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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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B-146285

JUNE 21, 1979

The Honorable William V. Roth, Jr.  
United States Senate

RELEASED

Dear Senator Roth:

In response to your November 8, 1978, request and later discussions with your office, we reviewed the impact of selected crosscutting national policy requirements on a limited sample of State and local governments.

As your letter indicated, the Federal Government has enacted statutes on such issues as equal employment opportunity, citizen participation, and equal delivery of program benefits to further certain national policy objectives. These national policy requirements are included in most Federal assistance programs and are commonly referred to as crosscutting public policy requirements. However, nearly every Federal agency has established its own grant-related regulations, procedures, and guidelines.

It is argued that these differing regulations result in confusion, duplication of effort, and added administrative costs. Your proposed legislation in the current Congress, S.878, addresses this problem of administering Federal regulations. Of particular significance is a proposed certification process intended to minimize the paperwork involved in monitoring and meeting compliance standards.

Title I of S.878 is intended to (1) encourage simplification and standardization in the administration of national policy requirements generally applicable to Federal assistance programs, (2) strengthen the supervision and implementation of such requirements, and (3) reduce the overall administrative burden and adverse economic impact on assistance recipients. The bill is intended to produce greater uniformity of program requirements that must be met by grant recipients. Requirements, such as citizen participation, equal opportunity, planning, and environmental quality, would be standardized as far as possible under existing law so that a recipient would not be asked to comply with different regulations of each administering agency.



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To achieve these objectives, title I, section 703, provides that the President designate a single Federal agency to establish standard regulations for implementing requirements applicable to Federal assistance programs. While section 705 of the legislation requires each agency administering a Federal assistance program to secure compliance with the standard regulations, it allows any affected State or local government to request that a Federal agency administering a Federal assistance program accept a certification by such government that its performance is in compliance with State or local laws, regulations, directives, and standards that are at least equivalent to those required by the standard rules and regulations. The bill recognizes that in some instances agencies may not be able to conform because of existing statutory impediments. Section 706 requires that the designated agencies propose legislation removing these impediments.

As you requested, we concentrated on the following three major objectives in conducting our study:

- Developing some rough estimates of the administrative costs attributable to various crosscutting regulations.
- Describing how several Federal grant administering agencies implement an identical national policy statute.
- Examining several national policy areas to determine whether certain selected States have adopted rules, regulations, or statutes in those areas which are at least equivalent to the corresponding Federal regulations.

As agreed with your office, we examined five policy requirements--citizen participation, environmental impact, equal employment opportunity, equal delivery of services, and the Davis-Bacon Act. We reviewed the implementation of these policy requirements under five Federal assistance programs. Our efforts were concentrated in Albany and Schenectady, New York; and Norfolk and Virginia Beach, Virginia.

ADMINISTRATIVE COST NOT READILY AVAILABLE

We did not determine even rough estimates of the administrative costs attributable to the various crosscutting requirements. In general, the local governments we visited were unable to provide such estimates. Even where an estimate was developed, however, we did not consider the estimate reliable on the basis of other information available. The type of cost data necessary to develop reasonably accurate estimates was not routinely maintained by the local governments included in our limited inquiry.

SOME DIFFERENCES EXIST AMONG FEDERAL AGENCIES  
IN IMPLEMENTING THE SAME NATIONAL POLICY  
REQUIREMENT

Notable differences existed in the implementation of Federal regulations for three of the five national policy areas reviewed-- citizen participation, equal employment opportunity, and delivery of services. We observed no substantial differences, however, among Federal agencies in the implementation of the Davis-Bacon and environmental impact requirements. While the limited scope of our review revealed no substantial differences in the implementation of environmental impact requirements, apparent problems from different implementations of these requirements have prompted corrective actions by the Council on Environmental Quality, as discussed on pp. 8 to 9.

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Various causes account for the implementation disparities in the national policy areas cited above. In some cases, different versions of the national policy were legislated for the programs. Differences also resulted from agency regulations, procedures for implementing the regulations, and oversight practices. Finally, grantee interpretation of the requirements also caused disparities.

Citizen participation requirements

Citizen participation requirements often specified in Federal grant program legislation, are intended to assure that those people affected by federally assisted activities are kept informed of, and are given the opportunity to comment on, the programs. Basically, Federal programs rely on some form of

advisory councils/boards or public hearings for citizen participation. For example, public hearings are required by the Urban Mass Transportation Administration programs and the Community Development Block Grant program, parent advisory councils for schools and school districts are required by Title I of the Elementary and Secondary Education Act, and advisory boards are required by the Comprehensive Employment and Training Act.

Federal regulations vary not only in type but also in frequency of citizen participation required. Requirements specifying the minimum number of public hearings vary from one hearing under the Urban Mass Transportation Administration program to three hearings under the Community Development Block Grant program. Advisory boards can be appointed, as in the Comprehensive Employment and Training Act program, or elected, as specified by the Educational Amendments of 1978. The Educational Amendments do not specify the number of parent advisory council meetings, but the Comprehensive Employment and Training Act program's proposed rules require at least five meetings per year.

Variations also exist in the way grantees are required to report on compliance with citizen participation requirements. Regulatory requirements to document citizen participation compliance ranged from submission of a questionnaire under the Elementary and Secondary Education Act program to submission of notices of public hearings, minutes of citizen participation meetings, statements of disposition of citizen comments, and lists of advisory board membership under other programs.

Differences in implementing the same policy requirement can also result from grantee interpretation. Two cities reviewed differed in the way they complied with identical citizen participation requirements under the same Federal assistance program. These differences resulted from the cities' interpretation of what the Community Development Block Grants required. One city submitted to the Department of Housing and Urban Development a one-page exhibit in its performance report summarizing citizen participation activity; while the other city, believing it was required, submitted copies of all material distributed at hearings, including agency regulations.

Equal employment opportunity

The requirements for equal employment opportunity under the programs reviewed generally derive from the same legislative source, Title VII of the Civil Rights Act of 1964. Agencies differed to some extent in applying these requirements to their programs. For example, in the Comprehensive Employment and Training Act and Urban Mass Transportation programs, equal employment opportunity implementation is based on detailed agency circulars which are more specific than the regulatory provisions. In contrast, Community Development Block Grant procedures do not specify affirmative action plan requirements for grantees beyond the requirements in the regulations.

The Urban Mass Transportation Administration's circulars require grantees to submit to the Administration detailed affirmative action plans with goals and timetables. On the other hand, the Elementary and Secondary Education Act, Title I, grantees--while submitting detailed data to the Office of Civil Rights--are not required to prepare affirmative action plans with goals, timetables, and annual updates.

On the procedural level, the Community Development Block Grant grantees in one region must require contractors to submit an affirmative action plan when the contract exceeds \$10,000, while in another region the threshold is \$25,000.

One instance indicates the impact of Federal agency monitoring on the implementation of equal employment opportunity at the local level. Community Development Block Grant regulations require grantees to advertise all vacant positions in grantee departments receiving block grant funds. Before the Department of Housing and Urban Development conducted onsite reviews of two cities, the cities had been advertising only for positions funded by the block grant.

Equal delivery of services

To assure equal delivery of services as required by Federal law, administering agencies use different methods to promote compliance. While some required submission of data in varying degrees of detail, one agency allowed grantees to certify their compliance.

Title VI of the Civil Rights Act of 1964, the most general nondiscrimination provision applicable to the delivery of federally assisted programs, states that people should not be denied participation in federally funded programs on the grounds of race, color, or national origin. The general provisions of title VI have been extended to the handicapped by Section 504 of the Rehabilitation Act of 1973. The amount of detail required to show equal delivery of services varies among Federal agencies.

Two programs have requirements which focus on geographic areas to be served. The Urban Mass Transportation Act program requires grantees to prepare sufficient documentation to assure that people are not discriminated against with regard to routing, scheduling, or quality of transportation service furnished; frequency of service; or age and quality of vehicles assigned to routes. Similarly, Community Development Block Grants require grantees to include detailed maps identifying the characteristics of the neighborhoods to be served in the grant application. The Community Development Block Grant program goes further by requiring grantees to report the actual number of minorities benefiting from each project.

Under the Comprehensive Employment and Training Act program, grantees must provide documentation of participants categorized by age, race, and sex groupings. Grantees must submit cross-tabulations and develop planned service levels for the groups. Grantees must also submit an annual plan for outreach, training, and placement of the handicapped.

While the Comprehensive Employment and Training Act program requires the submission of detailed data by age, race, and sex to demonstrate equal delivery of program benefits, the Office of Education under its Elementary and Secondary Education program, Title I, relies upon a certification process. School districts submit certificates of assurance that they are in compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 prohibiting discrimination on the basis of sex, and Section 504 of the Rehabilitation Act of 1973 providing equal opportunity for the handicapped.

POTENTIAL EXISTS FOR USE OF  
CERTIFICATION PROCESS

The presence of State laws and requirements in certain national policy areas suggests that potential exists for using the certification process of section 705 of S.878. Both New York and Virginia have some requirements in these policy areas.

New York State has requirements similar to the Federal requirements for environmental review, equal employment, and the Davis-Bacon prevailing wage rates. The New York State environmental quality review carried out under the State's Environmental Conservation Law requires the consideration of factors included in the Federal Council on Environmental Quality's regulations. New York State requirements for equal employment opportunity are contained in the Governor's 1976 Executive Order 45. The order was modeled after the Presidential Executive Order 11246, providing for equal employment opportunity in the Federal Government and under federally supported activities.

New York State's Labor Law requires that prevailing wage rates of a locality be paid, as a minimum, to construction and service workers on projects awarded or ordered by public entities in New York State. We were told that sometimes the New York rate is higher than the Federal rate required by the Davis-Bacon Act. Where both are applicable, the higher of the two becomes the minimum requirement.

The Virginia Governor's 1978 Executive Order Number One states that Commonwealth employees and applicants for employment shall be afforded equal opportunity in all aspects of personnel management without regard to race, color, religion, national origin, political affiliation, handicap, sex, or age. The order covers the classified service of Virginia but does not cover the legislative or judicial branches of State government or local governments. Virginia also has requirements for State agencies to submit environmental reports to the State Council on the Environment on major State projects, except highway or road construction projects.

In the four cities visited, we found no local laws or ordinances equivalent to the national policy requirements. This would suggest that the utilization of local laws and ordinances in the certification process may be limited.

LOCAL OFFICIALS DO NOT PERCEIVE THE  
REQUIREMENTS AS MAJOR STUMBLING BLOCKS

Even though some local officials in our limited research cited problems in the implementation of and compliance with crosscutting requirements, they did not view the requirements as major stumbling blocks to grants management. The reasons they gave were that (1) they have already "learned the ropes," (2) the Federal Government pays most of the cost for compliance activities, and (3) local program administrators generally have to deal with only one program's requirements rather than multiple program requirements. Some officials liked dealing only with the granting agency to resolve problems and conflicts associated with the requirements.

In addition to the four cities reviewed, we asked administrators from State, regional, and local levels in several States to describe their experiences and difficulties in complying with the crosscutting requirements. The comments of these administrators were generally consistent with the comments of the official in the four cities we reviewed.

Officials were concerned about the possible impact of new or additional requirements, such as the requirement for crosscutting Comprehensive Employment and Training Act employees by race and sex to document equal opportunity and the new regulations for equal treatment of handicapped individuals issued under the Rehabilitation Act of 1973, Section 504.

Our analysis of the impact of crosscutting regulations showed various organizational and administrative arrangements among governments. For example,

- the Comprehensive Employment and Training program may be administered by a consortium group,
- the elementary and secondary education programs may be carried out under the jurisdiction of independent school boards,
- the Urban Mass Transportation Administration program may be administered by regional transportation authorities,

--special sanitation districts are often responsible for waste treatment, and

--cities themselves control the Community Development Block Grant program.

State governments also exercise certain controls over some of these programs. This varied intergovernmental arrangement reduces the burden on individual grantees because they often deal with only one Federal agency.

THE FEDERAL GOVERNMENT HAS TAKEN  
RECENT ACTIONS TO STANDARDIZE THE  
ADMINISTRATION OF REGULATIONS

Studies by the Advisory Commission on Intergovernmental Relations, the Federal Paperwork Commission, and others have encouraged the Federal Government to simplify and standardize the administration of Federal regulations.

In 1978, the Council on Environmental Quality promulgated standard regulations for all agencies affected by the National Environmental Policy Act. The new regulations effective July 1979 are intended to reduce paperwork and delays and to produce better decisions by using efficient, uniform procedures. Among the reasons given for issuing standard regulations was that variation in agency practices confused local officials and private citizens, especially applicants for Federal permits or funds. Under the new regulations, each agency will issue implementing procedures to explain how the regulations apply to its particular policies and programs.

Other Government efforts have also been made to better administer Federal regulations. In 1978, the Office of Federal Contract Compliance Programs was made responsible for the area of Federal contractors' equal employment opportunity compliance, thus consolidating functions previously carried out by 11 different agencies. Additionally, the Office of Management and Budget has proposed new procurement procedures governing State and local grantees under Circular A-102, Attachment 0. The new procedures rescind nonconforming provisions of current agency subordinate regulations, create a grantee procurement review certification program, and reaffirm the idea of maximum reliance on State and local government management of their own procurement.

Under the 1978 Executive Order 12067, the Equal Employment Opportunity Commission is responsible for coordinating all Federal equal employment opportunity requirements, including those imposed on grantees. The Commission will write uniform requirements in this area, but agencies may still promulgate specific program regulations. The Commission is surveying Federal agencies to develop an inventory of equal employment opportunity requirements. It will work with the Department of Justice to establish Government-wide standards for the receipt and processing of employment discrimination complaints.

The President has directed the Interagency Coordinating Council to work with State and local governments to identify the crosscutting requirements suitable for standardization. After these have been identified, the Council will work with affected agencies to develop uniform interpretation and enforcement procedures. While these actions have taken place, the provisions of S.878 go further toward standardization. For example, while the Council on Environmental Quality's standard regulations for implementing the National Environmental Policy Act allow agencies to issue implementing procedures, S.878--rather than providing for additional implementing procedures--would require agencies to prepare a legislative proposal to remove impediments to developing standard rules and regulations where standardization is prevented by conflicting or inconsistent provisions of law.

#### WILL STANDARDIZATION PRODUCE SIMPLIFICATION?

Standardization will not necessarily result in simplification. Two major outcomes seem possible. On the one hand, if the standard regulations are generally more stringent than existing requirements, standardization could lead to complications or additional work for the grantee. On the other hand, if grantees are given wide discretion in carrying out national policy requirements under standard regulations, the Federal Government would have to relinquish controls it presently considers necessary to ensure compliance.

Given the first outcome, standardization could conceivably add to already extensive agency requirements. For example, in assuring the equal delivery of program benefits, Urban Mass Transportation Administration grantees, who now have to prepare extensive documentation including specifying routes through

minority neighborhoods, might have to periodically count riders on their buses if the designated agency adopted a standard regulation requiring documentation of actual usage, as is required under Community Development Block Grants.

Also, in equal employment opportunity, Elementary and Secondary Education Act grantees--while submitting detailed data for the Office of Civil Rights--are not required to have a minority employment affirmative action plan with goals, timetables, and annual updates. However, they might be required to develop and submit such plans if the designated agency adopted an equal employment opportunity standard regulation like that currently required of Urban Mass Transportation Administration grantees.

*could also* Given the second outcome, where the standard regulations would result in less specific or stringent requirements, Federal agencies presently administering highly prescriptive requirements would have to give up some control over grantees' activities that have been considered necessary to assure compliance for particular programs. For example, if the standard regulation did not specify the number of advisory board meetings which must be held, as in the Elementary and Secondary Education Act, Title I, the specified minimum of five meetings annually under the Comprehensive Employment and Training Act would be eliminated.

The concept of decreased Federal control to simplify the grant system was supported by many ~~of the~~ State and local officials we interviewed. They were concerned, however, that if policy requirements were standardized without the Federal Government giving up some control, then the standard would have to be very detailed or written towards the worst-case situation. Officials felt that this would impose additional burdens on grantees currently dealing with agencies that have less stringent procedures.

Should you wish to discuss these matters in more detail, we would be happy to meet with you or your staff. As arranged with your office, unless you publicly announce its contents

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earlier, we plan no further distribution of this letter until 3 days from the date of the letter. At that time, we will make copies available to others.

Sincerely yours,

A handwritten signature in cursive script, reading "Thomas B. Steitz". The signature is written in dark ink and is positioned above the typed name and title.

Comptroller General  
of the United States