



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

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THE DIRECTOR

M-11-21

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jacob J. Lew
Director

A handwritten signature in black ink, appearing to be "Jacob J. Lew", written over the printed name and title.

SUBJECT: Implementing the Presidential Memorandum “Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments”

On February 28, 2011, the President issued a memorandum to Federal agencies entitled “Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments” (Memorandum). The Memorandum directs the Office of Management and Budget (OMB) to issue implementation guidance to agencies and to lead a coordinated process – in consultation with Federal agencies and State, local, and tribal governments – that will foster flexibility to improve program outcomes. The scope of the Memorandum is broad, encompassing administrative, regulatory and statutory requirements that affect Federal programs administered by State and local governments, tribes, and territories. This OMB guidance memorandum and the accompanying “Frequently Asked Questions” and Report template provide direction to Federal agencies based on input from Federal agencies, State and local representatives, and associations that represent their interests.

Background: During OMB’s consultations, Federal, State, and local and tribal officials have applauded the objectives of the Presidential Memorandum. To help ensure the success of this effort, they also recommended the following strategies:

- Senior leadership at the Federal, State, local, and tribal levels should focus on areas where increased flexibility could drive the most significant improvements.
- Collaboration across levels of government should involve key officials with authority to act on existing requirements or make recommendations for changes. This includes leaders from the program, financial and auditing communities. Recommendations should focus accountability on outcomes instead of processes.

- State, local, and tribal governments must be empowered to bring forward visions and solutions for how public funds can be used more cost-effectively to accomplish better results. This effort should complement the hard work many State and local governments have already initiated to accomplish more with less.
- Federal, State, local, and tribal governments should not adopt a “one size fits all” approach if significant progress would more appropriately be made by providing flexibility on a conditional or experimental basis. While some suboptimal requirements can be eliminated altogether, others may not be easily eliminated unless a State, local, and tribal government has an alternative mechanism to ensure accountability and other important objectives are met. Some State, local, and tribal governments may be ready to implement these alternatives before others.

Key Elements of Agency Action Plans: The Presidential Memorandum requires Federal agencies to report to OMB on actions taken and plans to offer greater flexibility – where it will yield improved outcomes at lower cost -- in Federal programs administered by State, local, and tribal governments. This report should be coordinated with other Administration initiatives, including the development of retrospective review plans under Executive Order 13563. Agencies should identify opportunities for both immediate and short-term implementation (such as objectives that could be accomplished in six months or less) and broader systemic changes that may take longer to implement. Agency action plans and reports to OMB should be guided by the following objectives:

- **Establish better processes for cross-agency and cross-government collaboration:** Agencies should enhance their current processes to address requests for flexibility that involve multiple programs or agencies. Specifically, agencies should ensure that they work together to rapidly respond to requests to implement innovative, cost-effective approaches. Agencies should also consider adopting a more collaborative approach to negotiate flexibilities where practical. Agencies may also identify opportunities to consolidate and support unified applications and reporting for multiple programs with similar goals.
- **Clearly define program outcomes:** Agencies, informed by consultation with State and local governments and other stakeholders, should define the outcomes to be achieved by any proposed new flexibility (whether statutory, regulatory, or administrative). These can include common outcomes across jurisdictions or outcomes that vary by State, locality or by tribe.

- **Focus on high impact areas:** Agencies should identify, in consultation with State, local, and tribal partners, the program and policy areas in which additional flexibility can offer the greatest potential benefit.
- **Increase transparency:** Agencies should establish clear criteria and transparent processes for considering requests for flexibility. Agencies should also clarify and disseminate existing flexibilities available to State, local, and tribal governments.
- **Facilitate use of robust and authoritative data:** Agencies and their State, local, and tribal partners should review their capacity to generate accurate and authoritative data to ensure accountability and improve decision-making that leads to better outcomes. This capacity is critical to achieve a balanced focus between process and performance.
- **Eliminate duplicative and unnecessary reporting:** Agencies and State, local, and tribal partners should identify recordkeeping and reporting requirements that are duplicative, unnecessary, or of minimal value. They should also identify opportunities to consolidate and share data across programs and agencies where there are similar reporting requirements.
- **Identify other barriers to cost-effectiveness:** Agencies and State, local, and tribal partners should identify administrative and regulatory barriers that impede coordinating or blending funding streams from multiple Federal programs and agencies, as well as funding from other levels of government or non-governmental sources to achieve better outcomes. Agencies should also solicit input on significant statutory barriers that could be addressed through waivers or legislative change.
- **Mitigate the risks of removing barriers:** Agencies should weigh programmatic, financial and other risks when considering requests for flexibility and may grant some flexibility on a conditional basis. Where risks can be mitigated by granting flexibility on a conditional basis, agencies should set clear criteria and standards. Where a bold flexibility strategy might hold great potential for improving outcomes at lower cost, but entail additional risk, agencies may wish to explore experimental pilots accompanied by rigorous evaluations to test these new approaches.

In general, flexibility should not be granted where it will:

- Endanger public health, safety or the environment;
- Diminish access to critical services for vulnerable populations;

- Result in inappropriate shifting of costs between different levels of government or result in overall increases to taxpayer costs; or
- Diminish the ability to detect fraud, waste and abuse of taxpayer dollars.

OMB Role: To carry out its responsibilities under the Presidential Memorandum, OMB will:

- Lead an interagency working group, in consultation with OMB's Federal Chief Information Officer and the Federal Chief Technology Officer, to review OMB circular policies including auditing and cost allocation requirements to enable State and local grantees to most effectively use resources to improve performance and efficiency. This working group will seek input and recommendations from State, local, and tribal governments.
- In collaboration with agencies, identify cross-agency focus areas that would benefit from (1) unified planning and application processes, (2) streamlined and standardized reporting mechanisms; (3) common outcome definitions and measures, or (4) coordinated processes for considering waiver and other administrative requests from State, local, and tribal governments.
- Launch an interagency working group, in cooperation with the Domestic Policy Council, to explore options available under current law to support Pay for Success proposals requested by States, localities, and tribes.

Agency Actions: Departments and major agencies administering programs that directly impact State, local, and tribal governments should provide to OMB the name and contact information of the senior lead official who will coordinate the agency response. No later than June 1, 2011, based on input from State, local, and tribal partners, agencies should consult with their Program Associate Director at OMB to discuss: (1) the general approach they are taking to consult with stakeholders and carry out other aspects of the Presidential Memorandum; (2) high impact program and policy areas to include cross-agency issues; (3) immediate actions the agency will take to provide increased flexibility; and (4) recommendations regarding how OMB could facilitate cross-agency cooperation in high impact areas.

Agencies should continue to consult with OMB as they work with State, local, and tribal governments to analyze options for increased flexibility. By August 29, 2011 agencies should report their actions and recommendations to OMB using the attached template.

Frequently Asked Questions: The attached FAQs provide responses to questions that have arisen during consultations with agencies and State, local, and tribal governments and related associations. Agencies should familiarize themselves with the responses in order to promote consistent implementation of the Presidential Memorandum.

OMB Contact: Substantive questions on program policies should be directed to your agency's Resource Management Organization (RMO) at OMB. General or process-related questions about implementation may be addressed to Mary Ellen Wiggins at mwiggins@omb.eop.gov or 202-395-7805.

Attachments

[Agency name]

Implementing the Presidential Memorandum on Administrative Flexibility

[Date: DUE AUGUST 29, 2011]

- I. **Summary and Highlights:** Summarize the focus areas identified for potential flexibility, and the outcomes that the agency is seeking to improve in these areas. Across all areas, what are the most significant flexibilities your agency identified that you believe have the greatest potential to improve outcomes? What notable changes have already been offered or can be offered in the next six months? What will take longer? This summary should be no more than one or two pages.

- II. **Process overview:** Provide an overview, no more than one page, of the agency's process to implement the Presidential Memorandum, including collaborating with other agencies and levels of government about high-impact focus areas, outcomes, data, barriers, and potential flexibilities. Be sure to address the following:
 - How the most senior leadership at the Federal, State, and local levels reached consensus on areas where increased flexibility could drive the most significant improvements.
 - How State and local governments were empowered to bring forward visions and solutions to accomplish better results at lower cost, including how this process built on existing efforts by many State and local governments to identify ways to accomplish more with less resources.

- III. **Actions Taken or Planned in Focus Areas:** For each focus area, briefly describe the outcomes your agency seeks to improve and the programs that are affected. Explain concisely how increased flexibility can support those objectives, including strategies to strengthen integration of programs supported by different Federal, State and local funding streams. Please summarize actions or planned steps and a specific implementation timeline, emphasizing immediate and short term actions, for each of the following categories in which the agency plans significant actions. Agencies should identify whether these actions or planned steps affect existing statutory, regulatory, or administrative (e.g. reporting) requirements.
 - Process improvements: What changes will your agency make to processes in order to expedite actions to enhance flexibility where it will improve outcomes? In particular, what immediate and near term changes are planned that would help State and local governments navigate approval processes, including those that involve multiple agencies or departments?
 - Unified application plans and reporting: What is the agency doing to enable State and local governments to submit consolidated application plans or reports that meet the requirements of multiple programs? Which of these plans or reports support programs in multiple agencies? Where possible, these efforts should begin immediately. Will the agency be implementing

“Performance Partnerships” or similar models that allow selected States or localities to negotiate performance targets and terms in exchange for greater flexibility?

- Dissemination of information about existing flexibilities: What is your agency doing to clarify and disseminate information about existing flexibilities and the process and criteria used for granting them? Agencies should report on on-going as well as new efforts.
- Elimination of administrative and regulatory requirements: What steps is your agency taking to eliminate unnecessary administrative and regulatory requirements, including reporting requirements that may be duplicative or obsolete? This discussion can reference agency plans developed pursuant to Executive Order 13563’s retrospective review requirement. Where possible, changes to administrative requirements should be accomplished as soon as practicable.
- Waiver or suspension of requirements on a conditional basis: What requirements is your agency waiving or suspending for State and local governments that meet stipulated criteria? What are the processes and criteria the agency will use to determine when flexibility should be granted?
- Use of waivers as a component of experimental pilots: What experimental pilots are planned or under consideration that would involve waiver authority? What is the hypothesis that is being tested through these, how will risks be mitigated, and what evaluation strategy will be used to assess the suitability for scale-up?
- Improving the quality and availability of useful data for decision-making and tracking outcomes: What is the agency doing to facilitate data-driven decision-making? This can include streamlining or standardizing data across multiple programs; initiatives to improve quality and timeliness of data; modernization of data infrastructure, systems interfaces and analytical tools; and encouraging consortia or shared systems to improve the quality and cost-efficiency of information management. How is the agency working with state and local governments to enable appropriate sharing of data in full compliance with privacy laws and regulations?
- Notable Statutory Recommendations from State and Local Governments: Please highlight major statutory barriers and recommendations for legislative change that State and local governments brought to your agency’s attention. This discussion should focus on legislative changes that merit further consideration and should not be presented as a legislative proposal by your agency

IV. Actions Taken or Planned in Other Areas: What other notable actions have been taken or are planned that are not specifically related to high impact focus areas?

V. Additional Information: Please provide any additional information your agency believes should be shared with OMB or the public that is relevant to the Presidential Memorandum.

Implementing the Presidential Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments

Frequently Asked Questions

The following FAQs are divided into three sections: (1) Scope of the Memorandum and Agency Implementation, (2) Consulting with Other Levels of Government, and (3) Identifying and Mitigating Risk. For remaining questions, please contact mwiggins@omb.eop.gov.

1. Scope of the Memorandum and Agency Implementation

What is the relationship of the Memorandum to other efforts the Office of Management and Budget is leading that also affect programs supporting State, local, and tribal governments?

This initiative complements other OMB-led efforts to help Federal programs achieve their intended outcomes more cost effectively, including:

- Executive Order 13563: The E.O. applies to regulations involving and affecting State, local, and tribal governments. It calls for careful analysis of regulations by executive departments and agencies, including consideration of costs and benefits. Executive Order 13563 also requires retrospective analysis of existing significant rules and greater coordination across agencies to simplify and harmonize redundant, inconsistent, or overlapping requirements, thus reducing costs. Agencies may use information and reporting related to administrative flexibilities generated under the Executive Order to meet the requirements of the Memorandum. Agencies are encouraged to cross-pollinate information and reporting generated under the Executive Order, as well as to coordinate the processes under both. In particular, section 6 of the Executive Order requires a “plan” under which an agency “will periodically review its existing significant regulations.” Agency plans should include any of the identified flexibilities in administrative, regulatory and statutory requirements that lead to improved outcomes at lower cost in programs administered by State, local, or tribal governments.
- Executive Order 13175: The E.O. requires that agencies establish a process for regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications. For purposes of the Memorandum, agencies are encouraged to draw on or reuse information and reporting generated under the Executive Order. Agencies should also refer to the guidance issued by OMB on July 30, 2010, on how to implement the Executive Order.
- GPRA Modernization Act of 2010: The Act seeks to improve Federal agency performance in existing programs and initiatives by setting outcome-oriented goals that reflect government-wide management and policy priorities, including crosscutting priority goals affecting more than one agency. Expanding flexibilities and streamlining reporting to improve efficiency and outcomes is one way that agencies may achieve their Priority Goals.
- Federal Government Reorganization: First described by the President in the State of the Union Address earlier this year and formalized in a Presidential Memorandum issued in March 2011, this initiative is aimed at streamlining and restructuring the Federal government to serve the goal of a more competitive America. Recommendations received from State, local, and tribal governments in response to the Presidential Memorandum for streamlining or consolidating redundant processes and reporting requirements may inform the reorganization effort.

- **Improper Payments Elimination and Recovery Act:** In its implementation of IPERA, the Administration seeks to reduce wasteful payments by \$50 billion and recover \$2 billion in improper payments by 2012 through annual agency risk assessments, expanded payment recapture audits, and non-compliance repercussions. Engagement with State and local agencies that administer high-risk programs may highlight where administrative flexibility could improve payment accuracy.
- **Partnership Fund for Program Integrity Innovation:** The Partnership Fund's \$32.5 million provides funding for scalable pilot projects that test improvements to the integrity, efficiency and effectiveness of Federal assistance programs administered at the state and local level. Through engagement with state and local stakeholders in the collaborative pilot development process, the Partnership Fund could help test the effectiveness of new types of flexibility.
- **Pay for Success Pilots:** Pay for Success is an innovative way of partnering with philanthropic and private sector investors to create incentives for service providers to deliver better outcomes at lower cost—producing the highest return on taxpayer investments. Pay for Success projects, which allow greater flexibility to adopt evidence-based interventions, may also serve as a test-bed for new flexibilities. Because of growing interest in this approach by State and local governments and the private sector, the Administration is exploring whether existing legislative authorities provide the necessary flexibility for States and localities to use Federal funds to support these pilots through formula and competitive grant programs. The President's 2012 Budget proposes explicit statutory authority to support up to \$100 million in new pilots under seven competitive grant programs.
- **Open Government Directive:** The Open Government Directive charges the Government to establish a system of transparency, public participation and collaboration to promote efficiency and effectiveness. Following the Directive, Federal agencies have adopted Open Government Plans that commit to publishing information online, improving the quality of Government information.

Many officials have noted that the scope of the Presidential Memorandum – which covers administrative, regulatory, and statutory barriers – is too large for agencies to address all the requests for flexibility that State, local, and tribal governments may raise. How will the Administration manage this effort so that it actually achieves something meaningful?

The Administration is not asking for a complete list of potential flexibilities across agencies and programs. Rather, we are asking for agencies (1) to identify unnecessary requirements that could be eliminated quickly without adverse consequences; and (2) to select three to five high impact areas where new intergovernmental and cross agency cooperation could yield significantly improved outcomes. For example, several agencies oversee programs to address homelessness. How might administrative and regulatory requirements be aligned across programs and agencies to allow States, localities, or tribes to target funds toward coordinated efforts to achieve specific outcomes within a specific geographic community?

States, localities, and tribes often have misconceptions about Federal requirements, sometimes assuming that requirements exist when they don't, or not realizing that waivers can be granted. How will the Administration address this problem?

Areas of confusion are likely to be uncovered when Federal agencies work with State, local, and tribal partners to discuss Federal barriers. Numerous officials have cited examples where States, localities, or tribes assumed Federal requirements were barriers to change, when face to face discussions revealed either that the real restrictions were imposed by State or local governments, or that State, local, or tribal governments were simply misinterpreting the Federal requirements. Based on what agencies learn through these discussions, agencies should actively disseminate clarifications and ways in which

State, local, and tribal counterparts can meet remaining requirements without incurring unnecessary costs. The President has also asked agencies to adopt a transparent and consistent process in evaluating and granting flexibilities.

How should agencies look for administrative flexibilities specifically with respect to their grant programs?

With respect to agencies' grants programs, areas for consideration include:

- (1) **Pre-Award Process.** Grants.gov currently offers State and local governments a means to find and apply for Federal grants. However, across agencies and programs, grant applications vary, both in the scope and depth of information/data required. OMB encourages collaboration across both programs and agencies to identify opportunities for streamlining the grants application and pre-award process. State and local governments will be critical in identifying how administrative burden can be reduced in the grants pre-award stage.
- (2) **Post-Award Process.** Further, agencies are encouraged to work with State and local governments to identify areas for flexibilities in post-award reporting. Some examples of flexibilities include: establishing common data elements across programs/agencies for reporting, and adopting existing government-wide forms as the sole requirement for post-award reporting.
- (3) **Payment Systems.** Currently, the Federal Government disburses payment to grantees through several different payment systems. Each payment system may have distinct requirements for the processing and approval of disbursements. Agencies should solicit State and local governments' suggestions to improve the payment methods associated with grant awards.

What are examples of possible cross-agency issues?

Several Administration cross agency-initiatives are already underway that call for strengthened cooperation among Federal, State, and local governments:

- **Workforce Development:** The Workforce Innovation Fund, recently enacted in the Department of Labor's 2011 appropriation, allows States and regions to compete for funds to transform their workforce systems, including breaking down program silos and strengthening performance incentives for improved outcomes. In addition, the President's 2012 Budget seeks broad waiver authority to enable Workforce Innovation pilots to test the most promising approaches that may not be possible under current law for integrating services now funded through the Departments of Labor and Education and perhaps other agencies.
- **Homelessness:** The U.S. Interagency Council on Homelessness (ICH), established in 1987, is made up of 19 Federal agencies whose representatives review the effectiveness of Federal activities and programs to assist people experiencing homelessness, promote better coordination among agency programs, and inform State and local governments as well as public and private sector organizations about the availability of federal homeless assistance. Efforts undertaken through the Presidential Memorandum could help implement ICH's Federal Strategic Plan to End Homelessness, which is a long-term, coordinated strategy that aims to better coordinate Federal homelessness efforts.
- **Sustainable Communities:** The Partnership for Sustainable Communities supports comprehensive regional and community planning efforts that integrate a number of different issues, including transportation and housing investments, to create and maintain community economic and environmental health. Key agencies include the Environmental Protection Agency (EPA) and the Departments of Housing & Urban Development and Transportation, with secondary roles for Agriculture, Energy, Commerce, Health and Human Services, and Labor.

- **Integrated Human Services Delivery:** There are a number of human services programs administered by multiple Federal agencies, including the Departments of Health & Human Services, Labor, and Agriculture. Many state and local organizations have made significant strides in this area. Because these programs serve similar low-income populations, improved coordination focused on the needs of the individual and family can help reduce overall costs while improving outcomes.
- **Cost Allocation & Audit Requirements:** The Memorandum directed review of existing guidance concerning cost principles and audits for State, local, and tribal governments to eliminate, to the extent permitted by law, unnecessary, unduly burdensome, duplicative, or low priority recordkeeping requirements and effectively tie such requirements to achievement of outcomes.

What specific cross-program and cross-agency actions should agencies consider for short term implementation?

OMB encourages agencies to consider a broad range of pilots to test innovative, new approaches across programs and agencies to reduce burdens, improve coordination and outcomes, and lower costs. Examples could include:

- Unified application and reporting processes for multiple programs allowing grantees to file a single application and a single performance report.
- Streamlined, electronic reporting of data that can meet the performance reporting needs of multiple programs.
- Elimination of reports that are either outdated or do not contribute to effective program management.

Cash-strapped States, localities, and tribes will have difficulty modernizing data systems to support more performance-based approaches to program operations. What assistance can the Federal government provide to improve information technology infrastructure?

In addition to reviewing circular policies including cost allocation and auditing requirements, the Administration will collaborate with States, localities, and tribes to identify ways to support the shift to cloud-based computing and shared services models and reduce or eliminate redundant infrastructures. For example, under the Administration's 25 Point Implementation Plan to Reform Federal Information Technology Management, the Administration formed an "email as a service" working group, comprised of email and collaboration experts from across government to finalize requirements for a government-wide, cloud email acquisition vehicle. This vehicle would permit not only Federal, but also State, local, and tribal governments, to move email systems to the cloud. In addition, the Administration will make Federal IT tools, such as IT dashboards and TechStat, more accessible to States, localities, and tribes. Individual agencies may partner with States, localities, and tribes to use the challenge.gov platform to procure innovative and cost-effective IT solutions.

What is the soonest that agencies should begin implementing recommendations under the Presidential Memorandum?

Agencies, under existing authorities, should begin implementing recommendations as soon as possible. Actions already underway should be reported as such in the report.

2. Consulting with Other Levels of Government

Can Federal agencies informally engage State, local, and tribal governments and Associations that represent them?

Yes. Under the Unfunded Mandates Act [P.L. 104-4] and guidance issued by OMB [OMB 95-20], Federal agencies may seek input from employees of State, local, and tribal governments as well as representatives of Associations that represent these governments. In seeking this input, agencies should be careful to consider geographic, political, and other factors that may differentiate varying points of view.

How should Federal agencies go about engaging State, local, and tribal governments and Associations?

Many States and localities are already working to streamline administrative processes and costs in order to focus resources on achieving program outcomes. Agency dialogue with other levels of government can support and advance these efforts. To this end, agencies should initiate dialogue that will yield timely, unfiltered feedback that other levels of government can provide easily. The sample questions below illustrate the types of practical implementation innovations that could lead to improved outcomes, including efforts that may involve multiple Federal programs or agencies.

- **Innovative reforms.** How can the federal government facilitate State and local innovation efforts that improve outcomes? Are changes needed in administrative, regulatory, or statutory requirements to facilitate positive innovation?
- **Reporting.** Where could agencies reduce current reporting requirements that are not necessary or useful to determine either program performance, facilitate data-driven program improvements, or ensure proper use of taxpayer dollars? Where are there opportunities to consolidate or streamline data requirements or submission?
- **Data systems.** What could the Federal government do to facilitate State and local efforts to modernize data systems to enable greater focus on outcomes and other key indicators?
- **Braided funding.** Where could more flexibility to align or combine funding streams enhance program efficiency and outcomes at the State, local, and tribal levels without jeopardizing appropriate use of funds?
- **Unified applications.** Where could agencies streamline or consolidate planning documents and processes to address multiple programs effectively and promote more comprehensive planning efforts at the State and local level?
- **Waiver and flexibility requests.** In programs where States or localities can request flexibility through waivers or other mechanisms, are there ways to improve the application process to ensure full utilization of statutory authority, timely consideration of requests, better measures of impacts, and effective utilization of findings from demonstration efforts?
- **Actions to provide flexibility.** In what programs or areas would additional flexibility be most likely to spur innovation and program improvement? Would additional flexibility require changes to administrative procedure, regulation, or statute? In which cases should flexibility be granted to all States or participating entities versus granted on an experimental basis?
- **Cross-agency coordination.** How could Federal processes facilitate expedited, coordinated review of flexibility requests involving more than one agency? How could agencies better gain insights of State, local, tribal, and territorial partners as new requirements are generated?

What strategy could agencies use to solicit input from external stakeholders on high impact areas that cross program and agency bounds?

Agencies should consult with state, local, and tribal partners as well as other stakeholders to get a wide range of views and input.

Intergovernmental dialogue should address the cumulative impact of administrative requirements in related clusters of programs. Agencies can work with OMB to arrange symposia, focus groups, or town hall meetings that convene intergovernmental representatives from “high-impact focus areas” where coordinating resources, data and administrative processes across agencies would significantly improve the practical administration of programs as well as measurable outcomes.

Where possible, agencies should utilize existing relationships with intergovernmental task forces, commissions or other workgroups and Associations or coalitions representing state, local, and tribal partners and other key stakeholders, such as consumers, recipients of government services, and businesses, as appropriate. Given limited administrative resources, agencies should look for opportunities to participate in national or regional conferences or symposia – sponsored by Federal or non-Federal organizations – to seek input on strategies in response to the Memorandum. In addition, agencies should refer to the guidance issued by OMB on July 30, 2010, on how to implement Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments” when engaging tribes.

As one example, shortly after the Presidential Memorandum was issued, the American Public Human Services Association (APHSA) and the National Association of Chief Information Officers (NASCIO) organized a full-day symposium in Washington, D.C. to discuss new ways that Federal, State, and local partners could collaborate to improve outcomes in human services programs. Participants included senior Federal officials from OMB, the Interagency Council on Homelessness, the Social Security Administration, and the Departments of Health and Human Services, Labor, and Agriculture, as well as State administrators for health and human services, and information technology. The event provided a constructive forum for analyzing program delivery challenges and exploring ways in which flexibility could be used to better align program rules to the outcomes being sought within individual programs and across programs.

How do actions under the Presidential Memorandum relate to on-going discussions with the National Governors Association and other groups on Medicaid?

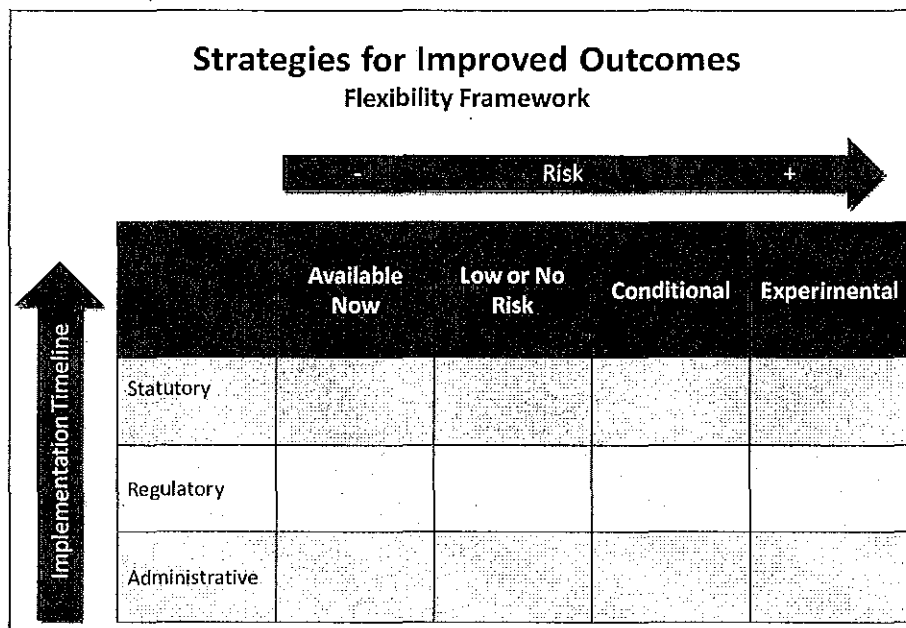
As the President recently said: “We will work with governors of both parties to demand more efficiency and accountability from Medicaid.” On February 28, 2011, he announced to the National Governors Association that he wanted a bipartisan group of governors to work with him on improving health care and lowering costs. As part of his fiscal framework, the President also outlined an approach to making Medicaid “more flexible, efficient and accountable.” The Administration has worked closely with States on many issues in the implementation of the Affordable Care Act and looks forward to continuing to work closely with states on a range of issues related to health programs through mechanisms already underway.

3. Identifying and Mitigating Risk

What criteria will agencies use to decide when requirements can be eliminated entirely and when they can be waived only on a conditional basis?

Based on discussions with agencies and State, local, and tribal officials and Associations, OMB has developed guiding principles and the risk framework below to shape agency strategies for granting flexibility. Key principles are:

- The goal is not “flexibility for flexibility’s sake”; it is to provide flexibility when it will enable State and local governments to focus more attention and resources on efforts that will improve outcomes.
- Agencies should assess the risks of granting additional flexibility and should not eliminate or waive requirements if doing so would:
 - Endanger public health, safety or the environment.
 - Diminish access to critical services for vulnerable populations.
 - Result in inappropriate shifting of costs between different levels of government or result in overall increases to taxpayer costs.
 - Diminish the ability to detect fraud, waste and abuse of taxpayer dollars.
- Agencies should modernize their standards and processes for ensuring accountability for taxpayers dollars, in consultation with OMB, to put greater emphasis on performance and results rather than activity-based compliance reporting.
- Using the flexibility framework shown on the next page as a guide, the following actions should be taken based on a review of potential risks and mitigation strategies:



- **Dissemination of flexibilities available now:** As agencies learn where State, local, and tribal governments are confused about or unaware of existing flexibilities and the process and criteria for obtaining them, agencies should devise dissemination strategies so that all eligible entities are aware of existing flexibilities.
- **Elimination of requirements that are low risk:** Agencies should take immediate steps to eliminate requirements that pose little or no risk if they are removed. These include duplicative, unnecessary or obsolete reporting and other administrative and regulatory

requirements. Agencies should also examine legislative requirements that may no longer serve a purpose.

- **Conditional exemptions or waivers:** Agencies should grant exemptions on a conditional basis to States, localities, or tribes that meet certain stipulations that ensure adequate accountability. For example, States, localities, and tribes that have robust performance data and performance plans with outcome milestones, against which performance can be monitored, could be given relief from activity-based reporting requirements – immediately if statutory authority already exists, or after appropriate statutory or regulatory changes are made. This approach can incentivize State, local, and tribal governments to make the necessary administrative changes to support more outcome-focused management.
- **Experimental waiver pilots:** Agencies may use waivers as a component of bold pilots to test promising hypotheses about how to improve outcomes at lower cost. These should be accompanied by rigorous evaluations to assess the impact of the pilot and identify any significant negative consequences that could inform decisions on whether the pilots should be scaled up.

State and local government recommendations on improving administrative flexibility may have unintended consequences to other non-Federal grant recipients. How should agencies evaluate these impacts?

Agencies should work closely with State and local governments, and other stakeholders to identify potential unintended consequences associated with proposed flexibilities and solicit recommendations on mitigating any adverse impacts.

Do OMB administrative PAYGO policies apply to flexibilities granted under this Presidential Memorandum?

Yes. The Presidential Memorandum does not alter OMB's pay-as-you-go rules for administrative action, as set forth in OMB Memorandum 05-13 and referenced in Section 31.1 of A-11. Any discretionary administrative action by an agency that would increase mandatory spending must be coupled with other administrative action that would produce equivalent mandatory savings. Any exceptions to this budget neutrality requirement must be requested by the agency head and will be granted only when the OMB Director determines that the exception is appropriate in light of compelling circumstances.