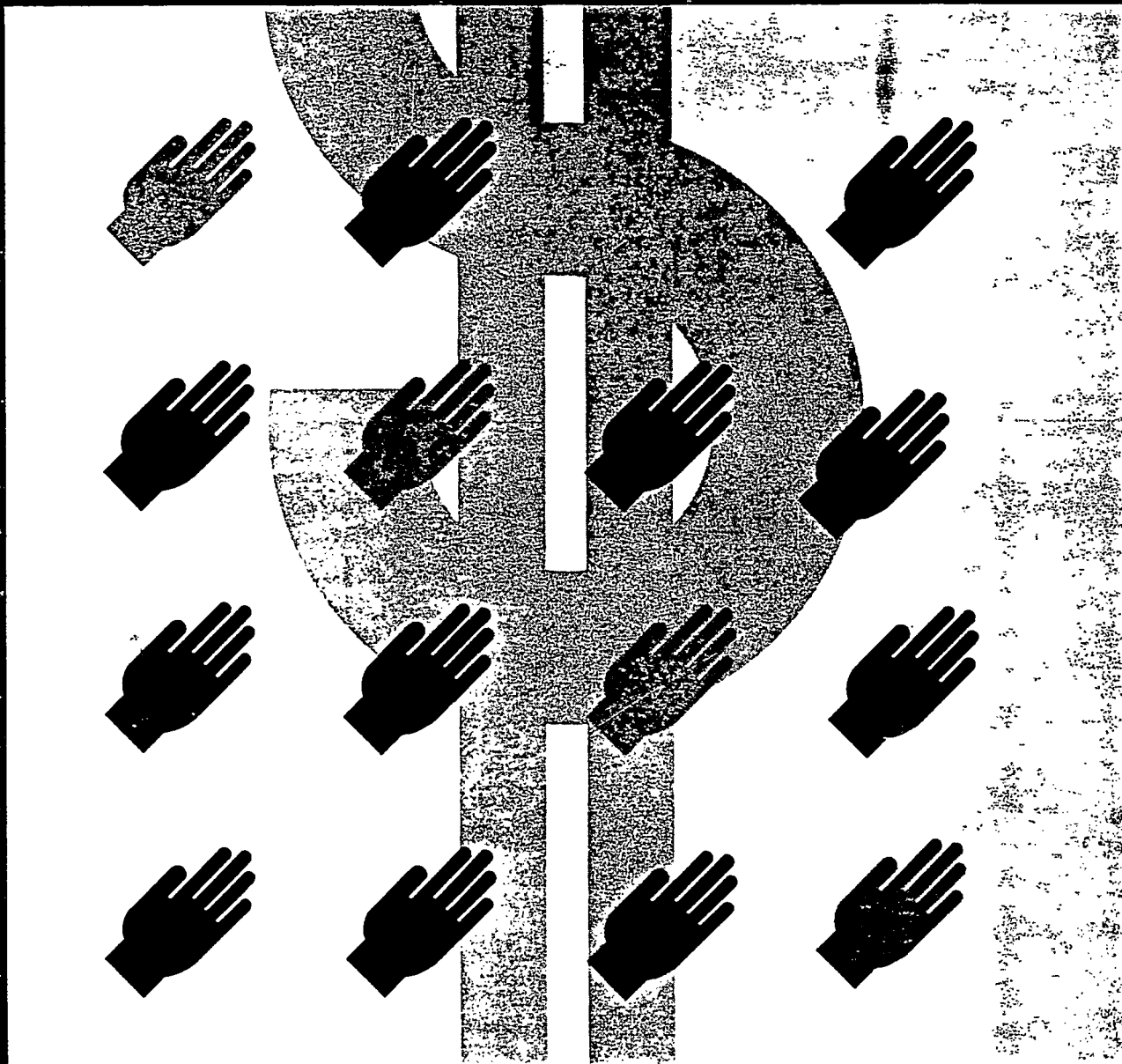


The New Wave of Federalism:

BLOCK GRANTING AND CIVIL RIGHTS
IN THE SOUTHWEST REGION

January 1983



— A report of the Arkansas, Louisiana, New Mexico, Oklahoma and Texas Advisory Committees to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the recommendations in this report should not be attributed to the Commission, but only to the five Advisory Committees in the Southwest Region.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

The New Wave of Federalism:

BLOCK GRANTING AND CIVIL RIGHTS IN THE SOUTHWEST REGION

A report prepared by the Arkansas, Louisiana, New Mexico, Oklahoma and Texas Advisory Committees to the United States Commission on Civil Rights.

Attribution:

The findings and recommendations contained in this report are those of the Arkansas, Louisiana, New Mexico, Oklahoma and Texas Advisory Committees to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committees for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

Right of Response:

Prior to the publication of a report, the State Advisory Committees offer to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication. Additional opportunities for review and comment by affected agencies and institutions have also been provided and are included in the Appendix of this report.

LETTER OF TRANSMITTAL

Arkansas, Louisiana, New Mexico,
Oklahoma and Texas Advisory Committees
to the U.S. Commission on Civil Rights
January 1983

MEMBERS OF THE COMMISSION

Clarence M. Pendleton, Jr., *Chairman*

Mary Louise Smith, *Vice Chairman*

Mary Frances Berry

Blandina Cardenas Ramirez

Jill S. Ruckelhaus

Murray Saltzman

John Hope III, *Acting Staff Director*

Dear Commissioners:

The Arkansas, Louisiana, New Mexico, Oklahoma and Texas Advisory Committees submit this report on their study of the block grant program in their respective States and in the Southwest region as a whole.

This report is based on information gathered through a series of consultations convened by each of the Advisory Committees in the five States within the Southwestern Region over a five-month period ranging from March through July 1982. The purpose of these consultations was to obtain information pertaining to the administration of block grant programs in each of the States and to evaluate to the extent possible, the impact of these programs on minorities, women, the elderly, and the handicapped in these States. Each of the consultations also dealt with issues relating to civil rights enforcement at both the State and Federal levels, as well as citizen participation in the context of the block grant program. In addition, the specific concerns of Native Americans in Oklahoma and New Mexico with regard to block grants were addressed in the consultations held in those two States.

This report is designed to fulfill five purposes. First, it provides a general overview of the block grant program in the Southwestern Region. Secondly, it discusses key issues relating to civil rights enforcement and citizen participation not only from a regional perspective, but also on a State-by-State basis. Thirdly, it focuses on issues that are unique to the region in the area of block grants such as Native American concerns. Fourthly, it examines the decisionmaking processes within each of the States as it relates to block grants. Finally, a minimum standards checklist is included to ensure nondiscriminatory implementation of block grant programs by each of the States within the region.

On the basis of their review, the five Advisory Committees have jointly defined and outlined a series of concerns relating to the implementation of block grants in the Southwestern Region. These concerns are as follows:

Each of the Committees is extremely concerned that the enforcement of civil rights laws and anti-discrimination provisions under the block grants at the Federal level appear to be inadequate. This concern is based, in part, on indications that the implementing regulations promulgated by the U.S. Department of Health and Human Services, U.S. Department of Education, and the U.S. Department of Housing and Urban Development, do not provide specific

instructions dealing with civil rights requirements, nor do they establish a clear system for monitoring and enforcing compliance with these requirements. This condition is made even more untenable by the fact that with few exceptions, most of the States within the Southwestern Region lack an effective central agency to handle civil rights complaints resulting from the block grant programs being administered by the State.

The Advisory Committees are equally concerned that under the block grants, public input into the decisionmaking process is, at best, unsure. Moreover, many of the States within the region have been slow in implementing a viable citizen participation process. If this situation is allowed to continue, the Advisory Committees are fearful that citizen participation in the context of the block grant program may be significantly reduced.

The issue of citizen participation has a direct bearing on how the States perceive their role in the area of decisionmaking. The Advisory Committees are concerned that in each of the States within the region, decisions regarding the distribution of funds under the various block grants are being made with little input from those populations most affected—the elderly, the handicapped, minorities, and women with dependent children. This concern is heightened by the fact that the States have much greater discretion under the block grant program to establish program priorities and eligibility criteria for human services than under the categorical programs.

With regard to Native American populations in New Mexico and Oklahoma, the Advisory Committees are especially concerned about the impact of block grants on their sovereignty status. Moreover, not only are the tribes in both States ineligible for direct funding under most block grants—the Federal funding formulas used for allocating these funds almost ensure that the programs they will be able to administer will be underfunded.

Finally, little has been done by the States to deal with the issue of urban Indians in the context of the block grant program.

We urge you—the Commission—to consider our concerns, and assist us in carrying out follow-up activities on this very important matter. We also urge the Commission to carefully consider the Minimum Standards Checklist which was adopted by us to provide assistance to both State governments and community groups in evaluating procedures being utilized to operate block grant programs and to assure nondiscriminatory implementation of the block grants as a possible framework for Federal monitoring and compliance review.

Respectfully,

Marcia McIvor, *Chairperson*
Arkansas Advisory Committee

Earl Mitchell, *Chairperson*
Oklahoma Advisory Committee

Louis Pendleton, *Chairperson*
Louisiana Advisory Committee

Denzer Burke, *Chairperson*
Texas Advisory Committee

Roberto Mondragon, *Chairperson*
New Mexico Advisory Committee

ARKANSAS ADVISORY COMMITTEE

Marcia McIvor, *Chairperson*
Fayetteville

Evangeline Brown
Dermott

Elijah Coleman
Pine Bluff

Morton Gitelman
Fayetteville

Frank Gordon
Little Rock

Jeane M. Lambie
Little Rock

Thomas C. McRae
Little Rock

Qumare A. Morehead
Pine Bluff

Tae Y. Nam
Pine Bluff

Sheffield Nelson
Little Rock

Irene M. Palnick
Little Rock

Alan Patteson, Jr.
Jonesboro

Shirley J. Thomas
Little Rock

Robert A. Torres
Little Rock

LOUISIANA ADVISORY COMMITTEE

Louis C. Pendleton, *Chairperson*
Shreveport

Ralph E. Thayer
New Orleans

Murphy Bell
Baton Rouge

Van Hildren Brass
Monroe

Fran Martinez Bussie
Baton Rouge

Earl D. Diaz
Lake Charles

Thomas R. Fiddler
New Orleans

Leondard L. Haynes, Jr.
Baton Rouge

Betty Green Heitman
Baton Rouge

Roberta Madden
Baton Rouge

Aaron Mintz
New Orleans

Sybil H. Morial
New Orleans

Jewel L. Prestage
Baton Rouge

P. Spencer Torry
Alexandria

Anne F. Wison
Vivian

NEW MEXICO ADVISORY COMMITTEE

Roberto A. Mondragon, *Chairperson*
Santa Fe

Emma J. Armendariz
Deming

Harris Arthur
Farmington

Salvadore Beltran, Jr.
Truth or Consequences

Grace B. Duran
Las Cruces

Richard A. Gonzales
Albuquerque

Mary Sue Gutierrez
Albuquerque

Lorraine P. Gutierrez
Albuquerque

Robert R. Harding, Jr.
Albuquerque

LaDonna C. Harris
Albuquerque

Joe G. Maloff
Albuquerque

Madeline L. Parry
Artesia

Max A. Sklower
Albuquerque

Charlene Tsoodle-Marcus
Santa Fe

Gerald T. Wilkinson
Albuquerque

OKLAHOMA ADVISORY COMMITTEE

Earl D. Mitchell, *Chairperson*
Stillwater

Hannah Atkins
Oklahoma City

Rhoda C. Baker
Tulsa

Clyde C. Carroll
Oklahoma City

Charlene M. Craig
Oklahoma City

June Echo-Hawk
Tulsa

Robert A. Funk
Piedmont

Rosa Q. King
Oklahoma City

John H. Nelson
Lawton

Roberto A. Olivas
Norman

William R. Richardson
Oklahoma City

Gloria Valencia-Weber
Stillwater

Penny B. Williams
Tulsa

Frances M. Wise
Oklahoma City

TEXAS ADVISORY COMMITTEE

Denzer Burke, *Chairperson*
Texarkana

Joe J. Bernal
San Antonio

James C. Calaway
Houston

Adolfo P. Canales
Dallas

Maria Del Rosario Castro
San Antonio

Karyne J. Conley
San Antonio

Danielle Eubanks
Dallas

Yvonne Ewell
Dallas

Patrick F. Flores
San Antonio

Hector P. Garcia
Corpus Christi

Arnulfo Guerra
Roma

Bernice Johnson
Grand Prairie

Olga M. LePere
McAllen

Earl M. Lewis
San Antonio

Barbara Little
Houston

Charles M. Miles
Austin

Carnegie H. Mims
Fort Worth

Gewndolyn Morrison
Fort Worth

Irma Rangel
Kingsville

Bernard Rapoport
Waco

Ben T. Reyes
Houston

Paula Y. Smith
Austin

Fumi Sugihara
College Station

Milton I. Tobian
Dallas

Carlos Truan
Corpus Christi

Luis A. Velarde
El Paso

Bobby Webber
Fort Worth

Charles A. Wright
Austin

Gloria Zamora
Bulverde

PREFACE

. . .we are not cutting the budget simply for the sake of sounder financial management. This is only a first step toward returning power to States and communities, only a first step toward reordering the relationship between citizen and government. . .

President Reagan, March 20, 1981

The U.S. Commission on Civil Rights has a mandate to appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap or national origin. Pursuant to this mandate, the five State Advisory Committees in the Southwest Region (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) initiated a regionwide project focusing on the use of block grants as a means of returning responsibility for social programs to the States. However, along with the increased responsibility also came the budget cuts in funding and a substantial decrease in federally imposed statutory and regulatory requirements. Because the Committees were concerned about the potential impact of these changes it was decided in February 1982, to examine the process of block grant funding and, to the extent possible, to determine its civil rights implications for minorities, women, the elderly and the handicapped in the region.

The specific goals of the project were to examine the block grant process to determine what civil rights protections and assurances were in place. In addition, the Advisory Committees sought to inform the public in each State of the funding process, and to provide a general forum for individuals and organizations to discuss the ramifications of block grants. To achieve these goals, the Committees agreed to convene a meeting in their respective States to enable State and Federal officials, as well as legislators, community leaders, heads of human service agencies, community organizations, provider groups, tribal representatives and civil rights groups to share their views on the block grant programs. To facilitate a free flow of ideas, a consultation format was used for these meetings. These consultations were held in the following locations: Little Rock, Arkansas, March 24, 1982; Baton Rouge, Louisiana, April 15, 1982; Austin, Texas, May 27, 1982; Oklahoma City, Oklahoma, June 21-22, 1982; and Santa Fe, New Mexico, July 22, 1982. This report summarizes the information received by the Advisory Committees in these five consultations.

The report itself consists of four parts. Part I includes a regional analysis of the issues and incorporates the major concerns of participants at each of the consultations. Part II encompasses a Minimum Standards Checklist designed to provide guidance and assistance to State officials and private citizens, as well as community groups in evaluating procedures used to administer block grant programs. In Part III, separate reports for each of the States are presented. These are designed to provide a summary of the issues covered at each of the State consultations. The final section of this report incorporates letters of response from the governor's office in each of the five States within the region, as well as from pertinent Federal officials.

ACKNOWLEDGMENTS

This report was produced with the assistance of the Commission's Southwestern Regional Office. The overall project was coordinated by John F. Dulles, II, Deputy Regional Director. The preparation of this report was the principal assignment of Gloria Cabrera, Regional Attorney. Portions of the report were also written by John F. Dulles, II; Ernest Gerlach, and Mary D. Minter, Civil Rights Analysts. Margaret Guzman Robbins, Civil Rights Analyst, provided editing assistance. Legal review was conducted by Laurie Campbell, Regional Attorney, of the Commission's Western Regional Office. Support assistance was provided by Norma Valle and Diana Monreal who were responsible for the physical preparation of this document. All worked under the supervision of J. Richard Avena, Regional Director.

The Advisory Committees also wish to thank Deborah R. Snow, Assistant Staff Director of the Commission's Federal Civil Rights Evaluation Office, and Rosa Morales, Chief of the Commission's Housing and Federal Financial Assistance Division, for providing technical assistance in this study.

CONTENTS

PART I: REGIONAL ISSUES

1. The New Wave of Federalism: Block Granting in the Southwest Region.....	3
Overview	
Discretion	
State Legislative and Executive Roles	
Civil Rights Enforcement	
2. Civil Rights Enforcement.....	11
Overview	
Complaint Handling Procedures	
Recordkeeping	
Compliance	
State Mechanisms Dealing with Civil Rights Enforcement	
Conclusion	
3. Community Participation.....	17
Overview	
The Hearing Process	
Notice of Public Hearings	
Conclusion	
4. Indian Tribes: Unique Sovereign Governments and Block Grants	23
Overview	
Funding Issues	
Census Issues	
Indirect Costs	
Urban Indians	
Conclusion	

PART II: MINIMUM STANDARDS CHECKLIST

Introduction	31
Elements of the Checklist.....	31
Using the Checklist	31
Administrative Procedures	
Civil Rights Compliance/Enforcement	
Evaluation/Monitoring	

PART III: STATE REPORTS

Introduction 37

1. Block Grants in Arkansas 38

 State Government in Arkansas

 An Overview of Block Grants

 Civil Rights Enforcement Responsibility

 Citizen Participation

 State Decisionmaking Process

 Summary of Concerns

2. Block Grants in Louisiana 46

 State Government in Louisiana

 An Overview of Block Grants

 Civil Rights Enforcement Responsibility

 Citizen Participation

 State Decisionmaking Processes

 Summary of Concerns

3. Block Grants in New Mexico 54

 State Government in New Mexico

 An Overview of Block Grants

 Civil Rights Enforcement Responsibility

 Citizen Participation

 State Decisionmaking Processes

 Indian Block Grant Issues

 Summary of Concerns

4. Block Grants in Oklahoma 66

 State Government in Oklahoma

 An Overview of Block Grants

 Civil Rights Enforcement Responsibility

 Citizen Participation

 State Decisionmaking Process

 Indian Block Grant Issues

 Summary of Concerns

5. Block Grants in Texas 74

 State Government in Texas

 An Overview of Block Grants

 Civil Rights Enforcement Responsibility

 Citizen Participation

 State Decisionmaking Processes

 Summary of Concerns

PART IV: APPENDIX

Letters of Response 87

PART I
REGIONAL ISSUES

The New Wave of Federalism: Block Granting in the Southwest Region

The specific population being affected include pregnant women, single parent families, infants, children, youth, minorities, elderly, and the handicapped.¹

Whether or not one agrees with the bureaucracy that is our Federal Government, its activities cannot be ignored because they impact daily on our lives. Federal funds constitute a significant component of any State's budget. Since the amount of money that the Federal Government collects and then sends back to the States is in the billions, it is reasonable to assume that, in financially troubled times, this is a source of wealth that will be considered when there is a national effort to reduce Federal spending. A major part of the New Federalism philosophy is to reduce the size of the Federal Government by cutting the budget and to turn back responsibility for domestic social programs to States. This is being done through a block grant funding approach. Block grant funding is generally defined as a consolidation of narrowly focused, tightly controlled categorical programs into large, virtually unrestricted grants that give wide discretion to States on how to use the monies.

Block grants are not new to the 1980's. Their use has merely been increased over the past couple of years and is likely to be increased in the future. The Department of Housing and Urban Development (HUD), for example, has been administering the Community Development Block Grant since 1974. This block grant has received little attention because it was just one means used to get monies to the

States. Another method was categorical grants which are funds that are earmarked for a specific purpose. General revenue sharing was yet another method. In general, revenue sharing funds were allocated by a formula to State and local governments with few requirements as to how the money was to be spent.

With the new wave of Federalism came the increased importance of the block granting approach. These grants combined many of the characteristics of the categorical and revenue sharing grants. Block grants are essentially monies allocated to States by formula and designated for use in broad program areas such as health, community services, and home energy assistance with few or minimal Federal strings attached. During the 1981 Federal budget process, the President proposed and Congress acted on a number of block grant proposals. The Omnibus Budget Reconciliation Act of 1981² was signed into law on July 29, 1981. Chart 1 indicates the nine block grants that Congress authorized and the designated Federal agency which administers each.

While nine grants may appear to be a relatively small number, it is important to note that these grants represent several billion dollars. Additionally, while at present only a small number of Federal programs have been block granted, there is every indication that many more programs will be block granted in the future. Chart 2 describes the numbers

¹ Testimony before the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights in Oklahoma City, Oklahoma, June 21-22, 1982 (hereafter cited as *OK Transcript*), p. 17. See also, Tulsa Metropolitan Human Service Commission, *Human*

Services Funding in Tulsa County, Preliminary Report, May 3, 1982, p. 4.

² Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357.

CHART 1

Block Grant	Administering Federal Agency
1. Community Development	U.S. Dept. of Housing and Urban Development (HUD) ¹
2. Elementary and Secondary Education	U.S. Department of Education ²
3. Community Services	U.S. Dept. of Health & Human Serv. ³
4. Preventive Health and Health Services	U.S. Dept. of Health & Human Serv. ³
5. Alcohol and Drug Abuse and Mental Health	U.S. Dept. of Health & Human Serv. ³
6. Primary Care	U.S. Dept. of Health & Human Serv. ³
7. Maternal and Child Health Services	U.S. Dept. of Health & Human Serv. ³
8. Social Services	U.S. Dept. of Health & Human Serv. ³
9. Low-income Home Energy Assistance	U.S. Dept. of Health & Human Serv. ³

SOURCE: 1. U.S. Department of Housing and Urban Development, Region VI.

2. U.S. Department of Education.

3. U.S. Department of Health and Human Services, Region VI.

and types of categorical programs that have been consolidated into block grants as of October 1981.

Probably the most significant changes that have come about with block grants are the elimination of competition between the States for Federal monies, the elimination of matching requirements for all block grants except Primary Care, the great discretion that States now have in the implementation of the grants because of the elimination of detailed regulations and guidelines governing the expenditure of such funds, and relaxed reporting requirements. The roles of State legislatures and State executives in the block grant process have also significantly changed.

The formula used for the distribution of funds for all but the Social Services Block Grant is based on the amount received by States in Fiscal Year 1981 for the categorical programs now consolidated. State populations and low-income populations are also key factors in the funding formulas of some blocks. Chart 3 lists the block grants accepted by each State in the Southwest Region as of August 1982. Chart 4 indicates the agencies within each

State that have been designated to administer the various block grants.

Many are concerned about the changes in the method of allocating funds and the impact this will have on certain programs. Brenda Quant of the Louisiana Hunger Coalition in discussing the possible impact on the programs at the consultation in Louisiana said:

. . . When we began to collect information about what the changes were going to mean to people. . . we began to realize that. . . it's not enough just to say "Let's save the food stamp program," or "Let's save school lunch," because everything was under attack. In fact [we] came up with the slogan "Ash it all to save it all." And that is what we rallied people around.³

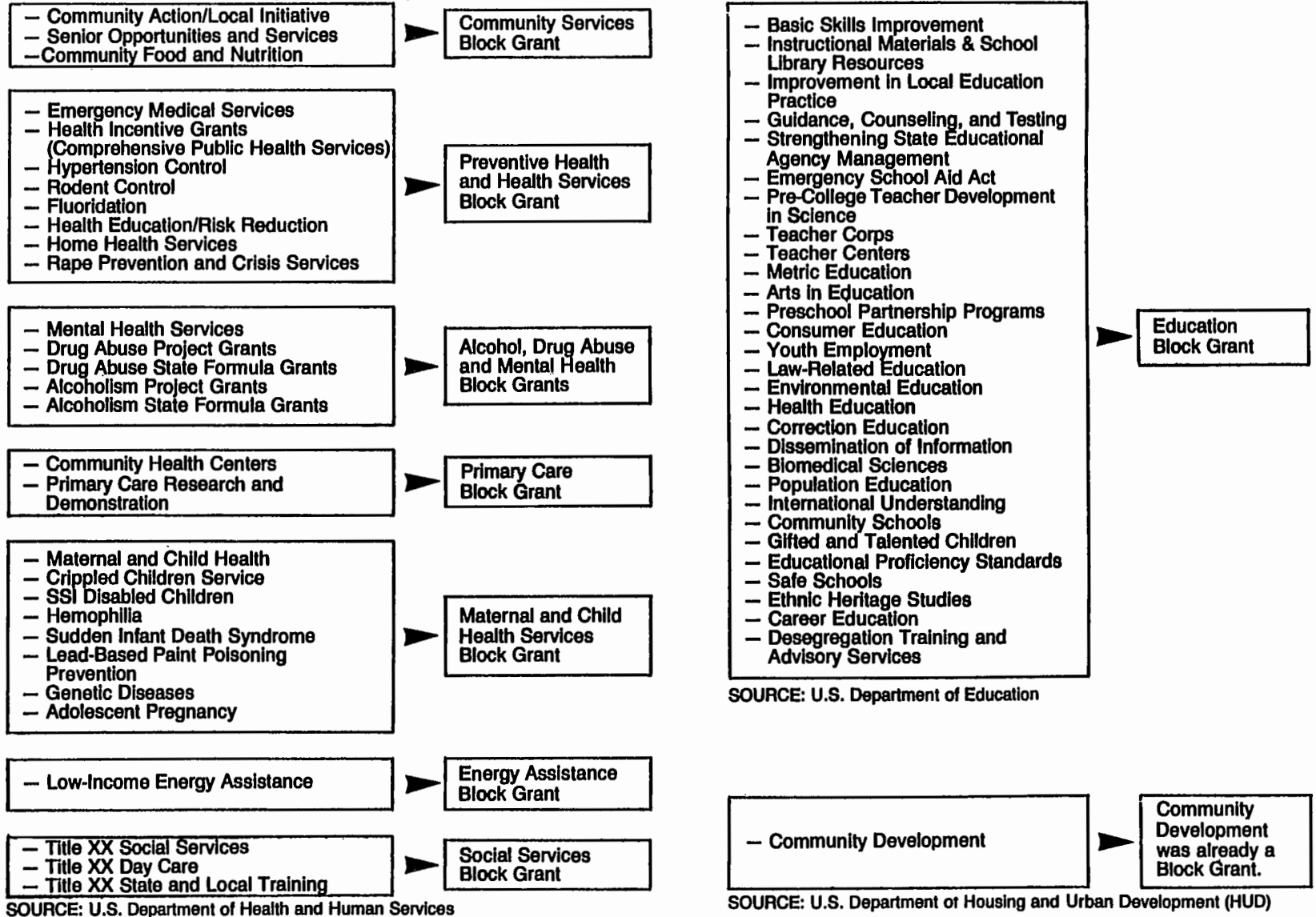
Discretion

In addition to changes in the fund allocation formula, the single most important change brought about by block grants is the discretion that the Federal Government has deliberately placed in the hands of State governments. The final regulations issued by the U.S. Department of Health and Human

³ Testimony before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights in Baton Rouge, Louisiana, April 15, 1982 (hereafter cited as *LA. Transcript*), pp. 151-152.

CHART 2

Consolidation of Categorical Programs into Block Grants



SOURCE: U.S. Department of Health and Human Services

SOURCE: U.S. Department of Education

SOURCE: U.S. Department of Housing and Urban Development (HUD)

CHART 3

Block Grants that the States in the Southwest Region had Accepted or Indicated An Intent to Accept As of September 1982

STATE	Community Development	Education	Community Services	Preventive Health and Health Serv.	Alcohol, Drug Abuse and Mental Health	Primary Care ¹	Maternal and Child Health Serv.	Social Serv.	Low-Income Energy Assistance
ARKANSAS	X	X	X	X	X		X	X	X
LOUISIANA	X	X	X	X	X		X	X	X
NEW MEXICO ²	•	X	X	X	X		X	X	X
OKLAHOMA	X	X	X	X	X		X	X	X
TEXAS	X	X	X	X	X		X	X	X

SOURCE: *Consultation Transcripts*, Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

¹Primary Care was not available until October 1, 1982.

²As of September, 1982, New Mexico had not accepted the Community Development Block Grant.

CHART 4**State Agencies Responsible for Block Grant Implementation**

STATE	AGENCY	BLOCK GRANTS
ARKANSAS	Department of Human Services	Social Services Low-Income Home Energy Assistance Community Services Alcohol, Drug Abuse and Mental Health Services
	Department of Health	Preventive Health & Health Services Maternal & Child Health Services Primary Care
	Department of Education	Elementary & Secondary Education
	Industrial Development Commission	Community Development
LOUISIANA	Department of Health and Human Resources	Social Services Low-Income Home Energy Assistance Alcohol, Drug Abuse and Mental Health Services Preventive Health & Health Services Maternal & Child Health Services Primary Care
	Department of Labor	Community Services
	Department of Urban and Community Affairs	Community Development
	Department of Education	Elementary & Secondary Education
NEW MEXICO	Department of Health and Environment (Health Services Division)	Preventive Health & Health Services Maternal & Child Health Services Alcohol, Drug Abuse and Mental Health Services
	Department of Human Services	Social Services Low-Income Home Energy Assistance
	Department of Education	Elementary & Secondary Education
OKLAHOMA	Department of Economic and Community Affairs (DECA), Division of Human Development (Overall Coordination of Information on Block Grants: Department of Economic and Community Affairs)	Community Services Community Development
	Department of Human Services	Social Services Low-Income Home Energy Assistance
	Health Department	Preventive Health & Health Services Maternal & Child Health Services
	Department of Mental Health	Alcohol, Drug Abuse and Mental Health Services
	Department of Education	Elementary & Secondary Education
TEXAS	Health Department	Preventive Health & Health Services Maternal & Child Health Services
	Human Resources	Social Services Low-Income Home Energy Assistance
	Department of Community Affairs	Community Services Community Development Drug Program
	Texas Commission on Alcoholism	Alcohol Program
	Mental Health Department	Mental Health Services
	Department of Education	Elementary & Secondary Education

Services (HHS) emphasize that block grant programs are intended to confer wide discretion on the States.⁴ The new philosophy is that the ultimate check on what States do with the allocated Federal dollars is the State's accountability to its citizens. If citizens are unhappy with the manner in which States are administering the block grants, they can make their feelings known at the ballot box.

In the past, certain assurances were required before money was sent to the States and Federal agencies monitored compliance with these assurances. An example of a standard assurance would be a statement of agreement to utilize the funds in a nondiscriminatory manner. The Federal Government is also allowing them to monitor their own compliance. In other words, *States are now to interpret what the assurances mean and whether they are in compliance unless the HHS determines that the interpretation is clearly erroneous.* (Emphasis added) The HHS final regulations state:

. . .when an issue arises as to whether a State has complied with its assurances and the statutory provisions, the Department [HHS] will ordinarily defer to the State's interpretation of its assurances and the statutory provisions. *Unless the interpretation is clearly erroneous, State action based on that interpretation will not be challenged by the Department.*⁵ (Emphasis added)

The possible effect of these regulations could be 50 different legal interpretations.⁶

This discretion is further enlarged by another section of the regulations which state in part:

. . .to the extent possible, we will not burden the States' administration of the programs with definitions of permissible and prohibited activities, procedural rules, paper work and recordkeeping requirements, or other regulatory provisions. The States will, for the most part, be subject only to the statutory requirements, and the Department will carry out its functions with due regard for the limited nature of the role that Congress has assigned to us.⁷

State Legislative and Executive Roles

The statute and the regulations are not specific as to who acts for the State. In some States, this may create a potential struggle between the legislature and the governor in the implementation of the block

grant programs. According to one governor, in a State with a strong legislature, "the governor proposes and the legislature disposes."⁸ Each State in the Southwest Region has dealt with this issue in its own way.

In this region, the greatest activity has probably occurred in Oklahoma, which has both a strong governor and a strong legislature. This State also has a strong constitutional mandate which forbids one branch of government from attempting to exercise the powers properly belonging to another branch of government.⁹

In October 1982, the Oklahoma Legislature created a Joint Committee on Federal Funds which consisted of ten members of the legislature including the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the chairpersons of the Senate Appropriations Committee and the House Appropriations and Budget Committee. The Joint Committee was given the power to approve or disapprove applications for Federal financial assistance by any State agency. A State agency could not submit any application to the Federal Government without this approval. However, the attorney general of Oklahoma declared this an "unconstitutional abridgment of the separation of powers."¹⁰ The governor felt that this function of disapproving applications was basically an administrative task of overseeing Federal programs. He also felt that during the next session, the legislature will introduce another bill on this issue.¹¹

State Representative Joe Manning, appearing before the Oklahoma Advisory Committee, was concerned that the Joint Committee now has no authority to enforce its recommendations and that there is no legislative procedure to determine the effectiveness of the various block grant programs.¹² While this may be true, others suggested that the legislature has a significant role through its appropriations function in that it controls the purse strings.¹³

New Mexico has also been involved in a debate between the governor and the legislature. Efforts have been made by the New Mexico Legislature to pass legislation providing greater legislative control

⁴ 47 Fed. Reg. 29472, 29474 (1982).

⁵ 47 Fed. Reg. 29472, 29478 (1982).

⁶ Telephone interview with William Acosta, Regional Administrator, Office of Human Development Services (HHS), Region VI, Dallas, TX, Sept. 24, 1982.

⁷ 47 Fed. Reg. 29472 (1982).

⁸ OK. Transcript, p. 68.

⁹ Okla. Const. Art. 4, §1.

¹⁰ Okla. Atty. Gen. Op. No. 82-45, p. 8 (1982).

¹¹ OK. Transcript, pp. 54-55.

¹² Ibid., p. 137.

¹³ Ibid., pp. 182-184.

CHART 5

Prohibited Bases of Discrimination for Each Block Grant in the Budget Reconciliation Act of 1981

	Race/ Color	National Origin	Sex	Age	Handicap	Religion
1. Community Development	X	X	X	X	X	X
2. Elementary and Secondary Education*	—	—	—	—	—	—
3. Community Services	X	X	X	X	X	•
4. Preventive Health and Health Services	X	X	X	X	X	X
5. Alcohol and Drug Abuse and Mental Health	X	X	X	X	X	X
6. Primary Care	X	X	X	X	X	X
7. Maternal and Child Health Services	X	X	X	X	X	X
8. Social Services*	—	—	—	—	—	—
9. Low-income Home Energy Assistance	X	X	X	X	X	•

SOURCE: Omnibus Reconciliation Act of 1981.

*Prevailing law makes prohibitions against discrimination.

•Not specifically prohibited.

over the allocation of Federal funds. These efforts, however, have been largely unsuccessful.¹⁴

Civil Rights Enforcement

Because of the nature of the U.S. Commission on Civil Rights' jurisdiction to appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, it has had a vital interest in exploring the impact of the changes resulting from the block grant approach on civil rights. Concern was expressed that block grants could minimize or eliminate civil rights protections available under previous categorical programs. While block granting represents a basic change in the system of allocating Federal financial assistance, funds provided under block grant programs are not immune to civil rights requirements. The majority (seven of nine) of the block grants have specific statutory language which prohibits discrimination in the use of such funds. Additionally, existing Federal civil rights legislation has not been repealed.

¹⁴ Testimony before the New Mexico Advisory Committee to the U.S. Commission on Civil Rights in Santa Fe, New Mexico, July 22, 1982 (hereafter cited as *NM. Transcript*), p. 262.

¹⁵ U.S. Department of Justice, Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Memorandum for

Basically all grants are to be implemented in a nondiscriminatory manner. However, there is some variance in the individual grants. Chart 5 summarizes the prohibited bases of discrimination for each block grant authorized in the Omnibus Budget Reconciliation Act.

As Chart 5 shows, the Budget Reconciliation Act itself does not contain language specifically prohibiting discrimination in two of the block grants—Education and Social Services. However, the Office of Management and Budget has asked the Justice Department for a legal opinion as to whether the grants not having specific nondiscrimination language are subject to existing laws prohibiting discrimination in Federally-assisted programs. The Justice Department has decided that these grants are indeed subject to these laws,¹⁵ so that *all block grants are to be implemented in a nondiscriminatory manner.* (Emphasis added) However, no provisions were made to ensure that the grants will be implemented in a nondiscriminatory manner.

Michael Horowitz, Counsel to the Director, Office of Management and Budget, Re: Applicability of Certain Cross-Cutting Statutes to Block Grants Under the Omnibus Budget Reconciliation Act of 1981 (March 12, 1982).

Civil Rights Enforcement

I'm appalled at them [members of the community] being naive enough to feel that. . .all these racists that I've spent most of my adult life trying to either dissuade, go around, or simply run over, are going to suddenly roll over and play dead as if they no longer exist.

. . .now any time the states become responsible for the guaranteeing of our rights as provided under the Constitution of the United States, we lose every time.¹

One of the major concerns expressed at each of the consultations in the Southwest Region was the confusion about the respective roles and responsibilities of the Federal and State governments with regard to civil rights monitoring and enforcement in block grant programs.² Consultation participants viewed the new block grant programs as shifting the major responsibility for assuring civil rights protections to the States.³ This was not a popular feature of block granting. Brenda Quant of the Louisiana Hunger Coalition objected to increasing Louisiana's role in civil rights as she felt this was a return to "States' rights."⁴

Raul Vasquez, a representative of the League of United Latin American Citizens (LULAC), at the Texas consultation expressed a similar view. He told the Committee:

. . .Texas has historically been far less sensitive to minorities and civil rights than has the Federal Government.⁵

¹ Testimony before the Arkansas Advisory Committee to the U.S. Commission on Civil Rights in Little Rock, Arkansas, March 24, 1982 (hereafter cited as *AR. Transcript*), p. 298-299.

² Testimony before the Texas Advisory Committee to the U S Commission on Civil Rights in Austin, Texas, May 27, 1982 (hereafter cited as *TX. Transcript*), p. 299.

In New Mexico, giving the State responsibility for civil rights was viewed as tipping the scale against minorities, women, the elderly and the handicapped. According to Kathi Harmon, of the Governor's Committee on Concerns of the Handicapped:

. . .Turning programs back to the State will mean that too many squeaky wheels get greased (i.e., that those with political clout will fare better than the truly needy).⁶

Juan R. Vigil, director of the Albuquerque Human Rights Department, cited a different example in support of his fear of States acquiring civil rights enforcement responsibilities:

The State Human Rights Commission is the . . .existing. . .[agency designated to handle] discrimination complaints [in New Mexico]. Yet, every time the legislature meets, a major effort is made to abolish the commission. Recently, such legislation was passed, but was ultimately vetoed by the Governor. This tells us that a significant number of our legislators have not taken seriously the need to protect our civil rights, or the enforcement of nondiscrimination.⁷

In Arkansas, Howard Love, president of the Urban League of Arkansas, reflected on the history of other Federal block grants in the State of Arkansas and the civil rights problems they posed:

The . . .question has to do with civil rights compliance and the enforcement of nondiscrimination provisions

³ *AR. Transcript*, p. 182.

⁴ *LA. Transcript*, p. 137.

⁵ *TX. Transcript*, p. 331.

⁶ *NM. Transcript*, p. 78.

⁷ *Ibid.*, p. 13.

under the block grant [program]. Well, we've had revenue sharing, we've had the Law Enforcement Assistance Program, and we've had Comprehensive Employment and Training Act (CETA), and we've also had the Community Development Block Grant Programs.

He continued:

As forerunners to the type of block grants that's been proposed now, if we look at Law Enforcement Assistance Administration of block grants to States, we find that there was no, absolutely no civil rights and nondiscrimination enforcement in that process at all. The Justice Department had to come into the State and force the State Police Department to begin to address the issue of discrimination.⁸ (Emphasis added)

Sandy Ingraham, a staff member of the Oklahoma Coalition for Fair Block Grants, espoused a similar view in Oklahoma.⁹ She expressed concern that,

. . .nowhere, federally or locally, is there any kind of required reports and I don't know how anyone can try to analyze the effect of civil rights violations if nobody is having to report on minority participation in programs. . .¹⁰

There is interest in the civil rights implications of block grant programs because many believe that such programs may have a disproportionate impact and burden on minorities, women, the elderly, and the handicapped, if adequate protections for ensuring nondiscrimination are not safeguarded. In New Mexico, Alfred Rucks, representing the National Association for the Advancement of Colored People (NAACP), noted the importance of these protections in light of the present state of the economy. In his opinion,

. . .Racism. . .tends to increase as hard times increase.¹¹

In Texas, Zy Weinberg of the Anti-Hunger Coalition of Texas, while not claiming racism, did allege that:

[In Texas] minorities, women, the elderly, and the handicapped, have been disproportionately affected by the budget cuts and the block grants enacted to date.¹²

A member of the Texas Legislature, Representative Wilhelmina Delco offered an explanation for this. In her opinion, minorities fare much better under federally administered programs. She went on

⁸ AR. Transcript, p. 236.

⁹ OK. Transcript, p. 35.

¹⁰ Ibid., p. 34.

¹¹ NM. Transcript, p. 66.

¹² TX. Transcript, p. 334.

to explain why most minorities favor having the Federal Government monitor State programs:

I would submit that one of the reasons that poor people and minority people have turned to the Federal Government is because of the obvious abdication of the [States civil rights] responsibility.

For the most part, the programs that have been generated by the Federal Government have only been minimally and reluctantly matched by the State of Texas, even though the State of Texas is clearly one of the wealthiest in these United States.¹³

A member of the New Mexico Legislature shared a similar view and thus felt that the legislature should not play a predominant role in the implementation of block grants.¹⁴ Senator Alfred Nelson said, "I've seen very little or no evidence that the legislature is really being sensitive to the needs of the poor, the handicapped, the elderly, and the needy in this State and that bothers me."¹⁵ In support of this statement, he cited the legislature's recent refusal to appropriate \$100,000 to obtain the Community Development Block Grant.¹⁶ Consequently, the U.S. Department of Housing and Urban Development (HUD) will continue to administer these funds rather than the State.

Uncertainty about the extent to which civil rights enforcement responsibility will remain with the Federal Government or shift to the States is complicated by the State agencies' own interpretation of statutory requirements and their own determination of compliance with assurances. Basically, their interpretation calls for little or no intervention.

The U.S. Commission on Civil Rights addressed this issue in commenting on the U.S. Department of Health and Human Services final regulations for implementing block grant programs published in the *Federal Register* on October 1, 1981. These comments read in part:

. . .the rules provide minimal guidance to the States in implementing the block grant programs; in some cases they simply reiterate statutory language without elaboration or explanation. In other cases, they are overly broad, omit major statutory provisions and do not provide adequate compliance and enforcement procedures. Thus, the rules fail to accomplish what the Commission considers to be one of the primary functions of such Federal

¹³ Ibid., p. 283.

¹⁴ NM. Transcript, p. 289.

¹⁵ Ibid.

¹⁶ Ibid., p. 291.

regulations, i.e., to clarify the responsibilities of Federal fund recipients by translating broad statutory provisions into clear, specific requirements that can be effectively monitored and enforced.¹⁷

The Commission pointed out that despite the existence of Federal enforcement mechanisms, programs have been found to discriminate in the past and that ample evidence of this is available. It also noted there has been an added problem when Federal assistance is provided through programs such as block grants:

...the wide latitude afforded States...in programs funded through general revenue sharing, for example, often has resulted in State and local governments circumventing nondiscrimination statutory provisions by freeing State and local funds which were then used for discriminatory purposes.¹⁸

Others feel that attempts to deregulate and free the States from burdensome guidelines could easily result in the adoption of procedures that are inadequate for monitoring and enforcing compliance with statutory civil rights requirements. For example, it was cited in a report¹⁹ dealing with revenue sharing that:

...the teaching of experience under earlier civil rights laws is that the key to success in performing a major enforcement task is to establish good compliance machinery and to demonstrate a willingness to impose sanctions on those who violate the law.²⁰

An important element in any civil rights enforcement system, is a clearly defined grievance or complaint processing procedure for potential beneficiaries of the services being funded. However, the U.S. Department of Health and Human Services (HHS), in explaining complaint handling procedures to be followed under the block grants, pointed out that the States will determine whether or not they are in compliance with the assurances that they have signed. In those instances where Federal laws or regulations do not apply States will be able to spend block grant funds in accordance with their own laws and regulations.²¹

¹⁷ John Hope, III, Acting Staff Director, U.S. Commission on Civil Rights, letter to Richard S. Schweiker, Secretary, U.S. Department of Health and Human Services, December 4, 1981.

¹⁸ Ibid.

¹⁹ *General Revenue Sharing: The Case for Reform*, National Sharing Project, February 1976.

In looking at procedures governing complaint handling, recordkeeping and compliance reviews, the following elements are important:

A. *Complaint Handling Procedures*

Although the regulations do not specify civil rights complaint handling procedures to be implemented at either the State or Federal levels the Federal Government will continue to handle civil rights complaints.²² However, the States will have 60 days within which to secure voluntary compliance before the Federal Government can intervene. If voluntary compliance cannot be obtained, the appropriate Federal enforcement agency will take over responsibility.

B. *Recordkeeping*

Many also felt that if civil rights enforcement is to be taken seriously, there must be an appropriate system of reporting and recordkeeping that documents compliance or infractions. A specific system of reporting and recordkeeping, however, is not required under the current block granting system and this could potentially present a problem for those trying to monitor civil rights compliance.

The regulations also fail to prescribe a specific format for submitting required applications and reports. In discussing the application process, the regulations cite the Act's requirement that an annual submission for each block grant be made before funds are approved. That section goes on to say:

The Secretary [of the Department of Health and Human Services] is not prescribing any particular format for the submission or elaborating on its contents beyond what is specified in the Act. States should simply insure that its submission satisfies the statutory requirements.²³

Once the submissions are received, the regulations provide that:

The Department [HHS] will review the submissions to determine that they are complete and in accordance with statutory requirements. **FUNDS WILL BE MADE AVAILABLE TO ANY STATE FILING A COMPLETE SUBMISSION.**²⁴ (Emphasis added)

According to the regional administrator for the Office of Human Development Services (U.S. De-

²⁰ Ibid., p. 9.

²¹ 47 Fed. Reg. 29472, 29477 (1982).

²² 47 Fed. Reg. 29472, 29480 (1982).

²³ 47 Fed. Reg. 29474 (1982).

²⁴ Ibid.

partment of Health and Human Services), the entire submission could consist of a one sentence letter.²⁵

The Department of Education has also published its final regulations for the Education Block Grant and Chapter 1 of the Education Consolidation and Improvement Act of 1981. The regulations state in very broad terms that all applicable civil rights laws for recipients of Federal funds apply. For example:

Recipients of funds under Chapter 1 are recipients of Federal financial assistance and, therefore, must comply with Federal civil rights laws generally applicable to recipients of Federal financial assistance. Consequently, those statutes, as well as the regulations that implement them, apply to Chapter 1 programs.²⁶

For Chapter 2 programs, the language is similar:

As the Secretary interprets other applicable statutes, recipients of grant funds under Chapter 2 are recipients of Federal financial assistance under the civil rights laws. Therefore, those statutes, as well as regulations implementing those statutes, apply to Chapter 2 programs.²⁷

In discussing civil rights enforcement procedures, Bill McEuen, general counsel for the New Mexico Department of Education, stated:

. . . there is simply no provision for any type of civil rights monitoring or enforcement. All the law specifies is for us to require assurance that they [the local school districts] will receive the Chapter 2 monies, and [that] they tell us they will comply. We have no power to enforce, monitor, etc.²⁸

Mr. McEuen added, however:

The Office for Civil Rights [U.S. Department of Education] has not lost any of its powers or any of its duties. Under the new block grant system, they still have the power to investigate complaints, to require records, to do on-site investigations. They have, ultimately, the power to withhold Federal funds from a school district which cannot comply and refuses to remedy the discrimination that has been uncovered. The Office for Civil Rights still operates under a court order in the case of *Adams v. Bell*, which requires it to investigate compliance and requires it to resolve those complaints within a specified time period.²⁹

The U.S. Department of Housing and Urban Development (HUD), likewise requires nondiscrimination. Grantees under the Community Develop-

ment Block Grant must submit certifications that they will conduct and administer the grant in conformity with the provisions of the Civil Rights Acts of 1964 and 1968.³⁰ Again, the language is extremely broad.

C. Compliance

Basic to assuring compliance with any set of laws is an awareness on the part of the administering agency of the parameters of its responsibility and the consequences of noncompliance. The Secretary of the Austin School Board, Nan Clayton, in discussing this issue asked the Texas Advisory Committee:

What will be the ramifications of noncompliance, loss of all Federal funds, loss of the block grant funds, or warnings with no penalty? We don't know what will happen to us. We need to know.³¹

As previously discussed, there is a consensus that all block grants are to be implemented in a nondiscriminatory manner. The problem lies in that assuring nondiscrimination requires more than passive acceptance of the policy or statutory requirement. It is necessary to do something positive to assure that there is no discrimination against the protected classes. This action is predicated on acknowledgement and acceptance of the obligation to comply with civil rights laws. In implementing block grants States have a contractual obligation to adhere to applicable civil rights laws.

However, there appears to be some confusion as to what the Federal and the State roles in civil rights enforcement are supposed to entail. This confusion may be due in part to the lack of specific guidelines and regulations on the issue of civil rights enforcement now that the administrative focus has shifted.

Federal officials continue to emphasize their commitment to civil rights as did James Kelly, Deputy Assistant Director for Intergovernmental Affairs of the U.S. Office of Management and Budget (OMB), when he told the Louisiana Advisory Committee:

. . . There are some very very strong provisions in the civil rights area, and we feel extremely committed to insure that those are both understood and adhered to.³²

²⁵ Telephone interview with William Acosta, Office of Human Development Services (HHS), Region VI, Dallas, TX., Sept. 24, 1982.

²⁶ 47 Fed. Reg. 32858 (1982).

²⁷ 47 Fed. Reg. 32885 (1982).

²⁸ *NM. Transcript*, p. 216.

²⁹ *Ibid.*, p. 225.

³⁰ Pub. L. No. 97-35, 95 Stat. 385 reprinted in U.S. Code Cong. & Ad. News (Supp. No. 7, Sept. 1981).

³¹ *TX. Transcript*, pp. 403-404.

³² *LA. Transcript*, p. 9.

The fact remains, however, that States will have an increased opportunity to deal with civil rights enforcement. Statements made at the five consultations seemed to express skepticism that none of the mechanisms currently in place in the five States could effectively guarantee civil rights protections. Representative of this view was Clarence Johnson of the Poverty Education and Research Center in Austin, who said:

. . . We think that this whole response by the Federal bureaucracy to block grant enforcement means that we really have to have meaningful enforcement mechanisms on the State level and it has to be done quickly.³³

State Mechanisms Dealing with Civil Rights Enforcement

Many of the participants at the consultations believed that each State should have an entity to deal with civil rights enforcement for block grants. They also felt that these entities should be independent of State governments. Some of the statements made on this point were:

. . . the State does need to have an arm of itself with the independence and autonomy that allows it to investigate objectively. . .

. . . an organization that is housed within another organization. . . is asking the watch dog to watch his own plate and not eat.³⁴

Information presented at the consultations, however, indicated that all of the States in the Southwest Region depended primarily on individuals assigned to the various State agencies to perform equal opportunity functions, rather than having a separate office, staff and resources to perform civil rights monitoring and enforcement functions. The rationale for this according to Dennis Daugherty, director of Federal Relations in the Louisiana Governor's Office is that:

. . . the civil rights enforcement has, by and large been [an agency] function—because under the demands of Federal law, it has been a responsibility that has been vested in each State agency responsible for Federal programs. [Therefore] the Governor's feeling is, I think, if it isn't broke, don't fix it.³⁵

Since the system of letting individual agencies handle civil rights has worked, in the opinion of

³³ *TX Transcript*, p. 390.

³⁴ *Ibid.*, pp. 136-137.

³⁵ *LA Transcript*, p. 123.

³⁶ *AR Transcript*, p. 257.

State officials in Louisiana, changes have not been made in the process.

In no State within the region was there an independent office working exclusively on civil rights enforcement. For example, an attorney with the Arkansas Legal Services Support Center, Sheryl Dicker, explained to the Committee that there is no State mechanism set up to enforce Federal nondiscrimination laws in that State.³⁶ She stated at the consultation:

In Arkansas we do not. . . have any viable State mechanism to investigate complaints of discrimination, to negotiate or conciliate complaints, to hold public hearings on those complaints or to compel compliance of those complaints. Representative Brown alluded to the Commission on Human Resources, which is. . . our only State agency that has. . . any close connection with enforcement of civil rights acts; and that agency, in order to become the enforcement mechanism for Civil Rights Acts, would have to have its legislation amended right now under the law. Though again, that agency is not presently in existence because it doesn't have funding. Under the 1977 law that created the Commission on Human Resources, they were only given the power to study problems of discrimination, to promote equality, to encourage nondiscrimination, and to evaluate agencies and hold public hearings relevant to those issues. They don't have the power, as of now, to investigate complaints or to compel compliance.³⁷

Participants at the Texas consultation also expressed the view that what the States needed was an enforcement mechanism designed to deal effectively with civil rights problems. State Representative Frank Gaston of Dallas added:

. . . I am convinced that the effectiveness of civil rights enforcement must be closely tied to allocation of revenues. The carrot-and-stick approach, in which money is reduced or withheld for noncompliance with civil rights laws is the strongest tool available to assure protection of minority groups from the unfair acts of the majority.³⁸

Others, such as E.E. "Tex" Ritterbush of New Mexico, agreed that the States should continue to be held accountable to Washington for the Federal money it receives and spends.³⁹

While States are struggling with this issue, Texas Representative Wilhelmina Delco offered some suggestions:

³⁷ *Ibid.*, p. 258.

³⁸ *TX Transcript*, p. 278.

³⁹ *NM Transcript*, p. 48.

I would hope that the Federal Government would not cut all ties and all strings until we have firmly in place some indications, proof, if you will, that the same kinds of concerns that a lot of poor and minority people have come to expect from government will not be abandoned in the name of New Federalism.⁴⁰

Others shared Representative Delco's concern. In Louisiana, Brenda Quant said,

. . . protections for minorities, women, children, [the] elderly, [the] handicapped, and the poor, which are written in various laws, have no strength, and ultimately, no meaning when money for enforcement is limited and Federal responsibility is withdrawn.⁴¹

In Arkansas, State Representative Carolyn Pollan from Fort Smith argued for the importance of the Federal Government in assuring civil rights compliance:

There is no doubt that without Federal Government intervention and the Civil Rights Act of 1964, the individual States still would not have integration. Without Federal Government intervention and proposing the Equal Rights Amendment to the United States Constitution, we would still not have the changes in State law that have taken place in the last eight years: Without the Federal Government intervention, we would not have made the advancement in the programs for the handicapped that have taken place in the last ten years. . .⁴²

Delores Wilson, branch chief with the Dallas Regional Office for Civil Rights, U.S. Department of Health and Human Services, responded to these concerns by saying:

The Office for Civil Rights is not abdicating its responsibility. We are still in . . . the business of assuring equal opportunity in service delivery or in the receipt of service. . .⁴³

She added:

The primary differences in the nondiscrimination requirements connected to the Health and Human Services Block Grant are the addition of the sex and religious discrimination prohibitions and the requirement that the department notify the Governor of findings of noncompliance and then provide the State 60 days within which to secure voluntary compliance.

Recognizing the questions that these changes create, the department is in the process of developing procedures to

insure compliance with the statutes. In this effort, a National Block Grant Task Force was convened in early November of 1981, charged with the responsibility for developing strategies for implementing the nondiscrimination clauses of the block grants to the States.⁴⁴

A number of complaint processing and compliance review prototypes had been developed by HHS with the suggestion that one or more of these prototypes be put in operation in the various regions. However, these approaches were still under review by regional and national department personnel. According to Ms. Wilson the task force was still intact and would be reconvened in the near future to finalize complaint and compliance review procedures. She also explained that the primary goal for the task force is to develop a methodology that will insure a viable partnership between the Federal and State governments. In establishing this partnership she stressed that her office could not delegate its statutory responsibility for enforcement.⁴⁵

Conclusion

The consensus seemed evident from the various statements presented to the five Advisory Committees that many minorities, women, the elderly, and the handicapped are accustomed to the Federal Government exercising the role of civil rights enforcer and that the majority appear to be comfortable with that arrangement. Because of problems that minorities encountered in the past, there is some understandable resistance to trusting the individual States to develop and maintain adequate civil rights mechanisms to assure nondiscrimination. This resistance may be due in part to the fact that block grants are not being created in a vacuum. Many felt that the past record of State enforcement indicates that special efforts need to be taken to secure compliance with nondiscrimination provisions of the regulations. Others suggested that perhaps a partnership between the Federal and State governments, such as the one described by Delores Wilson from OCR, may be more palatable. However, the relationship between the Federal Government and the States still remains undefined at present.

⁴⁰ *TX Transcript*, pp. 294-295.

⁴¹ *LA. Transcript*, p. 136.

⁴² *AR. Transcript*, p. 192.

⁴³ *TX Transcript*, p. 132.

⁴⁴ *Ibid.*, pp. 124-125.

⁴⁵ *Ibid.*, p. 126.

Community Participation

. . .the various forms of citizen participation mechanisms that will be devised at the local level will be purely . . .advisory. . .The final decision will be made by local and [State] government officials.¹

We cannot afford to leave the allocation of public dollars and resources to a few people. That's the major problem. We need more public involvement by those people who are directly affected rather than sitting back on the sidelines and waiting for something to happen. Only then, I think will the State and local decisionmaking process become more fair and more equitable, and I hope that happens.²

Community participation is crucial to the protection of civil rights for program beneficiaries, especially for minorities, women, the elderly and the handicapped. They must have real access to and actively participate in the block grant process. It is also vitally important that they have input into the decisions that are made and which affect them. Congress has recognized the significance of community participation in the past and has specifically included provisions for funding such participation in the legislation. This provision is also included in the various block grants, although the requirements are not as stringent as found in categorical grants.

Because of the advances made under the categorical grants-in-aid system, many civil rights leaders strongly criticized the relaxation of public participation requirements in programs such as revenue sharing in the past. They perceived the change as

the result of "a declining commitment to public participation in federally-funded programs."³ And so, "to many minorities and women, revenue sharing accomplishes its purpose to strengthen State and local governments—but at the expense of their involvement in that process."⁴

Thus, it is interesting to note that the concerns expressed today about the relaxing of community participation requirements under the block grant programs are not new. The only difference might be that the requirements appear to have been relaxed even further under the current block granting approach.

The legal requirements on community participation under the new block grants are very simple. First, HHS final regulations specify that *States are to subject the plans and descriptions of intended uses to public comment*, and secondly, these public comments must be obtained before the plan is finalized.⁵ (Emphasis added)

In addition to the regulations that have been published by HHS, the Department of Education has published its final regulations for the implementation of the Education Block Grant. The Budget Reconciliation Act in discussing citizen participation requirements for Chapter 2 states:

. . .in the allocation of funds for programs authorized by this chapter, and in the design, planning, and implementation of such programs, provides for systematic consulta-

¹ *LA. Transcript*, p. 257. Statement by Linton Ardoine, Secretary, Louisiana Department of Urban and Community Affairs.

² *AR. Transcript*, p. 26.

³ U.S. Commission on Civil Rights, *Making Civil Rights Sense of Revenue Sharing Dollars*, Washington, D.C., (1975), p. 3.

⁴ *Ibid.*, p. 4.

⁵ 47 Fed. Reg. 29472, 29474 (1982).

tion with parents of children attending elementary and secondary schools in the area served by the local agency with teachers and administrative personnel in such schools, and with other groups as may be deemed appropriate by the local educational agency.⁶

The final education regulations published on July 29, 1982, in discussing Chapter 1 have similar language:

(a) An LEA [Local Education Agency] that receives Chapter 1 funds shall design and implement its Chapter 1 project in consultation with parents and teachers of the children being served. . .

(b) To meet the consultation requirements in paragraph (a) of this section, an LEA *may, but is not required to*, establish and use parent advisory councils.⁷ (Emphasis added)

However, citizen participation is not specifically required in the Education Consolidation Act.⁸ According to Mr. McEuen, the general counsel for the New Mexico Department of Education:

Under Chapter 2, we have a twofold system for public involvement. We have a State advisory council which advises us on the distribution of Chapter 2 money.

Secondly, we require that each district have an advisory council, which includes at least one parent of an elementary child, and at least one parent of a secondary child, and that provides input on how each district should use their Chapter 2 monies, and how they could utilize them better.⁹

For Chapter 1 of the Education Consolidation and Improvement Act of 1981, which encompasses categorical programs not blocked, McEuen indicated there is a:

. . . requirement in the law that parents be involved in the needs assessment planning evaluation and program planning and preparation for the next year. That has been accomplished in the past through Parents Advisory Committees in each local school district.

Those committees are no longer required by law, but, interestingly enough, what happened when we saw the applications come from in the Chapter 1 districts, they all appear to be voluntarily continuing their Parents Advisory Councils.¹⁰

⁶ Pub. L. No. 97-35, 95 Stat. 472, §566(a)(4).

⁷ 47 Fed. Reg. 32856, 32863 (1982).

⁸ Telephone interview with Mike Upton, Education Program Specialist, Division of Grants, Policy and Administration, Compensatory Education Programs, U.S. Department of Education, Region VI, Aug. 16, 1982.

The citizen participation requirements in the Community Development Block Grant are stated in the Act. These are:

In order to permit public examination and appraisal of such statements, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the grantee shall:

(a) furnish citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken;

(b) publish a proposed statement in such manner to afford affected citizens or, as appropriate, units of general local government an opportunity to examine its content and to submit comments on the proposed statement and the community development performance of the grantee; and

(c) hold one or more public hearings to obtain the views of citizens on community development and housing needs.¹¹

In preparing the final statement, the grantee must consider any such comments and views and may, if deemed appropriate by the grantee, modify the proposed statement accordingly. The final statement must be made available to the public, and a copy furnished to the U.S. Department of Housing and Urban Development.¹²

Neither the statute nor the implementing regulations provide detailed guidance on the format or mechanisms to be utilized in obtaining public comments. Generally, State officials in the Southwest Region favored tailoring the opportunity for comment to their individual States. James F. Kelly, of the U.S. Office of Management and Budget (OMB) agreed with this procedure. Speaking for OMB, he said:

We feel it's very important to state that public input is a requirement. But that the method in which that public input is done can be done best as defined by State or local practice.¹³

There was some concern expressed at the Arkansas consultation over weakening public participation requirements. Leonard Chaires, regional director of the U.S. Fair Housing and Equal Opportunity Office

⁹ *NM. Transcript*, pp. 216-217.

¹⁰ *Ibid.*, p. 216.

¹¹ Pub. L. No. 97-35, 95 Stat. 384, §302(b)(2)(A)-(C).

¹² *Ibid.*

¹³ *LA. Transcript*, p. 60.

(HUD) in Region VI, contrasted the Community Development Block Grant's previous citizen participation process with the current one. He explained that,

The difference is. . .that the citizen participation plan as we used to know it will not be in effect. They [the public] will have access to information and certainly they can make their needs known, *but the local elected officials will not need to abide by what is presented by that citizen group.*¹⁴ (Emphasis added)

In addition to opposing the weakening of public participation, some participants at the Oklahoma consultation emphasized the importance of obtaining meaningful citizen input and of the need for more openness in the process. According to Stephanie Colton, director of the Oklahoma Department of Fiscal Services:

The increased citizen participation will be necessary to more accurately gauge true needs and service sufficiency as well as insure that civil rights are afforded all Oklahoma residents.¹⁵

Oklahoma State Representative Joe Manning agreed with the importance of input, even from members of the legislature. Representative Manning felt that as representatives of large constituencies, legislators should be significantly involved in block grant implementation. He stated:

This current process will only allow for legislative review of the mechanism for funding decisions not the decisions themselves, that matter will be handled entirely by the agency. I'm not saying that this is incorrect, however, *agencies are not elected by nor held accountable by citizens, elected officials are. . .and I would agree that the legislature must become more involved in this process.*¹⁶ (Emphasis added)

In Louisiana, Brenda Quant of the Louisiana Hunger Coalition, painted a very dim picture of the legislative input in that State. Ms. Quant described her participation at a legislative meeting chaired by State Representative Louis Charbonnet in Baton Rouge in September 1981. She explained that while her organization had some difficulty getting on the agenda, her group was well received by the legislators. According to Ms. Quant,

¹⁴ *AR. Transcript*, p. 81.

¹⁵ *OK. Transcript*, p. 140.

¹⁶ *Ibid.*, p. 137.

¹⁷ *LA. Transcript*, p. 140-141.

As it turned out, the legislators couldn't hear enough from us. Because it was really the first that they knew what the block grant process meant in Louisiana, as far as the legislature was concerned. What it meant was that the decisions, really, had already been made. The Secretary of Health and Human Resources, really came to make a report about what had already been done and didn't give them [legislators] any information that they had requested.

This was the first [time] that the legislators realized that they would have either no voice or very little voice in how the funds would be used. In fact, most of them didn't know that the applications for almost all of the block grants had already been filed with the Federal Government.¹⁷

She added:

. . .I think, that's when they also realized that they were in a very bad position as elected officials, because their constituents would hold them accountable for the funds, when, in reality, they had no part in making the decisions.¹⁸

In some States, criticism of the public participation process was even more forceful. At the Arkansas consultation, for example, Ruth Guinn, deputy director of the Human Service Providers Association, told the Arkansas Advisory Committee that,

There was no public participation at all when Arkansas made the decision to assume responsibility for the block grants. . .¹⁹

Ray Scott, the director of the Arkansas Department of Human Services seemed to agree that there had been some shortcomings in the process used to obtain citizen input. Mr. Scott told the Committee:

. . .with the *exception* of the lack of opportunities and the kind of time constraints under which we operated to provide for more meaningful opportunities for public participation and citizen input, I feel basically very positive about the way the block grants were implemented.²⁰ (Emphasis added)

At some of the consultations, concern also was expressed that the plan that is made available for public comment does not reveal how the money will actually be spent. There is no requirement that forces a State to spend the monies received only for items included in their plan. According to the regulations,

¹⁸ *Ibid.*

¹⁹ *AR. Transcript*, p. 245.

²⁰ *Ibid.*, pp. 163-164.

If a State expends block grant funds contrary to its plan or a description of intended uses of the funds, such action would require the repayment of those funds *only if the expenditure violated the State's assurances or the statutory provisions.*²¹ (Emphasis added)

Thus, there is no established procedure to inform the public about the actual expenditures. In the area of education, for example, the State gives monies to a school district according to a State developed formula which is supposed to take into consideration certain categories of students, e.g., poor and disadvantaged students, who are entitled to additional funds. However, once the school district obtains this money, it is free to spend it in any manner it wants, and not necessarily for the students for whom it obtained the funds.²²

The Hearing Process

. . . Public hearing. . . means very different things to different people.²³

. . . seems to me that it's time to take a very long look at the whole concept of public hearings because this is an entirely new ballgame, but we're playing with the same instruments that we played with in the old ballgames. . .²⁴

Possibly the most efficient manner of obtaining citizen input is through the use of public hearings to receive comments from persons wishing to participate. The Act itself requires the States to conduct public hearings on the proposed use and distribution of funds under the Community Services, Preventive Health and Health Services, Alcohol and Drug Abuse and Mental Health Services, Primary Care, and Low-Income Home Energy Assistance block grants. Almost all block grant hearings must be conducted by the State legislature. The one exception is that hearings concerned with the Low-Income Home Energy Assistance block grant may be conducted by any unit of the State government.²⁵

Public hearings were not required during the first year (Fiscal Year 1981), because of the precipitous manner in which the grants were implemented.²⁶ There simply wasn't enough time between the enactment of the authorizing legislation and the

effective date for implementation of the program to accommodate hearings in all cases. Nonetheless, the statute specifically requires hearings:

No State may receive block grant funds for any fiscal year until the State has conducted a public hearing, after adequate public notice, on the use and distribution of the funds proposed by the State as set forth in the report prepared pursuant to subsection (a) with respect to that fiscal year.²⁷

As is the case with citizen participation requirements, there is little specific direction provided to States on how to conduct a hearing. The manner in which the hearings are conducted and plans developed is left to the discretion of the individual States.²⁸ As a result, it is likely that there will be little uniformity in the way the different States conduct these hearings and develop their program plans.

Notice of Public Hearings

Even though the hearing requirement was waived for the first year, some States opted to hold hearings anyway. Consultation participants were often critical of how these hearings were held. Another important concern that surfaced at the five consultations was the failure of State officials to provide adequate notice to the public about hearings. All five States in the region utilized State registers to publish their official notice. As can be expected, there is a significant difference in the manner in which various States and even different agencies within the same State publicize their hearings. Some education department officials in Oklahoma explained the procedure they followed.

We [Oklahoma Education Department] advertised in . . . the superintendent's newsletter which goes to all the school districts in the State. We advertised in the *Gazette* and we sent . . . a release to the *Tulsa Tribune* and the *Daily Oklahoman*.²⁹

They lamented, however, that they "had very little attendance at all the meetings. . . maybe ten to twelve people."³⁰

Perhaps a partial answer to the lack of success in attracting participants at hearings, at least in the case

²¹ 47 Fed. Reg. 29472, 29478 (1982).

²² *OK. Transcript*, pp. 114-115.

²³ *NM. Transcript*, p. 309.

²⁴ *Ibid.*, p. 314.

²⁵ 47 Fed. Reg. 29472, 29474 (1982).

²⁶ 47 Fed. Reg. 29472, 29474 (1982) The Act was adopted on Aug. 13, 1981, and on Oct. 1, 1981, some grants were made available to the States.

²⁷ Pub. L. No. 97-35, 95 Stat. 763 §1742(c).

²⁸ 47 Fed. Reg. 29472, 29474 (1982).

²⁹ *OK. Transcript*, pp. 319-320.

³⁰ *Ibid.*

of American Indians, lies in the comments made by Governor Gilbert M. Pena of the Nambe Pueblo of New Mexico:

The Indian has historically had very bad luck at public hearings. Sometimes no Indians show up, because not all read the local paper, and those who do read the paper, rarely read the Public Notice section of the classified ads, because in Indian communities, such important information would be distributed differently.³¹

Some consultation participants were very critical of the procedures used to provide notice. Stephanie Colton, for example, told the Advisory Committee in Oklahoma:

Agencies such as the State Department of Education which can convene so-called public hearings without truly notifying the public do not help the course of civil rights and better service delivery.³²

In defense of the hearing notice procedures utilized in Arkansas, Don Zimmerman, executive director of the Arkansas Municipal League, attributed poor attendance to public apathy. He said:

. . . I think the cities of Arkansas are complying with the regulations on those hearings, but the amount of participation at them is usually very limited. They advertise that they're going to have public hearings whether it be in Community Development Programs or revenue sharing or whatever. And they'll be there to conduct the public hearings, and oftentimes no one shows up. And you know, I don't know who's fault that is. But they're going through the motions and complying with the advertising requirements and everything, but oftentimes the general public is complacent about how these funds were administered.³³

Despite this defense, other participants at the consultation commented that:

We have not had any public participation in the State of Arkansas. There has not been a single public hearing, a single legislative hearing on the issue of block grants.³⁴

. . . something that has not—has rarely occurred in Arkansas, and that's meaningful participation [of the handicapped] in facilities that are accessible.³⁵

³¹ *NM. Transcript*, pp. 139-140. See also Statement of Governor Gilbert Pena entered into the official record at 9.

³² *OK. Transcript*, p. 140.

³³ *AR. Transcript*, pp. 227-228.

³⁴ *Ibid.*, pp. 260-261. As of March 24, 1982.

³⁵ *Ibid.*, p. 261.

³⁶ *NM. Transcript*, p. 31. See also statement of Janice Paster entered into the record at 2.

³⁷ *TX. Transcript*, p. 156.

In New Mexico, Janice Paster, representing the New Mexico Women's Political Caucus, voiced similar concern about the hearings. She said:

. . . the hearing process is unchanged. The Federal act placed a great deal of power and discretion in the hands of State government; it did nothing to further direct meaningful public participation in the setting of priorities and the expenditure of funds. Advocates are confronted by a bureaucracy which is as inscrutable as ever.³⁸

In Texas, numerous public hearings were held. Elected officials explained that the Governor and the State agencies which were implementing block grants held two-day hearings in eight major cities in Texas: San Antonio, Nacogdoches, Lubbock, Arlington, Austin, Houston, McAllen, and El Paso during May 1982. These hearings were designed so that agencies could get input from various groups on respective block grants.³⁷ They were also used to provide input into the intended use report which was submitted to the State's Legislative Budget Board.³⁸ While reportedly, the turnout differed from city to city, in general, officials conducting the hearings were pleased with the results.³⁹

The Governor's Office of Budget and Planning also developed a questionnaire that was mailed to elected officials throughout the State to obtain their input on how best to implement block grants.⁴⁰ Notices have also been published in Spanish to accommodate the large Mexican American population in Texas.⁴¹ Texas also appears to have taken the initiative in conducting multiple hearings. The Lieutenant Governor's Office, for example, held hearings in order to: "give organizations and communities the opportunity to prioritize their needs and to share them with the legislature."⁴² Also, a special Task Force on New Federalism was created under the auspices of the Lieutenant Governor's Office to seek information on block grants and to determine their impact on the State.⁴³

However, the question as to what constitutes an effective hearing was consistently brought out in the various consultations. Jule M. Sugarman, president of the Human Services Information Center in Wash-

³⁸ *Ibid.*, p. 158.

³⁹ Interview with Leon Wilhite, Governor's Office of Budget and Planning, Austin, Texas, May 27, 1982.

⁴⁰ *Ibid.*

⁴¹ *TX. Transcript*, p. 206.

⁴² *Ibid.*, pp. 288-289.

⁴³ Interview with Leon Wilhite, Governor's Office of Budget and Planning, Austin, Texas, May 27, 1982.

ington, D.C., succinctly described what he felt constituted a credible public hearing. He said:

Public hearings are credible when they actually influence the decisions, when they come at a point in time early enough to make a difference in what the final decisions will be, when citizens have information to make responsible recommendations on the potential decisions, when they are scheduled conveniently for the people to attend those hearings, when there is a sign of interest by the senior officials to also, in fact, actually attend the hearings.⁴⁴

While in the Southwest Region there was great diversification in the types of hearings held, there was one meeting that was singled out by Sandy Ingraham of the Oklahoma Coalition for Fair Block Grants. This hearing was held by the Oklahoma Department of Economic and Community Affairs (DECA) for the Community Development Block Grant for Small Cities. Ms. Ingraham described the hearing process in this way:

DECA went through a process. . . of trying to determine how to administer the block grant, and they went out and they had planning meetings, they actually went out around the State and talked to the people, it was a novel idea. They went out and talked to the people and said, okay, we're going to have to start administering this program. How do you suggest we do it?

And then they got all their ideas together, sent invitations to all of the people who had participated in those hearings and said, this is what we came up with, what do you think?

And then after that they printed their plan and they had a public hearing.⁴⁵

She added:

And at the public hearing there was actually a dialogue, and I may be over-emphasizing this but I really think it's rare. They had a dialogue. . . somebody in the audience stood up and made a comment and he [the division director] said something back [like], "oh, that's a good idea maybe we can fit that in here," or something like that. It really gave some kind of public acceptance and public input and I think that they're really to be commended for going through that kind of process.⁴⁶

The Louisiana Advisory Committee was assured by James F. Kelly, of OMB that:

⁴⁴ *TX. Transcript*, p. 86.

⁴⁵ *OK. Transcript*, p. 21.

⁴⁶ *Ibid.*

The statutes call for a form of public hearing in all of the cases for all of the block grants prior to the adoption of an actual intended use report, or a plan for how the money is to be spent. And, again, we will be monitoring that part of the audit responsibilities to insure that compliance with that provision is met.⁴⁷

Nonetheless, Ms. Paster indicated that adequate public participation is an ideal that has yet to be attained. She told the Committee:

The effect of the reorganization [consolidation of programs into block grants] was to make the public hearings and written public comment the only avenues for public participation in the planning process. Few advocates believe those avenues to be effective; most believe their comments have no impact on final decisionmaking. The hearings are frustrating, at best, and infuriating, at worst.⁴⁸

Conclusion

Federal requirements on obtaining and utilizing community participation have been changed with unknown consequences under the block grants process. Also, the precipitous manner in which block grants were implemented exacerbated the problems of providing ample opportunity for public input on the implementation of block grants. As regards community participation, the pattern that emerged in the Southwest Region was that there is a lack of consistency in the procedures utilized to obtain public comments. This created a great deal of uncertainty in that people did not know what to expect. Proper procedures to provide adequate notice to the public seemed to be lacking in most of the Southwestern States. The lack of prior consultations with many groups, such as Indian tribes, resulted in these groups feeling left out of the decisionmaking process. Consultation participants emphasized that even if the regulations don't specifically require that the input be taken into account, at least the opportunity should be afforded for the public to attempt to influence the officials' decisions. States that realize their accountability to its citizens will, of course, view this process as beneficial in assessing the needs of the State.

⁴⁷ *LA. Transcript*, p. 47.

⁴⁸ *NM. Transcript*, pp. 31 and 33. See also Statement of Janice Paster entered into the record at 2.

Indian Tribes: Unique Sovereign Governments

Indian tribes do not expect to be exempt from Federal budget reductions, but we do not expect to absorb them all.¹

Indians, as a group, confront different problems with block granting because of their historic trust relationship with the Federal Government. Indian tribes are sovereign nations, having the power to determine their own membership, enact laws, and enforce them within the boundaries of their reservation.² Not only are the tribes separate governmental entities, but they also have a unique trust relationship with the Federal Government. This relationship is based on "historical antecedents that reach back to the original treaties negotiated with Indian tribes in which the United States obtained vast areas of land in exchange for its commitment to protect the people and property of the tribes from encroachment by the U.S. citizens."³ The American Indian Policy Review Commission,⁴ in discussing this trust relationship categorized it as having three basic components. These are:

First, the trust responsibility to American Indians extends from the protection and enhancement of Indian trust

resources and tribal self-government to the provisions of economic and social programs necessary to raise the standard of living and social well-being of the Indian people to a level comparable to non-Indian society.

Second, the trust responsibility extends through the tribe to the individual Indian member, whether on or off the reservation.

Third, the trust responsibility applies to all United States agencies and instrumentalities, not just those charged specifically with the administration of Indian affairs.⁵

It is clear that the trust responsibility of American Indians is an established legal obligation which requires the United States to protect and enhance Indian trust resources and tribal self-government.⁶

Therefore, even in the area of block grants, the Federal Government is required to honor the sovereignty of the tribes by dealing with them on equal footing as with the States. At two of the consultations, New Mexico and Oklahoma, participants representing tribes and tribal organizations consistently ranked tribal sovereignty as the major concern of Indians in the implementation of block grants.

Indian, served as director for the commission. The commission was charged with the responsibility of conducting a comprehensive review of the historical and legal developments underlying the Indian's relationship with the Federal Government, and to determine the nature and scope of necessary revisions in the formulation of policy and programs for the benefit of Indians in this country.

⁵ *Final Report*, p. 4.

⁶ *Ibid.*, p. 10.

¹ *OK. Transcript*, p. 257.

² American Indian Policy Review Commission, *Final Report Summary* (hereafter cited as *Final Report*), p. 2.

³ New Mexico Advisory Committee to the U.S. Commission on Civil Rights, *Energy Development in Northwestern New Mexico: A Civil Rights Perspective*, Jan. 1982, p. 81.

⁴ This commission was established through provisions of the Act of Jan. 2, 1975, Pub. L. 93-580, 88 Stat. 1910. The Honorable James Abourezk was chairman, and Ernest L. Stevens, an Oneida

In a letter to President Reagan dated December 10, 1981, the Albuquerque Area Indian Health Board addressed the issue of sovereignty. The letter states in part:

Whether we look at our situation in technological, economic or philosophical terms, the reality is [that] the whites have used their institutions to eliminate us. Only our treaties and efforts to remain sovereign nations within the society have allowed us to survive. The dilution of this sovereignty endangers our existence as a group and the racism and exclusion from the larger society threatens our personal lives.⁷

The Governor of the Pueblo de Acoma of New Mexico, Merle L. Garcia, agreed. He said,

. . . I fear the Federal Government has again approached the Indian people with a plan to further alienate itself from carrying out its trust responsibilities, which is to provide programs and funds for the American Indian. If this trend continues and we approve such block grant programs to be allocated by the State, then I believe, we would soon become wards of the State, we would be under the jurisdiction of the State, which indicates to me we are being treated like an unwanted child, handed from one family to another. . . .⁸

Block grant programs may work for many American citizens, but, I am afraid it will only further damage the treaty responsibilities of the Federal Government to the Indian people.⁹

Tribal representatives in Oklahoma shared Governor Garcia's view of block grants. Although there are no reservations in Oklahoma, there are Indian trust lands. Thirty-nine tribes reside within this State.¹⁰ Basically, this includes the 23 United Tribes, eight northeastern tribes, five civilized tribes, and three unaligned tribes.

As in New Mexico, there appears to be a general opposition to block grants by many Indians in Oklahoma. Indicative of this position is Resolution

⁷ Letter from the Albuquerque Area Indian Health Board, Albuquerque New Mexico to President Ronald Reagan, dated December 10, 1981.

⁸ *NM. Transcript*, p. 128.

⁹ *Ibid.*, p. 130.

¹⁰ The tribal offices and their location are as follows: (1) Absentee-Shawnee, Shawnee; (2) Apache Tribe, Anadarko; (3) Caddo Tribe, Binger; (4) Cherokee Nation, Tahlequah; (5) Cheyenne-Arapaho, Concho; (6) Chickasaw Nation, Ada; (7) Choctaw Nation, Durant; (8) Citizen Band of Potawatomi, Shawnee; (9) Comanche, Lawton; (10) Cherokee-Shawnee, Tulsa; (11) Creek Nation, Okmulgee; (12) Delaware Tribe of East Oklahoma, Bartlesville; (13) Delaware Tribe of West Oklahoma, Anadarko; (14) Eastern Shawnee, Seneca; (15) Ft. Sill-Apache, Apache; (16) Iowa Tribe of Oklahoma, Perkins; (17) Kaw, Kaw City; (18) Kickapoo, McLoud; (19) Kiowa, Carnegie; (20) Miami,

No. 82-05, adopted on June 11, 1982 by the United Indian Tribes of Western Oklahoma and Kansas. This resolution opposes block granting and sees this system as a threat to the recognition of the sovereignty of the Indian tribes as separate governments. The resolution reads in part:

. . . Be It Resolved that the United Indian Tribes: totally oppose the current method of having the State of Oklahoma receive Block Grant Funds which supposedly are allocated for Indian governments when, in fact, Tribal/State relationships are non-existent, together with the fact that the eligibility requirements being imposed upon tribal governments by the State is intended to directly dissolve the inherent sovereign status of Tribal governments.¹¹

While the Federal Government treats Indian tribes differently because of their sovereign status, there appears to be an inherent problem in that tribes cannot apply for direct funding from the Federal Government for all of the block grants. In Oklahoma, difficulties have developed in the implementation of block grants because, according to Dwayne R. Hughes of the Citizen Band Potawatomi Indians, "the Federal Government insists on giving the lion's share of funds to the States and giving the States the responsibility of allocating tribal shares."¹² An example which best illustrates this problem is the requirements imposed by the Oklahoma Department of Economic and Community Affairs (DECA) on applicants for funding under the Community Services Block Grant. Applications would be accepted only from those entities fitting one or more of the following categories:

1. Incorporated under the laws of the State as a non-profit organization; or,
2. an organization which serves migrant and seasonal farm workers in the State of Oklahoma; or,

Miami; (21) Modoc, Miami; (22) Osage, Pawhuska; (23) Otoe-Missouria Tribe, Red Rock; (24) Ottawa Tribe, Miami; (25) Pawnee Tribe, Pawnee; (26) Peoria Tribe, Miami; (27) Ponca Tribe, Ponca City; (28) Quapaw Tribe, Quapaw; (29) Sac and Fox, Stroud; (30) Seminole Nation, Wewoka; (31) Seneca-Cayuga Tribe, Miami; (32) Tonkawa Tribe, Tonkawa; (33) United Keetoowah Tribe, Tahlequah; (34) United Indian Tribes of Western Oklahoma & Kansas, Shawnee; (35) Wyandotte Tribal Office, Wyandotte; (36) Wichita Tribe, Anadarko; (37) Native American Center, Oklahoma; (38) Native American Coalition, Tulsa; (39) Northeast Eight Inter-Tribal Council, Miami.

¹¹ Resolution No. 82-05 adopted by United Indian Tribes of Western Oklahoma and Kansas, June 11, 1982, p. 1. Also *OK. Transcript*, p. 237.

¹² *OK. Transcript*, p. 259.

3. a political subdivision of the State of Oklahoma.¹³

To some Indian tribes, this was paramount to saying, "Indian tribes need not apply." This is because in order to qualify for these funds, Indian tribes have to apply as non-profit corporations. Many tribes are unwilling to do this because it sacrifices their sovereignty as separate nations in order to receive community services funding. Some tribes are suspicious that, if they become non-profit corporations, years later their status as sovereign nations may be challenged.¹⁴

Similarly, Wendell Chino, president of the Mescalero Apache Tribe, in New Mexico indicated that funding under block grants will hurt Indian programs. He objects to funds coming through the States because:

The State typically funds non-profit corporations for its community-based programs. Tribes are sovereign governments. The States approach of funding tribes essentially relegates tribes to the status of a non-profit corporation. This approach denies the sovereignty of tribes and attempts to ignore the fact that block grants to tribes are from government to government rather than from benefactor to beneficent, and that the State is only a delivery mechanism for Federal funds.¹⁵

Although block grants are not popular among Indian tribes, they are a reality and tribes are having to deal with this new system. Tribal representatives in Oklahoma and New Mexico indicated that they favor direct funding of the tribes in lieu of the State funneling money to the tribes.¹⁶

Funding Issues

Some block grant titles in the Budget Reconciliation Act and their implementing regulations recognize the uniqueness of American Indian tribes as sovereign governments. In both the Act and the regulations, recognition is given to the special relationship that exists between the Federal Government and the tribes. Tribes may receive direct funding from the Federal Government in some block grants.¹⁷

There are a total of five block grants which are available for direct funding to Indian tribes. These are:

¹³ Ibid., p. 260.

¹⁴ Ibid.

¹⁵ *NM. Transcript*, p. 145.

¹⁶ Ibid., pp. 143-145 and p. 151. See also *OK. Transcript*, p. 260.

¹⁷ 47 Fed. Reg. 29472, 29480 (1982).

¹⁸ Ibid.

1. Preventive Health and Health Services
2. Alcohol and Drug Abuse and Mental Health Services
3. Primary Care
4. Community Services
5. Low-Income Home Energy Assistance¹⁸

When the Secretary of HHS receives a request from "the governing organization of an Indian tribe," he must determine whether the members of such tribe would be better served by means of grants made directly to the tribe to provide benefits or whether funds should be provided through the State. The Secretary may then allocate a portion of the State's funds to the tribe but only if direct funding of Indian tribes is allowed in that block grant.

The basic formula that is used to determine how much money a tribe is to receive is as follows: the ratio of the amount of a tribe's grant to the total State grant equals the ratio of the number of eligible¹⁹ Indian households to the total number of eligible households. This formula is depicted in Chart 6. In other words, the grant to a tribe must equal the same ratio to the State grant as the total of all eligible Indian households is to the total number of eligible households in the State.

Of the block grants available for direct funding to Indians, all except community services and energy are limited to those tribes that previously received funding under the categorical programs.²⁰ This requirement effectively excludes the vast majority of all tribes from participation.²¹

In a document submitted by James N. Milam, the Principal Chief of the Seminole Nation of Oklahoma, the formula for allocating funds is explained utilizing an enlightening example. The report says that:

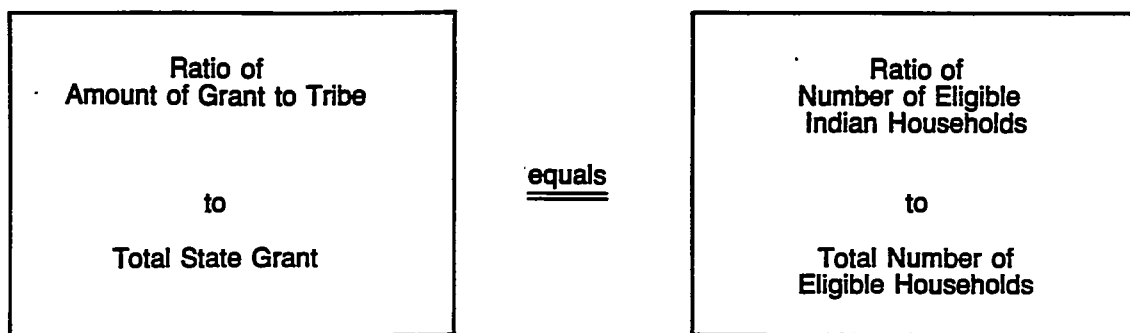
An eligible Indian population will be compared to the total eligible population within the State including Indians and a ratio will be computed. This ratio will then be applied to the State's allotment for that fiscal year. The tribal organization shall then receive 100 percent of the calculated amount. For example, the State of New Mexico has a total population including Indians of 1.3 million people (1980 Census). Of this population, the Taos Pueblo has nearly 1,900 people. This figure represents less than two-

¹⁹ "Eligible Indian" means a member of an Indian tribe whose income is at or below the poverty line.

²⁰ *NM. Transcript*, p. 235. See also 47 Fed. Reg. 29472, 29489 (1982).

²¹ *NM. Transcript*, p. 95.

CHART 6



tenths of one percent of the total State population. If the State of New Mexico receives \$9.1 million for the Community Services Block Grant program, then Taos Pueblo may be eligible to receive between \$9,000 to \$15,000 for community services. This allocation could maybe pay the salary of a part-time director, but nothing else. Taos Pueblo's allocation for community services has formerly been in the range of \$50,000.²²

Thus, while direct funding is available under certain block grants, the formula utilized to allocate funds has the effect, in most cases, of allotting to the tribes very small amounts. This problem also occurred in Oklahoma. Some Indians appearing before the Oklahoma Advisory Committee indicated that their tribes have not fared very well. Mildred Cleghorn, for example, indicated that her tribe, the Ft. Sill-Apache, had received block grant funds from the U.S. Department of Health and Human Services in the amount of \$149 to provide services.²³

Another example cited was the 86 percent reduction in funding for the Citizen Band Potawatomi Tribe under the Energy Assistance Block Grant. From a total funding of \$1.4 million received in the previous year, it was reduced to \$181,000 under the block grant. During this same time frame, the State received a 300 percent increase in the number of eligible households for the Low-Income Home Energy Assistance Program.²⁴ In New Mexico

there were eight northern tribes that received zero funding under this block grant.²⁵

It appears that Indian tribes are going to absorb even greater budget cuts. Furthermore, the amounts currently being allocated to the tribes are often so small under the new formula that tribes are forced to subcontract with the State to provide services. This has also posed some difficulties, especially for those Indians that live in urban areas. The HHS regulations, for example, state, in part:

We encourage States and tribes to negotiate different, mutually satisfactory shares of tribal and State funds. . .²⁶

This language refers to the counting of tribal members who do not live on the reservation but who could receive services from either the tribe or the State.

According to Linda M. Mellgren, U.S. Department of Health and Human Services, there are additional problems in determining the number of American Indians eligible to receive assistance in non-reservation areas. She added:

Information is not available from the Census Bureau which would allow for accurate counts of tribal households or members not living on the reservation because there is no uniform definition by tribes or by Federal programs serving tribes for the off-reservation service area of a tribe. The regulations, therefore, encourage States and tribes to negotiate agreements as to the number of tribal

²² Lorraine P. Edmo and Dr. Jose Rivera, "The Politics of Block Grants: Their Impact on Indian Tribes. An Analysis and Recommendations." May 1982, p. 6.

²³ *OK. Transcript*, p. 265.

²⁴ *Ibid.*, p. 257.

²⁵ *NM. Transcript*, p. 132-133.

²⁶ 47 Fed. Reg. 29472, 29482 (1982).

households or members not on the reservation that will be served by the tribe. Based on the agreement reached by the State and the tribe, the number of eligibles to be included in the direct funding allocation would be increased. We believe that this is a fair and equitable way of distributing funds for tribal members who are under the jurisdiction of both tribe and State.²⁷

As indicated earlier, obtaining funds through the States is not favored by the tribes, but some tribes would receive such a small allotment under the block grants that they have little choice but to negotiate with the State in this manner.

Under the block grant program, tribes have proposed including a minimum funding set-aside provision in the regulations to assure adequate funding of Indian tribes. This proposal has been rejected in the regulations published in the *Federal Register* on July 6, 1982.²⁸ The rationale is that the Department of Health and Human Services lacks the authority to change the provisions of the Act to assure tribes an amount equivalent to the proportion of funds they received under the categorical programs.

Census Issues

Another issue that surfaced at both the Oklahoma and New Mexico consultations was the use of census figures to determine fund allocations for the block grants. Concern was expressed by some tribes that while the 1980 Census figures were utilized to determine State allocations, 1970 Census figures with some adjustments, were used for determining fund allocations to Indians. This, say some Indians, worked to their detriment. Even though many tribes allege that there was a serious undercount in the 1980 Census, most still believe that 1980 instead of 1970 figures should have been used to calculate their fund allocations.

The Department of Health and Human Services discusses this issue in the regulations published on July 6, 1982. The Department notes that:

Many tribes objected to the funding distribution schemes in the low-income home energy assistance and community services block grants, which are based on population data. They asserted that Indians are traditionally underrepresented in the United States census data and they suggested, therefore, that tribal health and population statistics,

²⁷ *NM. Transcript*, p. 252; See also Statement of Linda Mellgren entered into the official record at 10.

²⁸ 47 Fed. Reg. 29472, 29482 (1982).

²⁹ *Ibid.*

³⁰ *Ibid.*

rather than the ratio of Indian to non-Indian individuals or households in a State, should form the basis for a tribe's allotment.²⁹

The HHS responded, however, that:

We have used the most reliable population data available, primarily "The Population and Housing Census 1980 Advance Report," and "The Tribal List and Extract," prepared by the Census Bureau for the Office of Revenue Sharing, and supplemental data from the Census Bureau. Where census data were not available, we used population estimates from the Bureau of Indian Affairs and in one instance from a State Indian Commission. Finally, where no independent data were available, we used the tribes' own estimates of their population. In computing the poverty levels, we adjusted the 1980 population figures based on data from the 1970 census. We will revise these figures with poverty level data from the 1980 census as soon as they are available.³⁰

Indirect Costs

In addition to the problems previously discussed, tribes have to deal with the problem of indirect costs in administering their programs. States already have in place a bureaucracy that enables them to operate a program within the restrictions set out by the Federal Government in its block grant regulations but tribes have no such bureaucracy and also little or no tax base to defray administrative costs. According to Ed Little of the All Indian Pueblo Council in New Mexico, the impact is that tribes will not be able to operate programs if they cannot get some assistance for indirect costs.³¹ They will then become dependent on the States to provide the services. According to Governor Gilbert Pena, Chairman of the Eight Northern Pueblo Council in New Mexico, the permissible indirect costs are not enough even to cover the audits alone.³²

The final HHS regulations, however, reject these arguments by stating, ". . . we will not establish different rules on administrative cost limitations for tribes and tribal organizations than are established by statute for the States."³³ In response to tribal requests that audit expenses be chargeable to the direct services portion of grant funds, for example, HHS expressed the following view:

³¹ *NM. Transcript*, p. 105.

³² Statement of Governor Gilbert Pena, Chairman of the Eight Northern Pueblo Councils, New Mexico.

³³ 47 Fed. Reg. 29472, 29483 (1982).

... We do not believe that Indian tribes and tribal organizations should be permitted to spend less of their block grant funds for direct services than States.³⁴

Urban Indians

Other issues raised at the consultations dealt with providing services to urban Indians. George Effman of the National Indian Youth Council, defined an urban Indian as one who resides away from the reservation.³⁵ This is a common occurrence because many Indians have had to move into the cities to find employment, so that now approximately 52 percent of American Indians reside outside the reservation.³⁶ Mr. Effman was quick to point out that "because an Indian lives off the reservation, this doesn't cause him to lose his [her] treaty or trust rights."³⁷ The HHS regulations succinctly state that, "The fact that a tribe or tribal organization is receiving direct Federal funds does not disqualify its members from receiving services from the State."³⁸ According to Ms. Mellgren of HHS:

This statement affirmed the Department's [HHS] policy that an Indian individual may not be excluded from access to federally-funded facilities simply because that Indian's tribe may have access to similar services. This policy ensures that Indian people are not treated differently from other residents of a State based on their status as Indians.

However, States are not required to confer eligibility for duplicate tangible benefits on Indian people in the service population of a tribe that has received an allotment of block grant funds. For example, States are not required to provide cash payments or weatherization assistance to Indians included in the service population of a tribe receiving funds for these purposes under the Low-Income Home Energy Assistance block grant program.³⁹

She added:

The regulations, however, do prohibit a State from denying Indians access to intangible benefits. Examples of

³⁴ Ibid.

³⁵ *NM. Transcript*, p. 98.

³⁶ Ibid.

³⁷ Ibid., p. 99.

³⁸ 47 Fed. Reg. 29472, 29482 (1982).

intangible benefits include counseling and treatment at health facilities.⁴⁰

Conclusion

Undoubtedly, one of the major issues of importance for Indians in the Southwest Region is the perception among many that block grants represent a threat to their sovereignty as separate governments. The consensus among Indian participants in both the New Mexico and Oklahoma consultations appears to be that the sovereignty of the Indian nations must be respected in the implementation of block grants and that care should be exercised not to breach the Federal Government's relationship with the tribes.⁴¹ For this reason, many are opposed to this method of Federal funding. Also, many tribes believe that the State is receiving the lion's share of the funds while they are given a mere pittance to service their people. This concern was documented by Indian participants at the Oklahoma and New Mexico consultations who cited examples of miniscule block grant fund allocations received directly from the Federal Government, some as low as \$149. The formula used to provide monies to tribes, in many cases, has resulted in very small grants to tribes. Many tribes noted they had received larger amounts before under the categorical grant system. And many tribes felt that the budget cuts were having a disproportionate effect because the States are getting smaller budget cuts as compared with Indian tribes.

Another unique problem that Indian tribes and organizations encounter is the need for additional funds for administrative costs beyond the small allowance provided by block grants. Without funds for these indirect costs, operating programs will be difficult for many of these tribes.

³⁹ Statement of Linda Mellgren, entered into the official record at 10.

⁴⁰ *NM. Transcript*, pp. 237-238.

⁴¹ Ibid., pp. 128-130.

PART II

MINIMUM STANDARDS CHECKLIST

Minimum Standards Checklist

Introduction

At each of the block grant consultations, participants stressed the need to assure nondiscriminatory implementation of block grant programming. The idea was subsequently adopted by the five Southwestern Advisory Committees and the following checklist was developed to provide assistance to State and local officials, community organizations, and private citizens in evaluating current procedures used to operate and administer block grant programs.

Elements of the Checklist

The checklist consists of three major categories. These are: Administrative Procedures, Civil Rights Compliance / Enforcement, and Evaluation/Monitoring. Under each category are a number of elements which suggest key points to be considered in implementing block grant programs at both the State and local levels. The elements consist of legal requirements, policy considerations, critical activities, and responsibilities that should be taken into consideration in administering programs funded under the block grants.

Using the Checklist

The checklist is designed to serve as a guide for State officials and private citizens for evaluating how the pertinent governmental entity is carrying out its responsibilities with regard to block grants. In this sense, it is designed to suggest ideas of what to look for in evaluating the procedures being used to implement block grants. It can also be used as a

means for holding State and local officials accountable.

Public officials will also find this checklist useful as a means for evaluating their own procedures. For example, State officials could determine whether or not the procedures currently incorporated in the State's block grant effort are adequate. Moreover, it provides a succinct outline of the major legal requirements and policy considerations that should be kept in mind to ensure that programs funded through block grants are administered in a nondiscriminatory manner. At the same time, it must be stressed that the checklist is not all inclusive. Rather, the recommendations included in this checklist are designed to focus in on some important specific needs and requirements.

Minimum Standards Checklist

I. *ADMINISTRATIVE PROCEDURES*

A. State Responsibilities

1. Legal Requirements

- a. State must make an annual submission for each block grant prior to receiving funds.
- b. The chief executive officer of each State shall prepare a plan which contains provisions describing how the State will carry out the assurances agreed to.
- c. Chief executive officer of each State must certify that State agrees to comply with Federally required assurances.
- d. Audits must be conducted every two years by an independent entity.

- e. Grants must be operated in a nondiscriminatory manner.
2. Policy Considerations
- a. Clear statement of the requirements State had to fulfill to get funds from Federal Government for each block grant.
 - b. Clear articulation of the funding formula developed and used by the State to make grants to its recipients; some indication also should be provided by the State as to what measures it has taken or will take to insure equitable distribution of funds (i.e., prevent discrimination).
 - c. Clearly identify eligibility requirements that must be met by service providers to be eligible for grants.
 - d. Clearly identify eligibility requirements that must be met by beneficiaries of services.
 - e. Clear articulation of policymaking and decisionmaking processes with respect to the implementation of the block grant programs.
 - f. Provide information to public on who is responsible for administering each block grant.
 - g. Provide information to public on who is to make decisions for the State in the implementation of block grants.
 - h. Publicize what agency or individual is responsible for the development of the plans/submissions for each block grant.
 - i. State should articulate a needs assessment process so that service providers and organizations can use the same format.
3. Other Possible State Activities
- a. State should provide technical assistance to service providers in meeting statutory and administrative requirements. These may include:
 - (1) Needs assessment information on population;
 - (2) An evaluation of language, cultural, racial differences in service delivery;
 - (3) Information on alternative methods of service delivery;
 - (4) Information on programming approaches utilized effectively previously.
 - b. State should issue policy declarations on what service providers are required to do. These should include:
 - (1) Contracts include nondiscrimination clause.
 - (2) State able to terminate funds for non-compliance.
 - (3) Publicize who is to coordinate on the State level the accountability of the service providers.
 - c. State should articulate monitoring policies and procedures that will be used, and identify agency(ies) that will be responsible.
 - d. Develop mailing list of interested minority, handicap, women's, senior citizens' organizations to receive information on block grant programs.
4. Responsibility of Service Providers
- a. Develop and publicize requirements for those receiving services.
 - b. Clearly state a policy of nondiscrimination in providing services.
 - c. Have a procedure to receive and handle complaints.
 - d. Routinely report to State on nature of complaints received and their resolution or status.
 - e. Have a system of data collection of racial, ethnic, sex, age, handicap, religion statistics.
5. Citizen Participation
- a. Federal Legal Requirements
 - (1) State must prepare proposed spending plans and make them available for public comment well in advance of submission deadline.
 - (2) Legislature must conduct hearings on the proposed use and distribution of funds.
 - b. Recommended State Policy
 - (1) Plans
 - (a) Publicize how, where, and when plans prepared by State will be available.
 - (b) How and when will comments to plans be received?
 - (c) How will comments be acknowledged?
 - (d) How will comments be used to revise and/or modify plans?
 - (e) Prior consultation of citizens before development of plans.
 - (f) Develop effective mechanisms for plan dissemination at State and local level.
 - (g) Provide for the availability of copies of plans and/or reading areas for citizens.
 - (h) Address and phone number of contact person should be listed and made available.
 - (2) Hearings
 - (a) Publicize policy of State as to type (legislative, State agencies, or governor) and

number of public hearings to be held on each block grant.

(b) Publicize the format that hearings will follow.

(c) Publicize how citizen input will be received.

(d) Articulate how input will be used.

(e) Assure adequate notice. Notices should include: (i) purpose of hearing; (ii) time and location of hearing; (iii) media publicity that reaches affected citizens (e.g., minority media).

(f) Assure accessibility of location (handicapped and minorities).

(g) Assure geographic decentralization of hearing sites.

(h) Make allowances for fact that users of services are not always effective in making their needs known.

II. CIVIL RIGHTS

COMPLIANCE/ENFORCEMENT

A. Federal Requirement

1. All block grants are to be implemented in nondiscriminatory manner.

2. State must sign assurances of nondiscrimination.

B. Recommended State Activities

1. Enactment of nondiscrimination and affirmative action statutes and executive orders.

2. Clear articulation of policy of nondiscrimination in implementation of block grants.

3. Develop State enforcement mechanism for nondiscrimination. These should include at least the following components or elements:

a. separate enforcement entity

b. adequate funding/staff

c. sanctions

d. data collection and reporting system

e. independence

f. reports directly to Governor

4. Clear identification of rights of individuals to complain if they believe they have been discriminated against.

5. Clear identification of procedures for filing complaints [complainants should know how to go about filing]. These procedures should include:

a. clearly spelled out deadlines

b. format required (written/oral)

c. what complaint must include

6. Development and identification of clear procedures for investigating and remedying complaints [including specifying time frames for complaint processing].

7. Development and clear articulation of sanctions to be employed in correcting violations of statutory requirements.

8. Set of procedures/criteria for State (independent) compliance reviews.

III. EVALUATION/MONITORING

A. Federal Requirements

1. Audits must be conducted every two years by an independent entity.

2. Grants are to be implemented in a nondiscriminatory manner.

B. Recommended State Activities

1. Develop criteria to use to evaluate the effectiveness of service providers and State agencies in servicing clients.

2. Conduct independent evaluation of State programs (audit).

3. Publicize program evaluation criteria to be used in assessing effectiveness of programs.

4. Conduct independent audit and make results public.

5. Develop and utilize sanctions for noncompliance.

6. Assess accountability of State agencies or officials for each block grant (roles and areas of responsibility).

7. Development and clear articulation of data collection/reporting requirements applicable to fund recipients; clear articulation of how State will use data in evaluating effectiveness.

8. Involve public in evaluation/monitoring process.

PART III

STATE REPORTS

Arkansas

Louisiana

New Mexico

Oklahoma

Texas

Block Grant Programs in the Southwest Region: A State Perspective

The shift from categorical programs to block grants—as pointed out in the previous sections of this report—represent a rather significant realignment in State and Federal relationships. It also represents a change in how the Federal Government in Washington, D.C., perceives its role vis-a-vis the States. To obtain a better understanding of this changing relationship in the context of the block grant program, a consultation was convened in each of the five States within the Southwest Region. At each consultation, numerous local, State and Federal officials, as well as experts in the areas of block grants, community leaders, tribal officials and representatives were invited to share their views on block grants and their impact on minorities, women, the elderly and the handicapped.

A wide range of issues were examined at each of the consultations and many concerns were raised regarding the effect of block grants on programs and service delivery systems. However, three major areas of concern were raised consistently at every consultation. These were the enforcement of civil rights laws under the block grant program; citizen participation within the scope of the block grants; and, the State's decisionmaking process as it relates to block grants. In the case of New Mexico and Oklahoma, the specific concerns of American Indi-

ans in these States under the block grants were also dealt with. The purpose of this section is to examine these concerns on a State-by-State basis by drawing upon the views and insights expressed by participants in the various consultations. In order to provide a stronger framework for discussion on these issues, the structure of State government and the status of the block grant program in each State is also briefly touched upon.

Although the issues covered in each State report have been addressed in the section dealing with regional issues, it is important to keep in mind that the participants in these State consultations were perceiving the issues in light of their own unique experiences. These reports attempt to reflect these perspectives. Therefore, while there may be some duplication, especially with regard to quotes and individual statements, these reports should be viewed as statements of concern as perceived by each of the Advisory Committees.

Each of the reports in this section have been reviewed for accuracy by appropriate State and Federal officials. These responses are included in Appendix A. The first report will focus on the State of Arkansas. Subsequent reports will deal with issues and concerns as they were viewed in Louisiana, New Mexico, Oklahoma and Texas.

Block Grants in Arkansas

A Report of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

State Government in Arkansas

The State of Arkansas historically has been governed by a strong executive who administers the overall operation of State government. The General Assembly, the State's legislature, is the principal lawmaking body. It is a bicameral body consisting of a House of Representatives and a Senate. The House of Representatives is composed of 100 members elected for two-year terms. The Senate consists of 35 members elected for four-year terms with half of the Senate being elected every two years. The legislature convenes every two-years, on odd-numbered years. The governor, however, can call the legislature into special session at any time. The State's Constitution restricts the regular sessions of the legislature to 60 days unless extended by two-thirds vote of both houses.¹

There are 13 major departments within the State government with each department headed by a director who reports to the governor. These directors meet periodically with the governor as a cabinet. Within these 13 departments are some 60 separate agencies.²

Although the legislature in Arkansas has little formal control over the various agencies and departments on a day-to-day basis it does have significant input into the budget process. The governor, as chief executive, proposes a budget to the legislature. However, the actual starting point in this process lies with the individual State agencies and depart-

ments. Upon receiving instructions from the State Department of Finance and Administration (DFA), the various agencies and departments supply information relating to expenditures for the expiring biennium and an estimate of the funds they will need for the coming biennium. This information is also provided to the Legislative Council and the General Assembly. Taking information provided by the DFA, the Governor's Office prepares a budget and presents it to the legislature for its consideration. The Legislative Council serving as the key research department for the legislature also plays an extremely important role in advising the General Assembly on matters relating to funding and program priorities.³

To assist the legislature in preparing the budget, a Joint Budgetary Committee consisting of legislators from both houses has been established. The Committee reviews the governor's budget, proposes changes and, if necessary, prepares a compromise budget. Again, the Legislative Council exercises an important role in this process by reviewing specific budget requests and making recommendations on items within the proposed budget. Once the budget is approved by the legislature, the DFA is responsible for administering the allocation of funds to the various departments.⁴

Block Grants in Arkansas: An Overview

As of October 1, 1981, the State of Arkansas accepted six block grants. These were: Preventive

¹ Walter Nunn, Editor, *Readings in Arkansas Government*, Rose Publishing Company, Little Rock, Arkansas, 1973, "The Arkansas Legislature" by Donald T. Wells, pp. 60-61. See also AR. Const. art. 5, §17.

² *Ibid.*, pp. 170-171.

³ *Ibid.* "Budgeting in Arkansas: Agencies, Governor and Legislature" by Dan Durning, pp. 183-188.

⁴ *Ibid.*

Health; Maternal and Child Health; Alcohol, Drug Abuse and Mental Health; Social Services; Community Services; and the Low-Income Energy Assistance block grants.⁵ In addition, according to the Governor's Office, the State accepted the Education Block Grant in October 1982. At the consultation, it was also indicated the State would accept the Small Cities Discretionary Program, which is part of the Community Development Block Grant, starting in October 1982.⁶

The State's overall funding appropriation for the six block grants it accepted was about \$51 million for the past Federal Fiscal Year. Nearly half, \$24 million, was provided through the Social Services block grant and another \$12.3 million was included in the Energy Assistance block. Together these two blocks accounted for slightly over 70 percent of all block grant funds received by the State.⁷

At the Arkansas consultation, one of the major concerns raised was the impact of the block grant programs on State programs. It was explained that along with the consolidation of the various categorical programs into block grants, there had been a substantial cutback in Federal funding. For example, Federal grants available to Arkansas which were used solely to provide services to the poor, women, the elderly and the disabled, totaled nearly \$385 million in Fiscal Year 1980. This figure, it was pointed out, represented only the Federal dollars received by the State and not any State or local matching funds. With the changeover to block grants, the State lost approximately \$78 million in Federal funds in Fiscal Year 1981. This total reflects a Federal fund reduction in all Federal programs, not just the block grants. The State expects to lose another \$29 million in Fiscal Year 1983.⁸ The loss in Federal funds for the six block grants the State accepted was about \$8 million. The direct and indirect impact of these cutbacks on programs and service delivery systems in Arkansas is yet to be measured. However, many of those who participated in the consultation felt that the budget cuts will have a significant effect on the nature and extent of services, eligibility requirements, program priorities

⁵ U.S. Department of Health and Human Services, *Block Grant Fact Sheet, Region VI, Revised 6/15/82* (hereafter cited as *Block Grant Fact Sheet*), p. 1.

⁶ Arkansas Advisory Committee to the U.S. Commission on Civil Rights, *Consultation on Block Grant Funding in the State of Arkansas, Little Rock, Arkansas, March 24, 1982* (hereafter cited as *AR. Transcript*) p. 122. See also Governor's Letter of Response in Appendix.

and the targeting of services at the State level. Many also felt that these cuts will eliminate essential programs and services over the long run.

There was particular concern expressed by a number of participants regarding the inability of the State to meet the needs for services for which funds were cut. The tax structure in Arkansas, for example, as State Representative John Miller of Melbourne pointed out, has as its main source of revenue, a personal income tax based on what is a very low ranking (nationally) per-capita income. The second major source of revenue, he added, is from the State sales tax which is kept low because it is a regressive tax. The other major tax the State uses is a severance tax on resources. However, that tax provides less than 2 percent of the State's revenue. As a result, the State is financially unable to make up any of the cuts.⁹

Another concern raised was the fact that Arkansas has the second highest percentage of elderly of all the States and a very high percentage of disabled persons. There is also a very high rate of infant mortality among minorities in the State.¹⁰ Furthermore, the State Employment Commission shows an unemployment rate of nearly 38 percent among black youths. However, the Urban League in Arkansas suggests that it may be closer to 56 percent.¹¹ Howard Love, director of the Urban League stated the situation as it currently exists in the State:

We have these substantial statistical indices of poverty and deprivation in the State. . . We cannot, [however] anticipate that our State will be prepared economically to pick up the services that will be lost as a result of the budget cuts. . .¹²

Civil Rights Enforcement Responsibility

In addition to the cutbacks in funding, the issue of State/Federal relationships emerged as a key concern. This concern was especially intense in the area of civil rights enforcement. Some expressed the fear that the Federal oversight and enforcement role would be literally dismantled. Others were equally concerned about the State's ability to carry out its

⁷ *Block Grant Fact Sheet*, p. 1.

⁸ *AR. Transcript*, pp. 242-243.

⁹ *Ibid.*, pp. 195-196.

¹⁰ *Ibid.*, p. 233.

¹¹ *Ibid.*, p. 234.

¹² *Ibid.*, p. 233.

responsibility in enforcing civil rights provisions under the block grant programs.

The issue of civil rights enforcement was a major concern of many at the consultation. This concern was underscored by two very important considerations. First, the guidelines outlining the role and responsibilities of the Office for Civil Rights within the U.S. Department of Health and Human Services and other Federal agencies charged with the task of enforcing civil rights laws under the block grants, as outlined during the consultation were vague and incomplete. Secondly, the State of Arkansas at the time of the consultation had no independent agency for investigating complaints of discrimination, for negotiating or conciliating complaints, for holding public hearings or for compelling compliance. Given the fact that under the block grants the State will be given greater discretion in handling civil rights complaints, that becomes an extremely important consideration.

Delores Wilson of the Office for Civil Rights within the U.S. Department of Health and Human Services (Dallas Region) dealt with some of the concerns raised regarding the Federal role in civil rights enforcement. She pointed out that the Office for Civil Rights had convened a special Task Force on Block Grants in November 1981 to develop methods and procedures for insuring compliance with the statutes under the block grant program. That task force is still in operation and at the time of the consultation in March 1982, was in the process of developing and testing a number of models or prototypes focusing on enforcement strategies. She stressed the point that the existing nondiscrimination requirements that are connected to the delivery of health and human service programs will remain very much the same. There is no abdication of the Federal responsibility in the civil rights area, she said. The primary difference in the nondiscrimination requirements connected to the block grant programs, she added, are the inclusion of sex and religious discrimination prohibitions and the requirement that OCR notify the governor of findings relating to noncompliance and provide the State with a 60-day period within which to secure voluntary compliance.¹³ A number of participants at the consultation noted that the key element in this realignment of enforcement authority under the

block grants is the role of the State. However, as Ms. Wilson pointed out:

In establishing the partnership there is one thing that has to be remembered, and that is that OCR cannot eliminate or redelegate its responsibility for enforcement. What this means is simply that the States will have the opportunity—in situations where complaints are brought [forth] alleging forms of discrimination—to investigate those complaints and to negotiate for voluntary compliance. But in the event that they are unable to come to a resolution that is going to meet with the Federal requirements of the Office for Civil Rights, we will still maintain the responsibility for enforcement. So when it reaches a point where the State is unable to go any further in obtaining a voluntary compliance agreement, the Office for Civil Rights will then step in and begin to initiate . . . formal enforcement proceedings as they have . . . always been done. . .¹⁴

But at the same time, she explained:

Because the block grant concept is novel . . . everything that is happening is still in the formative stage. Monitoring and data collection tools have not yet been formulated but are being addressed as a part of the prototype that have been developed by the National Task Force. . . because we feel that without having all of those prototypes tested, piloted, approved and adopted, data collection tools and monitoring systems cannot be set up in a viable manner until we know exactly what kind of system we are going to have.¹⁵

In the meantime, OCR had put into effect some interim procedures. Ms. Wilson described these procedures:

In processing complaints against recipients of non-block grant funds, we intend to continue handling those in the same manner we always have: Conducting the investigation, negotiating for compliance, and making the final determinations. Where a recipient receives only block grant funds, we're going to resort to our Washington office for guidance. We hope that this approach is going to give some priority to the considerations of State concerns. And with the guidance coming from the National Office to the ten regional offices, as opposed to each regional office working autonomously, we are hoping that it is also going to provide a form of continuity in handling similar problems in a similar manner. Where both block grant and non-block grant funds are involved, we get a combination of the two. We will be able to do investigations to a point in some cases and then go to the Washington office to the general counsel and headquarters staff for further guidance.¹⁶

Given the understanding that OCR will maintain final enforcement authority, and will in the end,

¹³ Ibid., pp. 47-48.

¹⁴ Ibid., pp. 49-50.

¹⁵ Ibid., p. 50.

¹⁶ Ibid., pp. 55-56.

determine what constitutes an adequate investigation and an adequate remedy on the part of the State, the State's role was yet to be defined. George Bennett, division director for the Dallas Regional Office for Civil Rights (HHS) stated:

. . . how we go about discussing that with the States, and getting that [information] back to the recipient that is effected is a totally different thing, and these are the things [that still need] to be worked out. . .¹⁷

Although it was accepted that the State would have the general authority and flexibility within some limits to handle civil rights complaints under the block grants, no central mechanism or agency had been established to handle such complaints in Arkansas. At the time of the consultation, the various State agencies were responsible for ensuring compliance with civil rights laws within their own programs. However, support for a stronger emphasis on civil rights enforcement at the State level was voiced by many at the consultation. Governor Frank White, for example, supported a stronger civil rights compliance function for the State.¹⁸ In this context, he stated:

..in no way do I sense any indication by the legislature or anybody else that they are not going to have a vehicle that protects civil rights in the State of Arkansas. So whatever money it costs, the money will be available. . .¹⁹

Linda Garner, one of the Governor's key legislative and budget aides, stated:

. . . if we saw our current procedures for accepting any complaints or [ensuring] compliance were not getting the job done then we would be happy to make those changes.²⁰

Others suggested the restoration of the State Human Resources Commission as a possible vehicle for serving as a mechanism for enforcing civil rights in Arkansas. That commission, which is still legally authorized, was created by the Arkansas General Assembly in 1977 to study problems of discrimination, to promote equality, to encourage nondiscrimination, to evaluate agencies and hold public hearings relevant to those issues. It did not have authority to investigate complaints or compel compliance.²¹

¹⁷ Ibid., p. 66.

¹⁸ Ibid., p. 96.

¹⁹ Ibid., p. 101.

²⁰ Ibid., pp. 111-112.

²¹ Ibid., p. 259. See also, Ark. Stat. Ann. §6-1501 through 6-1506 (Supp. 1979).

Another problem is that it was never adequately funded or staffed. In 1977, the State legislature appropriated \$50,000 for a minimum staff. In 1980, approximately \$60,000 was appropriated. The following year, no money was appropriated by the General Assembly based on a recommendation made by the Legislative Council.²²

State Representative Irma Brown of Little Rock supported the restoration of the Human Resources Commission. She added:

. . . at present there is no agency that is set up to monitor monies coming into the State under the block grant categories. I see the Human Resources Commission. . . as being set into motion and fulfilling this role. Granted, it does not have the strength. . . to enforce compliance, but certainly if reinstated, it could have the authority to make sure that all segments of the community benefited from the block grant funds. . . I don't see it as a solve all type agency, but certainly I see it as a step toward providing for all of the citizens of Arkansas equally. . .²³

Bob Adkison, president of the Arkansas Community Action Agencies Association, added his support:

I feel like it's incumbent, at least in this State, to do something with that Human Resource Commission, to either revive that existing commission or expand upon it, and appropriate some money. . . I think that's one step the State should take. . .²⁴

Sandra Kurjiaka, State director for the Arkansas Chapter of the American Civil Liberties Union, advocated for a stronger agency. She stated:

The only solution I would see after what I've heard here today is if there were a way to get the legislature of this State [to act I would] fund a civil rights commission, not a human resources commission, but a real commission that has people to investigate [complaints] and some sort of enforcement vehicle [that would be able to] remove money from agencies that discriminated.²⁵

Citizen Participation in Block Grant Programs

Another critical issue to emerge at the consultation had to do with citizen participation. The need for more citizen input into the decisionmaking process under the block grants was stressed by a number of participants. Bob Nash, vice president of

²² Ibid., p. 288.

²³ Ibid., p. 212-213.

²⁴ Ibid., p. 290.

²⁵ Ibid., p. 310.

the Winthrop Rockefeller Foundation in Little Rock, focusing on this concern, said:

I think what it is going to take is more involvement . . . more involvement by people who have not been involved in the political and public decisionmaking process. We cannot afford to leave the allocation of public dollars and resources to a few people. That's the major problem. We need more public involvement by those people who are directly affected, rather than sitting back on the sidelines and waiting for something to happen. Only then, I think, will the State and local decisionmaking processes become more fair and more equitable. . . .²⁶

Although it was emphasized that the legislation calls for some kind of public hearings in the second year, a number of participants pointed out that many State agencies had not yet developed a plan to obtain public input into the decisionmaking processes under the block grant programs. For example, at the time of the consultation in March, the State had not initiated any public hearings dealing with block grants either at the agency level or in the legislature. Don Crary, Executive Director of Advocates for Children and Families, commented on this issue by stating:

Six of the block grants have been around a year, and yet as you listened to the discussion, we're still at the intent stage within State agencies. We are intending to set up a good compliance system, and we're intending to come up with a plan for public hearings, we are intending to come up with a plan for allocating funds. . . . Some of those block grants . . . came in a year ago, and yet there is [still] no mechanism. . . . that's in place and working or being tested. . . . We're going to go into the second year of some of them and still some are no better off and have no better plan [than they had when they were first implemented].²⁷

Bob Adkison provided a different focus on the issue:

The perspective on the role of citizen participation in public hearings in State programs under the block grants is that citizen participation and public hearings are both a requirement and a desirable feature. . . . [However]. . . . participation requires a concerted effort that most agencies and communities do not possess. . . . [What it] implies is that many citizens, local entities of governmental agencies, and non-profit organizations do not perceive civil rights as a necessity. In some instances, the perception is one of resentment or at best antagonistic cooperation in order to receive funding. . . .²⁸

²⁶ Ibid., p. 26.

²⁷ Ibid., pp. 305-306.

²⁸ Ibid., p. 269.

Indeed, some of the participants in the consultation felt that there would be little meaningful citizen participation in block grant programs administered by the State based on past experiences. This concern was addressed by Sheryl Dicker, an attorney with the Arkansas Legal Services Support Center in Little Rock. She remarked:

Up until today, we have not had any public participation [in the block grant implementation process] in the State of Arkansas. There has not been a single public hearing, a single legislative hearing on the issue of block grants. So, though I believe we've received assurances that in the future there will be some public hearings, that in and of itself will not suffice. . . . Those public hearings must provide for meaningful participation. . . . And that has rarely occurred in Arkansas.²⁹

Howard Love, executive director of the Urban League of Arkansas, also addressing this issue stated:

If we can take the Community Development Block Grant Program and the Comprehensive Employment and Training Act (CETA) program as examples. . . . of citizen participation under the block grant programs, we can safely assume that there will be no real meaningful citizen participation in block grant programs administered by the State.³⁰

Citizen participation was felt to be especially crucial in the area of block grants given the wide discretion that State governments now have. Two programs were of special concern to participants at the consultation in this context: the Small Cities Discretionary Program within the larger Community Development Block Grant Program (CDBG) and the Education Block Grant. It was pointed out at the consultation that almost all of the block grants being administered by the State were programs that were already in place under the previous categorical structure. However, both the Small Cities Discretionary Program and the Education Block Grants will be new programs as far as the State is concerned. Under the CDBG program, for example, the State of Arkansas will receive about \$20 million in discretionary money to be distributed by the State under the Small Cities Discretionary Program.³¹ With respect to the Education Block Grant, 20

²⁹ Ibid., pp. 260-261.

³⁰ Ibid., p. 234.

³¹ Ibid., p. 122.

percent of the funds the State Department of Education receives will be discretionary.³² Given the nature of these programs, many felt that both the State's Industrial Development Commission, which will ultimately administer the CDBG program when the State takes over the Small Cities Program in October 1982, and the State Education Department, must incorporate a strong citizen participation process into these block grants. According to consultation participants, citizen input was vital to ensure that small communities and the various groups interested in education and community development will have an opportunity to influence how block grant funds are allocated in Arkansas.

The Governor has created two advisory groups to establish a plan of action for the CDBG and the Education block grants. Linda Garner provided the Advisory Committee with an overview of their status at the time of the consultation. She reported:

With regard to the Community Development Block Grant—the Governor has already formed a task force—which is accepting information from all over the State. . . There are two public hearings required. . . to take over the administration of the CDBG grant. [HUD has also established] some regulations so there is no total discretion at the State level. As far as the Education Block Grant [is concerned], . . . an advisory committee is required and the Governor has appointed that committee and very shortly they will be having hearings, receiving input and making recommendations on how the block grant will be administered.³³

Robert Middleton, director of planning for the Arkansas Industrial Development Commission (AIDC) gave his views on the role of citizen participation in the area of block grants and more specifically in the area of the Small Cities Discretionary Program which his agency will administer. He stated:

. . . that's a particular issue that's been of concern to us. We've taken the position so far that citizen participation is something that's a lot more than simply an opportunity to affect the outcome of an application to either HUD or AIDC. In our view, citizen participation means the volunteer activities, it means the involvement of citizens in much more than just a block grant application. Such as I understand, the way we structured the program, we would like to encourage the involvement of citizen groups and volunteer action beyond just the block grant. Now we're going to have some sort of a citizen participation

requirement. I couldn't tell you exactly what it will look like. We haven't really examined the full range of options yet.³⁴

A number of important changes have also been made in HUD's requirements regarding citizen participation. Leonard Chaires, director of HUD's Fort Worth Regional Office of Fair Housing and Equal Opportunity, told the Committee:

There is a four-part program for the citizen participation effort. That effort calls for making information available to citizens. I think the difference is that. . . citizens will not participate in developing a plan that the city will have to accept. There will be a requirement to hold at least one public hearing and there will be a need to publish a statement in terms of the needs of the Community Development Block Grant Program to be presented in that city. But the difference right now is that the citizen participation plan as we used to know it will not be in effect. They will have access to information and certainly they can make their needs known, but local elected officials will not need to abide by what is presented by that citizen group.³⁵

This represents a definite departure from the rather structured citizen participation process formerly required by HUD. The intent of this change, according to Chaires, was to give local elected officials greater discretion in setting priorities for their communities. Another purpose was to reduce the administrative cost of the program.

State Decisionmaking Process Regarding Block Grants

As many pointed out during the consultation, the role of State government under the block grant program is much greater than it was under the categorical program structure. William Acosta, regional administrator for the Office of Human Development Services, explained that the Federal Government will have virtually no role in the monitoring and expenditure of these funds.³⁶ He added:

Under this legislative intent, the States are given just about total and maximum flexibility. . . . And the Federal Government will not have a role in interpreting whether or not the States are administering or implementing these programs [as intended by the legislation]. . . . According to the current thinking, each State will be correct in interpreting its own point of view in its implementation and administration of these programs. . . . As long as the unit operating these programs does refer to its State counsel for

³² Ibid., pp. 182-183.

³³ Ibid., p. 123.

³⁴ Ibid., pp. 148-149.

³⁵ Ibid., p. 81.

³⁶ Ibid., p. 42.

interpretation that will be the shield that will protect the States in the implementation of these programs.³⁷

From a national point of view, the fact that the States have such discretion in interpreting the legislation underlying the block grant program disturbed many of the participants. Bob Nash articulated some of these concerns, taking into consideration the role of State government and its decision-making apparatus under the block grants:

There is a growing feeling among many groups and individuals that these block grant proposals repeal landmark legislation, eliminate essential programs, and undermine principles of fiscal accountability and lay the groundwork for confusion, neglect, and a new bureaucracy at the State level. Without defending every categorical program, some groups predict that untargeted, undirected, unmonitored, and unexamined block grants will mean far less assistance to those who need these services despite rhetorical commitments to the truly needy. . .³⁸

This same concern was raised by Bob Adkison:

While the concept of State and local control is theoretically sound, the lack of a national emphasis and targeting of resources toward minorities, women, the elderly, and [the] handicapped will perhaps signal a de-emphasis on the importance of allocating resources toward these affected groups. . .³⁹

How the State uses this discretion, especially in terms of targeting resources and setting program priorities is an important issue in a State like Arkansas that has a large minority population with relatively little political power to influence decision-making processes. Elaborating on this, Nash explained:

The major problem in Arkansas is that when you eliminate those targeted provisions, in my opinion, it's dangerous, because [then] we . . . have to depend upon the State officials and the legislature to take the limited dollars that are [currently] available and spread them out to those same problems. I don't think we have a guarantee that [those funds will be targeted to those truly in need] because political and economic power . . . is a major determinant in deciding where those dollars go. However, the people that are affected by the reduction [in funds] do not have political and economic power [in this State].⁴⁰

Irma Brown added:

³⁷ Ibid., p. 43.

³⁸ Ibid., p. 18.

³⁹ Ibid., p. 269.

⁴⁰ Ibid., p. 23.

Distribution of the funds will pretty much be in the hands of members of local elite power structures that have historically excluded black people and poor people. . . Without a Federal monitoring system, this would be especially true. Some of the more wealthy States may not witness the degree of discrimination that I fear we will experience in Arkansas, because as has been said before, it is a poor State according to national measurement scales. . . and it does not have proper and needed enforcement mechanisms.⁴¹

The question of accountability was also raised. As indicated earlier, many State agencies at the time of the consultation had not yet developed a plan to obtain public input into the decisionmaking process influencing the use of block grant funds. Moreover, no legislative hearings dealing exclusively with block grants had been convened. Indeed, much of what has happened in Arkansas in the area of block grants had been initiated through the Governor's Office. However, the legislators who participated in the consultation felt confident that the State General Assembly would take on a more active role in the future. State Representative John E. Miller pointed out:

The legislature certainly, in my opinion, has the responsibility of developing a budget. If you understand our budget process the . . . administration or the Governor. . . proposes a budget agency by agency. The Legislative Council then reacts to that proposal. . . And then the Council makes its recommendation to the General Assembly. Then the General Assembly acts on those budgets either to amend them or pass them with the recommendation of the Legislative Council. So . . . the legislature certainly will have its input on whatever program or expenditure of funds there is.⁴²

Senator Max Howell of Little Rock added:

You must understand that the General Assembly hasn't been in session since we got this new world. Up until now we've had categorical grants that we had no leeway in. We know that it's coming, we know that we're going to have to make these decisions. I personally am contacting groups. . . we are involved regularly in trying to find out where the problems are, and what we're going to have to do to answer these problems. And, I'm certain that the Arkansas Legislature, though it will have problems funding programs, will be ready to hear and deliberate on the needs of people.⁴³

All of the legislators were aware of the fact that the block grant program offers the State wide

⁴¹ Ibid., p. 23.

⁴² Ibid., pp. 206-207.

⁴³ Ibid., p. 211.

discretion regarding the use and distribution of funds. Rep. Miller commented:

...the Federal legislation under the Block Grant Program, as I understand it, gave an either/or situation. And in the absence of the legislature making the appropriation it gave the administration the authority to cut the programs and to—cut the cloth to fit the pattern. So what has happened, Governor White has cut that cloth to fit the pattern. . .⁴⁴

Irma Brown, however, felt that minorities and the poor in Arkansas, as in the past, will be hurt the most under the block grants. She cited two reasons for this. First, given the limited financial resources of the State, there is little likelihood that it will be able to make up most of the cuts in Federal funding. Secondly, these groups have had only limited access to the State's decisionmaking processes. Under the categorical programs, some access was afforded, but under the block grants, this access is no longer assured. This is especially critical given the fact that the groups most affected by decisions made at the agency level regarding program priorities and eligibility criteria will have the least to say about these decisions.⁴⁵

⁴⁴ Ibid., p. 218.

Summary of Concerns

In reviewing the various statements provided at the consultation in Little Rock, the Advisory Committee found that although it was too early to assess the impact of block grants and cutbacks in Federal funding on State programs and services, it is safe to say that it will be significant even though the State may take some steps to minimize the effects. The Committee also found that for the most part the enforcement of civil rights laws and anti-discrimination provisions by the Federal Government were yet to be put in place. Indeed statements made by Federal officials at the consultation seem to point out very clearly that the Federal enforcement structure with regard to block grants is incomplete. This situation is aggravated by the fact that no effective mechanism exists at the State level in Arkansas to deal with civil rights complaints. In the area of citizen participation, the Advisory Committee heard statements from many who felt that the various State agencies had been slow in implementing this process. Finally, the Committee found that there has been little systematic effort on the part of the Arkansas legislature to get involved in the area of block grants. In fact, the legislature has played only a minimal role thus far with regard to block grants.

⁴⁵ Ibid., p. 204.

Block Grants in Louisiana

A Report of the Louisiana Advisory Committee to the U.S. Commission on Civil Rights

State Government in Louisiana

The State of Louisiana has traditionally been governed by a strong executive. As chief executive, the governor makes reports and recommendations to the legislature on the affairs of the State, including its complete financial condition.¹ He is also required to submit to the legislature each year an operating budget and a five-year capital budget.² As a result of his control over budget matters, the governor has strong administrative control over the various State agencies and departments.³ This control is exercised mainly through the Division of Administration which is under the Office of the Governor.⁴ This division is headed by a commissioner who is appointed by the governor.⁵ It generally manages and supervises the financial operations and affairs of the State and all State agencies, including preparation of the executive budget and allotment of expenditures.⁶

The State legislature consists of two houses: the Senate and the House of Representatives.⁷ At the present time, there are 39 members in the Senate and 105 representatives in the House.⁸ Legislators of both houses are elected at the same time for four-year concurrent terms—on the same dates that the governor and other statewide elected officials are elected.⁹

Block Grants in Louisiana: An Overview

Louisiana is one of several states in which the executive branch supported the Reagan Administra-

tion's move to return funding authority and decisionmaking to State governments, to place accountability "closer to the people," and to reduce the Federal presence and responsibility in funding and program operations.¹⁰ What had been envisioned, however, was that the State would have sufficient lead time to gear up for these programs,¹¹ that Federal guidelines would be clear, but minimal, and perhaps most importantly, that adequate financial resources would be made available for the block grant programs.¹² As it occurred, there are fewer Federal dictates, and less Federal prescriptiveness,¹³ but also fewer Federal dollars.¹⁴

Even proponents of the block grant concept admitted to some feelings of disillusionment, confusion, and dissatisfaction with the actual implementation of these grants—especially the reduction of Federal revenues to support such programs. A few State officials admit doubt, and even suspicion, about the motives and manner in which the move to block grants is being made. Rep. Louis Charbonnet of New Orleans expressed this in his statement before the Advisory Committee:

. . . Maybe we're a little reluctant now when the Feds are saying "here we want to give it all to you," and we are reluctant [in deciding] whether we want to take that whole pie.. you have to [be] suspect when you're asking for something for a long time and all of a sudden somebody comes up and says "I want to give it to you." Why do you want to give it to me now when we were trying to take it and you wouldn't give us [even] a piece of it.¹⁵

Complicating the situation in Louisiana is the fact

¹ LA. Const. art. 4, §1 and §5.

² Ibid.

³ James H. Brown, *Louisiana Officials, 1981 Roster*, Moran Industries, Inc., Baton Rouge, La., (1981), p. 285 (hereafter cited as *LA. Officials*).

⁴ LA. Rev. Stat. Ann. §39:1-6 (West).

⁵ Ibid.

⁶ Ibid.

⁷ LA. Rev. Stat. Ann. §24:35-35.1 (West).

⁸ *LA Officials*, pp. 284-285.

⁹ Ibid., p. 284.

¹⁰ Testimony before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights in Baton Rouge, Louisiana, April 15, 1982 (hereafter cited as *LA. Transcript*), pp. 111-113.

¹¹ Ibid., pp. 113 and 225.

¹² Ibid., pp. 266-267.

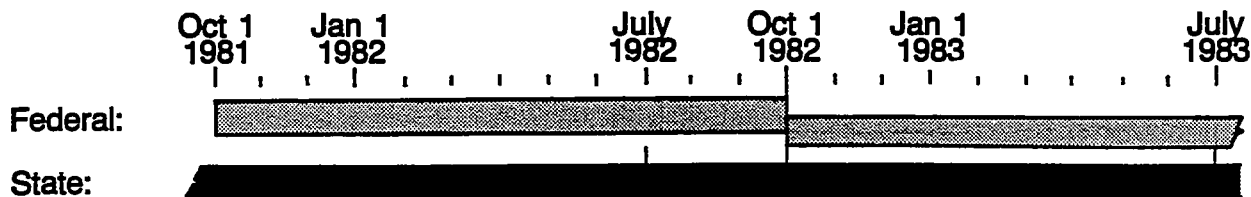
¹³ Ibid., p. 23.

¹⁴ Ibid., p. 266.

¹⁵ Ibid., p. 305.

FIGURE 1

Illustration of Overlap Between Federal and State Fiscal Years



that the State operates on a different fiscal year from the Federal Government. The Federal fiscal year (FY) begins on October 1 and continues through September 30 of the following calendar year. Louisiana begins its State fiscal year (SFY) on July 1 and ends it on June 30 of the following year.¹⁶ Figure 1 describes the overlapping of the fiscal years.

For FY 82, the State of Louisiana received \$82,112,539 in new Federal block grant funds from the U.S. Department of Health and Human Services.¹⁷ These funds were distributed among these blocks: Preventive Health Services, \$2,471,755; Maternal and Child Health, \$6,932,850; Alcohol, Drug Abuse and Mental Health, \$4,354,000; Social Services, \$44,268,682; Community Services, \$7,682,223; Energy Assistance, \$16,403,029.¹⁸

It is expected that approximately \$30 million will be awarded in the Community Development Block Grant funds for Small Cities, from the U.S. Department of Housing and Urban Development.¹⁹ In addition, the State has indicated that it will apply for Primary Care Block Grant funds when they become available (in FY 83).²⁰ It will also receive funds for Education Block Grant programs from the U.S. Department of Education.²¹

Most of the block grant funds will be administered by the Louisiana Department of Health and Human Resources, including the following programs: Preventive Health Service, Maternal and Child Health, Alcohol, Drug Abuse, and Mental Health, and Social Services.²²

The Louisiana Department of Labor will administer the Community Services and Energy Assistance block grants.²³

The Education and Community Development block grants will be administered by the State

Department of Education,²⁴ and the State Department of Urban and Community Affairs, respectively.²⁵

Civil Rights Enforcement Responsibility

At the consultation held in Baton Rouge, several issues which relate to the planning, administration, and implementation of services under block grants emerged. The major issues—enforcement of Federal civil rights provisions, citizen participation, and the State's decisionmaking process with regards to block grants—were discussed at length. Many expressed concern over the return of authority and responsibility for civil rights enforcement to the State. One participant, Brenda Quant of the Louisiana Hunger Coalition, noted that from the Reconstruction Period which occurred after the Civil War to the passage of civil rights legislation in the 1960's, the return of such power to the States had been disastrous for blacks. She remarked:

The resultant reign of terror, the wholesale removal of civil rights, the re-enslavement, and disenfranchisement of blacks are all well-known and documented in historical facts. This was our second experience with states rights. Slavery was our first.

After the defeat of Reconstruction, Louisiana called a constitutional convention in 1898 and passed the White Supremacy Constitution of Louisiana; Within a year, black voter registration dropped from 130,024 to 5,320.

It is also a well-known fact that the situation did not profoundly change until the 1960's, with the passage of civil rights legislation, especially the Civil Rights Act and Voting Rights Act.²⁶

Hilda McQuarter from the Louisiana League of Women Voters also pointed out that there was little enforcement of civil rights requirements under previous attempts by the Federal Government to

¹⁶ Ibid., p. 243.

¹⁷ U.S. Department of Health and Human Services, *Block Grant Fact Sheet, Revised, Region VI, 6/15/82.*

¹⁸ Ibid.

¹⁹ *LA. Transcript*, pp. 113 and 223.

²⁰ Ibid., p. 165.

²¹ Ibid., pp. 244-247, and p. 259.

²² Ibid., pp. 164-169.

²³ Ibid., p. 205.

²⁴ Ibid., p. 241.

²⁵ Ibid., p. 224.

²⁶ Ibid., p. 135.

return power to the States through General Revenue Sharing in the early 1970's.²⁷

One of the participants in the Louisiana consultation was James Kelly, deputy assistant director of Intergovernmental Affairs of the U.S. Office of Management and Budget (OMB). Mr. Kelly was asked to address, from a national perspective, several key areas regarding block grants. One of those areas included the delegation of civil rights enforcement to the States and those responsibilities which would be retained by the Federal Government.

According to Mr. Kelly, most of the discretion afforded by the legislation has been passed on to the State. The area of civil rights enforcement, however, presents a unique situation in that the Federal Government will retain at least some responsibility for ensuring enforcement of civil rights requirements. In those block grants in which Congress did not initially include specific civil rights assurances (Education and Social Services) such requirements are expected to be incorporated into the regulations in the future.²⁸

The new civil rights regulations, Kelly explained, which are presently being formulated, are expected to be consistent with the principles of New Federalism. In other words, much of the principal authority and responsibility would be delegated to the States.²⁹

Nonetheless, the Federal presence and Federal responsibilities would be retained, according to Kelly. He cited the procedures to be used by the U.S. Department of Health and Human Services.³⁰

Whenever the Secretary [of the funding department] determines. . .that the State has not complied with these provisions. . .He notifies the governor and the governor has sixty days [in which] to secure compliance.

If [compliance is not secured] within sixty days, then the Secretary can refer the case to the (U.S.) Attorney General, [or] exercise the powers [provided] under the nondiscrimination provisions. . .[or take] such other action as provided by other laws already on the books.³¹

At the State level, a different situation exists. At the time of the consultation, the legislature in Louisiana had not taken a very active role in planning and making decisions regarding the block

grant programs.³² Most of that responsibility had been left to the governor and the State agency heads.³³ As Rep. Charbonnet stated, the primary role of the State Legislature in protecting the civil rights of all persons in the State is to pass rules and regulations and enact bills to make sure that these protections are provided.³⁴

In addressing the role of the State legislature in ensuring the enforcement of civil rights requirements in the State, Rep. Charbonnet, who also serves as the Chairman of the Subcommittee on Appropriations of the State Block Grant Committee, commented:

I don't know if we're going to be able to put the regulations and rules in to protect people that we should.

I happen to come from the school that the most gains that poor people have gotten have been under federal jurisdiction because the State has refused to allow those gains to be accomplished by [its] interpretation of certain rules and regulations.

I hope that in 1982 and '83 that we have progressed enough in our thinking that, . . .that we have matured enough, and our racism has demised to an extent, and I don't want to say has died and removed itself because racism is alive and well in this state and growing everyday.

But I hope that it has demised to the extent that it will allow us to implement the block grant program with proper rules and regulations for all people.³⁵

One such measure was passed by the Legislature in 1978 providing for an Office for Civil Rights within the Office of the Governor.³⁶ The establishment of such office was left to the discretion of the governor. The legislation provides that:

The governor may establish within his office an office of civil rights to merge, consolidate, and administer the powers, duties, functions, and responsibilities of any state agency relative to equal employment opportunity and nondiscrimination in the provision of state services under the applicable state and federal statutes. It shall be the duty of such office to establish procedures where applicable to carry out such functions and responsibilities, including but not limited to procedures for investigation of and action on complaints regarding equal employment opportunity

²⁷ Ibid., p. 93.

²⁸ Ibid., p. 29.

²⁹ Ibid., pp. 29-31.

³⁰ Ibid., pp. 28-29.

³¹ Ibid.

³² Ibid., pp. 280 and 290.

³³ Ibid., p. 302.

³⁴ Ibid.

³⁵ Ibid., pp. 299-300.

³⁶ L.A. Rev. Stat. Ann. §49:213 (West).

and discrimination in state services under the applicable state and Federal statutes, and planning therefore.³⁷

No funds were appropriated for this office at the time the bill was passed in 1978. At the time of the consultation in April 1982, funding had not been requested by the governor for such an office. However, during the consultation it was noted that the governor "is willing to entertain suggestions along that line."³⁸

The responsibility for civil rights enforcement has been a function vested within each State agency responsible for Federal programs.³⁹ Presently there are formal mechanisms within the State departments of Health and Human Resources;⁴⁰ Labor;⁴¹ and Urban and Community Affairs.⁴² Informal mechanisms in the State Department of Education have been established to handle civil rights matters.⁴³ Agency mechanisms differ in organization, scope of authority, and procedures depending on the Federal mandate under the previous categorical funding. In all cases, those mechanisms have remained intact.

Each of the participating State agencies submitted supplementary materials to the Advisory Committee as part of their statements.⁴⁴ Review of these materials, reflected a lack of uniformity in the data collection and reporting procedures among agencies. Similarly, these materials lack specificity as to how the civil rights requirements will be enforced—including sanctions available to the respective departments and agency plans for assuming those civil rights functions previously carried out by Federal agencies such as routine monitoring of compliance. The lack of explicit guidelines from Federal agencies seems to contribute to the problem. As Leon Tarver, assistant superintendent for the Office of Educational Support Programs, Louisiana Department of Education, explained:

I find no explicit provisions contained in the Federal legislation nor in the non-regulatory guidelines covering civil rights enforcement requirements. Such requirements usually accompany grant allocations and award notices that usually contain various sets of compliance assurances to be agreed upon when accepting a grant award. However, I have no certain knowledge as to the process

³⁷ Ibid.

³⁸ *LA Transcript*, p. 132.

³⁹ Ibid., p. 123.

⁴⁰ Ibid., pp. 168-169 and pp. 176-181.

⁴¹ Ibid., pp. 211-213.

⁴² Ibid., pp. 230-231.

⁴³ Ibid., p. 261.

⁴⁴ Exhibits introduced at Louisiana Consultation: (A) LA. Dept.

or procedure for fulfilling any such expected requirements.⁴⁵

Citizen Participation in Block Grant Programs

In the area of citizen participation, James Kelly, of the OMB, told the Advisory Committee:

With respect to the public participation, the block grant statutes generally require that the State hold public hearings on the use and distribution of block grant funds. They're very specific, in most cases, [in that they] either require a hearing by the legislature or some other form of public hearing. And the statute is generally very clear in that area.⁴⁶

The nature of the citizen participation and where State responsibility for this participation rests were major concerns raised by participants of the Louisiana consultation. Mr. Kelly explained the Federal posture on the nature of citizen participation:

. . . we feel it's very important to state that public input is a requirement. But that the method in which that public input is done can be done best as defined by State or local practice.

Exposure must be done, but the process and the manner in which that is done should be left to the State in consultation with its local officials and constituency groups such as yours to define the best method to do that. Maybe a public hearing in the legislature is proper, maybe it isn't. Maybe local hearings of a citizen group that has a particular interest is best for civil rights. Maybe your hearings are the best way to insure for the State that there is input into the civil rights provision.

So, I think it's our contention to say that, in fact, the State and local governments should get together in consultation with their citizen groups and constituent groups and, in fact, define the system.⁴⁷

Members of the Advisory Committee wanted to know how it is decided whether the executive or legislative branch initiates the public participation processes. Following up on this concern, Roberta Madden asked:

There are some concerns, I think, in Louisiana about citizen participation. You mentioned that in some States the governor calls hearings, and in other States, the

of Health and Human Resources; (B) LA. Dept. of Labor; (C) LA. Dept. of Urban and Community Affairs; and, (D) LA. Dept. of Education.

⁴⁵ Supplement to *LA Transcript*, Louisiana Dept of Education, p. 7.

⁴⁶ *LA Transcript*, p. 46.

⁴⁷ Ibid., pp. 60-61.

legislature, and in other places, agencies. Who decides who is going to do that?

I think in Louisiana some people have felt left out of the process. Is it just a contest of naked power between the executive and the legislature?⁴⁸

Mr. Kelly's response was that the Federal Government seeks to remain "neutral" and let that be determined by the State's legislative and executive powers.⁴⁹ He noted that the absence of Federal prescriptiveness in this area has caused dissatisfaction among both executives and legislators in various States. He added:

. . . that has troubled some State legislatures and it has troubled some governors, depending on whether you come from a strong legislative State or a strong executive State. But it is our deliberate intention of allowing the dynamics to take place at the State level so that the State legislatures, for example, are not preempted by a Federal prescriptive definition. . .⁵⁰

While the statutes call for public hearings to be conducted by the legislature, these requirements were waived for the first year.⁵¹ The only federally-imposed citizen participation requirement was for some form of public comment to be obtained prior to adaption of an intended use report or a plan for how the money is to be spent.⁵² States were required to send in assurances of adherence to this provision.⁵³

Public hearings in Louisiana were planned both by the legislature and by the administering State agencies. There was concern, however, that the legislative hearings would be fruitless. Rep. Charbonnet stated:

I've attempted. . . to hold some public hearings and those hearings have not been very fruitful. As a matter of fact they have been just a waste of time.⁵⁴

He did note, however, that the role of the legislature in the public hearings could be expected to expand in the next State fiscal year (SFY 83).⁵⁵

Two explanations for the lack of success of the legislative public hearings were offered by participants. First, was the fact that the State had to expedite the development and distribution of the

⁴⁸ Ibid., p. 70.

⁴⁹ Ibid.

⁵⁰ Ibid., p. 71.

⁵¹ 46 Fed. Reg. 48582, 48583 (1981).

⁵² Ibid.

⁵³ Ibid. See also *LA Transcript*, p. 47.

⁵⁴ *LA Transcript*, p. 290.

plan in order to submit it to the Federal Government by October 1. Second, because of lack of available lead time there was little or no opportunity for citizen input.⁵⁶

However, others felt that legislators lacked sufficient information to hold public hearings on the State plan. Speaking of a hearing that was held only a few days before the October 1981 submission deadline, Brenda Quant noted:

. . . it was obvious that the governor's appointees were in control of the whole process. . . in the minds of the legislature, I don't think they realized the process had even begun. . .

. . . [The agency director] wouldn't even let the legislators look at the State plan they had drafted. He said it was too rough a draft.⁵⁷

When asked how she knew that legislators were denied access to the plan, Ms. Quant responded:

. . . they asked for it at the hearing. Repeatedly, they asked for it. And [the director] said that he could give it to them that day, and by that afternoon he could have changed something, that it was in flux and nothing was official and so forth, that it wouldn't be fair to give it to them. They must have asked him ten times in the course of the day, and he just continued to refuse.

In fact, one of his assistants had given somebody a copy of one of the plans that they had done, and [the director] didn't know about it until at the time, you know, somebody indicated that they had a copy of one of the drafts. And he was [really] upset with his assistant who had leaked one of the State plans to somebody in the legislature.⁵⁸

As the chief executive officer for the State, the governor has review and veto power over the plans developed by his appointed agency heads. Additionally, the governor appointed two citizen advisory committees—one to work with the Education Block Grant program and the other to work with the staff of the Community Development Block Grant (CDBG).⁵⁹ Although the Education Advisory Committee is required by Federal statute,⁶⁰ the

⁵⁶ Ibid.

⁵⁷ Ibid., p. 128.

⁵⁸ Ibid., p. 155.

⁵⁹ Ibid., pp. 156-157.

⁶⁰ Ibid., pp. 121-122.

⁶¹ 47 Fed. Reg. 6598, 6602 (1982).

CDBG Advisory Committee was formed as a result of the governor's own initiative.⁶¹

The governor, at the time of the consultation, had not yet decided whether to appoint advisory committees for each block grant program. Some of the State agencies suggested using committees that were already in existence (e.g., committees on aging, mental health, etc.).⁶² Where the governor had not appointed an advisory committee specifically to work with block grant matters, the secretary of the appropriate department was given discretion in selecting the citizen participation mechanism and procedures to be used by that agency. Statements from each of the State agency participants indicated that a variety of methods were being used to obtain citizen input into the various block grant proposals. However, there appeared to be a complete lack of uniformity and coordination between agencies on this matter.⁶³

Each of the agencies administering block grants reportedly held some type of public meeting(s) to obtain citizen input into their respective plans.⁶⁴ Nevertheless, participants were critical of several aspects of the citizen participation efforts of the State. Barbara Major of the Louisiana Hunger Coalition identified several deficiencies in this process. For example, she alleged that calls for information were not returned. No feedback was encouraged. Conflicting meetings were scheduled which diluted attendance. She also pointed out that in order to obtain fair hearings for persons affected by agency programs, litigation had to be filed.⁶⁵

Other participants commented that the State has a poor history of citizen involvement—especially from the poor and minorities—where Federal regulations have not required it.⁶⁶

Louisiana's Decisionmaking Process Regarding Block Grants

The Louisiana Legislature convenes annually for not more than 60 days beginning at noon on the third Monday in April. The adjournment of the 1981 session, preceded the October 1 deadline for submission of the initial block grants. Consequently, the

legislative role in preparing the initial plan was limited. Current legislative involvement in the block grant planning process has been largely through the legislative committee structure.⁶⁷ However, it has been limited to considering respective agency plans as part of their regular assignments.⁶⁸ For example, the House Welfare Committee is responsible for programs administered by the Louisiana Department of Health and Human Resources. Similarly, all block grant plans are subject to review through the respective budget and/or appropriations committees of the legislature.⁶⁹ Finally, the legislature has established a State Block Grant Committee.⁷⁰ Rep. Charbonnet explained that since requirements for legislative public hearings have been waived until after October 1982, increased activity and involvement by the legislature will be observed in the next year. He added:

[Since requirements for legislative hearings were waived only for the first year, this] would mean that next fiscal year at the Federal level, we will be able to take part in it.

At that time, I intend to actively have some public hearings throughout the State and get some public input to the block program as it has been mandated on us by the Federal Government.

But let us be very candid. It seems to be putting the horse after the cart because within the first year of implementation, Department of Health and Human Resources and other social service agencies have implemented a very significant amount of block grants because they didn't want to lose that funding. . .⁷¹

At the time of the consultation, the State of Louisiana had received a total of \$1.5 billion, a reduction of \$572 million, in Federal funds.⁷² These figures include both block grant and categorical funds to the State. State officials estimated that, had there been no reduction in Federal funds, an additional \$293 million would have been needed, when adjustment for inflation is included, to operate at the same level as the FY 81 programs.⁷³

In terms of block grants, the State of Louisiana was faced with a \$42 million reduction in Federal

⁶¹ *LA Transcript*, pp. 121-122.

⁶² *Ibid.*, p. 122.

⁶³ *Ibid.*, pp. 175 and 289.

⁶⁴ *Ibid.*, pp. 169-170, 209-210, 225-227, and 244-245.

⁶⁵ *Ibid.*, pp. 311-313.

⁶⁶ *Ibid.*, pp. 92 and 94.

⁶⁷ *Ibid.*, pp. 170, 173, 181, 214, and 293.

⁶⁸ Staff interview with Rep. George Connor, Chair of the House Welfare Committee, Louisiana Legislature, March 1982.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *LA Transcript*, p. 290.

⁷² *Ibid.*, p. 269.

⁷³ *Ibid.*

funds for services included in the Health and Human Services block grant programs alone in FY 82.⁷⁴ The most significant impact of these cuts have been in services to Medicaid recipients and to providers of medical services.⁷⁵ However, in order to offset the effects of such cuts, the governor and State agency heads recommended to the legislature plans to apply unused carryover Federal funds and the corresponding State match to the impacted programs. In addition, recommendations were made to utilize the existing transfer provisions included in some of the current block grants to further offset the need to reduce the nature or level of services. The legislature did authorize these recommendations.⁷⁶ However, some reduction in services still will be required for some of the programs covered by block grant funding.

The current fiscal year also marked the initiation of State responsibility for allocations of Community Services Block Grant funds. These funds are administered by the Louisiana Department of Labor. In FY 81, community action agencies in Louisiana received approximately \$9 million.⁷⁷ In FY 82, the amount of available funds was reduced to \$7,645,222.⁷⁸ Ninety percent of these funds continued to go to the community action agencies, as mandated in the Act. Initially, the State Department of Labor developed a funding allocation formula in which 50 percent of the community service funds must go toward employment and training, and 40 percent to traditional activities.⁷⁹ However, the reduction in Federal funds necessitated a change in the formula. Ulysses Williams, Secretary of the State Department of Labor, explained the change in the formula:

We changed our formula because we thought the formula we had in effect would severely handicap the community action agencies in doing an effective job in delivering those kind of services.

So, that formula was changed to seventy percent for non-traditional or traditional programs, and twenty percent went to employment and training kind of activities. . .⁸⁰

⁷⁴ Louisiana Department of Health and Human Resources, *Preliminary Plan for Federal Budget Reductions*, Baton Rouge, La., (1982) p. 6.

⁷⁵ *Ibid.*

⁷⁶ *LA. Transcript*, p. 196.

⁷⁷ *Ibid.*, p. 206.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, pp. 206-207.

The administrative decisions were made by the State Department of Labor. However, eight public meetings were held around the State to discuss the State's plan. Upon completion of these meetings, the minutes from each meeting were reviewed and some modifications made in the plan, as a result of this public input.⁸¹

This was also the first year that the State has received direct funding for the Community Development Block Grants for Small Cities. The total amount of community development funds was smaller than the previous year. As a result, agency priority has been given to the completion of existing projects, and limiting the number of new projects that will be funded. Approximately \$30 million was made available under this block grant.⁸²

In the area of education, the amount of Federal funds to be provided to the State was determined by a formula developed in Washington.⁸³ The amount of Federal funds anticipated for the 1982-83 school year is approximately \$78 million,⁸⁴ a reduction of nearly \$49 million from the previous year.⁸⁵ The Advisory Committee for Education established by the governor has been divided into three subcommittees: the Subcommittee on State Funds, to determine the use of funds set aside for support of State programs (20 percent of total allocations); the Subcommittee on State Formula, to develop the distribution formula for the remaining 80 percent of the State allocation; and the Subcommittee on Planning, Implementation, Review and Evaluation.⁸⁶ State officials pointed out that recommendations from the Subcommittee on State Funds will be used to continue State programs previously funded by categorical Federal funds. The Subcommittee on State Formula must include pupil enrollment in developing a formula. However, according to the assistant superintendent for the Office of Educational Support Programs, Leon Tarver, some discretion is available to States which will allow them to target special populations or offset other special "high cost" situations.⁸⁷ The subcommittee is also recommending criteria similar to that of the previous year;

⁸⁰ *Ibid.*, p. 207.

⁸¹ *Ibid.*, p. 208.

⁸² *Ibid.*, p. 233.

⁸³ *Ibid.*, p. 242.

⁸⁴ *Ibid.*, p. 273.

⁸⁵ *Ibid.*, p. 250.

⁸⁶ *Ibid.*, pp. 245-248.

⁸⁷ *Ibid.*, p. 246.

that is, 85 per cent of the funding is to be allocated on the basis of enrollment and 15 percent on high cost, "much of which is based on sparse population and income deprived children."⁸⁸ During the 1981-82 school year, similar categories existed except that the funding ratios were 80 and 20 percent, respectively.⁸⁹

In the areas of social and community services, State officials at the consultation explained that the reduction in Federal funds will not be completely offset by the use of transfer provisions and carryover funds. The reduced budgets mean that fewer persons will be able to receive services.⁹⁰ It also may mean that staffing will be reduced. Consequently, it has been suggested that the State "target" the use of funds for low- and moderate-income families.⁹¹

State officials indicated they are taking steps to target special needs or populations for priority in program funding. In the Department of Health and Human Resources, for example, all programs included in the block grants were listed and prioritized according to three categories: 1) life-support programs, which are essential to supporting persons in their life situations; 2) important but not life-support; and 3) marginal programs—or those of somewhat lesser importance. Programs in the first category received only a 5 percent cut in funding level. Those in Category 2 were cut by 25 percent. Programs in Category 3 were cut by a minimum of 50 percent and some were completely eliminated.⁹²

Similar steps regarding the CDBG Small Cities program are being taken. The Secretary of the Louisiana Department of Urban and Community Development, Linton Ardoin, stated:

Under this CDBG Small Cities Program, the projects that will be funded will be activities which benefit low- and moderate-income families. Secondly, activities which aid in the prevention or elimination of slums or blighted conditions. And thirdly, activities designed to meet community development needs having a particular urgency. . . we identified three areas by which projects will be

⁸⁸ Ibid., pp. 245-248.

⁸⁹ Ibid.

⁹⁰ Ibid., pp. 270-272.

⁹¹ Ibid., p. 99.

funded: economic development kinds of activities; housing rehabilitation kind of activities; and, public facilities.⁹³

Targeting of programs for low-income families and districts having sparse populations are also being proposed by the Louisiana Department of Education.⁹⁴ Program priorities in community services, according to Ulysses Williams, are being focused on employment and training programs, and traditional services determined by the local communities.⁹⁵

Summary of Concerns

The Louisiana Advisory Committee considered all of the statements voiced at its consultation on block grants. Based on these statements and supporting documentation, the Committee is concerned that the State of Louisiana has not taken an assertive role in filling the gap left by a diminished Federal role in civil rights enforcement. It is also concerned that the diminished Federal presence in civil rights enforcement could result in retrogression of previous gains made by minorities, women, the elderly and the handicapped. Furthermore, absence of a coordinating mechanism within the State contributes to confusion regarding the State's role in civil rights enforcement. The Committee is also concerned that the lack of uniformity in data collection and reporting requirements may impede efforts to determine the adequacy and success of civil rights enforcement efforts at all levels. With regard to citizen participation, the Advisory Committee felt that the absence of consistent, well-defined, well-advertised plans for citizen participation among State agencies may foster suspicion and distrust among citizen groups, particularly those whose constituents are likely to be affected adversely by funding programs and/or policy changes. Finally, the Committee was especially concerned that the absence of clear and specific federal guidelines may allow the State to evade its responsibilities to minorities, women, the elderly, the handicapped, and the poor.

⁹³ Ibid., p. 171.

⁹⁴ Ibid., pp. 231-232.

⁹⁵ Ibid., pp. 246-248.

⁹⁶ Ibid., p. 207.

Block Grants in New Mexico

A Report of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights

State Government in New Mexico

New Mexico State government has been characterized as one of "divided authority and of direct responsibility of the separate parts to the people at the polls. Representativeness prevails over centralization."¹ The governor, limited to a single (consecutive) four-year term, has extensive formal power. He is given authority in five areas: appointive, legislative, budgetary, pardoning, and emergency. His legislative powers are similar to those of the President of the United States, except that he enjoys the use of item veto to eliminate items in appropriations bills.²

The Legislature consists of a House of Representatives with 70 members elected to two-year terms, and a 42 member Senate, elected to four-year terms.³

The Legislature meets for 60 days in regular session in odd-numbered years and can consider any issue. In even-numbered years, it meets for only 30 days and its agenda is restricted to budgets, appropriations, and bills drawn as a result of the governor's initiative. These restrictions give the governor additional influence during the short sessions. Legislative sessions always begin in January. In addition to these sessions, interim legislative committees meet frequently throughout the course of the year. They are created to deal with specific problems and projects and all are joint committees, with representatives from both the Senate and House.⁴

¹ Garcia, F. Chris and Hain, Paul L., *New Mexico Government*, Albuquerque, University of New Mexico Press, 1976, p. 16.

² *Ibid.*

³ *Ibid.*, p. 27.

⁴ *Ibid.*, p. 33.

The preparation of the State's budget involves both the governor and the legislature. The Governor's Office reviews requests from each State agency and makes whatever changes it deems necessary. The completed executive budget is then submitted to the legislature for its consideration. The legislature, however, has developed its own capacity for budgetary decisions. The powerful Legislative Finance Committee performs its own budget analysis and conducts hearings. Its recommendations carry much weight with the full legislature.⁵

New Mexico is very dependent on the Federal Government and it receives a substantially larger return of Federal dollars than it contributes to the national treasury.⁶ One feature of State government is the absence of any authority for the State Legislature to appropriate Federal funds. This function is the prerogative of the executive branch and legislative efforts to change this have not been successful.⁷

Block Grants in New Mexico: An Overview

Governor Bruce King established a task force in May 1981 to begin preparations for assuming block grant responsibilities. Serving on this task force were several of his chief aides and representatives of the Department of Finance and Administration (DFA), the governor's principal arm for management and budget purposes. Sub-task forces were also set up

⁵ *Ibid.*, p. 17.

⁶ *Ibid.*, p. 4.

⁷ Testimony before the New Mexico Advisory Committee to the U.S. Commission on Civil Rights in Santa Fe, July 22, 1982 (hereafter cited as *NM. Transcript*), p. 280.

within DFA and each of the State agencies designated to administer the block grants.⁸

The following block grants were accepted by New Mexico as of October 1, 1981: a) Preventive Health, b) Maternal and Child Care, c) Alcohol, Drug Abuse and Mental Health, d) Social Services, and e) Low-Income Energy Assistance.

The Education Block Grant was also picked up on July 1, 1982, the earliest date it was available.⁹ The Primary Care Block Grant was not available until October 1, 1982 and no final decision had been made on whether to accept it or not. According to David Bloom, DFA's deputy director:

The Federal law is much tougher [on] the States in this area than most other block grants because of the matching money. . . and lots of other things. We have detected a great lack of enthusiasm among the States toward assuming this block grant.¹⁰

The Community Services Block Grant was available to the State on October 1, 1981 but it had not been accepted at the time of the consultation. According to the Governor's Office, the State did not opt to take this block grant because of the size of the budget cuts and the provisions which required funding existing community action agencies.¹¹ The program continued to be administered by the U.S. Department of Health and Human Services. According to Mr. Bloom, the State had been advised that it must assume the program by October 1982 or lose the money. Thus, the State will likely accept the block grant although no decision had been announced on how it would be administered.¹²

Another block grant available to the State was the Community Development Block Grant for Small Cities. It too was rejected by New Mexico. Explained Mr. Bloom: "We did not take it on because the law required that the administrative costs be shared 50-50 between the State and the Federal Government, and the legislature refused to come up with its portion of the funds."¹³

The Community Development Block Grant for Small Cities (CDBG) continued to be administered by the U.S. Department of Housing and Urban

Development. However, DFA had developed new criteria and formulas for substantially reordering funding priorities in this block grant and failure of the State to pick up the program caused it to forfeit its discretion. Funding continued to be based on Federal criteria. According to Mr. Bloom, the governor had asked the Federal Government for an extension beyond October 1, 1982 for the State to declare its intentions with respect to the CDBG. This will afford the new governor and legislature an opportunity to make the decision on this block grant after they assume office in January 1983.¹⁴ In early 1981, New Mexico anticipated that Federal block grant cuts would total about \$8.7 million, and the governor proposed replacing almost \$2 million with State funds.¹⁵ However, the U.S. Congress restored many of these reductions. Governor King supported this action:

We are pleased that Congress this year seemed to be less responsive to the President's program of reduced budgets and seems likely not to approve any block grants until we have had additional citizen input and also seems likely not to cut as much as the President would like to have cut back in some of the block grants.¹⁶

The budget cuts were also mitigated in other ways. Several of the programs were "forward-funding"—they received Federal funds in one fiscal year to be spent the following year. Thus the impact of the cuts was delayed by a year. And the State, anticipating large Federal cuts, set aside contingency funds in some areas and began implementing cost-containment measures.¹⁷

Overall, the State is in an enviable fiscal position compared with many States. According to DFA:

Recurring appropriations for the 1982-83 fiscal year will be well below anticipated recurring revenues; capital spending to be financed by issuance of bonds will be within conservative estimates of the State's bonding capacity; and the anticipated unappropriated surplus at the end of the next fiscal year should be comfortably in the black.¹⁸

Based on this information, Governor King told the Advisory Committee that, ". . . it's obvious we are

⁸ Commission on Civil Rights, Southwestern Regional Office, "Block Grant Report—New Mexico," Dec. 12, 1981 (hereafter cited as *Staff Report*), p. 1.

⁹ *Ibid.*, p. 2.

¹⁰ *NM. Transcript*, pp. 187-188.

¹¹ *Staff Report*, p. 1.

¹² *NM. Transcript*, pp. 188-189.

¹³ *Ibid.*, pp. 176-177.

¹⁴ *Ibid.*, p. 177.

¹⁵ New Mexico State Government, Department of Finance and Administration (*DFA Reports*, Vol. I, Issue 2, Feb. 5, 1982, p. 4 (hereafter cited as *DFA Reports*).

¹⁶ *NM. Transcript*, p. 162.

¹⁷ *DFA Reports*, Vol. I, Issue 2, Feb. 5, 1982, p. 5. See also *NM. Transcript*, p. 168.

¹⁸ *DFA Reports*, Vol. I, Issue 4, May 28, 1982, p. 1.

in a better position than any other State I know of to replace some funds with legislative approval and work through the channels."¹⁹

During the 1982 regular session of the New Mexico Legislature, a total of \$53.9 million was appropriated to compensate for reductions or slow-downs in Federal funding. The largest portion of this was \$32.8 million for highway construction projects, for which the State expects to be repaid. The next largest replacement was for Aid to Families with Dependent Children (AFDC) and Medicaid. A total of \$8 million was set aside as a contingency fund to replace anticipated Federal budget cuts. Another \$8 million was allocated to replace reductions in the Federal Impact Aid Program, which compensates school districts for property taxes lost as a result of Federal property and installations. The legislature also appropriated just over \$2 million to replace cuts in block grant programs administered by the State. Of this, \$1.2 million was allocated for Social Services. The remainder was allocated for three health block grant programs operated by the State.²⁰

In summarizing his views on the specific impacts of block grants and Federal budget cuts on New Mexico's citizens, Governor King told the Advisory Committee:

The impact of the Federal block grants on minorities, women, the elderly, and handicapped—now those are the ones that are being affected with the cuts. Putting it quite simply, the budget cuts mean less food, jobs, housing, medical care and social services for New Mexico's minorities, women, elderly and handicapped. More so, much more so, than the population at large, those groups compose the majority of New Mexico's lower-income population. The program cuts in the Federal budget are primarily programs serving the poor.²¹

Civil Rights Enforcement Responsibility

The issue of civil rights enforcement in the context of block grant funding was raised by many persons participating in the New Mexico block grant consultation. While the Federal regulations state that "Congress has made clear that States and their grantees have the responsibility to prohibit discrimination,"²² no specific standards or compliance criteria are provided. With respect to civil rights,

the U.S. Department of Health and Human Services has determined that "no additional regulations are being issued at this time, although regulations implementing novel aspects of the block grant nondiscrimination provisions are being developed and will be published in the future."²³ This paucity of guidance to the States has resulted in apprehension on the part of many civil rights advocates in New Mexico who fear that the State is ill-prepared and insufficiently committed to an aggressive civil rights enforcement effort. Their fears are compounded by language in the block grant regulations indicating that the Federal Government "will ordinarily defer to the State's interpretation of its assurances and the statutory provisions."²⁴

Juan Vigil, executive director of the Albuquerque Human Rights Office, commented on the regulations:

When the block grants were enacted, language pertinent to nondiscrimination was included. Additional suggestions were submitted requesting the Department of Health and Human Services to include requirements that hearings on block grants be conducted by a neutral third party and requiring that representatives of consumer organizations and minority groups . . . participate in the hearings. These recommendations were rejected by Secretary Schweiker. Existing regulations do not cover affirmative action, in requiring contracted agencies to apply affirmative action in carrying out their contracted services, nor in staff hired with block grant funds.²⁵

In responding to a question regarding civil rights enforcement, Chris Coppin of the Albuquerque Legal Aid Society suggested that if the Federal regulations governing compliance are not changed then the State of New Mexico would need to develop its own systems and enforcement machinery.²⁶ He was not optimistic this would occur without a Federal initiative:

I don't see it being effective if it's just the State of New Mexico. It has to come from the Federal Government because the State of New Mexico doesn't have those agencies nor is their belief in New Mexico that we need those agencies, such as the Human Rights Commission or the Commission on the Status of Women.²⁷

Kathi Harmon of the Governor's Committee on the Concerns of the Handicapped, was blunt in her

¹⁹ *NM. Transcript*, p. 166.

²⁰ *DFA Reports*, Vol. I, Issue 4, May 9-8, 1982, pp. 4-5.

²¹ *NM. Transcript*, p. 163.

²² 47 Fed. Reg. 29472, 29480 (1982).

²³ *Ibid.*

²⁴ 47 Fed. Reg. 29472, 29478 (1982).

²⁵ *NM. Transcript*, pp. 11-12.

²⁶ *Ibid.*, p. 50.

²⁷ *Ibid.*

appraisal of the civil rights provisions in the Federal regulations. She remarked that, "with regard to civil rights compliance and enforcement of nondiscrimination provisions in block grant programs, it's simple. There are none."²⁸

The New Mexico Legislature did establish a Human Rights Commission in 1969, consisting of five members appointed by the Governor with the advice and consent of the Senate.²⁹ The statute empowers the commission to investigate complaints alleging discrimination based on race, age, religion, color, national origin, ancestry, sex, or physical or mental handicap. The maximum penalty which it may impose for violations is \$1,000. The areas covered by the law include employment, housing, and public accommodations.³⁰ The agency has no power to take actions in matters involving discrimination in the delivery of services or benefits in programs funded by Federal, State or local governments. Despite this limitation, Governor King and a representative of the Department of Health and Environment both mentioned the State Human Rights Commission as a vehicle for remedying block grant discrimination complaints.³¹ Throughout the course of the Advisory Committee's consultation, participants noted that efforts to abolish the State Human Rights Commission have been initiated by the legislature on several occasions. This fact led some individuals to conclude that the State is not sufficiently committed to an aggressive civil rights enforcement program. In calling for the legislature to establish a vigorous watchdog agency on civil rights, Herb Fernandez, State LULAC director, told the Advisory Committee:

I think you need at the State level a stronger organization for overseeing civil rights than you had in the past. In the last two years, I think we have come to Santa Fe to testify in support of the Human Rights Commission. . . just to keep them going for one more year, because they are threatening to cut the funds off.³²

Juan Vigil also referred to the fragile status of the State's Human Rights Agency:

The State Human Rights Commission is the thrust of existing remedial action for discrimination complaints.

²⁸ Ibid., p. 75.

²⁹ N. M. Stat. Ann. §4-31-1 through 4-33-13.

³⁰ Ibid.

³¹ *NM. Transcript*, pp. 183 and 206.

³² Ibid., p. 52.

³³ Ibid., p. 13.

³⁴ Ibid., p. 199.

Yet, every time the legislature meets, a major effort is made to abolish the commission. Recently, such legislation was passed, but was ultimately vetoed by the governor. This tells us that a significant number of our legislators have not taken seriously the need to protect our civil rights or the enforcement of nondiscrimination.³³

The State agency officials participating in the consultation generally provided their impression that the existing mechanisms for civil rights will continue to apply under block grants and that they are adequate. Jack Winton of the Department of Human Services commented that all the pre-existing regulations continue to be in place:

In other words, if a client is denied service, for whatever reason, and the appeals grant denied, all of the mechanisms are in place to see to it that they were not denied on the basis of color, creed, or race. So consequently, the block grant itself had no impact in that area.³⁴

Mickey Stewart of the Health and Environment Department also stated that "the system we have now. . . does not require a change as far as [civil rights] is concerned."³⁵ While both the Human Services and Health and Environment departments have existing civil rights offices, the State Department of Education has no such unit. According to Bill McEuen, the department's general counsel, informal means are effective in resolving most complaints.³⁶ He went on to say that:

In addition, there is always the ability to contact the Office for Civil Rights of the U.S. Department of Education, operating out of Dallas. They do have a complaint investigatory arm, as well as a formal compliance review arm, and those people exist parallel to us in order to provide any remedies for civil rights complaints and discrimination that might occur in those programs.³⁷

Mr. McEuen also stated his belief that "the Office for Civil Rights has not lost any of its powers or any of its duties."³⁸ However, he made it very clear that in the Federal Education Block Grant legislation "there is simply no provision for any type of civil rights monitoring or enforcement."³⁹

The role of the legislature in the area of civil rights was discussed by a panel of legislators at the consultation. Senator Manny Aragon of Alberquerque

³⁵ Ibid., p. 206.

³⁶ Ibid., p. 224.

³⁷ Ibid., pp. 224-225.

³⁸ Ibid., p. 225.

³⁹ Ibid., p. 216.

que suggested that it might be necessary "to provide for enforcement of the civil rights portions in the block grant situation by providing both civil and criminal penalties for enforcement situations where we feel they are not being addressed."⁴⁰

However, Rep. Jerry Sandel of Farmington expressed his opinion that the public hearing process at the legislature and State agency levels would adequately serve as a "double-checking. . . as far as any violations to civil rights."⁴¹ And Senator Alfred Nelson of Las Vegas summed up his view in this manner:

I think we must comply with the national mandate. . . because it's going to benefit the women or minorities, but because it is good for all human beings and all communities in our society.⁴²

In summarizing the consultation proceedings, Jerry Ortiz y Pino expressed a concern and a challenge:

It does cause me to wonder, though, whether the absence of any of the old Federal requirements and safeguards—as administrators of these departments come to realize that those Federal requirements and safeguards are no longer there, they might not gradually take shortcuts and, little by little, begin getting away with things that previously a Federal official or the Civil Rights Commission or Legal Aid or someone would have drawn to their attention and prevented them from doing; and so I think the real battle, as far as the impact of block grants on civil rights, is still before us.⁴³

In concluding his remarks on civil rights, Mr. Ortiz y Pino said:

I think what's clear is that we're operating right now on kind of the good faith commitment of the administrators of the departments not to violate civil rights. Unfortunately, that good faith commitment might vanish as quickly as the administrators themselves can vanish.⁴⁴

Dr. Graciela Olivarez observed that no State agency had come to the consultation prepared to describe mechanisms or processes it would be prepared to institute to ensure the protection of civil rights under block grants.⁴⁵ She also reminded the Committee that:

⁴⁰ Ibid., pp. 275-276.

⁴¹ Ibid.

⁴² Ibid., p. 294.

⁴³ Ibid., p. 307.

⁴⁴ Ibid., p. 308.

⁴⁵ Ibid., p. 315.

⁴⁶ Ibid., pp. 318-319.

The legislature every year tries to abolish the Human Rights Commission, and if I don't say anything else about the commitment of the State to civil rights, that should say it all.⁴⁶

Citizen Participation in Block Grant Programs

Federal regulations on block grants require the States "to submit the various plans and descriptions of intended uses of block grant funds for public comment."⁴⁷ After the first year of operation, they also require that public hearings on block grants be conducted by the State legislature.⁴⁸ But the regulations make it clear that "the manner in which a State obtains public comment is at the State's discretion so long as statutory requirements are met."⁴⁹

In addressing the block grant legislation, Janice Paster of the New Mexico Women's Political Caucus concluded that:

. . . the Omnibus Act did not alter the public input/executive decisionmaking process in New Mexico. It is true that some bothersome Federal requirements no longer restrict planning, but the hearing process is unchanged. The Federal Act placed a great deal of power and discretion in the hands of State government; it did nothing to further direct, meaningful public participation in the setting of priorities and the expenditure of funds. Advocates are confronted by a bureaucracy which is inscrutable as ever.⁵⁰

Another participant at the consultation, representing the New Mexico Health Systems Agency, was also critical of the regulations and the State's record in citizen participation. According to Mr. E.E. "Tex" Ritterbush:

The present block grant legislation has little requirement for public input into the establishment of funding and service priorities. New Mexico State government has a poor record regarding community involvement in planning and allocation activities. Most funding decisions are based on tradition and convenience. Historically, State government "technicians" view the average citizen as someone who is ill-informed and too emotional and political to rationally contribute to the process.⁵¹

The director of the Home Education Livelihood Program (HELP), Eugene Ortega, expressed his

⁴⁷ 47 Fed. Reg. 29472, 29474 (1982).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ *NM. Transcript*, pp. 31-32 See also Statement of Janice Paster submitted into the official record at 2.

⁵¹ *NM. Transcript*, p. 46.

view that "patterns have shown the citizens typically are unaware of public hearings. . . [They] are scheduled at times when citizens and clients are unable to attend."⁵² He also said that "in discussing these matters with rural residents, we find that many times transportation to hearings is not available, nor are the residents financially able to attend."⁵³

Chris Coppin told the Advisory Committee that because "it is up to the States to determine how they are going to have public input. . . we could have 50 different interpretations around this country on the block grant format."⁵⁴ In New Mexico, according to Coppin, a person must get on five separate mailing lists in order to receive copies of proposed regulations for one State agency alone—the Department of Human Services.⁵⁵

Janice Paster provided the Committee with an example of a change in State policy which she believes has weakened the opportunity for public participation in decisionmaking. She explained that until a government reorganization plan went into effect in 1978, New Mexico law required that a citizens' board be appointed by the governor to approve all regulations promulgated by the then Department of Health and Social Services.⁵⁶ The board was accountable only to the governor and the citizens of the State. After 1978, the statute turned this power over to the director of the newly created Human Services Department. It also replaced the board with a Policy Advisory Committee.⁵⁷ According to Ms. Paster, "this body was never appointed by the present Secretary and thus, there has never been a question of whether it would review. . . and make recommendations."⁵⁸

Alfred Rucks, State director of the NAACP, advocated strong requirements for public involvement in block grants. He proposed that:

. . . citizen participation, not only should be solicited for public hearings in the legal section of newspapers, but by radio, T.V. and direct appeal to civil rights and other organizations with concern for the welfare of blacks and the disadvantaged; that citizens be appointed to advise on committees at the State and local levels, that have an understanding of the needs of various ethnic groups, poor, working poor, elderly, women, and the handicapped.⁵⁹

⁵² Ibid., p. 25.

⁵³ Ibid.

⁵⁴ Ibid., p. 19.

⁵⁵ Ibid., p. 20.

⁵⁶ Ibid., pp. 33-34. See also Statement of Janice Paster submitted into the official record at 1-2.

⁵⁷ Ibid.

⁵⁸ Ibid.

In late August 1981, DFA conducted public hearings on block grants in each of the State's seven planning districts. Elected county and city officials participated, as did planning and providers' organizations.⁶⁰ At the time of the hearings, Congress had not made its final funding decisions and State agencies did not yet have specific block grant plans prepared. Nonetheless, according to David Bloom:

Over a thousand people turned out. The suggestions that were made at the time formed the basis of the governor's program recommendations to the legislature and were taken very seriously. . .⁶¹

Referring to presentations made at the consultation by community advocates, Jack Winton of the Human Services Department told the Advisory Committee that "it was kind of disappointing to hear that the agency doesn't merit high marks in this area (citizen participation)."⁶² He said that the department conducted town meetings in one city in each of the seven planning districts in April 1982. Approximately 400 persons attended and comments were accepted for 45 days, even though State law requires a period of only 30 days.⁶³ Mr. Winton stated:

We wanted to be sure that everyone had ample opportunity to respond, and those who could not get to the meetings, their comments [could be sent] over a toll-free line or by postcard, or however, have all been duly compiled and put into the final analysis.⁶⁴

Mickey Stewart of the Health and Environment Department described the various boards and commissions which oversee programs administered by that agency. She indicated that these are vehicles for public input. And, said Ms. Stewart, "the State health plan is available to everyone. It is put together once a year, and it is available for comments, sent all around the State."⁶⁵

Bill McEuen, representing the State Education Agency, advised the Committee that while school districts are no longer required to have Policy Advisory Committees, they appear to be voluntarily continuing to support them:

⁶⁰ *NM. Transcript*, p. 67.

⁶¹ *Staff Report*, p. 3.

⁶² *NM. Transcript*, p. 169.

⁶³ Ibid., p. 199.

⁶⁴ Ibid., p. 200.

⁶⁵ Ibid.

⁶⁶ Ibid., p. 207.

They have had a good system that they are comfortable with that's worked for years, and they all want to seem to go ahead and use that as a system for getting public input.⁶⁶

The required legislative hearings for block grants might also afford an opportunity for meaningful citizen participation. According to Kathi Harmon:

State legislature hearings are required on most blocks for the purpose of making states answerable to their own citizens on spending priorities for assurance of equality, fairness, and appropriateness of expenditures. If it really works that way the State program officer can no longer hide behind the shield of complex Federal regulations to excuse the absence of services to meet a generally acknowledged need.⁶⁷

According to Sharlene Shoemaker of the Legislative Council staff, the State will meet its block grant hearing requirements through the regular budget hearings conducted by the Legislative Finance Committee, the House Appropriations and the Senate Finance committees, and their subcommittees. The reason for this, according to Ms. Shoemaker, "is that these are the permanent budget committees that make the decisions on budget priorities and replacement of Federal fund losses. They also meet early enough in the year for these hearings to precede the Federal planning process."⁶⁸ The legislature also created a Federal Funds Reduction Study Committee during the 1981 session and extended it for 1982-83.⁶⁹ While the committee conducted several hearings to consider the impacts of Federal budget cuts, its primary concern focused on the lack of legislative authority to control block grant funding. As noted previously, the legislature has no power to appropriate Federal funds in New Mexico. Legislation has been introduced to strengthen legislative control, but these efforts have failed.⁷⁰

According to Rep. Jerry Sandel, chairman of the Federal Funds Reduction Study Committee:

We have no authority as far as appropriating Federal funds; we have no authority as far as setting programs within the State agencies; and so we are basically an oversight committee. . . we have got to change the laws in the State of New Mexico as far as what the legislature can do regarding Federal funds.⁷¹

⁶⁶ Ibid., p. 216.

⁶⁷ Ibid., pp. 73-74.

⁶⁸ Ibid., pp. 262-263.

⁶⁹ Ibid., p. 261.

⁷⁰ Ibid., pp. 262 and 281.

⁷¹ Ibid., pp. 281-282.

Senator Alfred Nelson, the only minority member of this legislative committee strongly disagreed. He suggested that until the legislature became sensitive to the real needs of its disadvantaged communities and came together as a unit to meet their concerns, he would prefer the executive branch of government to continue to exercise the block grant decisionmaking authority.⁷²

And Senator Aragon proposed that regional block grant citizen committees be established by the legislature throughout the State to conduct hearings and to provide an opportunity for people to participate "in deciding what priorities will be met in their communities."⁷³

Jerry Ortiz y Pino, after listening to all the presentations made at the consultation, observed that the phrase "public hearing" means very different things to different people.⁷⁴ He described at least four elements which should be integrated into a genuine public hearing process:

- 1) The process should give the public some opportunity to define the problems that should be dealt with;
- 2) it should have some opportunity for the public to come up with ideas for solutions to the problems;
- 3) the public should have some opportunity to comment on the State's published intentions for meeting the needs; and,
- 4) there should be some opportunity for the public to be involved in the implementation of the programs.⁷⁵

State Decisionmaking Process Regarding Block Grants

Concerns were expressed by some consultation participants about the Federal Government's granting broad new discretionary authority for funding decisions to the State. Several representatives of civil rights organizations feared that minorities, women, the elderly, and the handicapped would not fare well in influencing priorities in State government. Kathi Harmon told the Committee that "We see the scene becoming increasingly politicized. . . we anticipate that the distribution of money will be based on political interest rather than on true needs."⁷⁶

⁷² Ibid., p. 272.

⁷³ Ibid., p. 271.

⁷⁴ Ibid., p. 309.

⁷⁵ Ibid., pp. 310-311.

⁷⁶ Ibid., p. 76.

Eugene Ortega referred to the existing programs set up under categorical programs to provide services to seasonal and migrant farm workers and to people in sparsely populated rural areas:

Even though over the years competent delivery systems have been developed by community-based organizations . . . under the block grant system there is no assurance that the established delivery system that works well will continue to be used, nor that policy will be established which is reflective of the needs and concerns of the clients.⁷⁷

He commented that while the Federal Government had recognized the special needs of farm workers and earmarked specific funds and programs for them, the State might not concern itself with this segment of its population. This is especially true, he continued, because many farm workers are not voting residents of New Mexico.⁷⁸

Alfred Rucks commented that the Federal Government has exhibited leadership in the areas of civil rights and social welfare and that "programs that have been dismantled and given to the States were created because of the failure of the various State and local governments in the past."⁷⁹

Herb Fernandez provided a different point of view on the State's new discretion:

Everyone talks about the lack of jobs, the high unemployment, the poor education, the poor medical services. . . yet it seems like we have been completely dependent on the strings of the Federal Government and the money they put out and the determinations they make as to what our needs are. I think within the next two years we should start seriously thinking as to what are the real targets in this State and what are the real needs that we need to address in the future.⁸⁰

Minority group members of the State legislature expressed their concern that this body is not representative of those persons most affected by block grants and Federal budget cuts. They pointed out that because legislators serve without compensation, many persons are economically precluded from seeking such elective office.⁸¹ They were critical of the legislature's setting of priorities. Senator Charles Marquez of Santa Fe alleged that "the whole legislature is dominated by the ultra-conservative

⁷⁷ Ibid., p. 27.

⁷⁸ Ibid., p. 24.

⁷⁹ Ibid., p. 64.

⁸⁰ Ibid., p. 39.

⁸¹ Ibid., pp. 268, 285 and 287.

⁸² Ibid., p. 286.

coalition."⁸² He told the Advisory Committee that he had introduced a bill to provide \$450,000 for services to the elderly, but it was "nitpicked down to \$200,000."⁸³ At the same time, according to Senator Marquez, the legislature was initiating bills to subsidize big business. Comparing the two, he asked ". . . who needs more help?"⁸⁴

Senator Nelson was critical of the legislature's failure to appropriate State matching funds which would have permitted New Mexico to administer the Community Development Block Grant for Small Cities. He stated:

When we go in and ask for a hundred thousand dollars to be able to service a \$9.5 million grant, we lose that. . . That worries me, because those monies from the Community Development Block Grant would have assisted small communities of 10,000 or less in New Mexico. These are the communities that . . . are suffering, and yet the legislative body last year couldn't pass a hundred thousand dollars to administer \$9.5 million of block grants.⁸⁵

Senator Aragon stated his opinion that "probably the entire battle involving providing services for those people with the most need throughout the State of New Mexico was lost in the legislature. . . approximately two or three years ago when we gave the property tax cut across the board. . . where only 20 percent of that money went to individuals, such as you and I, and the other 80 percent went to big oil companies; the Public Service Company of New Mexico and the railroads and all the people that own a lot of land and property. . ."⁸⁶

Indian Block Grant Issues

By regulation, Secretary Schweiker has determined that members of Indian tribes and tribal organizations always would be better served by direct Federal funding than by funding through the States in every instance that the Indian tribe or tribal organization requests direct funding and is eligible by statute to receive such funding. The department believes that because tribes and tribal organizations are closer to their members than State government, they are better able to ascertain their members' needs and to implement solutions. The experience of the department in the last few years has demonstrated that the perfor-

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid., pp. 291-292.

⁸⁶ Ibid., pp. 276-277.

mance of Indian tribal grantees is comparable to that of other grantees.⁸⁷

Despite these assurances provided by Linda Mellgren of the U.S. Department of Health and Human Services at the New Mexico consultation, Indian leaders appearing before the Committee remained skeptical and concerned about block grants. Their principal fear was that the Federal Government might fail to live up to its trust obligations to Indian tribes and treat them as subordinate to State governments, instead of as sovereign entities.

Governor Merle Garcia of the Acoma Pueblo offered the New Mexico Advisory Committee his views on the Federal Government's obligations:

I fear that the Federal Government has again approached the Indian people with a plan to further alienate itself from carrying out its trust responsibility, which is to provide programs and funds for the American Indian. If this trend continues and we approve such block grant programs to be allocated by the State, then I believe we would soon become wards of the State. We would be under the jurisdiction of the State which indicates to me we are being treated like an unwanted child handed from one family to another. We must make our stand now and increase pressure on the United States Government to live up to its trust responsibilities.⁸⁸

Wendell Chino, president of the Mescalero Apache Tribe explained:

I think the Indian tribes would like to state we are very jealous of our sovereignty. Certainly the State has no intention of surrendering any of its jurisdiction or its status. Likewise, tribal governments have no intention of relegating themselves to secondary positions to that of the State.⁸⁹

Referring to a well-documented history of jurisdictional conflicts between the State and Indian tribes, Wendell Chino stated:

The State and tribes often meet as adversaries in the courts. Issues regarding land, wildlife, water, minerals, jurisdictional questions and other legal questions arise and are heard in court. There can be no absolute assurance that legitimate tribal concerns addressed in a courtroom will not and do not impact upon the State's decisions in funding tribal programs.⁹⁰

⁸⁷ Ibid., p. 235. See also Statement of Linda Mellgren submitted into the official record at 6 (hereafter cited as *Mellgren Statement*).

⁸⁸ *NM. Transcript*, p. 128.

⁸⁹ Ibid., p. 151.

⁹⁰ Ibid., p. 143. See also Statement of Wendell Chino submitted into the official record at 1.

⁹¹ *NM. Transcript*, p. 145.

He also described his perception of the State's attitude on Indian funding:

The State typically funds non-profit corporations for its community-based programs. Tribes are sovereign governments. The State's approach of funding tribes essentially relegates tribes to the status of a non-profit corporation. This approach denies the sovereignty of tribes and attempts to ignore the fact that block grants to tribes are from government-to-government rather than from benefactor-to-beneficiary, and that the State is only a delivery mechanism for Federal funds.⁹¹

For this reason, the Indian tribal leaders participating in the block grant consultation were unanimous in their support for direct Federal block grant funding to Indian tribes. Under existing Federal statutes, the tribes are ineligible for direct funding under the Education and Small Cities Community Development block grants.⁹² They are eligible for three health block grants but only if they have previously administered the programs as categorical grants.⁹³ The only two block grants for which the tribes are eligible without this restriction are Community Services, and Low-Income Energy.⁹⁴ The Federal regulations also stipulate that direct funding to tribes is allowed even where the State might not have elected to accept a block grant. This will enable 22 tribes in New Mexico to receive direct funding for community services, a block grant which had not yet been assumed by the State as of July 22, 1982.⁹⁵

Addressing the restrictions in funding eligibility, Ed Little, of the All Indian Pueblo Council, told the Committee that, "in many instances, most . . . tribal governments and Indian organizations were written out by Federal regulations before they were offered to State governments."⁹⁶ Ramus Suina of the New Mexico Office of Indian Affairs explained that since most tribes had received their funding for health programs on a subcontract basis, they were declared ineligible for direct funding.⁹⁷

Governor Gilbert Pena of the Nambe Pueblo, who serves as chairman of the Eight Northern Indian Pueblos Council, conveyed his frustration on block grants to the Advisory Committee:

⁹² Pub. L. No. 97-35, 95 Stat. 384 §565(a) and 304(d).

⁹³ *Mellgren Statement*, p. 6.

⁹⁴ Ibid.

⁹⁵ Ibid., pp. 7-8.

⁹⁶ *NM. Transcript*, p. 88.

⁹⁷ Ibid., p. 95.

As of this day, July 22, 1982, we have received not one nickel of direct Federal block grant funds. We have clearly received the message that it is the intent of the Federal Government to avoid at all costs any new direct contracts with Indian tribes, especially the smaller tribes and consortia.

We have drawn these conclusions out of our direct experience. In the first place, we were only eligible for two out of all the block grant programs, the Community Services Block Grant and the Home Energy Assistance Block Grant. This resulted from the exclusion of tribes from some block grants and the "previous funding" requirement built into most of the others. This protected the Federal Government from a barrage of demands by Indians and left us with less access to funds for preventive health care services, for instance, than we had under the system of categorical grants. Since we have very little influence over the way the State will allocate these funds, we feel that the laws and policies in this case have excluded us from sharing equally in the benefits of this money.⁹⁸

In addressing this issue, Governor King expressed his support for direct block grant funding for Indian tribes and told the Advisory Committee that "we would be happy to work with the Indian people to have the grants go directly to [them]."⁹⁹

Governor Robert Lewis of the Zuni Pueblo also called for a cooperative effort between Federal, State and the tribal officials in planning for block grants:

We have been together with the Federal Government, the State and tribes. . .throwing rocks at each other rather than. . .working together. I think that's where the problem is. I know that's where it is because we cannot isolate ourselves one from another. We have to work together. . .by sharing what we have learned with one another, I can see no reason why we cannot devise a system of planning that just won't quit.¹⁰⁰

Another issue of great concern to the Indian leaders is the funding provided to Indian nations under the block grant programs. As explained by Linda Mellgren, funding "formulas in the statute are not based on need, but are based purely on population; even though those population formulas are weighted for poverty. It means that, where you have small tribes, you are going to have a small amount of money."¹⁰¹

⁹⁸ Ibid., pp. 132-133.

⁹⁹ Ibid., p. 164.

¹⁰⁰ Ibid., p. 148.

¹⁰¹ Ibid., p. 256.

¹⁰² Ibid., p. 133.

¹⁰³ Ibid., pp. 133-134.

¹⁰⁴ Ibid., p. 134.

According to Governor Pena, the Eight Northern Pueblos received a letter from the Department of Health and Human Services advising that the funding level for seven of its pueblos under the Low-Income Energy Block Grant would total \$34,916, representing a cut of 75 percent.¹⁰² The tribes negotiated an agreement with the State for additional funds which still provided for direct funding. However, the Federal Government refused to accept the formula agreed to by both parties, and the tribes were forced to give up direct funding and accept a subcontract with the State in order to get a more reasonable funding level.¹⁰³ According to Governor Pena, "the State gave us roughly \$77,000, or only a 50 percent cut from last year."¹⁰⁴

Ed Little stated that "the utilization of population figures for formula funding comes no where near to addressing the unique needs of Indian people. All funding for Indian tribes and organizations should be based on need and the propriety of each case or proposal."¹⁰⁵ However, Linda Mellgren told the Advisory Committee that neither the Department of Health and Human Services nor the Reagan Administration has proposed any kind of set-aside for funding Indian tribes. "I believe it has been considered," she commented, "but we have not decided to go forward with such a proposal at this time."¹⁰⁶

In addressing the Advisory Committee, John Olguin, director of the New Mexico Office of Indian Affairs, and Governor Gilbert Pena pointed out that the State Constitution contains a provision which provides that "no appropriation shall be made for charitable, educational, or benevolent purposes to any person corporation, association, institution or community not under the absolute control of the State."¹⁰⁷ This effectively precludes Indian tribes from participating in the appropriation of State funds. Governor Pena also told the Committee that:

. . .the most recent regular session of the State legislature saw the introduction of a memorial to deny the right to vote to persons not within the civil jurisdiction of the State. This was a thinly disguised attempt to disenfranchise Indians.¹⁰⁸

¹⁰⁵ Ibid., pp. 89-90. See also Statement of Ed Little submitted into the official record at 3.

¹⁰⁶ *NM. Transcript*, p. 256.

¹⁰⁷ Ibid., pp. 91 and 140.

¹⁰⁸ Ibid., p. 138.

Based on evidence such as this, the governor concluded that "it is difficult to see how New Mexico. . . is going to guarantee equal protection of Indians under the law and the enforcement of nondiscrimination provisions under the block grants."¹⁰⁹ Another problem for Indian tribes results from block grant limitations on the amount of funding which may be used to cover administrative costs. Ed Little pointed out that unlike other units of local government, "tribes have little or no base at all to defray indirect costs or administrative costs, whether they be direct or indirect. The impact that it is going to have is that most tribes won't be able to afford to run their programs."¹¹⁰ The Federal block grant regulations acknowledge this concern, but conclude that:

We do not believe. . . that Indian tribes and tribal organizations should be permitted to spend less of their block grant funds for direct services than States.¹¹¹

Finally, the unique problems confronting the urban Indian were brought to the attention of the Advisory Committee. George Effman, the former director of the Albuquerque Urban Indian Center, told the Committee that 52 percent of American Indians now reside off reservations. He attributed this to former Federal policies calling for relocation of Indians, and to the lack of employment opportunities on reservations.¹¹² He commented on the plight of the urban Indian:

Even though the majority of our people do not live on the reservations, the social [and] economic difficulties they face are intensified when they move away from the reservation. Most Federal agencies have continued to disregard their needs. Those agencies and their authorization legislation. . . only ignores the needs of American Indians once they move away from reservations or villages. They also ignore the trust and treaty responsibilities of the United States Government for such persons. If an Indian chooses not to live on the reservation, they are no less an Indian. Where an Indian resides does not determine their status as an Indian, nor should it change any inherent trust or treaty right.¹¹³

Ed Little suggested that urban Indian organizations were ruled ineligible to administer block grants based upon "the State's perception that the Indian Health Service and the Bureau of Indian Affairs were assuming responsibility for the services."¹¹⁴ He

concluded that "both the Federal Government and the States must address these urban Indian situations for many times he [the American Indian] finds himself left out from every program targeted for most Americans in the urban areas."¹¹⁵

Summary of Concerns

Throughout the course of its consultation on block grants in Santa Fe on July 22, the New Mexico Advisory Committee heard presentations from almost 40 persons, including the governor, State and Federal officials, Indian tribal leaders, legislators and representatives of professional, community and civil rights organizations. Based upon its consideration of information presented at the consultation, the Advisory Committee believes that the following concerns need to be addressed.

The New Mexico Advisory Committee is concerned that provisions for the assurance of compliance with Federal civil rights statutes and regulations, are weak at both the Federal and State levels. The Federal guidelines lack specificity with respect to standards and criteria, as well as with procedures for enforcement. This, combined with the serious doubts expressed about the State's own commitment to vigorously enforce civil rights provisions, represents a very disturbing situation in the view of the Advisory Committee. State agency officials appearing at the consultation failed to make any specific commitments for assuming new responsibilities in the area of civil rights. Existing State mechanisms also appear to be either inadequate or non-existent. Many concerns were also raised about the inadequacy of public participation provisions in the block grant programs. The Federal Government's failure to elaborate on statutory requirements in the regulations appears to give the State almost total discretion in establishing its citizen participation procedures. Yet, the Advisory Committee listened to many knowledgeable persons who alleged serious inadequacies in the State's implementation of existing procedures, some of which are no longer required under new block grant legislation. The Advisory Committee believes that if block grants are designed to bring government closer to the people, changes will be necessary in New Mexico to broaden the base of meaningful citizen involvement in funding

¹⁰⁹ Ibid., p. 140.

¹¹⁰ Ibid., p. 105.

¹¹¹ 47 Fed. Reg. 29472, 29483 (1982).

¹¹² *NM. Transcript*, pp. 98-99.

¹¹³ Ibid., p. 99.

¹¹⁴ Ibid., p. 89. See also Statement of Ed Little submitted into the official record at 2.

¹¹⁵ Ibid.

and program decisions. This will include a system for informing the public on policy issues, as well as designing structures which will encourage citizens to become involved in decisionmaking. Such systems are necessary in both the executive and legislative branches of State government.

The Committee is also concerned that the status of both reservation and urban Indians under block grants appears precarious at best. Not only are New Mexico's tribes ineligible for direct funding under most block grants—but the Federal funding formulas appear to make it likely that the programs they are eligible to administer will be severely underfunded. This, combined with restrictions on expenditure of funds for administrative costs, will work hardships on the tribes. As documented in earlier Commission studies, American Indians are the most economically disadvantaged minority group in New Mexico; most tribes have virtually no independent tax base or private sector economy to help fill the gap in providing jobs or human services. This situation has accelerated the influx of Indians into New Mexico's already hard-pressed urban areas, where they often fail to receive necessary support

services. Insufficient State and Federal attention has been focused on these critical problems.

The Federal block grant regulations call for providing information "to both the tribes and the States on an informal basis" concerning Indian issues.¹¹⁶ Based upon the statements of Indian leaders at the New Mexico consultation, the Advisory Committee feels that this process does not appear to be working.

Finally, while the consultation did not deal specifically with the impacts of Federal budget cuts, many individuals (including the governor) expressed alarm at the many reductions which were made in programs specifically targeted for the disadvantaged. Fears were also expressed that special populations such as minorities, women, the poor, handicapped, elderly, and farm workers, would suffer in the absence of special funding protections. Concerns were raised that these groups are often the least able to represent their interests in the political and other decisionmaking arenas of State government. The Advisory Committee shares this concern and believes that it needs special attention.

¹¹⁶ 47 Fed. Reg. 29472, 29483 (1982).

Block Grants in Oklahoma

A Report of the Oklahoma Advisory Committee of the U.S. Commission on Civil Rights

State Government in Oklahoma

In contrast to most of the other States in the Southwestern Region, Oklahoma is considered to be a strong legislative State.¹ It has a bicameral legislature consisting of 48 members of the State Senate and 101 members of the House of Representatives.² The legislature meets annually in regular session beginning the first Tuesday after the first Monday in January for no longer than 90 days. Usually the legislature is in session from Monday through Thursday. Special sessions may be called by either the governor or the legislature.³

Members of the State Senate have staggered four-year terms in office. State Senators from odd-numbered districts were elected in 1980. Senators from even-numbered districts faced re-election in 1982.⁴ State Representatives serve two-year terms. House members were up for re-election in November 1982.⁵ Currently, Democrats dominate both houses of the Legislature.

The governor is the State's chief executive officer. Oklahoma statutes require that the governor serve as chairman and ex-officio member of various State agencies, boards, and commissions.⁶ In anticipation of block grant funding in Oklahoma, the legislature created a Joint Committee on Federal Funds.⁷ This committee was given responsibility for reviewing all

proposals for Federal funding submitted by State agencies.⁸ It was also given authority to approve or reject such proposals. However, the attorney general of the State has since ruled that the committee's power to approve or reject agency proposals constitutes usurpation of powers belonging to the executive branch.⁹ Nevertheless, it is expected that the legislature will maintain strong control over block grant programs through the budget process. It is also expected that during the next session, new legislation will be introduced that modifies the role of the Joint Committee in such a way as to avoid constitutional problems.

Another factor which influences the legislative role in block grant proposals is the State's constitutional requirement for a balanced budget.¹⁰ Since the legislature is held accountable, tighter controls are not considered unusual.

For FY 82, the State agency proposals were not subjected to strict legislative scrutiny since the Joint Committee was not created until October 1, 1981.¹¹ Most of the block grant proposals were submitted to the Federal funding agencies by October 1, 1981.¹²

Block Grants in Oklahoma: An Overview

The concepts of "New Federalism" and block grant funding created excitement among citizens and

¹ Testimony before the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights in Oklahoma City, Oklahoma, June 21-22, 1982, (hereafter cited as *OK Transcript*) pp. 54-55 and p. 68.

² State Election Board, *Directory of Oklahoma*, "The Oklahoma Legislature," 1982, p. 124.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*, p. 91.

⁷ Okla. Stat. Ann. tit. 74, §452.7 (West Supp. 1981-1982).

⁸ Okla. Stat. Ann. tit. 74, §452.7 as amended by 1982 Okla. Sess. Laws, H.B. 1797.

⁹ Okla. Atty. Gen. Op. No. 82-45, (1982).

¹⁰ *OK Transcript*, p. 48. See also: Okla. Const. art. 10 sec. 23.

¹¹ Okla. Stat. Ann. tit. 74, §452.7 (West Supp. 1981-1982).

¹² *OK Transcript*, pp. 14, 74, and 287.

officials in Oklahoma. A scurry of activity began immediately. Citizens of Oklahoma began to come together to find out about the concept of block grants and how it would impact the State's service delivery system.¹³

At the same time, bustling activity among the legislature began, even among State agencies. On all fronts, citizens, officials, and administrators anticipated this advent of "New Federalism."

On June 21, 1982 the Oklahoma Advisory Committee held a consultation on block grant funding in Oklahoma. Participants described their initial feelings for the block grant programs. As details of how the "New Federalism" would work were combined with details of accompanying budget cuts in programs covered by block grants, feelings of excitement soon became feelings of increased frustration. State Senator Roger Randle expressed the feeling that actually the States were being deceived:

Now the leadership in Washington says they want to make a change and I think that gives us a great opportunity in Oklahoma and other States to take advantage of that.

The potential for success with that new opportunity, I think, is greatly lessened, however, by the fact that in my opinion, much of the changes on the Federal level are being done in a way that's less than honest.

He continued:

When the Federal Government turns back programs and tells everyone that these programs are now going to be your responsibility, tells that to all recipient people and then doesn't send us the dollars to enable us to carry on those programs, we're just playing a shell game to try to hide responsibility so that Washington cuts their budget and they're trying to fix it so we get responsibility for a decrease in the program and that's not honest but that's what I think Washington is trying to do to a great degree.¹⁴

Participants in the consultation felt that the manner in which programs were selected for turn back to the States was also unfair. Sandy Ingraham of the Oklahoma Coalition for Fair Block Grants noted that:

[Regarding] President Reagan's "swap" proposal. . .he indicated an interest in keeping what looks to be the

popular social service programs at the national level and give the unpopular social service programs, such as the AFDC to the State to administer; and that's a civil rights issue that I don't think ought to be ignored.¹⁵

Nonetheless, the citizens and officials in Oklahoma have tried to ensure that those block grant programs that will be administered by the State are done so equitably and effectively. To accomplish this goal, new legislation (H.B. 1797) was passed giving the legislature a greater role in federally-funded programs.¹⁶

On October 1, 1981, the State of Oklahoma applied for six of the block grants that were available from the U.S. Department of Health and Human Services. Funds allocated to the State in these grants totaled \$62,521,970.¹⁷ The allocations were made as follows: Social Services, \$31,853,654; Home Energy Assistance, \$14,537,356; Maternal and Child Health, \$3,801,695; Preventive Health & Human Services, \$785,610; Alcohol, Drug Abuse and Mental Health, \$7,333,000; Community Services, \$4,210,655¹⁸. In addition, the State applied for block grant funds in the areas of Education and Community Development.¹⁹

Although Primary Care Block Grant funds will be available in FY 83, Oklahoma has not indicated whether it will participate in that block grant.²⁰ It was noted that there was less incentive provided for State acceptance of this grant than with the others.²¹

Several activities, functions, and beneficiaries of some of the block grant programs encompass more than one State agency.²² Consequently, the governor has assigned certain agencies to take the lead role in preparing submission requirements and in administering the respective programs.²³ The designated lead assignments are intended to avoid unnecessary duplication and to encourage cooperation between agencies having joint responsibilities for program aspects.

The governor designated the Department of Economic and Community Affairs (DECA) as the coordinating/monitoring agency for all block grants.²⁴ While this does not grant authority to DECA to control the planning and administration of programs under another State agency's jurisdiction,

¹³ Ibid., p. 6.

¹⁴ Ibid., pp. 161-162.

¹⁵ Ibid., p. 9.

¹⁶ 1982 Okla. Sess. Laws, H.B. 1797.

¹⁷ U.S. Department of Health and Human Services, *Block Grant Fact Sheet*, Revised, Region VI, 6/15/82.

¹⁸ Ibid.

¹⁹ *OK. Transcript*, p. 298.

²⁰ Ibid., p. 327.

²¹ Ibid., p. 76.

²² Ibid., p. 286.

²³ Ibid., pp. 59-60; 286-287; 292; 297; and 311.

²⁴ Ibid., pp. 59-60, and 297.

it provides a centralized mechanism by which the governor is kept informed of programs and problems related to the block grant programs.²⁵

Civil Rights Enforcement Responsibility

Sandy Ingraham, a staff member of the Oklahoma Coalition on Fair Block Grants, pointed out two major problems which affect how the State deals with the delivery of social services:

First. . . [we] find [that] many of our State's leaders [are] unwilling to publicly acknowledge that [Oklahoma has] any significant problem in the area of poverty or civil rights. . . .²⁶

Secondly, she explained, it is often impossible to initiate certain kinds of programs or address controversial issues because public attitudes make the issues too politically sensitive.²⁷ Despite this criticism the Oklahoma Legislature passed a bill (S.B. 580)²⁸ in April 1982, prohibiting discrimination in State employment. Enforcement power under this Act is granted to the State Personnel Board.²⁹

In subsequent action the legislature included in Section 3 of H.B. 1797, a requirement that nondiscrimination provisions be a part of each State proposal for Federal funds. These provisions require that each proposal specify a process to guarantee that persons seeking services shall:

1. Have the right to file formal application for services or resources upon request;
2. Be afforded an opportunity to have private and confidential interviews pertaining to the case;
3. Not be denied assistance on the basis of race, color, gender, creed, religion, age, political preference or physical affliction;
4. Receive timely approval or disapproval of the application;
5. Receive written notification of appeal and appeal procedures, including notice that:
 - a. all aggrieved parties shall be afforded a reasonable opportunity for a fair hearing,
 - b. the applicant or the representative of the applicant shall have access to records relevant to the appeal process, and

²⁵ Ibid.

²⁶ Ibid., p. 12.

²⁷ Ibid., p. 13.

²⁸ 1982 Okla. Sess. Laws, S.B. 580.

²⁹ Ibid.

c. the applicant shall have the right to a timely determination and prompt notice of hearing decisions.³⁰

Responsibility for review of State agency proposals rests with the Joint Committee on Federal Funds.³¹ However, as indicated earlier, the State Attorney General of Oklahoma has ruled that a committee of the legislature cannot be given authority to approve or reject agency proposals.³² It is expected that new legislation will be introduced at the next session which modifies the role of this committee.

Within each of the State agencies receiving block grant funds is a mechanism for handling complaints of civil rights violations. As explained by Governor Nigh:

. . . the first process would be the agency that has the responsibility for the allocation of funds as they come up with their rules and regulations and have their programs or they would have, in effect, the basic principles that you would establish as you create the funds. Any appeal, the first appeal, in my opinion, should first go to that agency. Now, beyond that, your real question was who was the final authority? I would think that's the Human Rights Commission. . . . I understand the basic question and the final question is who's responsible to insure fairness and, of course, that will lay at the Human Rights Commission and the Governor.³³

Although the State is gearing up to take on increased responsibilities for civil rights enforcement, many of the participants at the consultation felt there was some uncertainty and little direction as to what role Federal agencies will exercise in enforcing these provisions. There is also some uncertainty as to what role the State legislature will exercise with regard to delegating enforcement authority to individual State agencies.

Given the change in administration, philosophy, and policy regarding increased State responsibility, including enforcing civil rights provisions, Thurmond Johnican from the Office for Civil Rights, U.S. Department of Education, explained that changes in Federal civil rights legislation would be required before his agency could delegate responsibility for civil rights enforcement to the State. He remarked:

³⁰ 1982 Okla. Sess. Laws, H.B. 1797, §3.

³¹ Ibid.

³² Okla. Atty. Gen. Op. 82-45, (1982).

³³ *OK Transcript*, pp. 69-71.

The Federal agency that administers civil rights laws growing out of the statutes does not have the responsibility to delegate its responsibilities to the State to administer the civil rights law.

The only way that delegation of authority can go from the Federal Government to the State is that there has to be either [by amending or repealing] to the [existing] law itself.

Mr. Johnnican added:

While the President is able to, by presidential decision, determine that a regulatory agency or administrative agency of the Executive Branch would not be funding monies any more, there has to be action on the civil rights law itself in order to take the civil rights agency out of the picture with respect to administering the civil rights law.

The agency of the Federal Government that administers civil rights laws has the capability of delegating its responsibility for certain kinds of compliance activities to other Federal agencies. Of course, they do not have the authority to delegate part of its responsibility to administer the civil rights laws to State agencies; they have not written the law that way.³⁴

At the consultation, no State agency had been formally designated to coordinate civil rights enforcement among the State agencies and to routinely monitor and report on civil rights matters. The agency procedures described lacked uniformity across agencies. While State legislation (S.B. 326 and H.B. 1797) requiring agencies to develop mechanisms for civil rights protection appears to deal with the need for a unified, coordinated system of monitoring, reporting, and complaint resolution system, such a mechanism rests with the legislative rather than the executive branch.

Participants pointed out that one way in which State compliance with civil rights provisions could be addressed is through federally required State audits and through standards adopted for conducting such audits.³⁵ One of the key features of the "New Federalism" is to allow the States to have more responsibility in programmatic as well as fiscal areas in programs funded by Federal funds. It is expected that States will assume a much greater role in enforcing cross-cutting national policies (i.e., policy requirements enacted in separate pieces of legislation which affect activities in other legislation; for example the civil rights statutes). Consequently,

efforts are being made at the national level to develop a single set of audit standards that would encompass compliance in programmatic areas, including civil rights as well as in fiscal areas.³⁶

Various checkpoints appear to be built into the audit review process to ensure compliance with special conditions or requirements. According to Peter Taliancich of the U.S. General Accounting Office (GAO), Region VI:

[In addition to the State audits there are] the various Inspector Generals of the Federal agencies who will be looking over the shoulders of the States, if you will, to assure that that role is carried out.

OMB is a force behind getting the States to submit their audit plans through the appropriate Inspector General so that there is front end assurance that those State plans meet the GAO audit standards.

The General Accounting Office [is still] another level which, from time to time, [will be] monitoring the role of the various States in the process and getting various assurances that the States are complying with the requirements of the block grant legislation and that the IG's are doing their job effectively.³⁷

Citizen Participation in Block Grant Programs

Although little information was available at the time, there was sufficient interest on the part of citizens and community-based organizations to form a loosely organized coalition called the Oklahoma Coalition for Fair Block Grants. Membership in the organization ranged from elected officials to representatives of service delivery agencies, to special interest groups, and concerned citizens.³⁸ The coalition began by researching population characteristics of the State, and its counties and major population centers. It is also studying the State planning and budgeting process. Training sessions were held and citizens were encouraged to participate actively in the entire process.

The primary purpose of the coalition is to ensure equitable and effective distribution of block grant funds.³⁹ Members have worked both with legislators and agency staff to ensure the inclusion of citizen voices into the planning and decisionmaking process.⁴⁰

³⁴ Ibid., pp. 110-111.

³⁵ Ibid., p. 81.

³⁶ Ibid., pp. 83-92.

³⁷ Ibid., p. 90.

³⁸ Ibid., p. 7.

³⁹ Ibid.

⁴⁰ Ibid., p. 6, 11, 14, and 16-23.

Beginning in FY 83, block grant legislation will require public hearings on block grant proposals to be held by the State legislatures. The hearing requirements were waived during FY 82. As pointed out earlier, the legislature created the Joint Committee on Federal Funds, giving it the authority to conduct public hearings as necessary. However, that committee was not established until FY 82 proposals had already been submitted, thus ruling out any public hearings that could have been held regarding planning for FY 82.⁴¹ While the legislative role for FY 82 was minimal, an expanded role by the legislature is expected for FY 83.⁴² Another important feature of the new legislative requirements on citizen participation is that a summary of comments must be included with all legislative reports of public hearings.⁴³

There were less than eight weeks from the time that the block grants became available to the October 1 deadline for submission. This constricted time frame obviously affected how State agencies sought citizen input on the block grant proposals. First of all, State agencies were not required to conduct public hearings. However, they had to sign assurances that citizen participation was included in the proposal. Consequently, the form of citizen participation varied from agency to agency and, even within agencies.

According to State officials with the Department of Health, applications and the State plan were made available for public comment before submission.⁴⁴ The Department of Human Services and the Department of Mental Health utilized input from existing advisory committees, created during categorical funding.⁴⁵ Widespread citizen participation was sought by the Department of Economic and Community Affairs through a series of public meetings it conducted throughout the State.⁴⁶ Within the Department of Education, an advisory committee was appointed by the governor. This committee consists of representatives of various agencies, school representatives, and lay persons. The committee met four times during the year.⁴⁷

During the consultation, participants expressed concern that some of the methods used to obtain

citizen participation actually deterred participation by some groups. Helen Kutz of the Cleveland County Independent Living Project explains:

On the community level oftentimes in smaller communities, just by virtue of inaccessibility, disabled people are left out of the whole political process.

. . . in my particular community to go to the City Council meeting that lasts for two hours, it's held in the public library, I can stay about thirty minutes because if I have to go to the bathroom, I've got to go home [because there are no available facilities for the handicapped]. What kind of political participation, community participation is that?⁴⁸

No public hearings were held for the FY 82 plan for the Social Services Block Grant. A formal complaint followed by a petition against the plan for reduction of services to the elderly was submitted by the National Association of Retired Persons.⁴⁹ Charlotte Heard of the Area Agency on Aging in Oklahoma City suggested that by including program beneficiaries in the planning process, more efficient and effective programs could be planned.⁵⁰ Also, by including reports of public input and recommended actions in the block grant proposals, State agencies could give feedback as to how public participation has influenced programming and budget decision-making by the respective agency.⁵¹

Participants were concerned that unless block grants included mandates for involving program beneficiaries, minorities, women, the elderly, and the handicapped, then programs would not be able to meet the specific needs of these groups.⁵² They also pointed out that the absence of any kind of mandated involvement of these groups would result in a significant eroding of benefits or a complete loss of benefits to members of these groups.⁵³

State Decisionmaking Process Regarding Block Grants

The Oklahoma Legislature has been actively involved in the block grant process. However, the nature of that role has been somewhat controversial in that it was judged to have intruded into the

⁴¹ Ibid., p 149.

⁴² Ibid., p. 136.

⁴³ Ibid., 36. See also: 1982 Okla. Sess. Laws H.B. 1797.

⁴⁴ *OK. Transcript*, p. 287.

⁴⁵ Ibid., pp. 294-315.

⁴⁶ Ibid., pp. 299-300, and 302.

⁴⁷ Ibid., p. 306.

⁴⁸ Ibid., pp. 225-226.

⁴⁹ Ibid., p. 202.

⁵⁰ Ibid., pp. 201-208.

⁵¹ Ibid., pp. 35-36.

⁵² Ibid., pp. 196-232.

⁵³ Ibid.

established boundaries of the administrative or executive branch.⁵⁴ The legislature is expected to assume a role as overseers and regulators through legislation that will be introduced during the next session.

One of the responsibilities of the Governor's Office, with respect to block grants, has been the assignment of lead responsibility for the various grant programs to specific State agencies. Early in the process, State agencies studied the grant legislation to match areas of approved program activities with existing agency functions. Conferences were held with the governor to discuss these areas.⁵⁵ In most cases, decisions were made to maintain programs as they had been funded through categorical funding.⁵⁶ Several reasons for maintaining existing programs surfaced: 1) there was a lack of lead time prior to submitting the plan to completely evaluate existing programs and plan major revisions or new programs;⁵⁷ 2) the opportunity to utilize existing carry-over funds from categorical programs in similar programs under block grants would be realized;⁵⁸ 3) maintenance of existing programs would minimize the reduction in services and agency staffs required as a result of Federal budget cuts;⁵⁹ and, 4) maintenance of existing programs would buy time for the State to evaluate programs and make changes based on client needs, program activities, and available funds.⁶⁰

It is expected that a reduction in services will be necessary in FY 83 as a result of additional reduction in Federal funds and unavailability of State funds to be channeled into these programs. Also, the carry-over funds available in FY 82 will no longer be available in FY 83.

In most departments receiving block grant funds, advisory committee structures have been established to assist in the decisionmaking process. For example, in the Department of Human Services,⁶¹ Department of Education,⁶² and Department of Mental Health,⁶³ efforts have been made to include existing advisory committees throughout the decisionmaking processes. Similarly, the Department of Economic and Community Affairs has attempted to obtain

broad citizen participation in its decisionmaking process.⁶⁴

Peter Talianchich of the General Accounting Office (GAO) explained that in a survey⁶⁵ conducted by GAO across 13 States, auditors found that:

Overall the States' transition to block grants administration proceeded as well as could be expected considering certain factors; one, the very short time frame between passage of the Act on August 13th and implementation on October 1st; two, the funding reductions accompanying the program; and, three, the uncertainty surrounding fiscal 1982 block grant appropriations.⁶⁶

He added:

One important factor easing the initial transition to most of the block grants was the State's considerable involvement in predecessor programs. States already received a vast majority of funds for these programs and had ties with program recipients. To the extent that this involvement existed, administrative framework and institutional knowledge was in place. . . [and] these various States did have a large degree of familiarity. Where States' experiences were not as extensive more adjustments were made.⁶⁷

Although Oklahoma was not included among those States surveyed,⁶⁸ the patterns in Oklahoma, at this early stage, appear to support the survey findings.

Indian Block Grant Issues

The principal issue, and one on which there was unanimity among Indian participants at the consultation was that of tribal sovereignty. Participants explained that numerous treaties exist between Indian tribes and the Federal Government which establish these tribes as sovereign governmental entities recognized by the Federal Government.⁶⁹ Prior to the inception of block grant funding, States had no role in the trust relationship between Federal Government and the tribes. However, Indians now fear that there may be a violation of the trust relationship through the block grants with the States.

It was noted that many of the treaties have been challenged in the courts; however, the unique trust relationship between the tribes and Federal Government remains. Aaron Dry of the Bureau of Indian

⁵⁴ Okla. Atty. Gen. Op. 82-45, (1982).

⁵⁵ *OK. Transcript*, p. 286.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, p. 178, and pp. 287-288.

⁵⁸ *Ibid.*, p. 150, and pp. 311-312.

⁵⁹ *Ibid.*, pp. 289-290.

⁶⁰ *Ibid.*, p. 290.

⁶¹ *Ibid.*, p. 294.

⁶² *Ibid.*, pp. 306-308.

⁶³ *Ibid.*, pp. 314-316.

⁶⁴ *Ibid.*, pp. 298-301.

⁶⁵ *Ibid.*, p. 74.

⁶⁶ *Ibid.*, pp. 74-75.

⁶⁷ *Ibid.*, pp. 75-76.

⁶⁸ *Ibid.*, p. 74.

⁶⁹ *Ibid.*, p. 243.

Affairs (BIA) and John Sloat of the Oklahoma Indian Affairs Commission explained at the consultation that this trust relationship has withstood such challenges and must be maintained.⁷⁰

Each of the participating tribes at the consultation expressed total and unqualified opposition to the block grants coming through the State because it does not recognize tribal sovereignty, and because the State-developed eligibility criteria threaten the status of their governments. Aaron Dry of the BIA read the resolution passed by the United Tribes of Kansas and Western Oklahoma concerning this issue at the consultation;

Now, therefore, be it resolved, that the United Tribes [of Western Oklahoma] totally oppose the current method of having the State of Oklahoma receive block grant funds which supposedly are allocated for Indian Government when in fact tribal-State relationships are non-existent together with the fact that the eligibility requirements being imposed upon tribal governments by the State is intended to directly dissolve inherent sovereign status of tribal governments.

[In order to apply for block grant funds from the State, Indians] must incorporate under the laws of the State as a non-profit organization. . . [they] must be an organization which serves migrant and seasonal farm workers in the State of Oklahoma; or. . . [they] must be a political subdivision of the State.⁷¹

Tribal representatives also maintained that tribal populations should not be included in statistics for State block grant applications. As Mr. Dry noted in reading further from the resolutions:

[Oklahoma Indian tribes are]. . . totally opposed to the inclusion of the tribal population in the State of Oklahoma application for block grants when, in fact. . . The State lacks jurisdiction within Indian country; past records indicate a lack of effort to serve the Indian population by the State when it proposed to serve an inflated amount of eligible Indian persons; State officials have not solicited tribal governments' assistance in developing policies or guidelines in its attempts to include but disinclude the tribal government; the State has failed to seek the assistance or input from its own State agency, the Oklahoma Indian Affairs Commission, in the development of the State plan and its subsequent block grant application; and the process being used by the State drastically reduces and dissolves the amount of block grant funds intended to benefit tribal governments and their populous.⁷²

⁷⁰ Ibid. See official statements submitted by Aaron Dry and John Sloat.

⁷¹ Ibid., pp. 236-240. See also, supplement to *OK. Transcript*. Resolution passed by the 23 United Tribes of Kansas and Western Oklahoma.

Although the statute makes available direct funding to tribal governments, eligibility requirements imposed by the Federal government and State agency regulations in addition to reductions in Federal funds make it difficult or virtually impossible for tribes to receive FY 82 block grant funds.

Some of the tribes in Oklahoma applied for and received Community Service Block Grant funds. The amount of funds available to Indian tribes, however, was reduced drastically from the previous fiscal year. Sandy Ingraham of the Oklahoma Coalition on Fair Block Grants, explained:

As I'm sure you're aware, the tribes and the tribal organizations have been given sovereign nation status in a lot of the block grants and they're allowed to go directly to the Federal level to apply for money.

This sounds good you know. . . I stood up and applauded when I heard it and I said, oh, that's neat. But I tell you if you want to talk about tokens. . . the results of that in the State of Oklahoma is nothing but token.

Energy assistance, money to Indian tribes was cut eighty-six percent in this State. There are tribes in this State that receive less than two hundred dollars in order to administer and give out to people for energy assistance. . . if you want to compare that they were cut from 1.4 million to one hundred eighty-one thousand dollars statewide. The State received a cut of twenty-six percent so you can see that's a little inconsistent with the amount of budget out of the Federal Government.⁷³

Mildred Cleghorn, chairperson for the Ft. Sill Apache Tribe, commented:

Our Community Service Block Grant money, which we received directly from Washington for fiscal year '82 was in the amount of one hundred and forty-nine dollars; and what can you do in this day and age with a hundred and forty-nine dollars. this verges on being ridiculous.⁷⁴

Dwayne Hughes of the Citizen Band Potawatomi tribe also discussed the reduction in funds.

A case in point is the fact that the tribal allocations were based on figures that were developed at the Federal level with input from the State of Oklahoma and our tribal allocations were reduced by eighty-six percent.

Last year with the contracts that ran through the Oklahoma Indian Affairs Commission the tribes received 1.4 million dollars in Low-Income Energy Assistance Pro-

⁷² *OK. Transcript*, p. 238.

⁷³ Ibid., pp. 29-30.

⁷⁴ Ibid., p. 265.

gram, this previous year we received one hundred eighty-one thousand dollars.

The Citizen Band Potawatomic Low-Income Energy Assistance Program lasted nine working days and all the funds were expended, that was one thousand five hundred sixty-three dollars, our tribal enrollment is twelve thousand.⁷⁵

He added:

It's our belief that Indians in the State will suffer a disproportionate share in the reduction of services brought about by these block grants being given directly to the State.⁷⁶

Pamela Irons, executive director of the Indian Health Care Resource Center in Tulsa addressed the plight of Indians living in urban areas and the problems that organizations such as hers were having in meeting the needs of this group. She commented:

The Indian Health Care Resource Center was organized in 1978 and chartered by the State of Oklahoma to address the health needs of tribal members living in the city boundaries of Tulsa.

...our organization [is defined] in Federal regulations [as an] Indian Organization. The reason for its existence is that tribes or tribal organizations serve their geographic area and do not come inside the boundaries of these two metropolitan areas to deliver services.⁷⁷

Ms. Irons also pointed out that while the State will be receiving funds for the services provided by the Health Care Resource Center last year, the State has been both insensitive to the needs of the population served by the center and uncooperative in adjusting the eligibility standards so that it could compete for State funds.⁷⁸ She further explained that efforts to obtain funding for similar centers in Tulsa and Oklahoma City, were unsuccessful and that their representatives were shuttled back and

forth from one agency to another in pursuit of funding. She also indicated that it was likely the centers would be closed.⁷⁹

Summary of Concerns

In reviewing the statements made during the block grant consultation, along with other materials submitted by participants, the Oklahoma Advisory Committee has the following concerns. First, there appears to be no mechanism, within the executive branch, for monitoring and reporting on civil rights efforts and enforcing civil rights provisions, including authority to employ sanctions when necessary. Although the governor indicated that these functions would be assigned to the State Human Rights Commission formal designation of these responsibilities has not been effected. Also, while a number of State agencies are to be commended for their efforts to obtain broad-based citizen participation, it is of deep concern to the Oklahoma Advisory Committee that an effective formal process does not currently exist within the major agencies for disseminating information to citizens and for involving citizens more extensively in the decisionmaking process. With regard to the problem of tribal sovereignty under the block grants, the Advisory Committee feels that at the present time no adequate Federal-State-tribal mechanism exists that can address this problem effectively and fairly. Moreover, there appears to be a lack of concern or cooperation extended on the part of some State officials to providers of services to urban Indians in seeking workable solutions to problems created by block grant funding procedures. Finally, the Committee feels that the reduction of funds available to Indian tribes is detrimental in its effects on tribal groups as compared to the general population of the State.

⁷⁵ Ibid., p. 257.

⁷⁶ Ibid., p. 260.

⁷⁷ Ibid., p. 228.

⁷⁸ Ibid., pp. 230-231.

⁷⁹ Ibid., pp. 229-231.

Block Grants in Texas

A Report of the Texas Advisory Committee to the U.S. Commission on Civil Rights

State Government in Texas

In Texas, the legislature rather than the governor, has traditionally played the most important role in governing the State. The decisions on what programs are established and whether or not they are administered by State or local government is basically controlled by the State Constitution and various State statutes. In short, the legislature establishes the policies and budgets affecting most governmental and human service programs in the State.¹

The Texas Legislature is composed of 150 representatives, elected every two years, and 31 senators elected every four years. The Lieutenant Governor is the presiding officer of the Senate. The Speaker of the House, elected by the House presides over the House. Both make appointments to various committees and assign bills.² Consequently, they exercise a great deal of power and influence over legislative action.

An extremely critical aspect of the State's legislative process are the various committees and subcommittees. Three committees deal specifically with human services legislation. These are: the House Committee on Human Services, the House Committee on Health Services and the Senate Committee on Human Resources. All of these committees have in

one way or another been involved in issues relating to block grants.

Both the Governor's Budget and Planning Office and the Legislative Budget Board, or the LBB as it is often referred to, are charged with the responsibility of preparing proposed budgets for the legislature. The LBB, however, has the specific responsibility for preparing the State Budget. In carrying out this function, the LBB is required to hold a series of hearings with each of the State agencies. The Budget and Planning Office also develops a budget, which is presented to the legislature during the early part of its session. However, it has usually been the LBB's budget which has been introduced in the legislature as the Appropriations Bill for State agencies and programs. This bill is important because it encompasses, in large measure, the State's priorities for funding and program operations.³

Once a bill passes the legislature, is signed by the governor, and has been published, the various State agencies are responsible for implementing the legislature's intent. However, State agencies have the additional authority to develop new or change existing administrative guidelines and requirements to implement programs. Any changes that are proposed must first go through a series of hearings. Oral and written testimony is taken on the proposed

¹ United Way of Texas, *Establishing Governmental Policies: A Citizen's Handbook*, Austin, Texas, 1981, p. 12.

² *Ibid.*, p. 13.

³ *Ibid.*, p. 15. Note: The LBB has the primary responsibility of developing recommendations for legislative appropriations for all agencies of State government. The membership of the board includes, by statute, the Lieutenant Governor (chairman), Speaker of the House (vice-chairman), the chairman of the Senate

Finance Committee and the Senate State Affairs Committee, two other members of the Senate appointed by the Lieutenant Governor, the chairman of the House Appropriations Committee and the House Ways and Means Committee and two other members of the House appointed by the Speaker. SOURCE: State of Texas, Legislative Budget Board, *Fiscal Size-up 1982-1983 Biennium, Texas State Services, Sixty-Seventh Texas Legislature*, Austin, Texas, p. 146.

changes. The rules are then modified accordingly and finalized. When they are finalized they are published in the *Texas Register*.⁴

Both State monies and Federal funds received by the State are appropriated to various agencies and departments by the legislature every two years. Under Texas administrative procedures, agencies have no authority to make changes in programs while the legislature is not in session to approve those changes. They can, however, modify guidelines and eligibility criteria to reflect changes in funding. This is an especially important consideration in the context of block grants. Because Federal funds are appropriated through the legislature, rather than passed through directly to the agencies themselves, many of these agencies have had to restructure block grant funds into previously defined categorical programs as they had been appropriated by legislative action prior to the inception of the block grant program. Thus, while State agencies do exercise a great deal of discretion in administering their programs and service delivery system, the legislature has ultimate control over their operation.

The Block Grant Program in Texas: An Overview

The State of Texas at the time of the consultation had accepted the following five block grants: Maternal and Child Health; Preventive Health; Social Services; Home Energy Assistance; and Alcohol, Drug Abuse and Mental Health.⁵ It was indicated that the Education Block Grant would be accepted in July 1982. Acceptance of both the Primary Care and the Small Cities Community Development block grants were still being considered at the time of the consultation in May 1982. A decision was made not to take the Community Services Block Grant in 1981 because of a rider in the State's Appropriation Bill which requires action by the legislature before Federal funds can be accepted for new programs.⁶ State officials at the time of the consultation, however, indicated an intent to pick up this block grant starting in October 1982.⁷

⁴ Ibid., pp. 21-22.

⁵ Testimony before the Texas Advisory Committee to the U.S. Commission on Civil Rights in Austin, Texas, May 27, 1982 (hereafter cited as *TX Transcript*), p. 153.

⁶ The language in the rider reads: "No Federal funds may be expended for programs or activities other than those which have been reviewed by the Sixty-seventh Legislature and authorized by specific language in this Act or encompassed by an agency's program structure as established by this Act."

The State's funding for the five block grants it accepted in October 1981 was about \$227.4 million for the current Federal Fiscal Year. Nearly 66 percent—\$149.8 million—was provided through the Social Services Block Grant, and another \$42.3 million was included in the Home Energy Assistance block. Together, these two block grants accounted for nearly 85 percent of all block grant monies received by the State.⁸

As in the other consultations, one of the major concerns raised during the Texas meeting was the impact of Federal funding cutbacks in general, and more specifically, the impact of block grants on State programs and service delivery systems. Dr. David Austin, a professor at the School of Social Work, at the University of Texas at Austin, cited some of the impacts and consequences of these cutbacks on State programs at the consultation:

There have been specific consequences of the budget cuts. Families have been dropped from the AFDC program that would have been eligible under previous rules. The same is true with the Food Stamp Program. . . Individuals employed in CETA Public Service have lost those jobs. State agency employees, particularly in the Department of Human Resources and the Texas Employment Commission, have lost their jobs. . . A number of service programs which had contracts with State agencies have had those cutbacks reduced or lost them completely, and they have laid off their personnel. . . Service capacity in service programs across the State has been reduced; some of these cutbacks in the provision of services took place beginning last October.⁹

He also pointed out that:

The gross impact of the budget cuts in the human service area on the State as a whole, up to this point, is actually quite limited. But this is not because those are not important cuts. It really grows out of the fact that in general, over the years, Texas has made very little provision for services to low-income families, or to the elderly, or to the disabled and handicapped. And there has been, in general, very limited use of Federal programs available for meeting the needs of these groups. . . . Therefore, in a sense, there isn't much to cut.

⁷ *TX Transcript*, pp. 153-154.

⁸ U.S. Department of Health and Human Services, *Block Grant Fact Sheet, Region VI*, Revised 6/15/82 (hereafter cited as *Block Grant Fact Sheet*) p. 1. NOTE: Funding levels cited on the Fact Sheet are provisional and are subject to adjustments when there is a final calculation of the State's entitlement and when the FY 82 appropriation is enacted.

⁹ *TX Transcript*, pp. 8-9.

The budgetary reductions in programs . . . have had only limited impact on the State as a whole.¹⁰

Dr. Austin added that low-income families have been the hardest hit by the cutbacks and changes in the status of programs, because the programs that were being impacted the most were those that were designed to provide basic services, such as health and education, to low-income families who do not otherwise have the funds to pay for those services.¹¹

Robert McPherson, associated with the Center for the Study of Human Resources at the University of Texas in Austin, commented that human service programs were bearing a disproportionate share of the Federal cutbacks in funding.¹² With regard to Texas, he said:

There has either got to be a reduction in the quality or the quantity of service levels to the participants. And to this point, there has been no action, to my knowledge, by the State, nor is there any action likely in the immediate future to restore from State resources, Federal cuts in the social program area.¹³

Although it was generally conceded that the block grants would provide more flexibility to the State in redirecting Federal funds than the categorical programs, the question of impact constantly emerged as a primary issue. Erlinda Cortez, of the Mexican American Legal Defense and Education Fund (MALDEF) in San Antonio, focused in on this concern:

Much of the block grant theory assumes that States will draw upon their own resources to compensate for lost Federal funds or that they will contribute the matching funds no longer mandated by Federal law. We feel, however, that the latitude that States have to make the choices diminishes as the demands upon these resources increase.¹⁴

She added:

Unfortunately, with the block grants, we will be seeing block grant funds being shifted away from the poorest recipients and away from low-income communities; block grant funds being shifted away from specific program areas to support more general State functions; block grant funds being shifted away from smaller scale, community based delivery systems and towards larger, established delivery systems that may actually be less effective at reaching into the community; block grant funds being treated as general revenue sharing funds for local govern-

ments, thus making available resources more diffused and potentially less effective. . . Obviously, the hardest hit will be the poor. In Texas, this means Chicanos, blacks, women with dependent children, the handicapped and the elderly.¹⁵

Civil Rights Enforcement Responsibility

The issue of civil rights enforcement was raised many times throughout the day-long consultation. This issue encompassed a number of concerns ranging from enforcement mechanisms to the role of State government in ensuring compliance with civil rights laws. There was also some confusion as to whether existing civil rights laws applied to the block grants. Delores Wilson of the Dallas Regional Office for Civil Rights, U.S. Department of Health and Human Services (OCR/HHS), elaborated on some of these issues. With regard to civil rights enforcement and the role of OCR/HHS vis-a-vis the States, she said:

The nondiscrimination requirements connected to the receipt of the block grants and the delivery of health and human service programs are much the same as they were prior [to the block grants]. The States are still required to operate block grant programs and provide services on a nondiscriminatory basis. Because block grant funds are considered to be Federal financial assistance, Title VI, Section 504 and other civil rights statutes will continue to apply.¹⁶

The key differences in the nondiscrimination requirements, she explained, were the inclusion of sex and religious discrimination prohibitions into the health and human service block grants and the role of State governments in dealing with findings of noncompliance.¹⁷

The State/Federal relationship in ensuring compliance with civil rights laws was stressed by Wilson. She also pointed out that there would be no dilution of the Federal role in this relationship. Ms. Wilson remarked:

To insure that there is not an abandonment of civil rights legislation or affirmative action or equal opportunity, the department is not permitted to redelegate the responsibility for enforcement. . . What we will be doing is entering into a partnership with the States whereby the States will be given an opportunity to voluntarily resolve their problems, to investigate, to propose remedies, and to consult with our department. . . In situations where they are unable to arrive at a remedy that is acceptable within

¹⁰ Ibid., p. 11.

¹¹ Ibid., p. 12.

¹² Ibid., p. 20.

¹³ Ibid., p. 22

¹⁴ Ibid., p. 341.

¹⁵ Ibid., pp. 341-342.

¹⁶ Ibid., p. 124.

¹⁷ Ibid., p. 125.

the 60-day period of time, the Office for Civil Rights then re-establishes its responsibility for the situation.¹⁸

Despite the fact that OCR would still be responsible for initiating enforcement, albeit in a partnership role, the mechanisms for making this possible were still to be put into place. As she explained in a previous consultation, OCR was still in the process of developing a series of prototypes whereby this partnership role could be implemented. In the meantime, it had initiated several interim procedures for handling complaints. In processing complaint actions against recipients of non-block grant funds, existing procedures would be used. Where the recipient receives only block grant funds, guidance would be sought from OCR in Washington on a case-by-case basis. Where both block and non-block funds were concerned, a dual approach involving both current procedures as well as headquarters guidance would be employed.¹⁹

Although the States will be given an expanded role in dealing with civil rights enforcement, few have the institutional basis for carrying out this enforcement role. Texas is no exception. In addressing this particular issue, Wilson said:

I would think that if all monies are going to be administered by the State, then the State does need to have an arm of itself with the independence and autonomy that allows it to investigate objectively.²⁰

Dr. David Austin also raised the question of establishing some kind of mechanism to deal with civil rights complaints under the block grants. In this regard, he said:

... the elimination of many of the detailed regulations associated with Federal legislation in the past, including those dealing with civil rights, raises the question of the need to begin thinking about establishing State standards and State laws that would enforce nondiscrimination procedures in the administration of these programs for which the State now has new responsibilities.²¹

Given the absence of any kind of mechanism or institutional structure at the State level to handle civil rights complaints, Dr. Austin felt that many individuals and groups will have no recourse but to turn to the already burdened Federal courts to seek redress. To prevent this from happening, he suggest-

¹⁸ Ibid., pp. 127-128.

¹⁹ Ibid., pp. 130-131.

²⁰ Ibid., pp. 136-137.

²¹ Ibid., pp. 17-18.

ed that the governor and the legislature give some consideration to the establishment of a State agency to handle such matters. Beyond that, he further suggested that it develop standard regulatory procedures for State agencies comparable to Federal regulations governing the administration of Federal funds.²²

Leon Wilhite, manager of the Intergovernmental Section within the Governor's Budget and Planning Office, dealt with the issue of formulating standards in his statement to the Advisory Committee. He explained that House Bill 391, passed by the legislature in 1981, authorizes the governor to develop standards on grant implementation by State and local entities.²³ In the past, when a State agency or local governmental entity received Federal funds it had often been unclear about just what was required of it in the way of compliance. Usually, it depended on the advice of the Federal agency administering the grant. What House Bill 391 does, he said, is require State agencies and local governments to implement Federal grants—both categorical and block—in a standard way. The basis for these proposed standards are incorporated in the Office of Management and Budget's (OMB) Circular A-102 which spells out standards governing grant implementation at the Federal level.

Wilhite also pointed out that there are provisions within A-102 dealing with civil rights compliance. However, he was not sure whether these provisions would be included in the State standards.²⁴

Although there is no central agency at the State level to deal with civil rights enforcement and complaints, individual State agencies do have responsibility for enforcing civil rights laws and statutes within their program areas by virtue of the fact that they are recipients of Federal funds. Merle Springer, executive deputy commissioner for the Department of Human Resources stated in his presentation to the Advisory Committee:

... we presently have a civil rights division within the department and we have had one since 1976. The areas that we have staff working on include the Title VI compliance procedures. As you know, these procedures provide for a formal and extensive review of complaints of discrimination in service delivery filed by a recipient. We also have compliance review procedures and under these

²² Ibid., pp. 34-35.

²³ Ibid. Also, 1981 Tex. Gen. Laws, H.B. 391.

²⁴ TX. Transcript, pp. 165-168.

procedures there are periodic and scheduled compliance reviews conducted in our major programs to ascertain whether the programs and the service delivery policies and procedures are in compliance with civil rights requirements of Title VI and the Civil Rights Act of 1964.²⁵

Dick Jarrell, director of Federal Funding and Discretionary Grants with the Texas Education Agency, outlined his agency's enforcement process:

Under Chapter 2 [of the Education Block Grant], civil rights complaints will be handled as they are presently handled under other Federal programs. . . Public complaints are referred to the appropriate program division and an investigation will follow. In other cases, a referral is passed to a particular program for further investigation. . . Appropriate action will follow.²⁶

He admitted, however, that the Texas Education Agency did not have a formal complaint handling system as far as filling out reports and maintaining records.²⁷ Mr. Jarrell also stated that there were no basic civil rights provisions built into the Education Block Grant.²⁸ He added:

We have been conversing with the Office of Civil Rights, [U.S. Department of Education] in Dallas to make sure of the extent of the required unstated requirements. They are coming back to us with those answers. So what we are basically saying, yes, there are no specifics, and the questions we have posed to them are, "Does the civil rights law apply? If it doesn't, then how do we comply?"²⁹

Doug Brown, general counsel for the Department of Community Affairs, explained his agency's system for handling civil rights-related complaints. He stated:

The legal division of the TDCA has general responsibility for reviewing complaints of this nature. Under most of the categorical programs that we now administer, the regulations have some very specific requirements regarding complaint procedures and the resolution of complaints involving discrimination. . .³⁰

However, he added:

Under the block grant system, the regulations promulgated by Health and Human Services appear to reverse the trend. Under some categorical programs, there would be very precise requirements as to procedures for addressing these complaints. Now the area seems to be fairly wide open other than providing a general requirement that the

complaints be directed to the Federal agency, the State is then given a 60-day comment period. And then after that, if an investigation is warranted, the Federal agency will conduct an investigation and render a final decision.³¹

The ambivalence of Federal regulations regarding civil rights enforcement and the role of State government in enforcing civil rights laws was underscored by many at the consultation. Representative Wilhelmina Delco was especially concerned about the withdrawal of the Federal presence and the vagueness in the legislation dealing with civil rights enforcement.

I would like to say that we have some very serious concerns about the civil rights implications, not so much from the specifics of the budget cuts, but from the philosophy that accompanies the block grants, the assumption that the States now will do it themselves. I would like for this Committee to consider the fact that in the State of Texas, with a legislature of 150 members, only 17 of those members are Mexican Americans, only 13 are black, and only 12 are women in the House of Representatives. In the Senate, there is only one woman, . . . no blacks, and I think three or four Mexican Americans.³²

She added,

Surely, if we are talking about a society where the majority rules, and that is certainly true in Texas, then we are not accurate in assuming that automatically if a philosophical change takes place on the Federal level, it will transfer to the State level.³³

Clarence Johnson, co-director of the Poverty Education and Research Center in Austin, also took exception to the Federal enforcement stance under the block grants.

The response of HHS seems to indicate that enforcement of statutory standards will not be vigorous. In terms of the Federal regulations on block grants, I would just go so far as to say they are very brief, they don't provide [for] any civil rights enforcement mechanisms. [Moreover] they generally don't mention civil rights laws other than to say that they are applicable.³⁴

He concluded that there was a lack of clarity in all of the regulations regarding civil rights enforcement from both the U.S. Department of Education and the Department of Health and Human Services. Furthermore, he felt that these agencies were at-

²⁵ Ibid., pp. 205-206.

²⁶ Ibid., p. 235.

²⁷ Ibid., pp. 243-244.

²⁸ Ibid., p. 254.

²⁹ Ibid.

³⁰ Ibid., p. 244.

³¹ Ibid., p. 245.

³² Ibid., p. 291.

³³ Ibid., p. 292.

³⁴ Ibid., p. 389.

tempting to go beyond Congressional intent by watering down these regulations even more than the Congress intended.³⁵

The concern that many had regarding the Federal enforcement structure underlying the block grant program was perhaps best summarized by Representative Delco:

I feel so strongly about the continuation of a Federal presence because the interpretation of a withdrawal of the Federal presence will be that States can go back to doing business the way they did before there was such a . . . presence. In my opinion [this development]. . . does not bear well for minorities or poor people.³⁶

Citizen Participation in the Block Grant Programs

The issue of citizen participation in the block grant programs also surfaced constantly throughout the consultation. It was pointed out by a number of participants that the poor, the elderly, and minorities, as well as the handicapped, are largely underrepresented in terms of who is speaking out for them. This was true not only in the legislature, but also on various State boards and commissions. Because of this underrepresentation, their direct input through public hearings into the decisionmaking processes at both the State and local levels becomes increasingly important if their views are to be heard. Indeed this may be the only input they will have. The question of credibility and meaningful citizen participation was also addressed by some of the participants. Jule Sugarman, president of the Human Services Information Center located in Washington, D.C., outlined some of the critical elements he thought characterized credible public hearings in this statement to the Advisory Committee:

Public hearings are credible when they actually influence the decisions, when they come at a point in time early enough to make a difference in what the final decisions will be, when citizens have information to make responsible recommendations on the potential decision, when they are scheduled conveniently for the people to attend those hearings, when there is a sign of interest by the senior officials to also. . . attend the hearings. . .³⁷

The credibility factor was raised consistently. It was also pointed out that public participation requirements under the block grants had been serious-

ly undermined. So serious, in fact, that it was felt that any credible input into the hearing process would be unlikely. Addressing this particular issue, Clarence Johnson of the Poverty Education and Research Center stated:

Even though the block grants are supposed to return power back to the people, the goal is not consistent with what we actually see in the block grants, which has weakened public participation requirements.³⁸

Coleen Beck of Advocacy Incorporated, an Austin based non-profit corporation formed to protect the legal rights of persons who are developmentally disabled, explained that there is too little information currently on impacts and funding cutbacks to provide any kind of meaningful input into the hearing process by consumers. In fact, she added, even State and Federal officials were often unaware of the overall impacts and ramifications of the block grants on service delivery systems.³⁹ Pat Pound, representing the Coalition of Texans with Disabilities, commented that disabled people must have some kind of mechanism to allow them to have input into the use and distribution of block grant funds. This mechanism currently does not appear to exist in the context of the block grant programs, she said.⁴⁰

The Governor's Office has taken a number of steps to ensure some kind of input into the block grant program. For example, a series of eight public hearings were held around the State during May dealing specifically with block grants. These hearings were designed to enable State officials involved in the block grant program to get feedback from local officials, private citizens, and community leaders on the impact of block grants in their community and how they were being implemented. They were also designed as a means for providing input into the governor's intended use report for block grant funding for the next fiscal year. That report was submitted to the Legislative Budget Board hearings in July 1982.⁴¹

Beyond this, the Governor's Budget and Planning Office has developed a questionnaire on block grants which was mailed to all local elected officials, mayors, and county judges to seek their views on how block grants could be best implemented at the local level. Additional studies focusing in on the

³⁵ Ibid., p. 390.

³⁶ Ibid., p. 306.

³⁷ Ibid., p. 88.

³⁸ Ibid., p. 284.

³⁹ Ibid., p. 410.

⁴⁰ Ibid., p. 322.

⁴¹ Ibid., p. 158.

impact of block grant programs at the local level are in the planning stage.⁴²

Because of the vagueness of the legislation and the guidelines underlying the various block grants, the States are given maximum flexibility to make their own interpretation regarding the question of citizen participation. Although legislative hearings are required and citizen participation requirements are spelled out, their effectiveness, has been questioned. Many felt that the whole issue of citizen participation is inadequately addressed in the block grant legislation and unless this is somehow changed, the input of those most in need may be pushed aside.

State Decisionmaking Process Regarding Block Grants

One of the major objectives of the President's "New Federalism" concept is to reduce Federal Government responsibility and return decisionmaking authority and revenue resources to States and local governments. To accomplish this, the Administration has undertaken several initiatives. Of these initiatives, the block granting of Federal financial assistance to the States represents perhaps the most important elements in the Administration's effort to restructure the relationship between the States and the Federal Government.

While the Administration has stressed the return of program control to State and local governments, the actions to date have focused almost entirely on the shift from Federal to State control. There has been no specific allocation of funds to cities or counties, particularly in Texas, and there has been, in fact, a decrease of local control in some program areas, while there has been an increase in State control.⁴³

According to Dr. Austin, the existence of federally-funded programs over the past two decades has obscured this relationship between State and local governmental entities in Texas. It has also obscured the limited level of support traditionally provided to the poor, the disabled, and the elderly in this State.⁴⁴

Robert McPherson also examined the role of State government in Texas in making decisions regarding the use of Federal funds. He pointed out:

Under the categorical programs of the 1960's and into the 1970's, the State enjoyed a relatively safe, reactive posi-

tion. We accepted the Federal money, we complained about the Federal guidelines, rules, and regulations, but in the end we took little of the heat associated with poor program performance. . . With the block grants, the State will be pushed into a pro-active position with all of the potential benefits but also the costs. We will no longer just be interpreting Federal regulations and administering programs. We now move to an era where we are responsible for making strategic decisions and designing delivery systems within the State an area that we have not been into before.⁴⁵

He further commented that because of the flexibility of block grants, it should be easier for the State to orchestrate both State and Federal funds to achieve its objectives. However, he added, the effects of the block grants will not be known until we can see exactly how the State is going to respond. In this context, he posed two important considerations:

Will the State simply accept the blocks and pass them on to a State agency, and we proceed on an agency-by-agency implementation? If they do, then this will not be significantly different from what is done under the categorical programs, except there will be less money available. Second, if the State accepts the responsibility and opportunity of block grant management, what will it do and how will the various subgroups. . . fare as a result of State decisions.⁴⁶

Looking at the current response, McPherson commented that there was no evidence of any kind of organized, systematic approach directed from a common point in State government toward planning for human service block grants. The legislature, moreover, has not been called into session on this subject and the Legislative Budget Board was only looking at the effects of the Federal cutbacks from their budget perspective. Also, he added, given the constitutional limitations in this State, the Governor's Office is able to do little more than encourage and coordinate meetings of State agency officials.⁴⁷ Beyond these developments, he noted:

The actual planning for block grant implementation, whatever it is, is taking place in the State agency receiving the block grant. Unfortunately, overall, the typical State agency compliance mentality seems to prevail. We don't know what the feds are going to do, therefore, we will wait and see. . .

Assessing the various Federal proposals, developing alternatives consistent with State goals, and contingency planning are phases that appear to be absent in much of the

⁴² Ibid.

⁴³ Ibid., p. 46.

⁴⁴ Ibid., p. 16.

⁴⁵ Ibid., pp. 27-28.

⁴⁶ Ibid., p. 29.

⁴⁷ Ibid., p. 30.

State's activity at this point. In that environment, if it continues, the opportunities will not either be recognized or maximized. Block grants will come providing fewer Federal resources, agencies will provide fewer services to consumers through their existing delivery systems, and much of the existing State bureaucracy will remain intact. . .⁴⁸

Commenting on these areas of concern, Dr. Austin said:

The State must look into new ways of communicating between State and local governments around these issues. . .however, there is really not very much precedence for this. . .We do not have a systematic framework for substantive consultation. We need a framework of communications that cuts across the administrative arm of elected public officials, some kind of public forum process to look at these issues, for which there really is not much precedence in this State and I think that it is time to invent it. . .⁴⁹

With regard to civil rights protections, Jule Sugarman explained that there are several critical elements underlying this issue at the State level.

The first is the question of access and denial of services. Over the years there has been a very large number of protections enacted in Federal law to assure that programs, first of all, would be targeted to low-income people and to minorities. And secondly, that there would be no arbitrary denial of services to those individuals. . .Many of these [protections] have already disappeared. For example, Title XX, in the past, there was a law that money had to be targeted to welfare families and other low-income families. That is gone. And now Title XX money can be used for any purpose whatsoever in the area of social services as the States want to do. . .⁵⁰

Focusing in on the situation in Texas, Sugarman suggested the following:

First, is that there still needs to be a great deal of focus on the use of State resources to balance funds available on the basis of needs throughout the State. Second, I think that the State ought to have minimum program standards that people should be pushing to see that those standards are there since Federal standards will disappear. . .Thirdly, I think that the State ought to give some real role to the major cities in terms of dealing with the use of funds, that ought not to be exclusively a State decision or a county decision. . . Finally let me just emphasize the questions of process. There is an awful lot that can be improved by the way in which things are done, by the way in which people feel that they have a part in making the decisions, a part in making the tough choices. In our terms today. . .that

⁴⁸ Ibid., pp. 30-31.

⁴⁹ Ibid., p. 38.

⁵⁰ Ibid., p. 64.

translates into who makes the decisions about the funding of programs in Texas.⁵¹

The special feature of a block grant is that some level of government below the Federal level gets increased flexibility. As indicated previously, the focus of the New Federalism proposals is that responsibility and authority is transferred from Washington to the State level. That means simply that officials at the State level will now be able to make critical decisions about services that heretofore they were not required to make. But with the block grant there is even a bigger question, the fact that State officials now have the flexibility, what will they do with it? Leon Wilhite responded to this question by commenting:

I think having the flexibility can provide us with the opportunity to better implement these funds. When we are looking at the categorical grants in general, we have had substantial administrative problems, when, say, one agency has had about eight, nine or ten categorical grants and they have had to be dealt with administratively on a singular-type basis. What we have now is a block grant so that they can be administered and dealt with in a more comprehensive fashion. And we feel like it will be a positive long-range impact.⁵²

Dr. Austin, on the other hand, felt differently about the question of flexibility:

. . .there has been no specific application of the concept of increased administrative flexibility. That has been one of the major aspects talked about under the block grants. . .In part, this is a consequence of the specific form of Congressional action last summer which in general, was intended to insure that on-going service programs receive continued funding for at least the first year of block grants under State administration. So really, the States, while they were told they had flexibility in many ways, they were also told they didn't have any flexibility during the first year.⁵³

He continued:

In part, the lack of flexibility or the use of flexibility is a consequence of the fact that the reduction in funds required that existing programs be cut back, and any shift to new or different programs would have been possible only with greater cuts in the funding support for existing programs which had been created in the first place to meet a legitimate community need. A further reason why there is little use of the flexibility is that under Texas administrative procedures the agencies have no authority to really

⁵¹ Ibid., pp. 83-84.

⁵² Ibid., p. 160.

⁵³ Ibid., p. 10.

make changes in programs while the legislature was not here to actually approve the changes.⁵⁴

The legislative role in Texas with regard to the block grants, however, is yet to be defined. Representative Terrell Smith of Austin explained some of the critical issues confronting the legislature in the area of block grants.

There is first of all a philosophical disagreement in the legislature now as to who should have the powers over the block grants. . .the Governor's Office, the executive branch, or the legislative branch, or exactly what that combination is going to be. And, of course, once that combination or that formula is finally agreed upon. . .then we need to set up the criteria for disbursing these funds. . .So essentially that is where I see us today. We haven't even reached the question as to who is going to make the decisions and we certainly haven't set up the mechanisms yet.⁵⁵

Representative Frank Gaston of Dallas commented that the basic problem in Texas lies in the executive/legislative imbalance. When the legislature adjourns, he explained, nothing is put officially on the books until two years later. So there is really nothing official going on in the State. The legislature, he added is considered to hold the power in this State. In this sense, it has to give its approval to everything the governor does.⁵⁶

The question raised by a number of participants is whether the legislature will be able to respond to the challenge. In this regard, Representative Gaston said:

The legislature will respond, but we [usually] respond to the particular area that screams the loudest and where the pressure is the greatest, and all too frequently ignore areas that need our attention and need long-range planning.⁵⁷

Coleen Beck of Advocacy Incorporated, felt that the legislature would pursue a different agenda. Focusing in on the issue of providing services to the handicapped Beck explained that:

The premise of block grants has been that the states have or will enact statutes on their books to replace Federal laws. . .Specifically, the efforts at the Federal level to deregulate and amend Public Law 94-142, that guarantees the right to an appropriate education for the handicapped, and Section 504, have very serious implications. In the past, Texas law merely adopted the Federal laws. Now there is a danger that no compelling arguments can

persuade legislators to enact the major legislation that will assume responsibility for the pervasive needs of the handicapped populations including special education consumers.⁵⁸

She added:

There is no history of State assumption of responsibility of rehabilitation services or for many of the other programs recommended for transfer to the State. . . Moreover, the turn back of federally-funded programs would result in expanded administrative responsibilities for State and local governments, and presumably increased staffing. In light of the mandate to reduce State employment in Texas, the legislature may not be willing to authorize sufficient staffing for these programs to be carried out.⁵⁹

Erlinda Cortez of MALDEF supported Beck's contention that both the executive and legislative branches in Texas may take it upon themselves to change the current agenda in the area of human services. She also felt that block grant funds were in danger of being channeled away from specific program areas because of political pressure. If this does happen then the poor, the uneducated, and the needy will be competing for money, not only among themselves, but with the more affluent and more politically powerful.⁶⁰ She concluded her statement by posing the following questions that she felt needed to be answered before any additional block grants should be administered by the State.

Has Texas reallocated State funds or raised taxes to make up for the Federal cuts included in last year's block grants?

Have State agencies or the legislature established criteria for targeting block grant funds to the truly needy or others with special needs?

Have State agencies or the legislature established processes for assessing needs, setting priorities, and allocating funds accordingly?

Does the State legislature have any role at all in setting policies for the expenditure of block grant fund?

Has the State legislature established procedures for conducting oversight into the policies which State agencies have adopted in spending block grant funds?

Has State government established policies which allow citizens to be informed about and to have input into decisions on block grant policies?

⁵⁴ Ibid., pp. 10-11.

⁵⁵ Ibid., pp. 269-270.

⁵⁶ Ibid., pp. 270-271.

⁵⁷ Ibid., p. 309.

⁵⁸ Ibid., p. 408.

⁵⁹ Ibid., p. 409.

⁶⁰ Ibid., p. 344.

Have any measures been taken to ensure compliance with civil rights laws?

Has the State established procedures to ensure that programs which have been funded by the Federal Government are not cut off inadvertently or without due process?⁶¹

To date, the only answer to those questions must be no, she said. MALDEF, she added, feels that the only avenue left to human service agencies and advocates is "watchdog monitoring." We have no alternatives, she concluded, but to monitor the devastating effects and to begin looking at ways to challenge enforcement problems inevitable with the block grant programs.⁶²

Summary of Concerns

In assessing the various statements presented at the Texas consultation in May 1982, the Advisory Committee found that while it is still too early to determine the impact of the block grants on State programs and service delivery systems, there are indications that minorities, women, the elderly, and

⁶¹ Ibid., pp. 343-345.

the handicapped will be adversely affected. Moreover, there are no assurances that the State will attempt to make up any of these cutbacks. The Committee also believes that the enforcement of civil rights laws and anti-discrimination provisions with respect to the block grants at the State level appears to be weak. Complicating this enforcement question is the lack of any central mechanism at the State level to handle civil rights complaints. With regard to citizen participation, the Committee feels that the State has not established adequate procedures and guidelines to facilitate this process at both the agency level and in the legislature. Finally, the Advisory Committee felt that at the time of the consultation there was an absence of any systematic planning effort in the area of block grants at the legislative or agency level of State government. Furthermore, the legislature has not yet clarified its role with regard to the block grant program. Until it does, the issue of who will take the lead in this area will be unresolved.

⁶² Ibid., p. 345.

PART IV

APPENDIX

Letters of Response

OCT 18 1982



STATE OF ARKANSAS
OFFICE OF THE GOVERNOR

FRANK WHITE
GOVERNOR

October 14, 1982

Mr. J. Richard Avena
Regional Director
United States Commission on Civil Rights
Heritage Plaza
418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

I appreciate the opportunity to comment on the Regional Report of the Commission on Civil Rights. There are a few errors in references made concerning Arkansas which need to be corrected.

In the Arkansas Advisory Committee Report on page 63, you say we accepted the Education Block Grant in July 1982, but it is not available until October 1982, and that is when we will accept it.

Page 64 of the Arkansas Report has a major error. You state in the 1st and 2nd sentence of that page that, "With the changeover to block grants, the State lost approximately \$78 million in Federal funds." That was a total federal fund reduction in all federal programs, not just the block grants. The six block grants we accepted as you noted in page 63 only amounted to approximately \$51 million. The loss in federal funds for the block grants was about \$8 million. The total federal budget cuts in all federal programs, categorical and block, amounted to about \$75 million.

In the large report "The New Wave of Federalism," the chart and table on pages 5 and 6 have errors. On page 5, your chart shows that Arkansas has accepted the Community Development Block Grant and the Education Block Grant as of August 1982. We plan to take both in October, 1982. We must take the Education Block, and we have notified Federal officials of our intent to take the CDBG as of October 1982.

On page 6, the table shows incorrectly that the Alcohol, Drug and Mental Health Block is administered by the Health Department. That Block is administered by Human Services.

I appreciate the opportunity to respond to your draft report and to participate in your public hearings.

Sincerely,

A handwritten signature in cursive script that reads "Frank White".

FRANK WHITE
Governor

FW/lg/wks

STATE CAPITOL • LITTLE ROCK, ARKANSAS 72201 • 501 - 371-2345



OCT 27 1982

WILLIAM P. CLEMENTS, JR.
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

October 22, 1982

Mr. J. Richard Avena
Regional Director
United States Commission on
Civil Rights
Southwestern Regional Office
Heritage Plaza
418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

I received your letter on October 12, 1982, concerning the draft report on the Federal block grant program prepared by the U.S. Civil Rights Commission. I want to go on record as opposing the summary statement in the Texas report titled, "Block Grants in Texas", dated October, 1982.

First, in my opinion, your finding of a weak system in Texas to enforce civil rights provisions on block grants cannot be supported by fact. During the past year there has not been one civil rights complaint from a recipient of the five block grants administered in Texas. Also, as explained in your hearing, state agencies have existing procedures to handle civil rights complaints. Secondly, I disagree with your assessment that Texas was negligent in establishing procedures for citizen participation on block grants. My staff met privately with your staff on three separate occasions and participated in your public hearing. In each case, my staff explained the extensive process I initiated to insure that all citizens, local officials, and organizations had an opportunity to provide input in developing the block grants for FY 1983. Further, numerous legislative committees held public hearings and finally the Legislative Budget Board held a hearing in August to obtain the opinions of all citizens on the final block grant reports.

I believe your summary statement should be amended to reflect the facts. If you have further questions, please call Dr. Jarvis Miller of my Budget and Planning Office.

Sincerely,

A handwritten signature in black ink that reads "W.P. Clements, Jr." with a stylized flourish at the end.

William P. Clements, Jr.
Governor of Texas

dm

NOV 1 1982



STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE
87503

BRUCE KING
GOVERNOR

October 29, 1982

Mr. J. Richard Avena
Regional Director
U. S. Commission on Civil Rights
Southwestern Regional Office
Heritage Plaza, 418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

In responding to the direct concern of your letter forwarding the Report of the N.M. Advisory Committee to the U. S. Commission on Civil Rights, it is safe to say that the bulk of the overview is accurate.

There are three minor points to be made. On page 101 of the "Block Grants in New Mexico" report, New Mexico is described as "unique" in respect to giving the executive power to allocate federal funds instead of the legislature. It is our understanding that we are not alone in maintaining control in the executive.

Also on page 101 is a discussion of the Community Service Block Grant (CSBG). At that time the state had not decided what to do with the CSBG. Since then, the state has accepted the CSBG and it is administered by our Human Services Department.

Finally, on page 103, the references to state finances are somewhat dated. Rather than project the belief that vast cash balances are available, it would be more accurate to state that New Mexico was in an enviable position compared with many states. Our financial situation has changed since March, and we are now in a much weaker financial state that makes replacing federal budget cuts more difficult.

As you recognized in your cover letter, conclusions reached by the Civil Rights Commission are judgmental. I would, nevertheless, like to comment on the summary. The summary statement written by the Commission makes little effort to distinguish between those aspects the state can control versus those which are largely a result of federal actions. Instead, the summary merely mirrors public commentary; there is no analysis.

Mr. J. Richard Avena
Page -2-
October 29, 1982


This report is mostly a record of public comments regarding the block grants. Some of the comments deal with state administration, others do not. I believe that many of the comments reflect public dissatisfaction with budget cuts and block grants imposed by the federal government but administered by the state. In this respect, I believe that the criticism of some people should rightfully be directed towards the federal government.

The one area that the state can control is the dissemination of information and efforts to inform the public of block grant activities. It should be pointed out that the Department of Finance and Administration conducted public hearings in all seven planning districts of the state in 1981. These public hearings were advertised and open to virtually anyone with an interest in federal budget cuts. The series of hearings was repeated this September (after the hearings by the Civil Rights Commission) in all seven planning districts, plus two hearings were held specifically for the Indian community (one in Window Rock and one in Santo Domingo). These hearings were publicized through newspaper ads and direct mailings to community leaders.

In addition, the DFA has publicized the impact of block grants through newsletters mailed to legislators, news editors, government officials, and any private individual who asked to be put on the mailing list. Also, DFA Secretary Marr has made numerous public appearances on television and to private groups to discuss the impact of the budget cuts on New Mexico.

All of the activities described above were newly implemented specifically to invite public participation and increase public awareness of block grant issues. Clearly, an effort has been made to keep the people of New Mexico informed. The State of New Mexico wants public input into these new programs; however, as the Commission's summary rightly points out, there are no guidelines for adequately involving the public. When have we done enough? What specifically and realistically can be done to increase public awareness? We would appreciate an answer to these questions, or any specific suggestions you may have to improve on the situation here in New Mexico.

Sincerely,


BRUCE KING
Governor



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director

Region VI
1200 Main Tower Building
Dallas, Texas 75202

October 26, 1982

OCT 28 1982

Mr. J. Richard Avena
Regional Director
U. S. Commission on Civil Rights
418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

We appreciate the opportunity to review and comment on your draft report entitled, THE NEW WAVE OF FEDERALISM: BLOCK GRANTING AND CIVIL RIGHTS IN THE SOUTHWEST REGION.

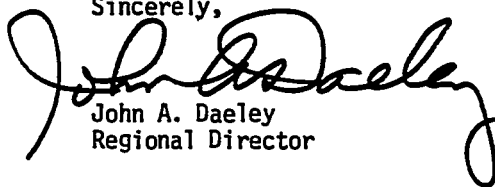
Each of the operating divisions which administer the Block Grants within the Department of Health and Human Services and our Office for Civil Rights have reviewed your document and are complimentary of your effort and the resulting report.

The Office for Civil Rights noted that the report reflects a "pervasive uncertainty about civil rights enforcement on block grant programs." Also, OCR supports a mechanism through which states and OCR could interact effectively in enforcing existing federal civil rights statutes rather than the enactment of additional civil rights statutes at the state level.

Neither the operating divisions nor this office have any additional comments regarding the substance of the report.

Thank you for sharing your early draft with us.

Sincerely,



John A. Daeley
Regional Director

NOV 8 1982

cc: Staff



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FORT WORTH SERVICE OFFICE
221 WEST LANCASTER AVENUE
P.O. BOX 2905
FORT WORTH, TEXAS 76113

REGION VI

IN REPLY REFER TO:

November 4, 1982

Mr. J. Richard Avena
Regional Director
Southwestern Regional Office
United States Commission on Civil Rights
Heritage Plaza, 418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

Thank you for the copy of the draft report concerning the administration of Federal block grant programs and for the opportunity to give you our comments. Our observations dealing with the Community Development Block Grant (CDBG) concerns expressed in the report are listed below. If at all possible, I should like these to be reflected in your final report.

On page 5, chart #3 of the report lists Arkansas and Texas as having accepted the Community Development Block Grant program. Both States have indicated that they would accept the program in Fiscal Year 1983 but they have not officially done so yet.

On page 10, chart #5 indicates that religion is not specifically prohibited as a basis for discrimination in the Community Development program. This is not correct. The assurances which must be submitted by Community Development grantees include compliance with Title VIII of the Civil Rights Act of 1968 which prohibits discrimination on the basis of religion.

Page 14 contains an Oklahoman's view "that no reports on minority participation in the program are required" and that therefore the effect of Civil Rights violations cannot be analysed. Reports are required. HUD Region VI's FY '82 Minority Business goal in CDBG was \$54 million (up from \$21 million in FY '81). We achieved over \$53 million. This remarkable accomplishment reflects credit on the communities in this Region.

Furthermore, the Community Development Program requires States to certify that the grants will be conducted in a nondiscriminatory manner. Specifically, the States must comply with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, which prohibit discrimination in housing and require that no person shall be excluded from participation or denied program benefits under programs receiving Federal financial assistance. Moreover, the States are required to submit an annual performance report to HUD which shows that the States have complied with their certifications and that the States have made the appropriate reviews and audits of units of general local governments to see that the grants

were carried out in accordance with all applicable laws. Therefore we believe the reports submitted by the States will include the information necessary to indicate if any violations of Titles VI or VIII occurred.

While the States will have the responsibility for monitoring civil rights performance of their grantees; the handling of civil rights complaints remain the responsibility of HUD. HUD Fair Housing and Equal Opportunity will also monitor the State agencies to assure their compliance with applicable civil rights provisions of the legislation.

As was pointed out in the report, States will have an increased opportunity to deal with civil rights enforcement. However, in order to be authorized to handle Title VI or VIII complaints the States would have to enact civil rights legislation which was substantially equivalent to the Federal laws. This legislation would have to be approved by HUD. The States would have to set a separate agency to administer the civil rights programs applicable and this agency would also be required to have HUD approval. Finally, the State cannot have any outstanding or pending litigation affecting the appropriate civil rights laws.

The States' monitoring mechanism for dealing with civil rights certification by and large rests within each State agency responsible for Federal programs. This contrasts with the Federal mechanism which consists of a separate entity to deal with civil rights enforcement. The argument can be made that better enforcement might be achieved if civil rights compliance were to be left to each operating agency and viewed as a program requirement administered by program personnel who would be held accountable for civil rights enforcement, just as they are held accountable for the compliance of other program requirements.

The community participation or Citizen Participation requirements of the CDBG program are the same when the program is administered by HUD or if administered by the State. Statements appearing on pages 29 and 73 of the reports seem to imply that local elected officials previously had to abide by what was presented by citizens at public hearings or through other avenues. This has never been the case. The citizen participation requirement is -- and this applies also to States administering the CDBG program -- that citizens' comments and views must be considered. The final decision whether or not to incorporate their views and concerns into the grantee's program has always been the prerogative of the elected officials.

We feel that the transfer of the Small Cities, now termed "non-entitlement areas", to the States is a sound move. The program's administration will be moved closer to the people it is meant to serve. Each State will be better able to structure its program to respond to that State's unique needs. We feel that the States not only will have the proper mechanisms to fairly and competently administer the program but by virtue of being closer to the cities, will have a better grasp of the problems and thus will be better able to help resolve those problems.

Sincerely,



Dick Eudaly

Regional Administrator

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

BULK RATE
POSTAGE AND FEES PAID
U.S. COMMISSION ON CIVIL RIGHTS
PERMIT NO. G73

