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The Honorable Alan Cranston Chairman, Subcommittee on Child and Human Development Committee on Human Resources United States Senate

Dear Mr. Chairman:

This decision is in response to your letter of June 14, 1978, asking us to determine the legality of a proposal by the Department of Health, Education, 2nd Welfare (HEW) to transfer $750,000in fiscal year 1978 child abuse and neglect research and development funds to the Office of the Assistant Secretary for Human Development Services (HDS), to be used for "crosscutting" research activities. The purpose of these activities is to fund research or demonstration projects which benefit more than one HDS target population (the aged, children, Native Americans) and which approach problems related to long-range HDS goals.

The Child Abuse Prevention and Treatment Act (CAPTA), Pub. L. No. 93-247, 88 Stat. 5, January 31, 1974, 42 U.S.C. Sec. 1501 et. seq. (Supp. V, 19753, was enacted to provide financial assistance for research and demonstration projects concerning the causes, prevention, identification, and treatment of. child abuse and neglect. The Act established the National Center on Child Abuse and Neglect which administers programs of research, demonstration, and State assistance grants, Pub. L. No. 93-247, Secs. 2-4, and compiles and maintains a clearinghouse of resource information on child abuse and neglect activities throughout the nation, id., section 2.

The Congressional intent in enacting this legislation was to provide adequate resources to deal specifically with the problems of child abuse and neglect, problems which had received limited attention and funding under previously existing statutes such as lisle IV of the Social Security 42 U.S.C. Secs. 601, 620. CAPTA was to operate in addition to, and to provide additional resources for, such existing programs. H. R. Rep. No. 93-685, Committee on Education and Labor, 93 Cong., 1st Sess., pp. 3-5; S. Rep. No. 93-308, Committee on Labor and Public Welfare, 93 Cong., 1st Sess., p. 5. Fifty percent of appropriations authorized for CAPTA are to be spent on demonstration projects, 42 U.S.C. Sec. 5104.

On April 24, 1978, the Child Abuse Prevention and Treatment end adoption Reform Act of 1978 was enacted, Pub. L. No. 95-266, 92 Stat. 205, title I of which amended CAPTA (Amendments). In the Amendments, a higher priority was given to research activities. To this end, the previous requirement that at least 50 percent of appropriated funds be used for demonstration projects, 42 U.S.C. 5104, was amended to include research activities within this ear- marked

expenditure, Pub. L. No. 95-266, section 104. Amendments meets also required the establishment of research priorities developed rough utilizing public comments and suggestions from experts in the field of child abuse, 42 U.S.C. 5101, as amended by Pub. L. No. 95-266, section 101.

The expanded priority given to research activities was emphasized by the House Education and Labor and the Senate Human Resources Committees. In the Joint Explanatory Statement on the CAPTA Amendments, the Committees stated, with respect to the utilization of research funds:

"The Committees would like to make clear that they expect that no funds appropriated under this Act would be utilized for research programs or activities which are not specifically authorized by this Act, nor would such funds be transferred to any office or other activity of the Department of HEW which is not directly responsible to the Commissioner of the Administration for Children, Youth, and Families or other successor office or activity which performs substantially similar functions with respect to the child abuse and neglect programs. The Committees have been assured that no such diversion of research funds appropriated under this Act has been implemented with respect to fiscal year 1978 appropriations, and the Committees expect that this situation will continue thereafter. " Joint Explanatory Statement of House Bill Senate Amendment, and Compromise e Agreement, 124 Congressional Record S. 5336 (daily ea., April 12, 1978)

In June, 1978, HEW published an announcement of grant availability for fiscal year 1978 for cooperative research or demonstration projects which support the long-range goals of HDS and which "crosscut HDS's component administrations and the populations they serve (including the Administration for Children, Youth, and Families which administers CAPTAIN), 43 Fed. Reg. 24472 (June .5, 1978). As stated in this announcement, these "cross-cutting" grants are authorized and are to be funded by HEW under sections 1110 and 1115 of the Social Security Act, 42 U.S.C. Secs. 1310, 1315, and are to be administered by HDS's Office of Planning, Research and Evaluation (OPRE).

Section 1110 authorizes the Secretary of HEW to make grants to, and to enter contracts and jointly financed cooperative arrangements with State and public and private nonprofit organizations and agencies to pay for part of the cost of research and demonstration projects for programs carried put under or related to the Social Security Act, 42 U.S.C. Sec. 1310(a). Section 1115 contains special provisions for projects carried out by the States.

In your letter of June 14, you ask whether HEW legally may "transfer fiscal year 1978 CAPTA funds to OPRE to be utilized in "crosscutting" grants, particularly in light of the Congressional intent, as expressed in the portion of the Joint Explanatory Statement quoted above.

In order to respond adequately to your inquiry, we requested a report on the issues raised from the Secretary of HEW. in a report dated July 7, 1978, the Acting General Counsel of HEW provided us with a detailed explanation of the purpose and of the administrative mechanism to be implemented for the cross-cutting" projects, pertinent parts of which are set forth below:

"* * * The underlying rationale of the cross-cutting program is that properly structured 'crosscutting' projects will increase the ability of each program to meet its research objectives, since scarce resources can be pooled to fund

projects that benefit several programs but are beyond the budget of any one of those one of those programs."

* * * * *

"Each project applicant will be required to estimate quantitatively the degree to which each OHDS 'target population' will be affected by the proposed project. These projects will then be evaluated, approved, and funded according to procedures designed to guarantee that research funds allocated to each OHDS program are spent properly. "

* * * * *

"Under the 'cross-cutting program); each of the OHDS Commissioners with research and demonstration authority for his or her programs has agreed to contribute to a 'cross-cutting' set aside pool a portion of appropriated funds allocated to him or her for research and demonstration. At the request of each Commissioner, the Budget and Financial Management Division reduces that Commissioner's allowance by the set aside amount, and increases the allowance to the Office of Planning, Research, and Evaluation (OPRE). (OPRE is a part of the Office of the Assistant Secretary.)

"Each OHDS Commissioner will designate research staff to participate on panels to evaluate the proposed 'cross-cutting' projects against the statutory research objectives and conditions of his or her program(s) and the 'cross-cutting' project specifications. If the project meets those objectives and conditions, the panel will recommend funding from the 'cross-cutting' set aside pool. Funding would be in relationship to the degree to which the project was expected to benefit the OHDS programs' target populations and existing levels of set-aside funds. Each Commissioner or his or her designee would then approve the project and the amount of the funds contributed to it from his or her portion of the set aside funds. Finally, a grant award or contract would be executed in the amounts approved by each Commissioner under each research authority.

"OPRE will keep records on the total amounts contributed by each Commissioner, and the amounts approved by each for each 'cross-cutting' project. If any Commissioner does not approve 'cross-cutting' funding up to the full amounts that he or sue has contributed, the remaining amount will be reallocated to the contributing Administration. " For fiscal year 1978, HEW's funds were appropriated by Joint Resolution, Pub. L. No. 95-205, 91 Stat. 1460, December 9, 1977, incorporating H. R. 7555, the Departments of Labor, Health, Education, and Welfare, and Related Agencies Appropriations Act of 1978. Child abuse activities are among a group of programs financed by Pub. L. No. 95-205 under a lump sum appropriation for "Human Development" in H. R. 7555. The total amount appropriated under this heading is $2,195, 978, 000, with no funds specially earmarked for the Child Abuse Prevention and Treatment Act .

Also included in this lump-sum appropriation are funds for programs such as Title VII of the Older American Act of 1965, 42 U.S.C. Sec. 3011, the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Sec. 5601 note, Sections 106, 107, and 306 of the Comprehensive Employment and Training Act of 1973, 29 U.S.C. Secs. 816, 817, and 875, and the Rehabilitation Act of 1973, 29 U.S.C. Sec. 701 note. Funds for activities under sections 1110 and 1115 of the Social Security Act (HEW's stated authority for the "crosscutting" project) were appropriated by Pub. L. No. 95-205 under the headings "Social and Rehabilitation

Service -- Public Assistance", and "Departmental Management -- Policy Research," and not under "Human Development."

References in the legislative history of Pub. L. No. 95-205 (H.R. Rep. No. 95-381, 95th Cong., 1st Sess., p. 90; S. Rep. No. 95-283, 95th Cong., 1st Sess. pp. 124 and 172) indicate that HEW and the House and Senate Appropriations Committees were in agreement that $18, 928, 000 of the total fiscal year 1978 "Human Development" appropriation should be applied to CAPTA. There are no statutory provisions requiring HEW to spend this amount on CAPTA activities, however.

Our Office has traditionally taken the position that, in a strict legal sense, the total amount of a lump sum appropriation may be applied to any of the programs or activities for which it is available in an' amount, absent further restrictions provided by the appropriations act or another statute. See, LTV Aerospace Corporation, 55 Comp. Gen. 307, 318-319 (1975). Thus, any of the funds appropriated for HDS under "Human Developments for fiscal year 1978 may be used by HEW to finance the activities of any program included in that appropriation, Neither the budget estimates allocating funds within the appropriation, nor the restriction on the use of CAPTA research funds set forth in the Joint Explanatory Statement constitute legally binding limits on HEW' s actual internal allocations of the funds made available to HDS. 55 Comp. Gen. 307, 315-327, supra; 55 Comp. Gen. 812 1956); 17 Comp. Gen. 147 (1937); B-149163, June 27, 1962; B-164031(3), April 16, 1975.

"Cross-cutting" grants for programs and projects that are not within the scope or purpose of the HDS appropriation may not, however, be funded with CAPTA or other HDS programs funds Such use of appropriated funds is prohibited by 31 U.S.C. Sec. 628, which states:

"Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no other.

See, e.g. , 19 Comp. Gen. 774 (1940) 36 Comp. Gen. 240 (1946).

A determination of the legality of the use of CAPTA research and demonstration fund "cross-cutting" grants, then, depends on the authority and appropriation under which grants are to be made, end the objectives to be met by them.

As described by HEW in its July 7th report, it is apparent that the proposed grants will be awarded under the research and demonstration authority of the various HUDS components, and not under the general authority of sections 1110 and 1115 of the Social Security Act, as was indicated in the June 5th announcement. A memorandum enclosed untie the HEW report indicated that the citations of authority in the announcement were erroneous and will be corrected to reflect the proper HDS authority in each grant or contract award notice. It was also stated that the Commissioner of each DS Administration, or his designee, would retain administrative control over program funds through the authority to approve the funding of projects which meet program requirements, and the amount of program funds allocated to any particular grant or contract.

With respect to whether the use of "cross-cutting" projects is consistent with the joint explanatory statement, HEW states:

"As I have explained above, child abuse funds will not be approved for any 'cross-cutting) project unless that project meets, in the judgment of the Commissioner, Administration for Children, Youth and Families, the statutory objectives and conditions of the Child Abuse Prevention and Treatment Act to the extent of the funds approved.

"OPRE uses those funds subject to, and only with, the personal approval of Dr. Cardenas, or her designee. It is our view, therefore, that the OHDS 'cross-cutting' program is not inconsistent with the concerns expressed in the Joint Statement. "

Accordingly, we agree that, as explained by HEW, the concerns expressed in the joint explanatory statement essentially have been complied with, and no funds which are allocated to CAPTA will be spent without the approval of the Commissioner of the Administration for Children, Youth, and Families.

One of you- staff members stated orally that you are concerned about the function of the Director of the National Center on Child Abuse and Neglect (the National Center) under the "cross-cutting" project. HEW's child abuse program under CAPTA is authorized to be carried out by the Secretary through the National Center, 42 U.S.C. 5105, et seq.; the proposed "cross-cutting" projects containing child abuse elements apparently are to be administered by the Commissioner, Children, Youth and Families, and not specifically by the Director of the National Center. We agree that the administrative mechanism to be employed by HEW for its "cross-cutting" project would have to recognize the statutory functions of the Director of the National Center. We suggest that the Commissioner, Children, Youth, and Families, delegate to the Director the authority to approve projects incorporating child abuse research and the amount of CAPTA funds to be contributed to them, if this has not already been incorporated into the proposal.

Finally, section 101 of the CAPTA Amendments, Pub. L. No, 95-266, requires the Secretary of HEW, through the National Center, to establish research priorities for grants and contracts made by the Center and to publish the proposed priorities for public comment at least 60 days prior to their establishment. HEW will need to determine if its June 5, 1978, announcement of "cross-cutting" grants and the priorities stated therein satisfy this publication requirement.

Assuming that the proposed projects will be administered under the research and demonstration authority of HDS' offices, in compliance with the respective authorizing legislation for each HDS component, it is our opinion that DAPTA and other HDS Administrations' fiscal year 1978 funds may legally be used to finance relevant portions of "cross-cutting" research projects.

Sincerely yours,

Comptroller General of the United States