely that WV had incurred such costs; amount not yet determined.

**PREAMBLE TO 1986 RULE REITERATING HHS' POSITION ON PRIOR APPROVAL**

(3) The following portion of the Tucson TSP Air Planning Area: The area described by connecting the following geographic points in the order listed below:

- Latitude 32°38.5' N, Longitude 111°24.0' W
  - Latitude 32°38.5' N, Longitude 110°47.5' W
  - Latitude 32°12.5' N, Longitude 110°32.5' W
  - Latitude 31°48.5' N, Longitude 110°24.5' W
  - Latitude 31°42.5' N, Longitude 110°50.5' W
  - Latitude 31°32.5' N, Longitude 111°12.5' W
  - Latitude 31°24.5' N, Longitude 111°28.0' W
- (and return to initial point)

Excluding the area within the following townships:

- T2S, R9-11E
- T10S, R9-12E
- T13S, R13E: sections 6, 8-10, 13-17, 20-24, 23-28, 8 (NE and SE quarters only) and 7 (NE and SE quarters only)
- T13S, R14E: sections 19-21, 25-27
- T16S, R13E: sections 1-3, 10-14, 23-25
- T14S, R14E: sections 9-8, 17-19, 20
- T17S, R19E
- T14S, R19E
- T20S, R14-15E

4. § 52.124 is amended by revising paragraph (a)(2) to read as follows:

§ 52.124 Part D Conditional Approval.

- (a) . . .
- (1) . . .

(2) As to only the areas listed in § 52.123(c)(2) and (3) of this subpart, the Tucson Air Planning Area portion of the Arizona SIP is approved as satisfying Part D requirements for CO and TSP, respectively, provided that, by November 4, 1982, the NSR regulations must be revised to meet the requirements in EPA's amended regulations for NSR [40 CFR 51.18(i)].

(FR Doc. 86-1666 Filed 1-26-86; 9:45 am) BILLING CODE 4150-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 95

Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation

AGENCY: Office of the Secretary, HHS.

ACTION: Interim Final Rule With Comment Period.

SUMMARY: On November 18, 1984 the Department of Health and Human Services published a Notice of Proposed Rule Making (NPRM) on Automatic Data Processing—Conditions for Federal Financial Participation in the Federal Register (49 FR 45817). Those proposed regulations are applicable to the

administration of Public Assistance programs under Titles I, IVA, B, C, D, and E, X, XIV, XVI (AABD), XIX of the Social Security Act.

This Interim Final Rule establishes the conditions and the procedures under which a State can obtain consideration for Federal Financial Participation (FFP) in emergency and certain other circumstances for the acquisition of Automatic Data Processing (ADP) equipment or services in affected programs. It does not deal with all provisions contained in the NPRM.

The remaining provisions of the NPRM that are not published as part of the Interim Final Rule will be published by DHHS at a later date.

DATE: Effective Date: These Interim Final Regulations are effective January 27, 1986. The comment period for these regulations, extends for 60 days after their publication in the Federal Register.

ADDRESS: Comments should be forwarded to: K. Jacquelyn Holz, Deputy Assistant Secretary for Management Analysis and Systems, Hubert H. Humphrey Building, Room 514E, 200 Independence Avenue, SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ron Lentz, (202) 245-7254.

SUPPLEMENTARY INFORMATION: This Interim Final Rule revises § 95.805 to add the definition of the term "emergency situation", revises § 95.823 governing waiver of the prior approval requirement and adds a new section, 95.824, that provides for DHHS consideration of State requests for FFP in emergency situations. No comments were received relating to § 95.823 of the NPRM.

Regulatory Provision

Section 95.823 is revised to permit waiving the prior approval requirements contained in § 95.811 for those State requests for funding ADP system developments and acquisitions which were postmarked and received by the Department prior to December 1, 1985, for which a State did not receive prior approval. The intent of this revision is to give the Department the authority to waive the prior approval requirements of § 95.811 in situations where a State undertook an ADP systems development or acquisition in anticipation of the Department retroactively approving the development or acquisition (in effect waiving the prior approval requirement).

Until recently, the Department has on several occasions retroactively approved systems developments and acquisitions of merit and led some States to believe erroneously that prior approval was not a pre-condition for

ADP funding. For this reason, a number of States have not sought prior approval in situations that call for it. Because such after the fact approval has not been authorized by existing regulations the Department believes it must provide a mechanism, by regulation, to allow to waiver of the prior approval requirement and not unfairly penalize States that have relied on a Departmental practice not authorized by its regulations.

The Department has chosen to limit the waiver of prior approval provisions contained in § 95.823 to only those State requests for FFP in acquiring ADP equipment or services, postmarked and received by the Department and undertaken without prior approval before December 1, 1985 because:

1. The Department's policy is to require prior approval as a means of assuring its early participation in State system developments and acquisitions. To establish a broad waiver of the prior approval requirement would defeat this purpose.

2. The Department wishes to provide only a brief transition period which allows it to waive prior approval instances where States acted without prior approval based on their perception of the Department's past practice of retroactively approving State ADP initiatives of merit.

By letter dated August 12, 1985, the Assistant Secretary for Management and Budget advised heads of all State public assistance agencies of the requirements for prior approval contained in 45 CFR 95.801 et seq. He informed them that "if a State does submit a request for retroactive approval and funding of the design, development and installation of an automatic data processing system, or the acquisition of automatic data processing equipment or services, the Department will deny the request."

We believe that this was sufficient notice to States of the Department's prior approval requirements, and that establishing December 1, 1985 as the cut-off date for permitting the waiver of the Department's prior approval requirements provides sufficient time for States to adjust to long-standing regulatory requirements. Accordingly, for State requests for the acquisition of ADP equipment or services postmarked and received by the Department after December 1, 1985, the Department will no longer waive the prior approval requirements contained in § 95.811.

Section 95.823(a) provides a mechanism for waiving the Department's prior approval requirements contained in § 95.811 for

State systems initiatives which the Department has previously approved retroactively in a formal approval letter. The intent of this Section is to ratify those instances where the Department has previously issued (prior to December 1, 1985) a letter retroactively approving State agency initiatives, although the Department was not permitted to do so under 45 CFR 95.601 *et seq.* This section applies only to the past actions described in this paragraph. The provisions of this section are effective December 1, 1985 with no further action required on the part of the States.

Section 95.623(b) is intended to provide a transition period which permits States to adjust to the Department's change in practice from one of having approved a number of State system initiative retroactively, albeit contrary to regulatory requirements, to one of strict adherence to the prior approval requirements in § 95.811. This transition period extends to December 1, 1985 and applies only to requests, which were postmarked and received by the Department prior to December 1, 1985 for which a State did not receive prior approval. The Department will retroactively approve these actions if the request would have received prior approval had a request for such approval been made by the State agency.

Section 95.605 has been revised to include the definition of the term "emergency situation." Under 45 CFR 95.811 we require States to seek and receive prior approval for ADP equipment and services acquisitions that meet certain expenditure thresholds that are set forth in the regulation. While this long-standing requirement has enabled the Department to have needed involvement in States' program planning, the requirement for prior approval may become counter-productive in emergency situations where ADP materials have to be replaced immediately in order to maintain program operations and still satisfy program requirements. For this reason, we are revising § 95.605 to include a definition of emergency situations and are adding a new § 95.624 to provide a procedure for States to follow in such situations.

The Department will consider as "emergency situations" those situations which could not reasonably have been anticipated and for which a State could not have planned. The following are examples of situations that the Department considers to be "emergency situations."

(a) Equipment failure due to physical damage or destruction caused by natural or other disaster; or

(b) Changes imposed by Federal legislative requirements which necessitate the immediate acquisition of ADP equipment or services.

The Department will not consider as emergency situations, instances which arise because of poor planning on the part of a State. Examples of situations that the Department does not consider "emergency situations" are:

(a) ADP equipment or software systems becoming obsolete through the rapid development of new technology or software techniques;

(b) The expiration of a contract that provides equipment or services support;

(c) Oversight or administrative inadequacy on the part of a requesting State or local government in obtaining prior approval; or

(d) Changes imposed by Federal legislative requirements which allow the State agency time to comply with the prior approval requirements of § 95.811.

The Department, in reaching a decision as to whether or not a situation should be accepted as an emergency, will require a State to demonstrate that its need to immediately acquire ADP equipment or services was unexpected and could not have been anticipated or planned.

Section 95.624 describes the procedure to be followed by State agencies when requesting approval of FFP for emergency situations as defined in § 95.605. Under this procedure if a State encounters an "emergency situation" as defined in § 95.605, it must submit a written request to the Department to proceed with the ADP acquisition immediately in order to meet the State's emergency need. The written request must be sent by registered mail and include:

(1) A brief description of the ADP equipment and/or services to be acquired;

(2) A brief description of the circumstances which result in the State's need to proceed prior to obtaining approval from the Department; and

(3) A description of the harm which will be caused if the State does not acquire immediately the ADP equipment and services.

Upon receipt of the information, the Department will within 14 days take one of the following actions:

(1) Inform the State in writing that the request has been disapproved and the reason for disapproval; or

(2) Inform the State in writing that the Department recognizes that an emergency exists and that within 90

days from the date of the State's initial written request, the State must submit a formal request for approval which includes the information specified at § 95.811 in order for the ADP equipment or services acquisition to be considered for the Department's approval.

The Department is establishing this emergency procedure in recognition of the fact that situations may arise which preclude a State from taking the time to follow the full prior approval procedures contained in § 95.811 before acting to correct the emergency situation in order to meet program requirements. States will be required to meet the requirements of § 95.811, except for the requirement of prior approval, within 90 days from the date of their written emergency request. The granting of FFP by the Department for the emergency acquisition will rest on the Department's determining whether or not the acquisition was necessary and satisfies all requirements of 45 CFR 95.601 *et seq.* except the requirement of prior approval. In such cases, where those requirements are met, we will approve FFP retroactive to the date of the emergency acquisition.

#### Interim Final Regulations

These regulations, 45 CFR 95.605, 95.623 and 95.624, are being published in interim final form with an immediate effective date. At the same time, we encourage interested parties to comment upon these new rules so that we may have the full benefit of public participation before the rules are published in final form. We are disposing with prior notice and comment procedures because we believe there is good cause to do so.

Specifically, we find that publication of these regulations in proposed form would be unnecessary, impractical and contrary to the public interest for the following reasons:

1. The Department presently has pending a number of requests from States for retroactive approval of system developments and acquisitions initiated before the Department's approval was requested. The Department believes that the States submitting these late requests acted in good faith based on their perception of the Department's practice until recently, and should not be penalized. While it is important to the efficient operation of affected Public Assistance programs that a number of these requests be approved promptly, the Department has no current authority to provide approval for the ADP equipment and services acquisitions at issue.

2. The Department wishes to immediately put in place a procedure by which States can act to acquire automatic data processing equipment or services in emergency situations without risking the loss of FFP from the Department because the prior approval requirements of § 95.811 were not followed. The Department believes that since it does not have the authority under existing regulations and does not seek the authority to waive its prior approval requirements contained in § 95.811, it must immediately establish procedures for handling emergency situations, so that in the event an emergency arises, a State will have a basis for quickly acting to correct the emergency situation without jeopardizing its eligibility for FFP.

3. We believe that since both the emergency situation and waiver provisions constitute relief and exemption from the pre-existing requirements for prior approval, the immediate effective date we are providing is justified and reasonable.

#### Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of \$100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

#### Regulatory Flexibility Analysis

Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities in appropriate cases. This rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the Department has previously obtained OMB clearance of the paperwork requirements contained in § 95.811, referenced under § 95.823 of this interim final rule. The OMB number is 0990-0058.

The emergency processing paperwork requirements contained in Section 95.824 of this interim final rule have been approved by OMB. The OMB approval number is 0990-0160.

(Catalog of Federal Domestic Assistance Program Numbers 13.843 Child Welfare Services—State Grants, 13.854 Foster Care, Maintenance, 12.859 Adoption Assistance, 13.870 Child Support Enforcement Program, 13.714 Medical Assistance Program, 13.808 Assistance Payments—Maintenance Assistance, 13.870 Assistance Payments—State and Local Training)

List of Subjects is 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs—social programs, Social Security.

#### PART 95—(AMENDED)

45 CFR Part 95, Subpart F, is amended as set forth below:

The authority citation for 45 CFR Part 95, Subpart F is added to read as follows:

Authority: Sec. 1102, 49 Stat. 947, 42 U.S.C. 1302.

1. Section 95.605 is amended to add the definition for "emergency situation" as follows:

#### § 95.605 Definitions.

"Emergency situation" is defined as a situation where:

- (a) A State can demonstrate to the Department an immediate need to acquire ADP equipment or services in order to continue the operation of one or more of the Social Security Act programs covered by Subpart F, and
- (b) The State can clearly document that the need could not have been anticipated or planned for and the State was prevented from following the prior approval requirements of § 95.811.

2. Section 95.823 is revised to read as follows:

#### § 95.823 Waiver of prior approval requirements.

For ADP equipment and services acquired by a State without prior written approval, the Department may waive the prior approval requirement if prior to December 1, 1985:

- (a) The State submitted to the Department all information required under § 95.811, satisfactorily responded to all concerns raised by the Department and received a final letter of approval from the Department; or
- (b) The State has a request pending with the Department for retroactive approval, which the Department received before December 1, 1985 and the Department determines that the request would have received prior approval had a timely request for such approval been made by the State agency.

(Approved by the Office of Management and Budget under control No. 0990-0058.)

3. A new § 95.824 is added to read as follows:

#### § 95.824 Consideration for FFP in emergency situations.

For ADP equipment and services acquired by a State after December 1, 1985 to meet emergency situations, which preclude the State from following the requirements of § 95.811, the Department will consider providing FFP upon receipt of a written request from the State. In order for the Department to consider providing FFP in emergency situations, the following conditions must be met:

(a) The State must submit a written request to the Department, prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include:

- (1) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;
- (2) A brief description of the circumstances which result in the State's need to proceed prior to obtaining approval from the Department; and
- (3) A description of the harm which will be caused if the State does not acquire immediately the ADP equipment and services.

(b) Upon receipt of the information, the Department will within 14 days take one of the following actions:

- (1) Inform the State in writing that the request has been disapproved and the reason for disapproval; or
- (2) Inform the State in writing that the Department recognizes that an emergency exists and that within 90 days from the date of the State's initial written request, the State must submit a formal request for approval which includes the information specified at § 95.811 in order for the ADP equipment or services acquisition to be considered for the Department's approval.

(c) If the Department approves the request submitted under paragraph (b) of this Section, FFP will be available from the date the State acquires the ADP equipment and services.

(Approved by the Office of Management and Budget under control number 0990-0160.)

Dated: November 12, 1985.

Margaret M. Heckler,

Secretary.

(FR Doc. 86-1717 Filed 1-24-86; 8:45 am)

DELETED COPY 0160-0058

LETTER TO STATES INFORMING THEM OF HHS' PRIOR APPROVAL POLICY

DEPARTMENT OF HEALTH AND HUMAN SERVICES

8/13/85

John Frazier  
Commissioner  
Alabama Department of Revenue and Security  
Administrative Building  
100 North Union Street  
Montgomery, Alabama 36102

Dear Mr. Frazier:

I am writing to you, and the heads of all State public assistance agencies, in order to clarify the Department of Health and Human Services' (HHS') requirement for States to obtain prior written approval before proceeding to acquire automatic data processing equipment and services, or develop and install automatic data processing information systems, for which a State will claim HHS matching funds. I wish to remind you that HHS' current regulations at 45 CFR 95.601, et seq., which govern the prior approval requirement, do not permit waiving this requirement. For this reason, States should not expect HHS to fund retroactively automatic data processing acquisitions, or system developments and installations that were initiated subsequent to promulgation of these governing rules.

A State must request and receive prior written HHS approval for such undertakings before HHS will provide matching funds. If a State does submit a request for retroactive approval and funding of the design, development and installation of an automatic data processing system, or the acquisition of automatic data processing equipment or services, the Department will deny the request.

The Department is in the process of finalizing the proposed revisions to 45 CFR 95.601, et seq., which appeared in the November 19, 1984 Federal Register as a notice of proposed rulemaking. As part of this rulemaking, we are considering the revision of the Department's policy regarding the prior approval requirement.

If you or members of your staff have questions concerning this issue, please contact Joseph F. Costa, Director, Office of Public and State Data Systems on (202) 245-7488.

Yours truly,

~~7/87~~ original signed by

John J. O'Shaughnessy  
Assistant Secretary for  
Management and Budget

- cc: Jo Ann Ross, SSA
- John Berry, HCFA
- Naomi Marr, OCSE
- Richard Shute, OHDS
- John Berry, HCFA
- Naomi Marr, OCSE
- Richard Shute, OHDS

OFFICE	NAME	DATE	INITIALS
OPSDS	Costa	7-27-85	JFC
OPSDS	Costa	7-28-85	JFC
			OR

COPY

MEMO FROM THE IHHS GENERAL COUNSEL REGARDING PRIOR APPROVAL

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. memo	Terry Coleman to John J. O'Shaughnessy re: Prior Approval for Granting Federal Financial Participation for State Automatic Data Processing System Developments and Application (attachment) (5 pages)	05/08/95	P5

**This marker identifies the original location of the withdrawn item listed above.  
For a complete list of items withdrawn from this folder, see the  
Withdrawal/Redaction Sheet at the front of the folder.**

**COLLECTION:**

Clinton Presidential Records  
Domestic Policy Council  
Cynthia Rice (Subject Files)  
OA/Box Number: 15428

**FOLDER TITLE:**

Child Support Enforcement-Computer Systems-Prior Approval

rx15

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

SECTION OF THE REGULATION SAYING "MAY LOSE FFP"

administration of programs authorized by those titles.

**Requirements Analysis** means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

**Service agreement** means the document signed by the State or local agency and the State or local Central Data Processing facility whenever the latter provides data processing services to the former and:

- (a) Identifies those ADP services the Central Data Processing facility will provide;
- (b) Includes, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;
- (c) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing service charges;
- (d) Includes assurances that services provided will be timely and satisfactory;
- (e) Includes assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with provisions of 45 CFR 205.50 and 309.21;
- (f) Requires the provider to obtain prior approval pursuant to 45 CFR §95.611(a) from the Department for ADP equipment and ADP services that are acquired from commercial sources primarily to support the titles covered by this subpart and requires the provider to comply with 45 CFR Part 74, Subpart C for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when these titles may reasonably be expected to either: Be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of ADP equipment or services;
- (g) Includes the beginning and ending dates of the period of time covered by the service agreement; and
- (h) Includes a schedule of expected total charges to the title covered by

this subpart for the period of the service agreement.

**Software** means a set of computer programs, procedures, and associated documentation used to operate the hardware.

**State agency** means the State agency administering or supervising the administration of the State plan under Titles I, IV, X, XIV, XVI (AABD) or XIX of the Social Security Act.

**System specifications** means information about the new ADP system, such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data--which is required to determine the ADP equipment and software necessary to implement the system design.

**System study** means the examination of existing information flow and operational procedures within an organization. The study essentially consists of three basic phases: Data gathering investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refiguring of the parts and relationships uncovered through the analysis into an efficient system.

59 FR 45326, Dec. 18, 1994, as amended at 59 FR 4375, Feb. 7, 1994. 59 FR 10708, June 15, 1994

**SPECIFIC CONDITIONS FOR FFP**

**§95.611 Prior approval conditions.**

- (a) **General acquisition requirements.** (1) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of \$5,000,000 or more in Federal and State funds.
- (2) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate authorized by 45 CFR 205.35, 45 CFR part 307 or 42 CFR part 433, subpart C, regardless of the acquisition cost.

(3) A State shall obtain prior written approval from the Department of its justification for a sole source acquisition, when it plans to acquire non-competitively from a nongovernmental source ADP equipment or services, with proposed FFP at the regular matching rate, that has a total State and Federal acquisition cost of more than \$1,000,000 but no more than \$5,000,000. Noncompetitive acquisitions of more than \$5,000,000 are subject to the provisions of paragraph (b) of this section.

(4) Except as provided for in paragraph (a)(5) of this section, the State shall submit requests for Department approval, signed by the appropriate State official to the Director, Administration for Children and Families, Office of State Systems. The State shall send to ACF one copy of the request for each HIS component, from which the State is requesting funding, and one for the State Systems Policy Staff, the coordinating staff for these requests. The State must also send one copy of the request directly to each Regional program component and one copy to the Regional Director.

(5) States shall submit requests for approval which involve solely Title XIX funding (i.e., State Medicaid Systems), to HCFA for action.

(6) The Department will not approve any Planning or Implementation APD that does not include all information required as defined in §95.605.

(b) **Specific prior approval requirements.** The State agency shall obtain written approval of the Department prior to the initiation of project activity.

- (1) For regular FFP requests.
  - (i) For the Planning APD subject to the dollar thresholds specified in paragraph (a) of this section.
  - (ii) For the Implementation APD subject to the dollar thresholds specified in paragraph (a) of this section.
  - (iii) For the Request for Proposal and Contract, unless specifically exempted by the Department, prior to release of the RFP or prior to the execution of the contract when the contract is anticipated to or will exceed \$5,000,000 for competitive procurement and \$1,000,000 for noncompetitive acquisitions from nongovernmental sources. States will be required to submit RFPs and con-

tracts under these threshold amounts on an exception basis or if the procurement strategy is not adequately described and justified in an APD.

(iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment involving contract cost increases exceeding \$1,000,000 or contract time extensions of more than 120 days. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately described and justified in an APD.

- (2) For enhanced FFP requests.
  - (i) For the Planning APD.
  - (ii) For the Implementation APD.
  - (iii) For the Request for Proposal and contract, unless specifically exempted by the Department, prior to release of the RFP or prior to execution of the contract when the contract is anticipated to or will exceed \$100,000.
  - (iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment, involving contract cost increases exceeding \$100,000 or contract time extensions of more than 60 days.
  - (3) Failure to submit any of the above to the satisfaction of the Department may result in disapproval or suspension of project funding.
  - (c) **Specific approval requirements.** The State agency shall obtain written approval from the Department:
    - (1) For regular FFP requests.
      - (i) For an annual APDU for projects with a total acquisition cost of more than \$5,000,000, when specifically required by the Department.
      - (ii) For an "As Needed APDU" when changes cause any of the following:
        - (A) A projected cost increase of \$1,000,000 or more.
        - (B) A schedule extension of more than 60 days for major milestones;
        - (C) A significant change in procurement approach, and/or scope of procurement activities beyond that approved in the APD;
        - (3) A change in system concept, or a change to the scope of the project;
        - (E) A change to the approved cost allocation methodology.

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The State shall submit the "As Needed APDU" to the Department, no later than 60 days after the occurrence of the project changes to be reported in the "As Needed APDU".

(2) For enhanced FFP requests.

(i) For an Annual APDU.

(ii) For an "As needed" APDU when changes cause any of the following:

(A) A projected cost increase of \$100,000 or 10 percent of the project cost, whichever is less;

(B) A schedule extension of more than 60 days for major milestones. For Aid to Families with Dependent Children (AFDC) Family Assistance Management Information System (FAMIS)-type projects, in accordance with section 402(c)(2)(C) of the Social Security Act, any schedule change which affects the State's implementation date as specified in the approved APD requires that the Department recover 40 percent of the amount expended. The Secretary may extend the implementation date, if the implementation date is not met because of circumstances beyond the State's control. Examples of circumstances beyond the State's control are:

(1) Equipment failure due to physical damage or destruction; or

(2) Change imposed by Federal judicial decisions, or by Federal legislation or regulations;

(C) A significant change in procurement approach, and/or a scope of procurement activities beyond that approved in the APD;

(D) A change in system concept or scope of the project;

(E) A change to the approved cost methodology;

(F) A change of more than 10% of estimated cost benefits.

The State shall submit the "As Needed APDU" to the Department, no later than 60 days after the occurrence of the project changes to be reported in the "As Needed APDU".

(3) Failure to submit any of the above to the satisfaction of the Department may result in disapproval or suspension of project funding.

(d) Prompt action on requests for prior approval. The ACF will promptly send to the approving components the items specified in paragraph (b) of this section. If the Department has not pro-

vided written approval, disapproval, or a request for information within 60 days of the date of the Departmental letter acknowledging receipt of a State's request, the request will automatically be deemed to have provisionally met the prior approval conditions of paragraph (b) of this section.

[51 FR 45326, Dec. 18, 1986, as amended at 55 FR 4377, Feb. 7, 1990; 56 FR 12456, Mar. 25, 1991; 58 FR 30778, June 15, 1993; 61 FR 39897, July 31, 1996]

**§ 95.611 Federal Financial Participation (FFP).**

If the Department finds that any ADP acquisition approved or modified under the provisions of § 95.611 fails to comply with the criteria, requirements, and other undertakings described in the approved advance planning document to the detriment of the proper and efficient operation of the affected program, payment of FFP may be disallowed. In the case of a suspension of approval of an APD for enhanced funding, see 45 CFR 205.37(c), 307.40(a) and 307.35(d).

[55 FR 4378, Feb. 7, 1990]

**§ 95.613 Procurement standards:**

(a) Procurements of ADP equipment and services are subject to the procurement standards prescribed by subpart P of 45 CFR part 74 regardless of any conditions for prior approval. Those standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(b) Those standards, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and the ADP services and equipment acquired by a State or local Central Data Processing facility primarily to support the Social Security Act programs covered by this subpart. Service agreements are exempt from these procurement standards.

**§ 95.615 Access to systems and records.**

In accordance with 45 CFR part 74, the State agency must allow the Department access to the system in all of

its aspects, including design developments, operation, and cost records of contractors and subcontractors at such intervals as are deemed necessary by the Department to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system.

[43 FR 11853, Sept. 29, 1978, as amended at 45 FR 10714, Feb. 19, 1980]

**§ 95.617 Software and ownership rights.**

(a) General. The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart.

(b) Federal license. The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(c) Proprietary software. Proprietary operating/vendor software packages (e.g., ADANAS or TOTAL) which are provided at established catalog or market prices, and sold or leased to the general public, shall not be subject to the ownership provisions in paragraphs (a) and (b) of this section. FFP is not available for proprietary applications software developed specifically for the public assistance programs covered under this subpart.

**§ 95.619 Use of ADP systems.**

ADP systems designed, developed, or installed with FFP shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified.

**§ 95.621 ADP reviews.**

The Department will conduct periodic onsite surveys and reviews of State and local agency ADP methods and practices to determine the adequacy of such methods and practices and to assure that ADP equipment and services are utilized for the purposes

consistent with proper and efficient administration under the Act. Where practical, the Department will develop a mutually acceptable schedule between the Department and State local agency prior to conducting on-site surveys or reviews, which may include but are not limited to:

(a) Pre-installation readiness. A pre-installation survey including an onsite evaluation of the physical site and the agency's readiness to productively utilize the proposed ADP services, equipment or system when installed and operational.

(b) Post-installation. A review conducted after installation of ADP equipment or systems to assure that the objectives for which FFP was approved are being accomplished.

(c) Utilization. A continuing review of ADP facilities to determine whether not the ADP equipment or services are being efficiently utilized in support of approved programs or projects.

(d) Acquisitions not subject to prior approval. Reviews will be conducted on a audit basis to assure that system or equipment acquisitions costing less than \$200,000 were made in accordance with 45 CFR part 74 and the conditions of this subpart and to determine the efficiency, economy and effectiveness of the equipment or system.

(e) State Agency Maintenance of Service Agreements. (1) The State agency will maintain a copy of each service agreement in its files for Federal review.

(2) A State agency that did not obtain prior approval of a service agreement, as required by § 95.612(b)(2) as it was in effect from December 28, 1977 (unless a State chose to exercise the option to make it effective as early as September 29, 1978) through January 19, 1987, is eligible for FFP claimed to services furnished by other State or local agencies under that agreement if:

(i) The State agency has a copy of it in its files for Federal review;

(ii) It meets the definition of a service agreement as it was defined in section 95.605 from December 28, 1977 through January 19, 1987;

(iii) The claim conforms to the timely claim provisions of 45 CFR part 95, subpart A; and

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PREAMBLE LANGUAGE EXPLAINING "MAY LOSE FFP"

3. We propose to delete § 95.611(b)(2). The current regulation requires HHS prior approval of all RFPs, contracts, and contract amendments for enhanced funding. The NPRM would limit this requirement to RFPs for enhanced FFP when HHS specifically requires prior approval of the RFP when rendering a decision on the "Planning APD" or "Implementation APD". This lesser requirement is contained in the NPRM at § 95.611(b)(3).

The NPRM would require prior approval of contracts if HHS specifically requires prior approval of the contract, when rendering a decision on the "Planning APD" or "Implementation APD". This lesser requirement is contained in the NPRM at § 95.611(b)(4).

The NPRM would require the State agency to submit to the Department for approval contract amendments that require HHS approval as a result of the Department's specifically stated requirement in the APDM approval letter. This lesser requirement is contained in the NPRM at § 95.611(c).

The NPRM would require the State agency to submit, for the Department's review all other contracts and contract amendments awarded by the State while executing activities detailed in the "Planning APD", "Implementation APD", APDMs or APDUs. This requirement is contained in the NPRM at § 95.611(d).

(4) Section 95.611(b)(1) would be redesignated § 95.611(b)(2) and modified to change the document name to "Implementation APD" and delete "or any change of the Advance Planning Document". This section would also be modified to allow for approval of funding of ADP acquisitions in phases. Under this approach the project, including a detailed estimate of the total project cost would be approved initially in concept. However, specific funding would be approved incrementally and contingent upon the State's achievement of specified project milestones.

A new § 95.611(b)(1) would be added to require the States, if they choose to request any FFP for planning, to obtain written prior approval of the Department for a "Planning APD" prior to entering into contractual agreements or making any other commitment for acquiring ADP planning services prior to the acquisition of ADP equipment or services.

The purpose of this new requirement is to encourage and allow States to initiate planning activities prior to the procurement of large-scale ADP equipment or services. It is anticipated that through improved planning, on the part of State agencies, more effective, efficient and economical acquisitions of

ADP equipment and/or services will result. It is also anticipated that due to better planning more timely processing of State requests will occur, as these requests will be based on more complete supporting information and there will be fewer system development failures and cost and time overruns. It should be noted that the proposed new planning process (the submission of a Planning APD) does not reflect changes in the FFP rates for planning. HCFA funds planning activities at the 50 percent FFP rate. However, development of a General Systems Design (GSD) is considered developmental activity and will be funded by HCFA at the enhanced funding rate.

A State would not receive FFP for planning costs unless a "Planning APD" is submitted and approved. However, State agencies could submit an "Implementation APD" directly without prior submission or approval of the "Planning APD" if they do not wish to receive FFP for project planning.

6. Section 95.611(b)(3) would be revised to require States to submit only those Requests for Proposals (RFPs), for which States will claim enhanced funding, if HHS so requests. Currently, the Department may require prior approval for RFPs for which regular funding will be claimed and if, for example, the procurement is complex or the grantee has a history of performance problems.

7. Section 95.611(b)(4) would be deleted since the new process does not require prior approval of any of the documents that are mentioned in § 95.611(b)(4).

8. A new § 95.611(b)(4) would be added to require prior approval of a contract (for regular and enhanced funding), or a contract amendment for enhanced funding, when HHS specifically requires it, when it renders a decision on the "Planning APD" or "Implementation APD". Currently the Department may require prior approval of contracts when the State is requesting funding at the regular matching rate and, for example, if the procurement is complex or the grantee has a history of performance problems.

9. Section 95.611(c) would be deleted since this requirement has been accommodated by § 95.611(d) of the NPRM.

10. Since the NPRM would release States of the requirement to submit certain documents for prior approval, a new § 95.611(c) would be added to require States to submit APDMs, feasibility studies (when required as specified in the "Planning APD" or "Implementation APD" approval letter), contract amendments (when required as

specified in the APDM approval letter) for HHS approval.

If the documents submitted for HHS approval do not meet applicable Federal requirements, no FFP would be allowed for the activities which are the subject of the documents. The Department would allow the State, through the addition of this new section, to proceed with the process of acquiring ADP equipment or services, without acquiring HHS written prior approval of the documents listed in this section. However, the Department would retain the right to disallow FFP already provided if it disapproves the documents mentioned in this section or if the required documents do not conform to the approved APD or APDM.

If the State is not willing to accept this risk, the State could submit these documents for prior approval. In such cases, while specific prior claimed costs might be subject to disallowance (just as any State claim is always open to review and analysis) a State would be assured that the major element of its APDM or feasibility study, for example, had received federal authorization.

11. Section 95.611(d) would be redesignated § 95.611(e).

12. A new § 95.611(d) would be added to require State and local agencies to submit for HHS approval the following documents:

- Annually Updated APDs;
- Contracts and Contract amendments (not requiring approval or prior approval under §§ 95.611(b) and (c));
- RFPs for enhanced funding (not requiring prior approval under § 95.611(b)) not later than when released to the public; and
- RFPs for regular funding not later than when released to the public.

Contracts, contract amendments and RFPs for regular funding which are less than \$50,000 and are an integral part of the approved APD need not be submitted.

States would be required to issue an addendum or revision to the RFP, contract or contract amendment should HHS determine during its review that the RFP, contract or contract amendment requires modification or clarification. The documents covered by this new section would be submitted to the Department and would be deemed approved if HHS took no action to disapprove within 45 days of receipt by the ASMB, unless HHS notified the State that HHS needed additional time to evaluate the documents.

If the documents submitted to HHS under this section for a specific project do not meet Federal requirements (i.e.,

the rules contained herein and provides HHS approvals related to the same project), no FFP would be allowed for activities which are the subject of the documents.

13. A new § 95.812 Disallowance of Federal Financial Participation (FFP) would be added which provides that if the Department finds that any equipment or services acquisition approved or modified under the provisions of § 95.811 fails to substantially comply with the criteria, requirements, and other undertakings prescribed in the approved advance planning document, payment of FFP may be disallowed. The Department approves FFP on the basis that the equipment or services acquisitions proposed under APDs will add to the proper and efficient operation of Social Security Act programs to which this subpart applies. By the same token, if the Department finds that a State fails to substantially comply with the terms of an approved APD, to the detriment of the proper and efficient operation of these affected programs, the Department may disallow FFP. The reasons for which the Department may disallow FFP include, but will not be limited to, failure of the proposed system to meet program effectiveness and efficiency objectives contained in the approved APD, and schedule slippages which result in cost over runs which eliminate expected future cost savings or otherwise adversely affect cost-benefit projections. In the case of a suspension of approval of an APD for enhanced funding, see 45 CFR 203.37(c), 307.40(a) and 305.37(d).

14. A new § 95.821(f) is proposed to establish minimum standard requirements for the security of non-Federal ADP systems used by State and local governments to administer programs covered under 45 CFR Part 95, Subpart F. HHS believes that increased reliance on automated systems to administer such programs and greater sophistication and complexity of the systems have resulted in the need to establish standard regulatory requirements to ensure the security of ADP facilities, operations and privacy of information. The need for standard regulatory requirements was demonstrated by a recent audit of the security of non-Federal ADP systems conducted by the U.S. Department of Agriculture's Office of Inspector General (USDA/IG).

The USDA/IG reviewed the security of 13 non-Federal ADP systems used by State and local governments to support the administration of Federal assistance programs. Although that review focused on Food Stamp systems, the review also

covered AFDC and Medicaid systems. The USDA/IG Audit Report Number 00831-3-C31 issued October 1985, disclosed a wide range of computer security weaknesses and related problems. A copy of that report can be obtained by contacting the USDA/IG for Audit, Room 247-E, Administration Building, NW, Washington, DC 20250. Some of the more serious weaknesses concerned inadequate controls over physical security which could allow unrestricted access to computer hardware and inadequate software controls which could permit improper manipulation of data or payments. The USDA/IG found weaknesses in the organizational controls of data processing in all 13 States audited. Further, the USDA/IG found that none of the 13 States audited had established formal procedures or requirements to ensure that such ADP systems met minimum ADP security standards.

The sum of HHS' existing information safeguarding regulations for State data files is presented in separate HHS program specific regulations (e.g., 45 CFR 205.50, 45 CFR 303.21 and 42 CFR 431.300(f)). While these regulations generally require State agencies to provide for data file safeguards, the requirements contain no specific ADP system security standards. HHS regulations do not impose specific system security requirements. Individual HHS agencies (FSA, OCSE and HCFA) have issued documents regarding agency system security requirements.

Although these documents establish certain specific program system security requirements, HHS recognizes the need to establish a broad basis for HHS system security requirements and State system security programs.

To accomplish this, HHS is proposing the addition of a new § 95.821(f) to 45 CFR Part 95, Subpart F entitled, "ADP Systems Security Requirements and Review Processes." The proposed new section would specify that State agencies are directly responsible for the security of ADP equipment, operations and information used in the administration of HHS programs covered under 45 CFR Part 95, Subpart F. The proposed security section would establish the following three basic minimum requirements for the security of such ADP systems:

- States shall develop appropriate standards and requirements to properly safeguard ADP resources and information processing.

- This requirement is intended to establish a baseline in each State for safeguarding ADP resources and information processing against which

States and HHS can measure the effectiveness of a State's security program. HHS considers the establishing of such a baseline to be critical to effectively safeguarding ADP resources and information processing and to evaluating the effectiveness of a State's security program.

- States shall establish an ongoing ADP security program to implement plans, policies and/or procedures to meet the State's ADP security standards and requirements and to maintain an ongoing program for conducting periodic risk analyses to evaluate potential threats to the system and incorporate appropriate safeguards.

This consists of the operating procedures, including establishing organizational responsibility and timeframes, which a State will undertake to meet the standards and requirements to properly safeguard ADP resources and information processing. HHS believes that such procedures are critical to meeting the ADP security standards and requirements established by a State.

- States shall establish an ongoing program of physical security reviews of ADP installations and provide the results of these reviews to HHS upon completion.

HHS believes that an effective security program requires follow-up to ensure established security procedures and processes meet established security standards and requirements. HHS intends this specific requirement for States to establish an on-going program of physical security reviews of ADP installations to meet this purpose. Requiring States to provide the results of their reviews to HHS is intended to provide HHS with information it needs to ensure that States are properly safeguarding ADP resources and information processing.

In summary, HHS proposes to require States to put in place ADP security programs which include establishing: Standards and requirements for such a program; procedures and processes for meeting established standards and requirements; and security reviews for ensuring established standards and requirements are met.

HHS believes it is more appropriate to allow States to determine the specific minimum standards and requirements to govern the security of their own ADP systems based on the unique circumstances of each State, rather than mandate general standards for all States and local agencies. Therefore, the rule specifies that States shall use standards governing the security of Federal ADP systems—Federal Information

## HCFA 1992

- sent out guidance
- policy would be retrospective
  - would have been approved
  - institute controls to make sure
- will fit it to us
- how many have they granted??
- same exact way interpreted

## Food Stamps

- no written policy
- but board reviews
- may be standard similar to HCFA

~~Teel~~ Teel Mania

Two possibilities

① HCFA didn't have authority  
→ very awkward

② if we make change

→ would states that were denied

John Monahan

debt issues more generic

→ could probably get 9-10 quarters

→ but interest does apply  
about 14%

interest kicks in 30 days  
after disallowance

Can state claim \$6 million?

→ no specific authority, but probably could

→ but interest would run

→ but would do it upfront?



~~Can't use~~  
Use TAMF §§ 2

Can't use TAMF for required IVD system

general approval law &  
controlled issue

Can use from more general approval  
~~not~~ in order supplement  
more specific approval

Thinks SSB will be harder

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The Arkansas Democrat-Gazette

February 14, 1999, Sunday

SECTION: NEWS; Pg. B1

LENGTH: 1056 words

HEADLINE: Huckabee bides;  
time on pursuing;  
legislative goals;  
Of 61 items he strongly supports,;  
only 1 bill made law; 1 on its way

BYLINE: ELIZABETH MCFARLAND, ARKANSAS DEMOCRAT-GAZETTE

BODY:

Two-thirds of Gov. Mike Huckabee's legislative package has been introduced this session, but only one of the bills has been signed into law. Another is expected to reach his desk soon.

Rex Nelson, Huckabee's spokesman, said that's not unusual only five weeks into the session.

Some of it, he said, is by design.

"You need to pick your fights and you don't need every battle at once," Nelson said.

Huckabee's program addresses issues ranging from a road improvement plan partially funded by a diesel fuel tax increase, to tax cut measures such as reducing capital gains taxes.

He proposes tax credits for taxpayers who hire welfare recipients. He aims to abolish an education reporting requirement his administration deems to be obsolete, and he wants to make it easier for schools to get rid of bad teachers. The governor's package includes family oriented bills to allow children in foster care to be adopted more quickly, to help juveniles in trouble get help more easily, and to put video poker games out of business.

Huckabee has identified 61 items as legislation he supports. Forty-three of them have been introduced as bills and one as a joint resolution for a constitutional amendment through Thursday.

The item in Huckabee's package that he has signed into law is Senate Bill 20 by Sen. Mike Beebe, D-Searcy, and others. It would regulate self-dealing among constitutional officers, legislators and their spouses.

In October 1997, Beebe and others put forth a draft of the bill after news reports that a lawmaker and two others closely associated with lawmakers received state grants without bids. In November 1997, the FBI began an investigation into child support enforcement contracts held by law firms associated with state lawmakers.

In February 1998, Huckabee issued an executive order prohibiting most state agencies from hiring lawmakers and limited the business state agencies can do with lawmakers, constitutional officers, state employees and their relatives. The item on the way to Huckabee is SB 261 by Sen. Stanley Russ, D-Conway, and others. It says the state Department of Education will pay the full tuition for teachers participating in the National Board of Professional Teaching Standards program and will pay teachers a bonus for certification.

Sen. Doyle Webb, R-Benton, Huckabee's floor leader in the Senate, said the slow pace of progress with Huckabee's agenda is partly "out of consideration of the

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House and its 57 new members. Much of the governor's package has started in the House and he's not trying to push any members. He wants everyone to feel comfortable with his package."

He also said the session has gone slowly because legislators are concentrating on developing property tax relief. That "has taken center stage in the early part of the session. Members were wanting to get comfortable with that direction before they moved on to other issues," Webb said.

Huckabee favors some bills, opposes others. His staff includes temporary employees, called liaisons, who are busy every day working either for or against bills on the governor's behalf, Nelson said. "Overall we're extremely pleased," he said.

The governor's office has about 50 people lobbying for bills on his behalf, including agency heads and seven workers hired just for the session, Nelson said. The legislative workers meet every day at 7 a.m. to go through the bills that might come up at committee meetings that day and to report on the status of their lobbying efforts.

In this session, as in 1997, Huckabee uses a grading system to indicate his position on every bill filed, Nelson said. An "A" is given bills that have the governor's fullest support. Nelson said the 61 bills in Huckabee's package are all "A" bills. "They can either be something we dreamed up or it can be something we found and ask our lobbyists to work for," Nelson said.

A "B" is for bills Huckabee supports but doesn't send his staff all out for. A "C" means Huckabee has no position on the bill. A "D" says that Huckabee has "real concerns" about the legislation, enough to confer with the sponsor. And an "F" would earn the bill a "full court press to defeat it," he said.

Nelson said Huckabee is confident that much of his agenda eventually will be approved, including his education bills, highway program and tax reform measures.

On another matter, Nelson said talks are going well between Huckabee and legislators on the capital improvement fund. Before 1997, the governor released capital improvement money from a plan worked out between him and the Legislature. In 1997, many lawmakers became frustrated at what they perceived was a lack of involvement by Huckabee in the proceedings, and they took control of most of those funds.

"We don't have a rigid position about saying we have to do it like we did prior to the 1997 session. We're willing to work with the leadership in distributing the \$ 100 million," Nelson said.

A sampler of bills embraced by Huckabee:

House Bill 1022 by Rep. Jim Milum, R-Harrison, to implement the constitutional \$ 20,000 homestead exemption for homeowners 65 and older. The bill was defeated in the House Revenue and Taxation Committee.

HB 1299 by Rep. Ted Thomas, R-Little Rock, to establish the Arkansas Property Taxpayer Bill of Rights, to clarify taxpayers' rights and help them understand more about the tax system. It was approved by the House Revenue and Taxation Committee.

HB 1329 by Rep. Jim Hendren, R-Sulphur Springs, known as the Fetal Protection Act. It passed with 51 favorable votes in the 100-position House and goes to the Senate.

HB 1360 by Rep. Jim Magnus, R-Little Rock, to require a 24-hour waiting period before an abortion is performed so the doctor can provide the patient information about the procedure. It has not been considered in the House Public Health, Welfare and Labor Committee.

Senate Bill 1212 by Rep. Harmon Seawel, D-Pocahontas, to repeal mandatory summer school for students in kindergarten through third grade who are failing. It is pending in the Senate Education Committee.

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SB 279 by Sen. Mike Beebe, D-Searcy, and others, to authorize a pilot program of performance-based budgeting, a system under which state funds would be allocated to agencies on the basis of how well each agency meets its goals.

Slug Line: yxgr-huckwk 1B

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February 02, 1999, Tuesday

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LENGTH: 783 words

HEADLINE: Bill passed by House restricts legislators' business with state

BYLINE: RAY PIERCE, AND ELIZABETH MCFARLAND, ARKANSAS DEMOCRAT-GAZETTE

BODY:

Arkansas came one step closer Monday to having a code of ethics for state lawmakers doing business with the state.

The House of Representatives by a 97-0 vote passed Senate Bill 20, by Sen. Mike Beebe, D-Searcy, which will restrict the kind of business lawmakers can do with the state.

The bill sailed through a House committee and the full chamber with no discussion. House Speaker Bob Johnson, D-Bigelow, said that was a testament to the reforms that the 57 new House members want to see in state government.

"They were moving toward ethics reform, they were moving toward campaign finance reform, they were moving toward bringing about a code of ethics for the House," Johnson said. "It's a compliment to the people entering the Capitol that it's an important bill. Many of them campaigned on it."

In October 1997, Beebe and other lawmakers put together a draft ethics bill after news reports that a legislator and two others closely associated with legislators received state grants without bids. In November 1997, the FBI began an investigation into child support enforcement contracts held by law firms associated with state lawmakers.

Gov. Mike Huckabee issued an executive order in February 1998 prohibiting most state agencies from hiring lawmakers and limited the business state agencies can do with legislators, constitutional officers, state employees and their relatives.

Johnson worked closely with Beebe on the bill. He said it's important to remember that the bill doesn't ban lawmakers from doing business with the state, but it puts controls on such business and requires that such business be properly reported.

The bill now goes back to the Senate for that body's agreement on House amendments, which simply were members wanting to add their names as co-sponsors. The House also passed HB 1207 by Rep. Randy Laverty, D-Jasper, limiting who can call themselves doctors. The bill prohibits anyone involved in "the healing arts" from calling himself a doctor unless the title is authorized for their profession under Title 17 of state law.

The Senate voted 24-9 to approve a bill that would eliminate the possibility of instant divorce one year after willful desertion or 18 months continuous separation.

SB 111 by Sen. Doyle Webb, R-Benton, would require a 30-day "cooling off" period from the time such divorce cases are filed to the time a divorce could be granted.

Sen. Mike Everett, D-Marked Tree, spoke against the bill, saying after 18 months separation, "not only has it cooled off, it may be heated up in another area of the state."

Senators voting against the bill were: Mike Bearden, D-Blytheville; Jay

The Arkansas Democrat-Gazette, February 02, 1999, Tuesday

Bradford, D-Pine Bluff; Everett; Bill Gwatney, D-Jacksonville; Morrill Harriman, D-Van Buren; Cliff Hoofman, D-North Little Rock; George Hopkins, D-Malvern; Tom Kennedy, D-Russellville; and Jodie Mahony, D-El Dorado. \*

Among bills filed in the House on Monday were:

HB 1359 by Rep. Jim Magnus, R-Little Rock, which would provide tax credits to companies that invest in new energy technologies. The tax credits would be equal to 50 percent of the investment, but not more than a company's total tax bill after all other credits and deductions are figured in. The bill also provides tax penalties for companies that don't comply with the conditions of the bill. Magnus said his bill was promoted by the Arkansas Economic Development Commission as a way to lure investment in things like solar power vehicles or low-emission or zero-emission vehicles.

HB 1366 by Rep. Sandra Rodgers, D-Hope, to create an Arkansas Department of Public Safety. Her bill would put the state's various law enforcement agencies, such as the Arkansas State Police, the Arkansas Highway Police, the Alcoholic Beverage Control Division and the state Capitol police, under one administrative roof.

Rodgers said her primary concern was to provide flexibility of movement of employees between the various agencies. She said that under the current structure, state police troopers who may want to take a job with the highway police would have to either retire from the state police or quit their job and then make another application.

HB 1355 By Rep. Calvin Johnson, D-Pine Bluff, to raise awareness of prostate cancer and increase the availability of diagnosis and treatment of the disease.

Senate bills filed Monday include:

SB 279 by all 35 senators to authorize a pilot program of performance-based budgeting to require state agencies to meet certain goals in order to justify their budget.

SB 282 by Sen. Jack Critcher, D-Grubbs, to increase the sales and use tax exclusion from \$ 2,500 to \$ 5,000 off the price of new or used vehicles.

Slug Line: yxgrtu 7a

LANGUAGE: ENGLISH

LOAD-DATE: February 17, 1999

7TH STORY of Level 1 printed in FULL format.

Copyright 1999 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

January 20, 1999, Wednesday

SECTION: NEWS; Pg. A8

LENGTH: 651 words

HEADLINE: Lawmakers solid;  
in support of bill;  
to end self-dealing

BYLINE: RACHEL O'NEAL, ARKANSAS DEMOCRAT-GAZETTE

BODY:

A Senate committee approved a bill Tuesday that mirrors Gov. Mike Huckabee's executive order to eliminate or regulate self-dealing among certain elected officials.

Senate Bill 20 is sponsored by 34 of the state's 35 senators and 84 of the 100 House members.

The Committee on State Agencies and Governmental Affairs unanimously recommended approval of the bill, sending it to the state Senate for consideration.

A co-sponsor, Sen. Morrill Harriman, D-Van Buren, told the committee the bill is purposely "extremely similar" to Huckabee's executive order.

The order includes all state elected officials, but SB 20 applies to constitutional officers -- governor, lieutenant governor, secretary of state, treasurer, attorney general, land commissioner, and auditor -- and state representatives and state senators.

Huckabee's Feb. 27, 1998, order, effective July 1, 1998, prohibited most state agencies from hiring lawmakers and limited, but did not prohibit, the business that state agencies can do with lawmakers, constitutional officers, state employees and their relatives.

Under the order, some business is allowed between state agencies and public officials or relatives of public officials.

Huckabee's executive order was a part of his response to allegations of legislative self-dealing. In November 1997, the FBI, the Internal Revenue Service, the Pulaski County prosecuting attorney's office and the Arkansas State Police issued search warrants and subpoenas at the offices of several state senators whose law firms held state child-support enforcement contracts. That investigation is ongoing.

In 1997, three lawmakers were hired for state jobs, though two later resigned and a third lost his job in June 1998.

SB 20 would require:

Before the spouse of a constitutional officer can take a state job, he must get prior approval from the governor and the Joint Budget Committee during legislative sessions or the Legislative Council when the Legislature is not in session.

Former members of the General Assembly and their spouses are not eligible for a job with any state agency within 24 months of leaving office if the job was newly created or the salary for the position was increased by more than 15 percent.

Neither a constitutional officer nor his spouse can enter a lease agreement, contract or grant with any state agency unless it was competitively bid, if required by law. If competitive bids are not required by law, the

The Arkansas Democrat-Gazette, January 20, 1999, Wednesday

constitutional officer must obtain approval from the governor and the Joint Budget Committee or Legislative Council.

Also Tuesday, the committee delayed action on SB 10 by Sen. Bill Walters, R-Greenwood. The bill would establish a procedure for recalling elected officials from office.

Walters has had recall proposals before. In 1997, he failed to get such a bill out of the committee. On Tuesday, the committee gave him more time to try to make the bill acceptable to members.

Walters said he believes that every state but Arkansas has some form of a recall.

Sen. Jim Scott, D-Warren, was unable to get SB 50 out of the committee. The bill would make it illegal to ship liquor directly to Arkansas residents.

Scott, who lives in a dry county, brought with him a bottle of single malt scotch that he ordered over the telephone from an Illinois liquor company. He said the telephone operator asked if he was over the age of 21 but did not ask for proof.

"The person had no idea how old I was," Scott said. "All she wanted to know is what I wanted and what credit card I was using."

Scott sponsored a similar measure in 1997 which was approved by the Senate but was defeated in the House. On Tuesday, some lawmakers had questions about how it would be enforced.

Scott was unable to get a second to the motion that would have allowed the bill to be voted on in the committee. It remains on the committee's agenda.

Slug Line: yxgr-statewe 8A

LANGUAGE: ENGLISH

LOAD-DATE: February 1, 1999

9TH STORY of Level 1 printed in FULL format.

Copyright 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

December 27, 1998, Sunday

SECTION: NEWS; Pg. B1

LENGTH: 1499 words

HEADLINE: If in place,  
legislators;  
can keep;  
state jobs

BYLINE: RACHEL O'NEAL, ARKANSAS DEMOCRAT-GAZETTE

BODY:

After the 1997 legislative session, state Reps. Billy Joe Purdom, Ed Thicksten and Bobby Hogue obtained state jobs. Purdom and Thicksten resigned after eyebrows were raised by their legislative colleagues. Hogue's contract was not renewed.

While a number of lawmakers have state jobs, most came into the Legislature with the job. Purdom, Thicksten and Hogue were criticized for taking state jobs during their legislative tenures.

Purdom, D-Yellville, resigned as an Alcohol Beverage Control officer in October 1997 after Attorney General Winston Bryant filed a lawsuit against him.

Thicksten, D-Alma, resigned in February as director of the Cooperative Education Services Coordinating Council, a job he had helped create. Bryant also had filed a lawsuit against him.

Hogue, D-Jonesboro, the speaker of the House of Representatives, was hired in 1997 as assistant athletic director at Arkansas State University. His ASU contract was not renewed when it expired July 1. ASU officials said they believed an executive order issued by Gov. Mike Huckabee prevented the contract renewal.

Purdom, Thicksten, and Hogue couldn't run for re-election this year because they reached the limit Amendment 73 set on legislative terms.

On Feb. 27, Huckabee issued the order, effective July 1, prohibiting most state agencies from hiring lawmakers. It also limited, but did not prohibit, the business that state agencies can do with lawmakers, constitutional officers, state employees and their relatives.

Huckabee issued the order to eliminate self-dealing among elected officials and state employees. He said in the fall of 1997 that when the "lights are truly turned on, the rats and roaches will, indeed, run."

The executive order is not retroactive, so it does not affect current state employees.

One such employee is Tracy Steele of North Little Rock, executive director of the Martin Luther King Jr. Commission. Steele, who has been the head of the commission since its inception in 1993, was elected in November to the House of Representatives District 59 seat.

Steele, a Democrat, said recently that as the commission's director, he is not a political appointee and was a state employee before he was elected to the Legislature. And he said Act 1214 of 1997 makes it clear that state employees can run for an elective office. Act 1214 states that state, county, municipal and school district employees "shall not be deprived of his or her right to run" for an elective office.

The Arkansas Democrat-Gazette, December 27, 1998, Sunday

Steele said after he takes the oath of office, he will ask for an attorney general's opinion on whether he can continue serving as the commission's director. But he said he doesn't have any doubt that he is entitled to be a state representative.

"There are over 20,000 state employees in Arkansas. They should have the right to run for office just like anyone else," Steele said.

The executive order prohibits state agencies under the governor's control from entering into contracts, leases or purchase agreements with a variety of state officials unless the contract is awarded through competitive bids.

The officials include legislators, constitutional officers, board members and commissioners, state employees or the immediate family members of any of those people. It includes renewal of existing contracts, leases or other arrangements. The order also prohibits state agencies under the governor's control from hiring any member of the Legislature or any constitutional officer while that person is in office.

Those agencies cannot hire the spouse or immediate family member of any lawmaker, constitutional officer or state employee without prior approval of the director of the state Department of Finance and Administration.

There are several state lawmakers, both incoming and incumbents, who are public schoolteachers. All were teachers before they were elected to the Legislature. Rep. Jimmy Jeffress, D-Crossett, and his brother, Gene Jeffress of Louann, are music directors at public high schools. Gene Jeffress, a Democrat, recently was elected to the House District 38 seat. Gene Jeffress teaches at Camden-Fairview High School and Jimmy Jeffress teaches at Crossett High School.

Other legislators who hold jobs at public schools and universities are:

Rep. Lisa Ferrell, D-Little Rock, teaches a search-and-seizure class to law enforcement officers at the University of Arkansas at Little Rock. Ferrell, who has taught the class since 1991, also is a lawyer.

Calvin Johnson of Pine Bluff is the dean of the School of Education at the University of Arkansas at Pine Bluff. Johnson, a Democrat, was elected to the House District 72 seat.

Harmon Seawel of Pocahontas is superintendent of the Maynard School District. A Democrat, Seawel was elected to the House District 77 seat.

Robert J. White of Camden, a Democrat, is director of student life at Southern Arkansas University at Magnolia. He was elected to the House District 37 seat.

Arnell Willis of Helena, a Democrat, is a professor at Phillips County Community College. He was elected to the House District 99 seat.

Other lawmakers are connected with state contracts, all of which were in place before Huckabee's executive order took effect July 1.

According to his 1997 Statement of Financial Interest, filed in January, Sen.

Nick Wilson, D-Pocahontas, holds a financial stake in Med-U-Care, a company that has a contract with the state Department of Human Services. It provides services to developmentally at-risk children such as low birth-weight babies.

Wilson is under investigation by the FBI, which is investigating insider dealing in state government.

Wilson has done some lawyer work for Multi Services Inc., a firm that had a state contract to provide state child support enforcement services in nine counties. Wilson is a longtime friend of the firm's manager, Greta Blankenship of North Little Rock. He also leased office space in Pocahontas to the firm.

Wilson and state Sen. Mike Bearden, D-Blytheville, have both done child-support enforcement work for Murrey L. Grider of Pocahontas, who had a two-year, \$ 840,760 child-support contract. Grider is Wilson's former law partner.

Two other incumbent lawmakers have connections with child-support enforcement contracts.

Sen. Allen Gordon, D-Morrilton, is a law partner with Bart Virden, a Morrilton

The Arkansas Democrat-Gazette, December 27, 1998, Sunday

attorney, who has a \$ 116,000 contract.

River Valley Child Support Enforcement Inc., which has a two-year, \$ 854,000 contact. The corporation was formed by the Phillips and Douthit law firm. Sen. Tom Kennedy, D-Russellville, is a partner in the firm. Kennedy wasn't a senator or a member of the firm when the firm obtained the contract.

Statements of Financial Interest, which legislators must submit by Jan. 31 of each year, shed a little light on who is doing business with the state.

Sen. George Hopkins, D-Malvern, a lawyer, reported on his 1997 statement that he received compensation for legal representation he provided the Magnet Cove School District. He also reported that his wife, Mariam, represents physicians affiliated with the University of Arkansas for Medical Sciences involved in malpractice lawsuits. Mariam Hopkins also is a lawyer.

Rep. Jim Luker, D-Wynne, reported in January 1998 that he leases office space for the Cross County child support enforcement unit, an arm of the state Department of Finance and Administration.

Rep. Percy Malone, D-Arkadelphia, reported in January 1998 that he rents downtown office space to the state Department of Employment Security and the University of Arkansas at Little Rock. Malone, a pharmacist, also reported filling prescriptions for Medicaid recipients through the Department of Human Services.

Sen. Mike Ross, D-Prescott, reported in January 1998 that pharmacies that he owns or in which he has an interest fill prescriptions and provide medical equipment to Medicaid recipients through the Department of Human Services and the Department of Health. His firm, Ross Pharmacy Inc., also has a contract to provide the same services to an insurance group for public school employees and state employees, he reported in January.

Some lawmakers are related to people who do business with the state.

State Sen. Wayne Dowd, D-Texarkana, reported on his 1997 statement that his wife, Margaret, a certified public accountant, performed accounting services for the state Board of Public Accountancy.

Dowd, a lawyer, also reported that he provided legal services to the Red River Commission of Arkansas.

According to disclosure records kept by the Department of Finance and Administration, Lynda White of Little Rock, the sister of state Sen. Gene Roebuck, D-Jonesboro, went to work last summer as a part-time employee at the Department of Human Services.

This month, White was transferred into a full-time position as a Department of Human Services research and project analyst. She makes \$ 36,695 annually. Both of her jobs were approved by the Department of Finance and Administration.

LANGUAGE: ENGLISH

LOAD-DATE: January 10, 1999

11TH STORY of Level 1 printed in FULL format.

Copyright 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

December 07, 1998, Monday

SECTION: NwaneWS; Pg. B2

LENGTH: 467 words

HEADLINE: FBI checks;  
program;  
for insurance;  
in state schools

BYLINE: ELIZABETH MCFARLAND, ARKANSAS DEMOCRAT-GAZETTE

BODY:

\*NW EDITION\*

The FBI is looking into a workers' compensation program operated by the Arkansas School Boards Association.

Dan Farley of Little Rock, assistant executive director, confirmed this week that the FBI has contacted the association.

He said executive director Tommy Venters of Benton briefed the association's board last week at its convention in Little Rock.

Venters has hired lawyer Bob Compton of El Dorado to represent him in the investigation. The association this week hired attorney Nate Coulter of Little Rock to represent it, Farley said.

He referred all questions about the investigation to Compton, who declined to comment.

Farley said the association created a self-insured workers' compensation program three or four years ago. The program covers nearly all public school employees in the state. All school districts in the state except for the Little Rock School District participate in the program.

Farley said Management Claims Service Inc. of Little Rock handles the claims for the program. Management Claims Service was incorporated in May 1996 with Lela Taskey of Maumelle as the registered agent.

Taskey is president and Glenda Clark is vice president. Taskey could not be reached for comment.

"We've been advised not to" [discuss the matter] because "the investigation is still under way," Clark said Friday.

For more than a year, a wide-ranging state-federal investigation has been under way regarding several areas of state government amid allegations of insider dealing by public officials with the state.

The FBI in November 1997 raided the offices of state Sen. Nick Wilson, D-Pocahontas, and others.

The Arkansas Democrat-Gazette confirmed more than 20 subpoenas issued in the case. Several weeks ago, target letters reportedly were sent to several people connected to the investigation. Several of the purported recipients declined comment or denied that any such letter had been received.

Target letters were purported to have referred to several subject areas as areas of investigation. Workers' compensation was said by sources asking not to be named to be one of the listed areas.

Another area involved in the federal-state investigation is a \$ 3 million program for lawyers representing children with parents involved in divorce proceedings. Contracts were not advertised and went to a state lawmaker and

The Arkansas Democrat-Gazette, December 07, 1998, Monday

two with close ties to state lawmakers.

Another area being investigated is state contracts for child support enforcement.

The investigation involving the workers' compensation program is part of the broad investigation into state lawmakers profiting from public business, according to a report Thursday in The Memphis Commercial Appeal.

Information for this article was contributed by Ray Pierce of the Arkansas Democrat-Gazette.

LANGUAGE: ENGLISH

LOAD-DATE: February 24, 1999

13TH STORY of Level 1 printed in FULL format.

Copyright 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

November 22, 1998, Sunday

SECTION: NEWS; Pg. B1

LENGTH: 1194 words

HEADLINE: Legislators mum as rumors swirl;  
about FBI inquiry begun a year ago

BYLINE: RACHEL O'NEAL, ARKANSAS DEMOCRAT-GAZETTE

BODY:

More than a year has passed since FBI agents swept into offices, including that of state Sen. Nick Wilson, and carted off boxes of documents.

On Nov. 5, 1997, FBI agents investigating allegations of insider dealing in state government served subpoenas and search warrants on the office of Wilson, D-Paragould, among others.

Since then, rumors have come and gone about who was going to be indicted and when, including a round that circulated feverishly through the state Capitol on Wednesday.

Lawmakers were whispering about whether any of their colleagues had received letters notifying them that they are the target of an investigation. If any had, they weren't talking to reporters.

Wilson said he hadn't received one and wasn't focused much on that possibility.

"I really don't stand around waiting for my mail," he said.

"I've been asked that question off and on for a year. I've read in the paper that things are going on and I hear occasionally from people who say they've talked to investigators. But other than that, I don't know," he said.

Another senator who was asked if he had received a target letter replied, "If I did, I wouldn't tell you."

Most lawmakers simply declined to comment or didn't return telephone calls placed to them to ask whether they had.

Rumors were so thick, and confirmation so lacking, that it boiled down to something like this last week: The purported letters purportedly identified a half-dozen areas of purported governmental inquiry that purportedly could involve the purported recipients of the purported letters.

U.S. Attorney Paula Casey, whose office reportedly is overseeing the investigations, declined to comment.

The year-ago seizures nabbed the records of Wilson and three other senators who have ties to state child-support enforcement contracts.

The <EM>Arkansas Democrat-Gazette</EM> has confirmed more than 20 subpoenas issued in the case, some of them seeking 1994-96 tax records of Wilson; state Sen. Mike Todd, D-Paragould; state Rep. Wayne Wagner, D-Manila, and others. Neither Todd nor his attorney, Sam Perroni of Little Rock, would comment on whether Todd had received a target letter.

Wagner did not return telephone calls.

One indictment has come out of federal investigations of possible corruption in state government during the last year -- last month's indictment of a former Harrisburg nursing home administrator on federal charges of conspiring to cover up the circumstances of an elderly patient's death.

That indictment can be traced to a hot line Gov. Mike Huckabee set up last year to report allegations of fraud and abuse in state government. It is believed

The Arkansas Democrat-Gazette, November 22, 1998, Sunday

that a hot line tip led to a still-ongoing FBI investigation of the state Office of Long Term Care.

Casey has said the Office of Long Term Care investigation led to charges being filed against Randy Crawford, former administrator of Woodbriar Nursing Home. Crawford is charged with one count of conspiring to defraud the United States and five counts of making false statements to federal and state authorities. Each count carries a maximum sentence of five years in jail and a fine of \$ 250,000.

Carol Turner, the home's former assistant director of nursing, pleaded guilty in October to a conspiracy charge in the case.

Crawford and Turner conspired to cover up the circumstances surrounding the death of Augusta Edna Gray, Casey said.

Gray was found outside the nursing home the morning of Aug. 31, 1995, with a head wound, bruises and minor lacerations, Casey said. Gray died the next day. The roots of the investigation into possible legislative self dealing complicated and involve several lawmakers who have state contracts or were doing business with the state.

It started in September 1997 after news stories broke about three grants totaling \$ 750,000 in a program to provide legal representation to children involved in custody battles. The grants went to Wagner and two Little Rock lawyers, Mona Mizell and Elizabeth Turner. The grants were awarded without bids and with little notice.

Amid publicity, Wagner returned his \$ 125,000 grant, Mizell returned her \$ 250,000 grant and Turner returned all but \$ 6,000 of her \$ 375,000 grant. The \$ 6,000 had been spent on the program.

Turner is the former chief legal counsel for the state Department of Education and the wife of former Gov. Jim Guy Tucker's chief of staff, Neal Turner. Mizell is a former employee of the state Bureau of Legislative Research.

Before she dropped out of the program, Elizabeth Turner hired Todd as a subcontractor and at a salary of \$ 14,584 a month. He was paid for two months and has returned all of the money.

Sen. Steve Bell, D-Batesville, drew up the incorporation papers for the firms created by Wagner and Turner. Bell has said he did the work as a friend and did not bill or expect to be paid for the work. He has said he was surprised when he received a \$ 9,000 check from Turner as payment. He said he tore up the check.

Todd and his law partner, Andrew Fulkerson, run Greene County Child Support Enforcement, which has a two-year, \$ 686,006 state contract to collect child-support payments.

Todd is among a number of current lawmakers who are connected with child-support enforcement contracts which were the subject of subpoenas last year. They are:

Multi Services Inc., a firm which provided child support enforcement services in nine counties. Wilson has done some work for Multi Services and is a long-time friend of the firm's manager, Greta Blankenship of North Little Rock. He also leased office space in Pocahontas to the firm.

In October 1997, Pulaski County Prosecuting Attorney Larry Jegley issued two subpoenas demanding to see records of payments made by the state to Multi-Services Inc. The subpoena was for any records of payment to Multi-Services from Dec. 1, 1992, to Oct. 27, 1997.

Murrey L. Grider of Pocahontas, who had a two-year, \$ 840,760 child-support contract. Wilson and Mike Bearden, D-Blytheville, have both done child-support enforcement work for Grider, who is Wilson's former law partner. Mizell also was one of Grider's subcontractors. She hired Wilson's son, Kirk, as her paralegal in the child-support enforcement work.

Nick Wilson's wife, Susan, was program coordinator for the state Retirement.

The Arkansas Democrat-Gazette, November 22, 1998, Sunday

and Relocation Program, making \$ 60,000 a year. She resigned amid news reports that Wilson sponsored an amendment which appropriated funds to create her job. Bearden would not comment on whether he had received a target letter. Bart Virden, a Morrilton attorney, received a contract for \$ 116,000. Virden is a law partner of Sen. Allen Gordon, D-Morrilton. Gordon has said Virden is responsible for the child-support enforcement work. River Valley Child Support Enforcement Inc., which has a two-year, \$ 854,000 contract. The corporation was formed by the Phillips and Douthit law firm. Sen. Tom Kennedy, D-Russellville is a partner in the firm. Both Gordon and Kennedy said they have not received a target letter.

<EM>Information for this article was contributed by The Associated Press.</EM>

Photos:

Paula Casey  
Nick Wilson  
Mike Todd  
Wayne Wagner

LANGUAGE: ENGLISH

LOAD-DATE: December 8, 1998

14TH STORY of Level 1 printed in FULL format.

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The Commercial Appeal (Memphis, TN)

November 22, 1998, SUNDAY, FINAL EDITION

SECTION: NEWS, Pg. A1

LENGTH: 862 words

HEADLINE: SOME ARK. POLITICIANS NERVOUS ABOUT FED INVESTIGATION

BYLINE: Joan I. Duffy The Commercial Appeal; Little Rock Bureau

DATELINE: LITTLE ROCK

BODY:

A federal investigation that now is more than a year old has some Arkansas lawmakers nervously wondering if, when and against whom a grand jury will return charges.

At issue is whether Arkansas lawmakers have been illegally benefitting from state contracts and grants, including a \$ 3 million grant to provide legal assistance to children in disputed custody cases.

Asst. U.S. Atty. Michael Johnson refused Friday to discuss specifics about the investigation or speculate on it's status, including whether his office recently has dispatched target letters.

"I can't discuss matters about the grand jury. I know that seems a novelty to most people in America these days," Johnson said. "We don't comment on investigations."

Sen. Nick Wilson (D-Pocahontas) is the most prominent of the lawmakers playing the waiting game. State and federal agents confiscated personal and business records in a raid of Wilson's office last year.

"I don't know what they're up to," said Wilson, who had a key role in creating several state programs under review.

Wilson, long considered one of the most powerful politicians in Arkansas state government, says he has not received a target letter from investigators.

Johnson said a target letter merely is an invitation for someone to talk to the grand jury and doesn't necessarily mean an indictment is imminent.

Sen. Mike Bearden, an Osceola Democrat who worked for Wilson's former partner under a state contract to collect overdue child support payments, was reluctant to discuss the probe.

"All I know is, I ain't done nothing wrong," he said.

Rep. Wayne Wagner (D-Manila), who had been set up to receive a piece of the \$ 3 million grant, said he had one main thought about the ongoing investigation:

The Commercial Appeal (Memphis, TN), November 22, 1998

"I just want this to be over. I've got kids. I've got two college educations to pay for."

Wilson has consistently denied any impropriety. But he has been at the epicenter of the investigation since it was sparked in September 1997 by revelations that several legislators and their friends were benefiting financially from programs created and votes cast by those same legislators.

The FBI, IRS, State Police and local prosecuting attorney investigators raided Wilson's office in Little Rock more than a year ago. Other agents simultaneously raided Wilson's office in Pocahontas. They also hit the Batesville office of prosecuting attorney T.J. Hively.

Agents took financial records, documents and computer hard drives.

Grand jury subpoenas filed at the federal courthouse sought records from Murray Grider of Pocahontas, Wilson's former law partner. The records related to his child support enforcement contract and personal income tax returns for the past several years.

Another subpoena sought records of D.M. Riche Inc., a real estate company owned by Grider. The company leases space in Walnut Ridge to the state Health Department and the State Police.

Other angles of the case include Wilson's role in adding an amendment to the state budget in 1997. The amendment resulted in his wife and her college sorority sister landing jobs promoting Arkansas as a haven for retirees. They later quit the jobs, citing adverse publicity.

~~Witnesses who have been going before the grand jury for much of the year said prosecutors appear to be interested in at least two state programs. One is the \$3 million pilot grant program passed in 1997 for lawyers to provide legal services to children in disputed custody cases. The other is a 1993 program to hire private lawyers to collect past due child support payments for children on public assistance.~~

Two lawyers tied to Wilson landed shares in the grant program: Mona Mizell, a longtime Wilson friend and former legislative staff member, and Elizabeth Turner, wife of Wilson friend and lobbyist Neal Turner.

Neal Turner is also under investigation by State Police for the \$ 100,000 in contracts from state agencies he landed after leaving former governor Jim Guy Tucker's administration in 1996.

Elizabeth Turner reportedly tried to pay Sen. Steve Bell (D-Batesville) \$ 9,000 for setting up her new corporation. Bell said he never asked for the money and tore up the check as soon as he received it.

Rep. Wagner also received a grant. And Sen. Mike Todd (D-Paragould), sponsor of the bill creating the grant program, subcontracted with Turner to share in her grant.

Mizell also works for Grider - Wilson's former law partner - on a child support enforcement contract. Sen. Bearden of Osceola and Wilson's son, Kirk, also are participants in Grider's contract.

The Commercial Appeal (Memphis, TN), November 22, 1998

Wilson ranks No. 1 in seniority and, despite his link to the probe, remains arguably the most powerful person in Arkansas government. But there are signs that the probe is taking its toll on his influence.

Last year, weeks after the story first surfaced, dozens of legislators, lobbyists and administration officials accepted invitations to Wilson's annual lobbyist-paid fishing and squirrel hunting retreat.

This year, facing the prospect of no-shows, he invited only lobbyists.

To reach reporter Joan I. Duffy, call (501) 372-2907 or E-mail [duffy@gomemphis.com](mailto:duffy@gomemphis.com)

LOAD-DATE: November 24, 1998

16TH STORY of Level 1 printed in FULL format.

Copyright 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

October 06, 1998, Tuesday

SECTION: EDITORIAL; Pg. B7

LENGTH: 823 words

HEADLINE: The feds tackle Nick Wilson

BYLINE: JOHN BRUMMETT

BODY:

One thing about the feds is that when they focus their considerable investigative forces on somebody, they don't publicly confirm it. Oh, you have exceptions. Kenneth Starr was appointed to get Bill Clinton, so you didn't need confirmation.

The typical practice is that after the feds have built their case against you, they'll confirm to you in a letter that you are a "target" and that they'll present the goods they've gathered on you to a surely rubber-stamping grand jury in a couple of weeks.

They'll kindly inform you that in the meantime you can feel free to volunteer to testify, or confess, or whatnot. Most people choose the whatnot, which entails hiring a lawyer and fretting and waiting from the "true bill" to be voted by the grand jury, a "true bill" being an indictment.

No one in the U.S. attorney's office or the FBI will confirm any particular person as the focus of an investigation we know to be taking place into alleged patterns of graft, corruption and assorted kickbacks in state government contracting.

The investigation grew out of disclosures that a few lawyers, some with ties to Sen. Nick Wilson, the legislative kingpin, presumed to corner the market on a new and lucrative taxpayer-funded program to provide legal services to children. From those disclosures, questions were raised in the press about a pattern of child support enforcement contracts tending to go to Wilson, his law partner or other legislators or legislative associates.

But one thing you can do in such a case is ask the candidly irascible Wilson himself if he has the sense that he is under individual investigation by the U.S. attorney and agents of the FBI.

"Yeah," he says, "Have been for about 12 months."

That shouldn't surprise. After all, nearly a year ago the FBI raided the offices of Wilson's nonprofit operation in Riverdale, the Arkansas Center for Public Affairs, and took off with everything not tied down.

"Tell you a little story about that," Wilson begins as if he thought no one would ever ask. He says that a few months ago his lawyer went before a federal magistrate to try to get the records returned, but the federal magistrate declined, "since he gets the same blue check from the same government that pays Paula Casey"--she'd be the U.S. attorney--"and the FBI."

So three months ago his lawyer took the matter to a federal district judge, Stephen M. Reasoner, a Republican appointee.

"You just knew the Lord would see that we got a draw like that," says Wilson, a yellow-dog Democrat.

This was on a Thursday, Wilson adds for emphasis. The judge declined to order the documents returned, but indicated publicly after a private discussion with lawyers that he was mildly uncomfortable with the situation.

The Arkansas Democrat-Gazette, October 06, 1998, Tuesday

Well, says Wilson, the local feds called his lawyer the very next Monday and said to come get the stuff, that they were through with all of it. And, says Wilson, the computer software indicated that the feds hadn't even opened it until the immediately preceding Friday, the day after the hearing. And, says Wilson, all the inactive paper files were still stapled shut, which is how the feds had found them.

Wilson relates the story to contend that nothing incriminating existed in the record and to build a case about how abusively aloof the feds can be: They make a big, front-page show of confiscating your records, then hold on to them for the heck of it without bothering to review them, then give them back only when an appeal to the 8th Circuit appears likely.

This is an old song, new verse. No man ever under federal investigation believed the federal authorities acted with kindness and restraint. What Bill Clinton and his elastic apologists alleged of Kenneth Starr could be alleged by any poor sap lucky enough to have the investigative and prosecutorial forces of the federal government brought down on his head.

"They can indict a ham sandwich if they want to," Wilson told a colleague of mine last weekend. He could be the ham sandwich in this scenario.

"It's like peeling an onion," a fellow with only peripheral knowledge of the investigation told me last week. You know, the more you look, the more you find. And it seems to center on Wilson and his occasional business enterprises that intersect with state government.

Wilson says authorities have his bank statements and tax records and even some paid bills from 1997 that he needed for his taxes, but ate. He says he's heard secondhand that two or three people who have done business with him have been visited by the FBI.

"There's nothing criminal," Wilson says. "I've reported all my income, minus expenses, and never done anything except what's been reported."

Just the same, he has told legislative colleagues that he might be a tad preoccupied with lawyers during the legislative session beginning in January.

<EM>John Brummett's column appears every Tuesday, Thursday, Saturday and Sunday.</EM>

LANGUAGE: ENGLISH

LOAD-DATE: October 11, 1998

17TH STORY of Level 1 printed in FULL format.

Copyright 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

October 02, 1998, Friday

SECTION: NEWS; Pg. B3

LENGTH: 442 words

HEADLINE: Child-support director favors dumping private contracts

BYLINE: RACHEL O'NEAL, ARKANSAS DEMOCRAT-GAZETTE

Nov '97

## BODY:

The head of the state Office of Child Support Enforcement said Thursday that he supports eliminating all private child-support contracts.

~~Dan McDonald, the office's director since November,~~ told members of the Performance Evaluation and Expenditure Review Committee that the private contracts "don't make sense."

Several of those contracts are held by current or former lawmakers. A federal grand jury in Little Rock and the FBI are looking into the contracts as part of an investigation into allegations of insider dealing in state government.

In 1993, the Legislature approved a measure allowing private law firms or private lawyers to handle child-support contracts. The law affected two kinds of contracts, legal-service and full-service contracts.

Under legal service, the lawyers, among other things, work out settlements on child-support payments. The full-service contracts include other functions, including interviewing parents and establishing paternity.

Before 1993, the Department of Human Services, through its Office of Chief Counsel, assigned in-house lawyers to handle the legal-service contracts. County judges and prosecuting attorneys handled the full-service contracts.

McDonald said he supports legislation that would require state lawyers to perform all of the work.

The office has five private full-service contracts, including a contract held by Greene County Child Support Enforcement. The company is run by Sen. Mike Todd, D-Paragould, and his law partner, Paragould Municipal Judge Andrew Fulkerson. Multi Services Inc., which had a \$ 1.87 million full-service contract for nine counties, quit in July, halfway through a two-year contract. Sen. Nick Wilson, D-Pocahontas, rented office space to the company and did some legal work for it. The Child Support Enforcement Office has four private legal-service contracts, all of which have connections with current or former lawmakers. The two-year contracts expire in July. They are:

Murrey Grider of Pocahontas for Crittenden, Cross and Poinsett counties, \$ 840,760. Grider and Wilson are former law partners.

River Valley Child Support Enforcement Inc. for Pope, Johnson, Yell, Logan, Scott and Montgomery counties, \$ 854,000. Sen. Tom Kennedy, D-Russellville, and two other lawyers run the company.

Southeast Arkansas Child Support Enforcement for Bradley, Chicot, Desha and Drew counties, \$ 674,289. Bynum Gibson of Monticello, a former state representative and a former chairman of the state Democratic Party, heads the company.

Bart Virden of Morrilton for Conway County, \$ 116,000. Virden's law partner is state Sen. Allen Gordon, D-Morrilton.

LANGUAGE: ENGLISH

LOAD-DATE: October 11, 1998

24TH STORY of Level 1 printed in FULL format.

Copyright 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

June 16, 1998, Tuesday

SECTION: NEWS; Pg. B1

LENGTH: 619 words

HEADLINE: Lawmaker submitted fingerprints in FBI inquiry

BYLINE: ELIZABETH MCFARLAND, ARKANSAS DEMOCRAT-GAZETTE

BODY:

State Sen. Nick Wilson, D-Pocahontas, said Monday he has voluntarily submitted fingerprints and handwriting samples to the FBI in its continuing investigation of legislators with state contracts.

Wilson said the FBI requested the information a couple of months ago, and he went to the federal courthouse in May to comply.

"My attorney said this is what they do in the process. It's not unusual for them to go through that process," Wilson said.

He said he has no idea why they wanted the fingerprints and handwriting samples, but he didn't mind submitting them.

Bill Walmsley of Batesville, Wilson's attorney, said the request is the only one made of his client since the FBI on Nov. 5 raided the offices of Wilson and several others whose firms hold state child support enforcement contracts.

"It's usual. I know there have been some others asked for the same thing," Walmsley said.

The investigation into state child support enforcement contracts grew out of a review that Gov. Mike Huckabee ordered in September. The review revealed that several state lawmakers were connected to firms that had child support enforcement contracts.

Huckabee ordered the review after questions of insider dealing arose over a \$ 3 million grant program that the Legislature authorized this year to provide attorneys for children involved in custody disputes.

The grants were given without advertisement and without bids to a state legislator and two friends of state lawmakers.

Pulaski County Prosecuting Attorney Larry Jegley asked the U.S. Justice Department in September to investigate the child custody grant program. The state police is also contributing to the investigation.

Dan McDonald, administrator for the state office of child support enforcement, said he has not talked with the FBI in about six weeks.

"I know they've done some interviews and picked up some more records," he said.

McDonald said the FBI obtained the office's legal action reports from fiscal 1997 on several contractors, including Multi-Services Inc. of Pocahontas and Little Rock.

Multi-Services holds a two-year, \$ 1.87 million state child support contract and was one of the contractors whose records were taken by the FBI last fall. Wilson leases a building in Pocahontas to Multi-Services and has performed legal work for them, though not in connection with the state contract, he has said.

"This report is supposed to show legal activity for that time frame. I assume it's a basis for which they can trace court activity from the files," McDonald said.

Wilson also said the FBI has returned the records from the Arkansas Center for Public Affairs, a nonprofit corporation he founded that provides public

The Arkansas Democrat-Gazette, June 16, 1998, Tuesday

information and conducts conferences on legislative issues.

He said the center's records had nothing to do with child support enforcement contracts. He went to court in January to try to get the records returned, but a judge rejected the request.

Four days later, Wilson said, the FBI called him to come get the records.

Wilson also said the FBI had returned child support enforcement records from his Pocahontas office.

Walmsley said the search warrant served in November on the center was "far and away from what the center had to do with."

When the center questioned the appropriateness of the FBI taking its records, the FBI said the entire matter was confidential, Walmsley said.

"It's a little bit scary to me the amount of authority the feds can have," he said.

I.C. Smith, the FBI's special agent in charge of the Little Rock office, declined to comment on any aspect of the investigation except to say that returning seized documents "wouldn't be unusual. That's just a normal course of business."

LANGUAGE: ENGLISH

LOAD-DATE: June 22, 1998

29TH STORY of Level 1 printed in FULL format.

Copyright 1998 Southeastern Newspapers Corporation  
The Commercial Appeal (Memphis, TN)

April 29, 1998, WEDNESDAY, FIRST EDITION

SECTION: NEWS, Pg. A10

LENGTH: 358 words

HEADLINE: ARK. TAKES OVER UNIT FOR CHILD SUPPORT

BYLINE: The Associated Press

DATELINE: BATESVILLE, Ark.

BODY:

Citing evidence of wrongdoing, the state child support enforcement office took over the operations Tuesday of a five-county unit led by Prosecutor T. J. Hively.

Hively had submitted a letter Monday to state officials saying he was terminating his contract with the Finance and Administration Department's child support office. He offered to leave in 30 days, but the state ousted him sooner.

"There was sufficient evidence of wrongdoing, and the contract needed to be terminated immediately," said Richard Weiss, director of the Department of Finance and Administration.

Dan McDonald, the head of the state office, said Hively's former employees were being given the chance to continue as temporary state employees in their present positions. Susan Brewer, a program analyst for the state office, is filling in as manager at the Batesville office.

McDonald said the state later will advertise for 10 to 15 permanent positions for the 16th Judicial District Child Support Enforcement Unit, which serves Cleburne, Fulton, Independence, IZARD and Stone counties. The state does not plan to seek a new private operator, he said. Legal services will be provided by state attorneys.

Regional child-support enforcement units track down deadbeat parents, establish paternity when necessary and collect child support.

Hively's office was raided Nov. 5 by FBI agents who seized check ledgers and other financial records. McDonald said Legislative Audit also will investigate Hively's office.

The Arkansas Democrat-Gazette newspaper has reported that Hively's unit overbilled the state by nearly \$ 35,000 last year. It reported Sunday that Independence County Deputy Prosecutor Vickie Warner has done most of the legal work for the unit, but records show she has gotten little of the \$ 317,394 the unit spent on legal services in the last 4 1/2 years. Instead, much of the money went to Hively, the paper said.

The Commercial Appeal (Memphis, TN), April 29, 1998

As prosecutor, Hively, 55, has run the Batesville unit since July 1993. His contract required that the unit pay its expenses, then submit bills to the state for reimbursement. The state paid two-thirds of most costs.

LOAD-DATE: April 30, 1998

33RD STORY of Level 1 printed in FULL format.

Copyright, 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

April 26, 1998, Sunday

SECTION: NEWS; Pg. A1

LENGTH: 1648 words

HEADLINE: Unit pay;  
Director;  
got bulk;  
Cohort workhorse;  
on child support

BYLINE: SANDY DAVIS, AND JEFF PORTER, ARKANSAS DEMOCRAT-GAZETTE

BODY:

BATESVILLE -- Vickie Warner has done most of the legal work for the 16th Judicial District Child Support Enforcement Unit, but records show she has gotten little of the \$ 317,394 the unit spent on legal services in the last 4 1/2 years.

Since July 1993, Prosecuting Attorney T.J. Hively of Batesville has run the unit, which identifies and pursues deadbeat parents in five north-central Arkansas counties.

He has paid Warner just \$ 9,015, according to canceled checks released by Hively's private law firm, Hively and Ketz. She has gotten nothing since 1995, records reveal.

The 16th Judicial District unit's check ledgers show that Hively himself was paid \$ 76,431 for legal services in 1997. The law firm's checks show he was paid \$ 13,168 in the first 2 1/2 months of this year.

The amounts Warner and Hively were paid disagree with the bills his unit has sent the Arkansas Office of Child Support Enforcement. The state reimburses most of the unit's expenses.

The Arkansas Democrat-Gazette reported April 12 that Hively's unit overbilled the state by nearly \$ 35,000 in 1997 -- for expenses from paternity testing to office supplies.

The FBI has been investigating the unit since last year. It raided Hively's office Nov. 5, seizing check ledgers and other financial records.

The state office has been reviewing its contract with Hively's unit, according to Administrator Dan McDonald, who declined to say what other steps the office might take.

Until this year, the 16th Judicial District unit wrote its legal-services checks directly to Hively, whose name was the only one to appear on the reimbursement bills the unit sent the state. The state office understood that Hively was receiving all the money and, in turn, was paying a portion to Warner, officials at the state office said.

Hively, in an April 2 interview, would not say how much Warner was paid for her work, which includes reviewing case files and appearing in court.

Citing the Arkansas Freedom of Information Act, the Democrat-Gazette asked April 14 for copies of all canceled checks written from the firm's account or from Hively's own attorney-at-law account to Warner for child-support enforcement work.

On April 16, the firm produced four checks, all written from Hively's attorney-at-law account between 1993 and 1995, totaling \$ 9,015. The firm

The Arkansas Democrat-Gazette, April 26, 1998, Sunday

produced no checks written to Warner from 1996 to 1998.

Since July 1993, the unit's bills to the state total \$ 317,394 in legal fees.

Warner, an associate at Hively and Ketz as well as a deputy prosecutor for Independence County, did not return several messages left at her office. Hively has not answered messages since the April 2 interview.

Hively said then that Warner was "very satisfied and very happy with her working relationship with our firm, and we're very happy with her. You've seen the documentation we've had with the state since January."

In January, at the insistence of the state office, Hively's unit changed the way it paid and billed for legal fees. It began making its checks payable to the law firm, Hively and Ketz, rather than to Hively individually. And it began reporting Hively's and Warner's hours separately to the state.

In a Jan. 16 letter to McDonald, Hively stated his understanding that reimbursement for legal work would be based strictly on the hours he and Warner actually worked.

Hively went on to describe how his unit pays attorneys for their work. He wrote that when he or Warner can't appear in court, other deputy prosecutors do the work.

"My understanding is that if there should be a conflict with myself or Ms. Warner appearing in court on our cases, that if one of my deputy prosecutors did appear on a particular day, that the hours that person worked would be documented and Ms. Warner would be compensated as if she would have been in court that specific day," the letter says.

McDonald said the letter led him to believe Hively's firm would receive the money and in turn pay Warner.

But what the unit reported to the state does not match what its check ledgers and the law firm's canceled checks show.

In January, Warner worked 54 1/2 hours and was paid \$ 5,178, the unit reported to the state. Hively worked 38 hours and was paid \$ 1,406, it reported. The check records tell a different story.

On Jan. 12, the unit wrote a \$ 3,292 check to Hively. On Jan. 30, it wrote another \$ 3,292 check to Hively and Ketz. The law firm's records show it deposited the second \$ 3,292 and wrote a check for that amount to Hively the same day.

In February, the unit reported owing Warner \$ 7,648 and Hively \$ 1,462. But it said it paid only \$ 6,585 so that it wouldn't exceed its budget. Although the unit reported 80 1/2 hours for Warner and 39 1/2 hours for Hively, no breakdown was given for the \$ 6,585.

The unit's check ledgers show it wrote two \$ 3,292 checks to Hively and Ketz. The law firm's records show those checks were deposited into the firm's account, and that the firm then wrote two \$ 3,292 checks to Hively.

In March, the unit listed only Warner as being compensated for legal work -- 71 hours' worth -- in its report to the state. But on March 13, the unit wrote a \$ 3,292 check to Hively and Ketz. Again, the law firm deposited the money and wrote a \$ 3,292 check to Hively. (The law firm's canceled checks for late March were unavailable on April 16, when the records were released.)

Those records raise questions for McDonald.

"If any contractor in fact is representing on their billing that a certain person is being paid, and in turn is not paying that person but taking the money themselves and benefiting personally that would definitely be questionable, and it appears to me that would be circumventing the spirit of the contract," he said.

Hively's contract covers Cleburne, Fulton, Independence, Izard and Stone counties. In addition to legal fees from his child-support enforcement unit, he earns \$ 69,016 a year for his work as a part-time prosecuting attorney in

The Arkansas Democrat-Gazette, April 26, 1998, Sunday

those counties.

His current child-support enforcement contract -- a two-year, \$ 1.2 million agreement -- requires that the unit bill the state monthly for reimbursement after paying its expenses.

The unit's January, February and March bills to the state show Warner being paid \$ 95 an hour, the limit set by the unit's contract with the state. Warner works out of a private office at the Hively and Ketz firm, and that hourly rate is supposed to compensate her for overhead expenses.

Because Hively's overhead is included in the unit's reimbursement bills, his hourly rate is \$ 37.

Unit manager Lisa Yeager, who prepared the bills, said she questioned the way legal-service expenses were being paid.

"I thought I should pay him [Hively] a check of \$ 1,400 and then turn around and pay Vickie Warner a check. She was the person we saw doing the work," Yeager said.

But Hively told her that the check was to be made out to him and he would pay Warner, Yeager said. She said the unit never wrote checks for legal services to anyone except Hively and, starting this year, to his law firm.

Yeager, unit manager since July 1993, has been on unpaid leave since the Democrat-Gazette's April 12 report that the unit had overbilled the state by \$ 34,791 in 1997.

Hively, who could not explain the billing discrepancy, pledged to investigate it and said he is trying to get copies of his records from the FBI. He had said April 2 that he was unaware of the overbilling.

After agreeing to unpaid leave, Yeager said she submitted the bills as she did to keep the financially troubled unit afloat. Most months, the state's reimbursement checks barely covered payroll, she said. That includes the legal-services checks, the largest item of payroll spending.

She also said Hively was aware of the financial troubles. She said he had used the unit's savings to make up budget shortfalls and had received telephone calls from a bank executive about the unit's frequently overdrawn checking account. Hively's contract with the state places ultimate responsibility for financing the unit with him.

Part of the problem was the unit's below-average performance for most of fiscal 1997. In nine months of the fiscal year that ended June 30, the state office reduced its reimbursement payments by 1 percent to penalize Hively's unit for not meeting state averages for child-support collections. Because of problems with a new computer system, the state stopped calculating that penalty in July. The problems with Hively's unit could translate into problems for the state Office of Child Support Enforcement. The money for the state's child-support enforcement program comes from a federal Department of Health and Human Services grant. That agency can hold the state responsible for misspent money.

In turn, the state office can hold its contractors responsible. It can terminate contracts and even seek repayment for overbillings, unallowable expenses or other improprieties. The situation is complicated by the FBI investigation.

"First of all, I'd want some explanation from the contractor," McDonald said.

"I'd also want some guidance from the current investigating units as to where they are in their investigation and what would be proper for me to do at this point.

"We certainly have the right according to the contract to terminate the contract if we found there to be wrongdoing. We don't even have to have a reason to terminate. We give a 30-day notice."

McDonald said Thursday he hasn't discussed the situation with Hively.

State law requires the agency to report a loss of funds, and the federal government would likely seek the return of money spent in violation of its

The Arkansas Democrat-Gazette, April 26, 1998, Sunday

regulations, he said. That, too, would mean action against the contractor. "We would certainly take action to get the money back," McDonald said. "We would be compelled to do that."

Photo:

T.J. Hively

LANGUAGE: ENGLISH

LOAD-DATE: May 5, 1998

34TH STORY of Level 1 printed in FULL format.

Copyright 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

April 14, 1998, Tuesday

SECTION: ENTERPRISE; Pg. A1

LENGTH: 1087 words

HEADLINE: Aide points to contractor in overbilling;  
Child-support unit;  
strapped, she says

BYLINE: BY SANDY DAVIS, AND JEFF PORTER, ARKANSAS DEMOCRAT-GAZETTE

BODY:

The office manager of the 16th Judicial District's Child Support Enforcement Unit on Monday painted a picture of a financially troubled office that regularly overbilled the state to meet its payroll.

The Arkansas Democrat-Gazette reported Sunday that the unit, headed by Batesville Prosecutor T.J. Hively, overbilled the state nearly \$ 35,000 in 1997. The office manager, Lisa Yeager, said that when money ran short, Hively told her, "You do what you can do, and you take care of it."

Hively did not return a phone call Monday. But in a press release made public late Sunday, he said Yeager had agreed to go on voluntary, unpaid leave while he investigated the billing discrepancies.

Yeager said she did not think she had a choice. But she defended herself in a telephone interview.

"I have done nothing wrong. Not one time," Yeager said. "I feel like there is a lot of wrong things being done, and someday -- and before too long -- all of the truth is going to come out. It's going to come to one person, one man. It's going to be the person who holds the contract to the unit, and it's going to be him."

Since becoming prosecutor in 1993, Hively has had a contract with the state Office of Child Support Enforcement to track down deadbeat parents, establish paternity when necessary and collect child support for the five counties in his district -- Cleburne, Fulton, Independence, Izard and Stone.

His contract, one of 20 across Arkansas, calls for the state to reimburse the majority of his unit's administrative costs, including salaries, paternity tests, court costs and office equipment and supplies. The contract stipulates the unit must bill the state for reimbursement based on what it has actually paid.

After reviewing 1997 records, the Democrat-Gazette reported that Hively's unit reported to the state that it spent \$ 406,351. The unit's check ledgers showed it paid out only \$ 371,560.

Yeager prepared the bills sent to the state office. She said she based them on the invoices vendors sent her, not on what she paid them. "I took the amounts that we owed and billed the state," she said. "But there was no money to pay the bills."

Most months, she said, the reimbursement the state sent was barely enough to cover the unit's payroll.

The unit's check ledger showed it spent \$ 247,363 on salaries in 1997. The largest amount went to Hively -- \$ 76,431 for legal services.

"There were times I had to give him three checks a month," Yeager said. That created a cash-flow problem. "I still had to meet payroll with the girls."

The Arkansas Democrat-Gazette, April 14, 1998, Tuesday

There was no money left to pay the bills."

The unit's contract places responsibility for funding the unit on the contractor. The state reimburses paternity-testing expenses at 90 percent, other expenses at 66 percent. The unit could make up the difference with state incentive and bonus money based on performance.

The unit's performance was below the state average in nine of 12 months during fiscal 1997. That reduced what the unit earned and helped put it in financial straits, Yeager said.

The FBI has been investigating Hively's unit since last fall. On Nov. 5, it raided it and two other child-support enforcement units. At Hively's office, it seized many records, including canceled checks.

Hively's press release, released by his re-election campaign, offered no specifics about the unit's finances but promised a full investigation.

"I feel confident that an explanation will be forthcoming by midweek, but without access to the relevant records, I am unable to make further comment," it quoted Hively as saying.

Hively asked for help Monday.

Ron Burch, deputy legislative auditor, said Hively asked the Division of Legislative Audit to review the unit's financial records. Burch said the fact that the FBI has so many records precludes a full audit, although the final decision on the review would be made by Charles Robinson, legislative auditor. Burch said he advised Hively to try to get copies of his records from the FBI. I.C. Smith, special agent in charge of the FBI in Arkansas, said his agency would cooperate with that. "If they need copies of records, we'll provide them," he said. "All they've got to do is ask."

Dan McDonald, administrator of the state Office of Child Support Enforcement, said his agency can't be much help to Hively. "There's nothing really that we can do at this point," he said. "He's going to do his own investigation."

McDonald's office is part of the Arkansas Department of Finance and Administration. The department's director, Richard Weiss, said the department would consider taking steps to sever Hively's contract if it confirms the reported discrepancies.

Weiss said his agency's review will take a back seat to an FBI investigation. However, he added, "We're not going to be complacent."

Yeager said Monday that when Hively assumed the child-support enforcement contract of the former prosecuting attorney in 1993, the unit had money in the bank.

"When Mr. Hively took office, there was an excess of money of about \$ 45,000," she said, and the unit bought certificates of deposit with that money.

"There were times when we ran short on money, and we had to cash in a CD," she said. "Before a CD was cashed in, it was approved by him. He was told the unit was running short of money."

By late 1996 or early 1997, Yeager said, she went to Hively and told him the situation was crucial. Yeager said Hively told her he didn't understand the financial problems.

"The words he said was he didn't really quite understand what I was saying, and he didn't understand why the money wasn't there, but if that was the case, there was something unrighteous going on, and I would be the first to leave.

"He told me, 'You do what you can do, and you take care of it.' "

Yeager said she and Hively went over the unit's financial situation again Thursday, after being interviewed by Democrat-Gazette reporters.

"I said here's where the problem is -- we're not getting funded properly, and after years of a shortfall, it's caught up with us," Yeager said.

"He said, 'Before I give the unit any money out of my pocket, I will box up everything in the unit in a U-Haul and put it on their [the state office's]

The Arkansas Democrat-Gazette, April 14, 1998, Tuesday

doorstep.'"

She said she believed Hively understood the problem, despite what he told her. "The bank president was calling him. He was calling and saying, 'You're really low on funds, and you need to put money in the account.' To me, that makes you aware that there is a problem," Yeager said.

LANGUAGE: ENGLISH

LOAD-DATE: April 22, 1998

35TH STORY of Level 1 printed in FULL format.

Copyright 1998 Little Rock Newspapers, Inc.  
The Arkansas Democrat-Gazette

April 12, 1998, Sunday

SECTION: NEWS; Pg. A1

LENGTH: 2225 words

HEADLINE: Child-support unit overbilled state in '97;  
Batesville office's records say it was spent \$ 371,560, reported \$ 406,351;  
contractor can't explain

BYLINE: SANDY DAVIS, AND JEFF PORTER, ARKANSAS DEMOCRAT-GAZETTE

BODY:

BATESVILLE -- The 16th Judicial District Child Support Enforcement Unit last year paid a North Carolina laboratory \$ 6,114 for paternity tests as it pursued its mission of tracking deadbeat parents.

It told the state it spent \$ 25,317.

The state, under its contract with the unit, reimburses most of what's spent for paternity testing. It paid the unit \$ 22,674.

That was not the only instance of overbilling by the 16th Judicial District unit. It also overbilled the state for equipment, office supplies, court costs, telephone bills and rent.

In all, according to its check ledgers, the unit spent \$ 371,560 in salaries and expenses in 1997. Its monthly, two-page bills to the state -- no receipts are required -- said it spent \$ 406,351, a difference of nearly \$ 35,000.

The state paid the unit \$ 370,012 in reimbursement and bonuses.

The unit is headed by Prosecuting Attorney T.J. Hively of Batesville. Neither he nor the office manager who filed the reports, Lisa Yeager, could explain the discrepancies.

Hively first signed a contract with the state Office of Child Support Enforcement in 1993. His job is to investigate cases involving child-support payments and to enforce court rulings in such cases in his judicial district, which includes five north-central Arkansas counties -- Cleburne, Fulton, Independence, Izard and Stone.

Across the state, the Office of Child Support Enforcement has 20 such contracts. Ed Baskin, technical assistant in the office, said 14 of those, including Hively's, are with government agencies. The other six are with private businesses.

Besides reimbursing the bulk of a unit's expenses, the state pays two-thirds of the salaries of the unit's workers. It also pays incentives and bonuses based on the unit's performance in collecting child-support payments.

The FBI is investigating that system for possible abuse. It raided three of the state's 20 child-support enforcement contractors on Nov. 5. The search warrant its agents took to Hively's office authorized them to seize records ranging from check ledgers and computerized data to telephone directories and speed dialers. Five months later, Hively said he knows of no wrongdoing in his 16th Judicial District unit. He lauded its performance, saying child-support collections had risen from \$ 770,904 in 1991 to \$ 2.08 million in 1996. But he could not explain why the expenses reported to the state differed significantly from what the unit actually spent.

"We'll be glad to certainly take some time and might hire an auditor to come in and go back and reconcile those deals," Hively said.

The Arkansas Democrat-Gazette, April 12, 1998, Sunday

"We'll be glad to do whatever it is, whatever you're asking, and then that way they can be explained or they can't be explained. I'm sure they can."

But the discrepancies trouble Dan McDonald, administrator of the Office of Child Support Enforcement in Little Rock. "If that is the case, what they're doing is alleging that they have more expenditures than they can support," he said. "That would be falsifying records."

"If they haven't written a check, they shouldn't bill us. They have to write a check for \$ 100 before we reimburse them \$ 100. That's the rules."

#### ULTIMATE RESPONSIBILITY

Hively's contract with the state places ultimate responsibility for financing the unit with him. And Hively and Yeager acknowledged that it requires the unit spend money before the state pays. They could not explain why the unit claimed it had paid bills that its check records did not show being paid.

"I don't know. I'd have to go through and look at them," Yeager said of the discrepancies. She said she could not reconstruct the unit's administrative spending for 1997 because many documents were in the hands of the FBI.

McDonald didn't see it as that difficult.

"You could just do total payments for checks, what was actually billed and reimbursed, compare that in total," he said. "That's a simple, quick thing right there."

The Arkansas Democrat-Gazette reviewed records at the state office and at the unit in Batesville and found:

m The unit wrote Laboratory Corp. of America checks totaling \$ 6,114 for DNA paternity testing during 1997 but reported \$ 25,317 in spending to the state -- a difference of \$ 19,203.

m It wrote \$ 1,091 in checks for equipment but reported \$ 4,305 in spending to the state.

m It wrote \$ 3,053 in checks for supplies but reported \$ 6,432 to the state.

m It wrote \$ 2,664 in checks for court costs other than paternity testing but reported \$ 4,689 to the state.

m It wrote \$ 4,877 in checks for telephone expenses but reported \$ 18,194 to the state -- a difference of \$ 13,317.

m It wrote \$ 652 in checks for rent but reported \$ 1,060 to the state.

The bottom line, with all spending reported to the state compared with the office check ledgers: During 1997, the unit reported spending \$ 34,791 for expenses not documented in its check ledgers.

The largest discrepancy is in DNA paternity testing expenses. In eight of the 12 months, the unit's check ledger shows it did not write a single check to its lab. But the unit told the state it paid the lab a total of \$ 17,781 during those months.

Telephone expenses account for the next largest discrepancy.

Yeager said one reason might have been instructions from the state office for her to carry the cost of an \$ 8,000 telephone system, purchased in 1996, over several months during 1997.

"We bought a new phone system. The way they told me to account for that, I could add an extra amount of money and they would reimburse me for the phone system. ... Some months I didn't add it, some months I did."

But Baskin, the technical assistant, said he doubted the agency would have given those instructions. "Nobody in this office should have told them anything like that, and I don't think anybody did," he said.

Hively's operation of the 16th Judicial District unit is separate from his part-time job as prosecuting attorney, for which he is paid \$ 69,016.

Under its contract, his child-support enforcement unit is reimbursed for 90 percent of paternity-testing expenses and for two-thirds of other expenses. A 1 percent penalty for not meeting statistical criteria for child-support

The Arkansas Democrat-Gazette, April 12, 1998, Sunday

collections slightly reduced its reimbursement some months.

Hively's unit pays fees for lawyers' time to review cases and go to court. The state reimburses the unit at the two-thirds rate, based on time sheets the unit submits monthly.

During 1997, the unit wrote legal-fee checks to Hively totaling \$ 76,431. Its time sheets contained Hively's name only, even though a deputy prosecutor, Vickie Warner, did much of the unit's legal work.

#### AWARE OF ARRANGEMENT

Hively said the state Office of Child Support Enforcement was aware of his arrangement with Warner, an associate in his private law firm, but he declined to say how much of the money he was paid went to her.

"Our situation as far as compensation is concerned is within our law firm," he said. "... I'm not going to get into what our personal law firm business is. That's not part of it."

Warner did not return telephone messages or messages left at her office.

In late January, the unit began making its checks payable to Hively's law firm, Hively and Ketz of Batesville, rather than to Hively individually. Also in January, its time sheets began showing Warner as performing most of the work. The change was made to comply with federal regulations, because a federal grant pays for most of the child-support enforcement program. In 1996, the U.S. Department of Health and Human Services regional office in Dallas began pushing contractors to keep better track of hours.

McDonald, the state office administrator, said federal officials told his agency that Hively's unit should have been keeping track of each lawyer's hours separately. "That wasn't a requirement we had on them until we were advised that we should be doing that," he said.

The state allows \$ 95 an hour for Warner's time as senior child-support enforcement attorney and \$ 37 for Hively's time. As the contractor, Hively isn't allowed to bill at the \$ 95 rate, said Baskin.

Last year, when all the checks were going to Hively, the hourly rate fluctuated from \$ 37 to \$ 95. Most of the bills submitted to the state showed only a lump sum, with no hourly rate specified.

Hively said other deputy prosecutors represent the unit in court when Warner has a scheduling conflict. Their time is billed as though Warner did the work, he said, but they aren't compensated directly. Instead, Hively said, they receive help from Warner on legal research.

McDonald said it's not his agency's job to tell the unit or the law firm how to write its checks.

"We've contracted with him to make sure that the legal work is done," McDonald said. "All we know is that we have hired a job to be done. We want there to be records to support that job was done, and we want to make sure that we have good service and we're paying good money for good services performed, bottom line."

#### PAYS FOR PHOTOCOPIES

The unit also pays Hively for photocopies. Hively owns the prosecutor's office copier, as did his predecessor, Don McSpadden. He charges the unit 15 cents per copy.

Copying was one expense the unit underreported to the state in 1997. It wrote Hively checks totaling \$ 6,466 but reported only \$ 6,187 when filing for reimbursement.

How well Hively's unit does its job is in dispute.

In nine months of the fiscal year that ended June 30, the state Office of Child Support Enforcement reduced its reimbursement payments by 1 percent to penalize Hively's unit for not meeting statistical criteria for child-support collections. Because of problems with a new computer system, the state stopped calculating the penalty in July.

The Arkansas Democrat-Gazette, April 12, 1998, Sunday

In addition, a state office report indicates that Hively's unit lost money during the fiscal year. Reimbursement, incentives and bonuses paid to the unit totaled \$ 359,200. But the report indicates the unit spent \$ 401,932, for a loss of \$ 42,732.

But Hively said the unit is not a money-loser.

"If that was the case, we'd be out of business," he said. " ... I have no idea how they're coming up with that figure."

One possible explanation: The state's calculations use the expenses the unit reported. But the unit's check ledgers indicate it spent much less than it reported.

Hively's unit has regularly overdrawn its checking account -- in five of the six months from September through February. Yeager said that's at least partly the state's fault.

"The state has not been able to get our incentive and bonus money to us in a timely manner," she said. "So the state has to write every unit a check manually, and they fall behind."

The last audit of Hively's unit -- for the fiscal year that ended June 30, 1995 -- showed an operating loss of \$ 7,521. But the audit, conducted by the Shoptaw, Labahn & Co. accounting firm of Russellville, found no serious problems with the way the unit did business.

'ALWAYS BEEN AUDITED'

"We've always been audited," said Yeager. "Everything has always come out with the auditors."

McDonald, though, said the audit was designed more to determine whether the unit is complying with federal regulations than to account for every dollar spent.

"An auditor's not required to look at every piece of documentation," he said.

"They could, but they're not required to, cannot make money on that, do not want to charge us the time that it would take for them to do that."

The FBI, however, is looking into the financial operations of Hively's unit.

An FBI memo, obtained by the Democrat-Gazette in March, says an agent interviewed an Independence County employee on Oct. 23 and was told Hively's employees were concerned about check-writing practices in the office and were documenting the activities. That was 12 days before the FBI's raid.

FBI agents also have interviewed employees of the state Office of Child Support Enforcement, asking about payment of legal fees by Hively's unit.

While the FBI's investigation continues, McDonald said, "We're just kind of in a wait-and-see mode. ... Personally, I wish we could get it all out on the table and see what's going on."

Hively had a similar view: "We're responsible people and run a responsible unit here. We'll promptly communicate with our state office to resolve any differences that may be. That's exactly what we'll do."

But the state office has had shortcomings of its own. McDonald, who joined the office in late November, admitted that its supervision of contractors hasn't been what it should.

"We probably could have done a better job in requesting specific support documentation," he said. "We probably could have done better in making a better contract, a more specific contract."

And, he said, there may be an accounting after the federal investigation ends.

"If there wasn't an FBI investigation currently going on, I would jump right in the middle of this, but I feel like our hands are tied right now as far as being able to go in and physically look at these type records," McDonald said.

"We can't answer for our contractors and what they do. They'll have to answer for that. And then it would be our responsibility after everything shakes out, everything's done, to go in and decide maybe what's owed back to the state and the federal government if they don't do that adequately enough."

LANGUAGE: ENGLISH

LOAD-DATE: April 16, 1998

THE PRESIDENT HAS SEEN

3-4-99

Arkansas House of Representatives



*Handwritten:* I don't want you to talk to John about this. NB

*Handwritten:* I can't find the file here. Can you help?

Date:

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(including cover sheet): 5

Urgent  ASAP  Routine

PAGE:

*Handwritten:* My fax # is 501-753-24. If you need to get info.

*Handwritten:* Nancy - Carol Rasso was going to e-mail you concerning this file. The memo on the Child Support meeting in D.C. pretty well explains where we are on the matter. The second memo is on Jodie W. to get to the POTUS concerning the situation. The folks at U.S. Dept of Human Services will be making a decision this part of this week. It means \$6.5 million dollars for cross state. Please help. Thanks

THE PRESIDENT HAS SEEN  
3-4-99  
*Handwritten:* Podesta / Maria / Bobo  
Can we help them on this? Looks like they have a grant.

*Handwritten:* BR



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Copied:  
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transmission, 71 and the

*Handwritten:* I will be out this afternoon. My dad is having surgery.

THE PRESIDENT HAS SEEN

3-4-99

Arkansas House of Representatives

State Capitol, Room 350

Little Rock, Arkansas 72201-1089

Telephone: 501-682-7771

*to Co. John  
Cres  
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LL

Date: 3-1-99

To: Nancy Hernandez

From: Mary Ann Salom

Fax No.: 202-456-6703

Pages (including cover sheet): 5

Status: Urgent  ASAP  Routine

MESSAGE: My fax # is 501-753-249  
If you need to get info 2

Nancy - Carol Rasso was going to e-mail you concerning this for the memo on the Child Support meeting in D.C. pretty well explain where we are on the matter. The second memo is one Jodi was to get to the POTUS concerning the situation. The folks at U.S. Dept of Human Services are making a decision <sup>may</sup> the <sup>part</sup> of this week. It means \$6.5 million dollars for our <sup>poor</sup> state. Please help. Thanks

I will be out this afternoon. Mary Ann  
: Mrs. Dad is having surgery.

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If problems occur during transmission, please call (501) 682-7771 and the receptionist will assist you.

**CHILD SUPPORT MEETING WITH HHS  
FEBRUARY 22, 1999  
SUMMARY REPORT**

Governor Mike Huckabee, State Representatives Mary Ann Salmon and Jim Magnus, State Senators Jodie Mahony, Doyle Webb and Morrill Harriman, DFA Director, Richard Weiss, DFA Deputy Director, Tim Leathers and Arkansas Child Support Administrator, Dan McDonald, met with representatives of HHS and Federal Child Support Administration in D. C. The purpose of this meeting was to seek relief from a disallowance of \$6.5 in federal matching funds for a mandated child support system.

The facts in this matter were not disputed at the meeting. Arkansas has an exemplary record of implementing and administering federally mandated child support programs. Arkansas has been at the forefront of adopting federally mandated laws to secure support for children. This disallowance of funding was not for improperly spending money. The funding for contracts was disallowed because the previous child support administrator did not seek prior approval of the contracts. Dan McDonald discovered the oversight when he came to Child Support and immediately sought approval of the contracts. HHS admits that the contracts would have been approved if they had been timely submitted.

HHS took the position at the meeting that they have been consistent in denying payments on contracts that were not preapproved, even though the law they cite for disallowing the contracts specifically states that they "may" disallow. The Arkansas group informed them that under these circumstances, HHS actions were arbitrary and capricious because they were not even considering exercising their authority under law and were automatically seeking to implement form over substance. It was also pointed out to the Federal officials that because of their mandating and approving the project before and after the fact, the disallowed contracts had their de facto approval.

The Arkansas delegation emphasized that Federal child support officials represent themselves as "partners" with state child support agencies and represent that they want to work together for the support of children. Since it is admitted that these contracts would have been approved and the money was not misspent, the only purpose the disallowance serves is to hinder the Arkansas program. This disallowance will damage the reputation of HHS.

and Arkansas Child Support Enforcement with the clients they serve. It will also hinder their ability to achieve support from Arkansas taxpayers and the Arkansas Legislature.

The Arkansas delegation pointed out that time is of the essence to resolve this matter. We are in the middle of our legislative session and must resolve this funding issue in the next few weeks. We pointed out that \$6.5 million is not a great deal of money in Washington circles, but it is a serious amount to take from a state budget of our size which is mostly spent on education, human services and prisons.

Governor Huckabee pointed out that regardless of what the HHS policy had been in the past, a policy adjustment was in order for this case. He suggested two alternatives to disallowance of funding. One alternative would be to impose a reduced penalty similar to the penalty for states that, unlike Arkansas, did not comply with mandated federal laws to implement their systems on time. He pointed out that Arkansas was being punished for following these requirements.

Governor Huckabee also suggested an alternative to let the formal disallowance stand, without any monetary penalty so long as Arkansas complies with federal mandates and guidelines. Technically, HHS would not be waiving the penalty, they would be encouraging compliance, which supposedly is the reason for the penalty. Also, the Arkansas Child Support program would not suffer.

The Federal officials promised to take our arguments under consideration and deliver a decision in 10 days.

**MEMO TO** The Honorable Bill Clinton  
President of the United States  
Washington, D. C.

**FROM** Jodie Mahony  
Arkansas Senator  
State Capitol  
Little Rock, AR 72201

**SUBJECT** Child Support in Arkansas

**DATE** February 25, 1999

---

I'm proud of what we have done on Child Support in Arkansas. We have worked hard since 1984 in changing the entire mind-set concerning the obligation to support one's children financially.

Despite comparatively less resources, we have consistently outperformed our surrounding states. We have never failed to pass the requirements given to us by the Federal Congress. The leadership in our state has tried to go beyond those mandates, find out the things that were working in other states, and enact them into Arkansas law. We have seen our Constitution overridden, our laws and policies reversed, mandates given to our judges, our clerks and our lawyers. All of this was done because we were doing the right thing.

We were the first state in the nation to pass UIFSA and consistently in the forefront with other laws and policies, including administrative policies to simply and more effectively collect child support. We have bullied business interests to make sure kids had a better chance. (I can make a good argument that Child Support Enforcement, properly implemented is the most effective educational tool in Pre-K and Elementary grades.)

At the NCSI, we have consistently supported the Child Support mandates as being good and necessary ones.

When our Department of Human Services used Child Support money for lawyers to support other services, we moved Child Support to the Department of Finance and Administration to ensure the proper use of Federal Child Support "profit".

We were able for a number of years to be self-supporting (thanks to the federal contribution). That is no longer possible and hasn't been for the last two years. We are not happy with having to use state General Revenue, but we have not complained. It does however make our job in getting the right laws on the books and the right attitudes in place that much harder.

We got our automated system in place within the extended time frame. We have made good decisions in acquisition of hardware and software. We work with Region VI and Judge Ross when we have difficulties. We have spent money wisely.

We did get prior approval for our overall plan to implement automated systems. We have our clearing house in place.

California and other states did not and will not for some time. They were given a slap on the wrist - admittedly by the Congress. We have been given a near fatal shot to the body. It is a triumph of bureaucratic form over substance. California frittered away fifty plus million while we did not fritter away a penny. We think the penalty for a mistake which did not hurt anything should have a considerably more equitable punishment than is being contemplated.

The law says the Department "may" take the proposed actions - it does not say "shall". There seems to be no good substantive reason for the harsh penalty.

*you asked us...*

Governor Huckabee and other State officials from Arkansas met with HHS officials on February 22, 1999 to discuss Federal funding approval (FFP) that was denied by HHS. The denied FFP was for the portions of three contract amendments related to the child support automated system that the State failed to submit to HHS for prior approval in accordance with federal regulations which have been in place since (1978). The Governor urged HHS officials to find authority to overturn their decision and retroactively approve the contracts that would total about \$7.2 million, of which \$6.5 million were federal matching funds. ? 90% match?

As you know, Governor Huckabee did not cite any error or misuse of HHS's discretion in denying the FFP for these contracts. The State is claiming that they were caught up in last minute activity related to the implementation of their automated child support system and because of this activity the requirements to submit the contract amendments were overlooked. The State is effectively asking the Secretary to grant retroactive prior approval based on the merits of the State's action, irrespective of whether the State followed procedures required by HHS regulation. HHS admits that this is a difficult case since the State was acting in good faith in implementing their system but that the prior approval requirements are extremely strict.

Prior to (1986) HHS occasionally did grant approval to contract-related documents even if they were submitted after the program regulations. However, HHS stopped this practice in 1985-1986 after two decisions by the Grants Appeals Board, which concluded that prior approval requirements in the current regulation is a prerequisite to the receipt by a State of any FFP.

State officials from Arkansas pointed out that the letter of the law contains permissive authority for HHS to disallow payments. HHS admits a fault in the letter of the regulation itself since it states that the failure to submit necessary information "may" result in disapproval of funding. Nevertheless, HHS claims that the preamble language to the regulation, Action Transmittals and conferences and workshops have all made clear that the regulation meant no exceptions. ?

Where HHS had discretion under regulations and policies, they did exercise it in Arkansas's favor (as they do for any other State). For example, on one of the contracts HHS used the date that Arkansas sent a one page "contract" which did not provide sufficient information to base an approval decision but HHS deemed that they had deferred approval and approved the contract back to the earlier date. However, HHS could find no legal basis for approving the costs incurred prior to those dates.

HHS is concerned that accommodating Arkansas would reverse the regulation and set a precedent for all other States which would effectively negate the prior approval requirements. The basis of the requirements of prior approval is that HHS pays between 50 percent and 90 percent of the costs of these contracts and HHS's desire to assure early participation in these system development efforts. This precedent would also affect similar decisions for HCFA, Child Welfare, Child Care as well as Child Support and may also impact Food Stamp regulations, which have similar prior approval requirements. In the last year, HHS has denied FFP for contracts in at least 12 States.

Because of these reasons, HHS believes they must inform Governor Huckabee that they are

unable to find legal basis for providing retroactive prior approval for the contract costs.

However, the official disallowance of the contract will not be transmitted to the State until the summer. At that point, the State has an option to appeal the disallowance, which is unattractive because of the high interest rate on outstanding penalties, or negotiate a payment schedule.

Although there are some concerns in the State that the payment would have to come from a budget appropriation, the State has other options. State officials are examining an option that would estimate next year's total system costs at \$6.5 million over actual costs and attempt to negotiate the difference with the system's contractor. Another option would be to remit the \$6.5 million from the federal administrative payments made to the State Child Support Enforcement Program over two to three quarters of the fiscal year (federal payment to Arkansas were \$19 million in 1996).

Unfortunately, there is no clear guidance on an intermediate sanction (less than the \$6.5 million) since the disallowance assumes that the federal government must recover the entire disallowed amount. HHS explained that the tenet of a disallowance is that the amount spent was not a legitimate federal expense and, therefore, the federal government has the responsibility to recover the entire disallowed amount.

Again, HHS recognizes that this is a difficult case since the oversight was brought to the attention of HHS by the State's Child Support Administrator in an act of good faith. But because of the long standing policy that has been in effect since 1985 and the fact that HHS has applied this position consistently, after detailed review, HHS did not find any authority for providing retroactive approval to the contract costs or the ability to mitigate the penalty.

• J. Eric Gould

03/17/99 07:11:46 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: Arkansas CSE: New info

I spoke to Norm Thompson:

I. 1998 Federal Share of Admin. Expenditures is \$30.6 m. Estimated :FY99/\$36.8m and FY00/\$40.2m

II. The penalty can be paid in installments over 9/10 quarters. Clearly spelled out in 45 CFR 304.40 **Repayment of Federal Funds by Installments**. The formula is based on the ratio of the disallowed amount / state share of admin. costs. With these numbers, it doesn't seem like a big deal anymore.

III. An interest rate of 13.75 percent begins to accrue on the disallowed amount 30 days after the notice of disallowance is received by the State if the State decides to appeal.

IV. FYI - HHS is almost sure **but** not positive that the State has actually pulled the money for these contracts from the federal account. HHS is 99% sure that they have but until the Regional Director goes in to examine the books and compares them to checks that have been pulled from the federal account we are not sure. The Regional Director will check the books later this Spring after the FBI is done with them. Once the RD can verify that the checks were pulled a notice of disallowance will go out.

V. According to Norm, the State already has \$60 million in approved spending and has asked HHS if they would be able to spend \$66.5 million altogether but only get reimbursed for the \$60 million (that way the State could try to pass some of the cost off on their contractors). HHS has made clear to the State that Federal debt collection regulations 45CFR 30 do not allow for this type of repayment. Once the disallowance is identified, a debt is put on the books and must be paid according to certain accounting standards.

# FAX TRANSMISSION

The Office of Child Support Enforcement  
Administration for Children & Families  
Department of Health & Human Services  
370 L'Enfant Promenade, SW  
Washington, DC 20447



FAX NO. (202) 401-5539

This transmission consists of this cover sheet plus 2 page(s)

FAX to:

DATE: 3/17/99

TO: ERIC GOULD

FROM: NORM THOMPSON  
202.260.0335

MESSAGE: PER CONVERSATION

45 CFR Ch. III (10-1-98 Edition) Office of Child Support Enforcement

§ 304.40

§ 304.25 Treatment of expenditures; due date.

(a) Treatment of expenditures. Expenditures are considered to be made on the date on which the cash disbursements occur or the date to which allocated in accordance with part 74 of this title. In the case of local administration, the date of disbursements by the local agency governs. In the case of purchase of services from another public agency, the date of disbursements by such other public agency governs. Different rules may be applied with respect to a State, either generally or for particular classes of expenditures only upon justification by the State to the Office of Child Support Enforcement and approval by the Office.

(b) Due date for expenditure statements. The due date for the submission of the quarterly statement of expenditures under § 301.15 of this chapter is 30 days after the end of the quarter.

42 FR 26477, May 24, 1977

§ 304.26 Determination of Federal share of collections.

(a) From the amounts of support collected by the State and retained as reimbursement for AFDC payments, the State shall reimburse the Federal government to the extent of its participation in the financing of the AFDC payment. In computing the Federal share of support collections, the State has two options:

(1) The State may use the AFDC FFP rate applicable to the period in which the assistance payment was made as follows:

(i) If the State uses the Federal medical assistance percentage under section 18 of the Act, this percentage shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the Federal share of collections shall be computed using the rate of Federal participation in the financing of:

- A) The individual assistance payment; or
B) All of the assistance payments in the same month; or
2) The State may use the current rate of AFDC FFP as follows:

(1) If the State uses the AFDC FFP rate applicable to the period in which the assistance payment was made as follows:

(i) If the State uses the Federal medical assistance percentage under section 18 of the Act, this percentage shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the Federal share of collections shall be computed using the rate of Federal participation in the financing of:

- (1) Federal funds, unless authorized by Federal law to be used to match other Federal funds;
(2) Used to match other Federal funds.

§ 304.27 [Reserved]

§ 304.29 Applicability of other regulations.

Sections 201.14 and 201.15 of chapter II of title 45 of the Code of Federal Regulations, which establish procedures for disallowance, deferral and reconsideration of claims for expenditures submitted by the States, shall apply to all expenditures claimed for FFP under title IV-D of the Act. For purposes of applying those provisions under title IV-D, Service shall read Office which refers to the Office of Child Support Enforcement; Administrator shall read Director which refers to the Director, Office of Child Support Enforcement; Deputy Administrator shall read Deputy Director which refers to the Deputy Director, Office of Child Support Enforcement; Regional Commissioner shall read Regional Representative which refers to the Regional Representatives of the Office of Child Support Enforcement; and State shall refer to the State IV-D Agency.

42 FR 3648, Jan. 21, 1977

§ 304.30 Public sources of State's share.

(a) Public funds, other than those derived from private resources, used by the IV-D agency for its child support enforcement program may be considered

in claiming where such

to the IV-D

public agency

IV-D agency administrative con-

(1) Certified by the contributing public agency as representing expenditures under the State's IV-D plan, subject to the limitations of this part.

(b) Public funds used by the IV-D agency for its child support enforcement program may not be considered as the State's share in claiming Federal reimbursement where such funds are:

- (1) Federal funds, unless authorized by Federal law to be used to match other Federal funds;
(2) Used to match other Federal funds.

41 FR 7106, Feb. 17, 1976

§ 304.40 Repayment of Federal funds by installments.

(a) Basic conditions. When a State has been reimbursed Federal funds for expenditures claimed under title IV-D, which is later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2 1/2 percent of the estimated annual State share of expenditures for the IV-D program as set forth in paragraph (b) of this section; and

(2) The State has notified the OCSE Regional Representative in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) Criteria governing installment repayments. (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the IV-D program as follows:

**§ 304.50**

Total repayment amount as percentage of State share of annual expenditures for the IV-D program	Number of quarters to make repayment
2.5 percent or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest OCSE-OA-25 submitted by the State shall be used to estimate the State's share of annual expenditures for the IV-D program. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest OCSE-OA-25) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In case of termination of the program, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2% percent of the annual State share for the IV-D program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the

**45 CFR Ch. III (10-1-98 Edition)**

State on its Quarterly Statement of Expenditures (SRA-OA-41) reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

[42 FR 3335, June 6, 1977, as amended at 52 FR 273, Jan. 5, 1987]

**§ 304.50 Treatment of program income.**

The IV-D agency must exclude from its quarterly expenditure claims an amount equal to:

**Office of Child Support Enforc**

(a) All fees which are collected during the quarter under the State plan; and

(b) All interest and other earned during the quarter from services provided under State plan.

[49 FR 36772, Sept. 19, 1984]

**§ 304.95 [Reserved]**

**PART 305—AUDIT AND P**

- Sec.
- 305.0 Scope.
- 305.1 Definitions.
- 305.10 Timing and scope of audit
- 305.11 Audit period.
- 305.12 State comments.
- 305.13 State cooperation in the s
- 305.20 Effective support enforc

gram.

305.21—305.57 [Reserved]

305.98 Performance indicators a

teria.

305.99 Notice and corrective act

305.100 Penalty for failure to b

tive support enforcement pro

AUTHORITY: 42 U.S.C. 602

652(a)(1), (4) and (g), and 1302.

SOURCE: 41 FR 55348, Dec. 20,

otherwise noted.

**§ 305.0 Scope.**

This part implements t

ments in sections 452(a)(4) a

the Act for an audit, at

every three years, of the e

of State Child Support E

programs under title IV-D

possible reduction in Fe

bursement for a State's titl

gram pursuant to sections

404(d) of the Act. Sect

through 305.13 describe the

tion 305.20 sets forth audit

# THE WHITE HOUSE

Domestic Policy Council

Fax: (202) 456-2878

To: *Cynthia Rice*

Fax #: *67431*

From: Elena Kagan

Subject:

COMMENTS:

Date: March ~~16~~, 1999

Pages: , including this cover sheet.

**ESEA Consultations:** IGA and DOEd will meet with the staff of Democratic governors on Tuesday to consult about our accountability proposal. The NGA Task Force on ESEA Reauthorization will include Governors Hunt (D-NC), Davis (D-CA), Barnes (D-GA), Patton (D-KY), Ridge (R-PA), Huckabee (R-AR), and Kempthorne (R-ID).

**TANF:** Governors Thompson (R-WI), Ventura (Reform-MN), and Fordice (R-MS), have sent letters to you this week voicing their strong opposition to any budgetary cuts in the Temporary Assistance for Needy Families (TANF) funds. The NGA is inundating the Hill with letters opposing TANF cuts as an offset for the Central America disaster relief supplemental appropriation.

*Rec'd  
Wants  
the Dept  
Went?*

**Arkansas/Child Support Enforcement:** On February 22, Governor Huckabee (R-AR) met with senior officials at HHS and asked for relief from an HHS decision to deny Federal funds for several systems-related contracts which the Arkansas child support enforcement program neglected to submit for prior approval. The Office of Child Support Enforcement and the Office of the General Counsel at HHS have carefully reviewed Arkansas' request and have concluded that there is no relief they can offer.

**Y2K**

**State Summit on Y2K Conversion sponsored by the National Governors Association:** Today I spoke to representatives from 39 states and the Federal government who are attending a two day session, designed to share information regarding state responses to the Y2K challenge to better coordinate efforts with federal officials. Other issues discussed included addressing public perception and state public outreach activities, state working relationships with local governments and small business, coordination with public utilities and banks, assessment of health care and water systems, maintaining state regulatory responsibilities, and business continuity planning.

**IGA hosted a State/Local Y2K Sector Meeting:** On Tuesday March 9, we hosted a meeting with John Koskinen and representatives of the state and local government sector to discuss the current state of preparedness for the Y2K challenge and what additional outreach activities should be undertaken to improve state, local, tribal and federal government coordination.

**NATIONAL LEAGUE OF CITIES**

To close out this year's National League of Cities (NLC) meeting, Mrs. Gore and Secretary Herman spoke to more than 3,000 elected officials from across the country on Monday, March 8. Mrs. Gore highlighted the problem of homelessness

3/15

→ Calif \$11 mi hadn't filed

→ Demand \$11 mi → then weren't happy

→ will give us examples

Calif wanted \$150 mi → penalty is 4%

We did right thing, got state wide system  
in place → has certified system

→ Rule put in place for:

FS / Medicaid / CSE / AFDC

→ contract approval

→ Hrd always been priv approval  
→ w/ & Coakly case

→ Then Dept Appeals Board refused to  
enforce the law

→ Then HHS did review rule prospectively

## Language in reg

off the

→ cited section w "may"

→ Preamble + policy guidance  
made Jan that ~~that is~~  
policy is "shall"

⇒ accompanied

---

## \$6.5 mi penalty

→ not allowable expenditure

→ no intern

→ disallowance of inappropriate

→ recovering <sup>claim</sup> federal funds

→ TNS to find every area of ambiguity and exploit it.

→ If IVD starts ~~had to~~ hadn't said anything would

→ Fix & Congress give them \$ back

→ always take disallowance

→ except where Congr moratorium

→ FS

→ EA

→ all state appeals

After DAB (which they would lose)

state has to pay interest 10%+

→ payments can be stretched  
out out of a couple of quarters

→ IVD director wants Dept

→ figure out systems spending  
next 1-2 years

→ Submit for amt - \$6.5 mi.

~~\_\_\_\_\_~~  
→ could avoid legislature

GAO has been wacking us on this issue

→ last year

→

Best fix

→ Conditional fix

→ we couldn't

THE WHITE HOUSE  
WASHINGTON

214

March 11, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: THURGOOD MARSHALL, JR. *JPM for TM*  
JON P. JENNINGS *JPJ*

SUBJECT: HOT ISSUES--HOPE, ARKANSAS

**Child Support Enforcement Program:** On February 22, HHS met with Governor Huckabee and others to discuss the State's child support enforcement program. The governor asked for relief from an Office of Child Support Enforcement decision to deny Federal funds for several systems-related contracts which the AR child support enforcement program neglected to submit for prior approval as required by HHS regulations. It appears that the issues raised in this case are no different than a dozen or so other States which have run afoul of the prior approval requirement over the past year. Deputy Secretary Thurm will contact the governor in the near future as to HHS' final decision. (HHS)

**Lower Mississippi Delta Project:** Representative Berry has expressed considerable interest in what the Federal government can do for the Mississippi Delta region. In the last two weeks, DOT announced a transportation grant for the region and a major shoe company has received assistance from Treasury's NADBank. Many of the Cabinet agencies currently have working groups putting together proposals and ideas for the region. It is anticipated that some of these initiatives should be ready to be announced in the next few months. (Cabinet Affairs)

**National Designation for State Center:** Representative Dickey has asked the Food and Drug Administration (FDA) to designate Pine Bluff's National Center for Toxicological Research Center as the nation's headquarters for battling biological and chemical terrorism. The FDA Administrator told Representative Dickey that the Administration has made no decision on where to locate a national center. Representative Dickey also inquired as to why the FDA only asked for \$3 million in its 2000 budget to complete the Arkansas Regional Lab, one of nine FDA "mega-labs" being consolidated from 18 field labs nationwide. The project is estimated to cost \$13.4 million. The \$3 million would be used to renovate a building for the lab's administrative staff and that the agency will ask for additional money at a later date. (HHS)

**Manufacturing Jobs:** Last week, two companies announced they would close their manufacturing operations in Morrilton, AR. Arrow Automotive's plant will cease operations in April, resulting in 400 lost jobs. Levi-Strauss also will close its plant in Morrilton, putting another 600 to 700 employees out of work. Various Federal, state, and local agencies are sponsoring job fairs and counseling programs. Axiom Corporation recently announced a major

expansion of 1,200 jobs for computer science employees. Unfortunately, this has little or no impact to sewing machine operators at Levi-Strauss or to Arrow's factory workers making floor mats for pickup trucks. (DOC)

**Chemical Agent Disposal Facility:** Under Congressional mandate, the Department of the Army is proceeding to destroy by 2007 the U.S. stockpile of chemical agents and agent-filled munitions. The Pine Bluff Facility is the fifth facility constructed in the U.S. for the destruction of such weapons. EPA's principal role in relation to the Pine Bluff Facility is to issue a permit for the incinerator that ensures public health protections. On January 15, the State and EPA issued a joint final permit to the Army for construction of the incinerator. Several national and state community and environmental groups have appealed the permit issuance, however, construction is authorized to proceed during consideration of the appeals by the State. (EPA)

**Adoptions:** On February 26, the AR Senate Judiciary Committee approved a bill to ease adoptions of foster children. The bill would allow a judge to make an adoption immediate if both parties agree and would allow the adoptive parents to continue to receive any subsidies they received as foster parents. The bill must now go to the Senate. Currently, a child must be in the foster parent's home a minimum of six months before the child can be adopted. (HHS)

**Medicaid Plan Amendments Disapproved:** Three proposed Medicaid State plan amendments submitted June 30, 1998 revising the rate-setting methodology for nursing home rates were disapproved by the HCFA Administrator on February 8. The AR General Assembly passed legislation providing for three rate increases. The legislation was vetoed by the governor. The AR General Assembly overrode the veto. The Medicaid Agency failed to submit plan amendments to increase the rates. The nursing home industry then won a decision in State court, which directed the Medicaid Agency to submit three separate plan amendments. (HHS)

**Bentonville Manor Nursing Facility:** The Arkansas Office of Long Term Care has recommended to Federal authorities that Bentonville Manor nursing facility be fined \$330,000 for failing to report the assault of an elderly resident by a nurse's aide who was allowed to continue working -- and allegedly abusing nursing home residents -- for more than two weeks before being fired. If the deficiencies cited in the report are not corrected by April 5, the facility could lose its ability to receive Federal funds for low-income residents. (HHS)