

ECONOMIC OPPORTUNITY ACT OF 1964

*Migrant
Program*

Section 311 provides:

The Director (of the Office of Economic Opportunity) shall develop and implement as soon as practicable a program to assist the States, political subdivisions of States, public and nonprofit agencies, institutions, organizations, farm associations, or individuals in establishing and operating programs of assistance for migrant, and other seasonally employed, agricultural employees and their families which programs shall be limited to housing, sanitation, education, and day care of children. Institutions, organizations, farm associations, or individuals shall be limited to direct loans.

A. THE LEGISLATIVE HISTORY

The legislative history suggests that the "program" which the OEO must develop and implement is, to some extent at least, already spelled out in four Senate bills, three of which passed the Senate on June 10, 1963. These three bills were referred after passage by the Senate to the appropriate House committee, but were apparently never reported out. Instead, the whole package was incorporated more or less by reference into the Economic Opportunity Act of 1964. The reference is made not in the Act itself, but rather in both the House and Senate reports. The Senate Report states that Title III-B (as set forth above in its entirety, Section 311)

authorizes programs included in three bills already passed by the Senate: S.521 (education), S.522 (day care of children), and S.526 (sanitation). Part B also authorizes housing programs, supplemental to the assistance available under Title V of the Housing Act of 1949, such as those proposed in another Senate bill, S.981. (Emphasis added.)

The House Report is slightly more flexible in its reference to the four Senate bills, stating that the committee "incorporated the substance" of the four bills. As far as has been discovered, these references in the two reports to the four bills were not the subject of discussion or debate when the Economic Opportunity Act came before either the House or the Senate.

It is clear that despite this language in the two reports, the provisions of the four bills cannot be incorporated exactly as written, since the bills were drafted with no connection to the administrative structure or financial scope of the anti-poverty program. The following are areas of differences between the four bills and the Economic Opportunity Act:

1. Fund authorizations and allocations. Section 321 provides that amounts not to exceed \$15,000,000 of the funds appropriated under other titles of the Economic Opportunity Act (apparently principally Title II-A, the community action part) for fiscal 1965 may be utilized for the purposes of Section 311, above. In addition to this \$15,000,000, Section 321 provides that \$35,000,000 is authorized specifically for Title III itself, containing all of the special programs to combat poverty in rural areas, including part B dealing with migratory labor. Apparently, the distribution of funds among the programs of Title III is left to the discretion of the Director of OEO. It is understood, however, that an administrative decision has been made to limit funds

for Title III-B to \$15,000,000, and to take these funds not from the \$35,000,000 authorized for Title III but from funds authorized under other titles. (It should be noted that there are two decisions here-- one concerning the overall amount; the other concerning the source of funds in terms of different titles.)

The authorizations in the four Senate bills have no apparent relation to either of these amounts in the anti-poverty Act. S. 521, dealing with education, authorizes an unspecified amount for straight educational assistance to children of migratory laborers, \$300,000 for summer schools, \$250,000 for planning grants, and \$200,000 for adult education; S. 522, dealing with day-care services for children of migrant workers, authorizes \$750,000; S. 526, dealing with sanitation facilities, authorizes \$2,500,000, of which \$500,000 is for demonstration grants; and S. 981, which deals with housing, authorizes \$25,000,000 as a revolving loan fund. So far as the total amount of funds available for assistance to migratory labor and the amounts to be allocated among the various programs ^{are concerned}, the complete lack of connection between the amounts specified in the bills and the amounts authorized in the Economic Opportunity Act suggests that the OEO is limited only by the amounts in the Economic Opportunity Act, and that the allocations among the various programs mentioned in Section 311 and in the four Senate bills ^a is matter left completely to the discretion of the OEO.

2. Administration. The Senate Report states: "The committee understands that this program will be administered directly by the Director of the Office of Economic Opportunity." The reference apparently intended by "this program" is to all of the programs for migratory workers. Any ambiguity on this score is removed by the fact that no other agency is specified in the Senate Report's "Short Summary" under Title III-B (while by way of contrast, other agencies are specified in those instances where the Director of OEO is expected to delegate his administrative responsibilities to other agencies) and by the further fact that Senator Humphrey in his concluding summary of the bill (Cong. Rec. p. 16220) clearly implies that OEO will administer this program. (The statement by Senator McNamara that "Title III is to be administered by the Department of Agriculture" (Cong. Rec. p. 16057) must therefore be considered an error, with the intended reference being to Title III-A, which is to be administered by Agriculture.) Thus, it seems appropriate to conclude that the references in the four Senate bills to administration by other agencies (by the Commissioner of Education, in S.521; by the Secretary of HEW, in S.522; by the Surgeon General, in S.526; by the Secretary of Agriculture, in S.981) must be disregarded and that Congress intended direct administration by the OEO.

3. Definition of "migrant agricultural employees." The House Report adopts the definition of "migrant agricultural employee" contained in S.521, namely: an individual --

- (a) whose primary employment is in agriculture, as defined in Section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or performing agricultural labor, as defined in Section 3121(g) of the Internal Revenue Code of 1954 (26 USC 3121(g)), on a seasonal or other temporary basis, and
- (b) who establishes with his family for the purpose of such employment a temporary residence. (Emphasis added.)

The Senate Report selected a slightly different definition, namely the one set forth in S.522, which is identical to that contained in S.521 except that the phrase "with his family" does not appear. The Senate committee explained its choice of the S.522 language, "rather than the slightly more restrictive definition found in S.521, to insure that single workers as well as those with families will be eligible for programs of adult education, sanitation, and housing." Thus, it would appear an open question to decide which of the two definitions was incorporated into the statute. It would seem, however, that the point of policy made by the Senate Report is a good one, and that the phrase "with his family" should therefore be deleted for purposes of OEO policy and administration.

In addition, thought should be given to incorporating into the definition of "migrant agricultural employees" the following phrases added to the definition of "domestic farm labor" in the Housing Act of 1964, as recently enacted:

and either (a) are citizens of the United States

The legislative history of this amendment to the Housing Act of 1964 has not been studied, but the summary of the new Housing Act implies that this change was a liberalizing one, making the programs available not only to citizens but also to immigrant farm laborers permanently residing in the United States after legal entry for permanent residence even though they may not have become citizens. If the Housing Act amendment is tacked onto the definition recommended in the Senate Report, the following definition of "migrant agricultural employee" would result:

an individual

- (a) whose primary employment is in agriculture, as defined in Section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or performing agricultural labor, as defined in Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), on a seasonal or other temporary basis, and
- (b) who establishes for the purpose of such employment a temporary residence; and
- (c) who either (i) is a citizen of the United States or (ii) resides in the United States after being legally admitted for permanent residence therein.

4. A permanent residence does not disqualify. One amendment was made on the floor of the House to the migratory labor provisions of the Economic Opportunity Act. On the motion of Representative Hagen

It seems clear that this legislative history should be incorporated into the OEO administration of Section 311, in two ways: First, it should be made clear that migrant workers are eligible for assistance (and programs can be developed for such assistance) at the "home base" of the worker (such as those areas of Florida, Texas, and California where the migrants may reside for several or more months during the year, and which they consider "home"). Second, it should be made clear that a migrant or his family is eligible for assistance if the "breadwinner" moves even if the family may stay at "home base."

5. Limitations to recipients of grants or technical assistance.

Section 311 goes beyond the four Senate bills by specifically stating that "institutions, organizations, farm associations, or individuals shall be limited to direct loans." This is an across-the-board limitation to all of the programs authorized under this section. In addition, at least by implication, assistance to the remaining categories of recipients--"the States, political subdivisions of States, public and nonprofit agencies"--can be in the form of grants or other assistance (such as technical assistance), in addition to loans, unless specifically limited by the programs described in the four Senate bills.

6. The Director's power. In addition, Section 311 specifically gives the Director of OEO power, not simply to administer the programs specified in the four Senate bills, but rather to "develop and implement

as soon as practicable a program of assistance. The clear implication of this statutory language is that there should be one coherent program developed (rather than a number of unrelated efforts), that such program ^{development} has not yet been done, and that it is the Director of the OEO who should do the developing and implementing. This language should carry far more weight than the references to the four Senate bills in the two committee reports, and should provide the needed hook on which to hang a flexible interpretation of the programs and requirements of the four Senate bills and of Section 311 itself. Such flexibility is reinforced by the words "such as" in the Senate Report (in referring to the housing programs which could be authorized under Section 311), and by the reference in the House Report to incorporating "the substance" of the four bills. In addition, the House Report specifically gives the Director "broad authority" to develop and implement the program. It should be added, however, that Section 311 of the Economic Opportunity Act does limit assistance to four specified program areas: housing, sanitation, education, and day care of children. Since these are also the four areas covered by the four Senate bills referred to in the two committee reports, there is a strong indication that these bills should be followed to the extent feasible. Nevertheless, as the four Senate bills are described more fully in the next section of this memorandum, it is essential to keep in mind the fact that the only language enacted by both the House and the Senate, and signed into law by the President, is contained in

Section 311, above; committee reports do not constitute law, particularly where references are made to bills which had not even reached the floor of the House. Therefore, the keynote to the power of the Director of OEO in the field of migratory labor should be a flexible weighing of each of the programs proposed in the four Senate bills along with other programs which could help make a series of unrelated programs part of a coherent, energetic, and focussed attack upon the problems of migratory labor.

B. THE PROGRAM CONTENT OF THE FOUR SENATE BILLS

Section 311 limits Federal assistance to four program areas: Housing, sanitation, education, and day care of children. Since each of these was the subject of a separate Senate bill, and since at least the substance of these bills was incorporated by indirect reference into the Economic Opportunity Act, each of these bills will now be described in some detail, so that rational choices can be made to accept, modify, supplement, or reject each proposed program. Some of the decisions to be made are set forth as part of the description of the four bills; most are set forth as a list of questions at the end of this memorandum.

1. Housing (S.981).

a. In general. The most important provision of S.981 has been substantially enacted into law with the passage of the Housing Act of 1964, S.3049. That law provides in Section 503 for Federal financial assistance (up to two-thirds of the development cost) for the construction of low-rent housing for domestic farm labor. The program

is administered by Agriculture. Three other programs contained in §.981 were not made a part of the Housing Act of 1964, and therefore require description for purposes of the Economic Opportunity Act.

- (1) Loans and grants for minor improvements in dwellings.
- (2) Insurance of home loans for domestic farm laborers.
- (3) Direct loans to provide housing for domestic farm labor.

b. Loans and grants for minor improvements in dwellings. The bill amends Section 504(a) of the Housing Act of 1949 by extending to domestic farm laborers an existing program of small grants and/or loans presently available only to farm owners. The existing program is administered by the Secretary of Agriculture. The purpose of the small grants or loans (in amounts to any one person not to exceed \$1,000 for a loan or combined loan and grant; and not to exceed \$500 for a grant, whether or not combined with a loan) is to make the dwelling safe and sanitary and remove hazards to the health of the occupant, his family, or the community; the loans or grants can cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making other similar repairs or improvements. The applicant must be the individual, either owner or (under the bill) laborer. It would appear that if this program of direct loans or grants is considered appropriate for the OEO program, then the

administrative structure of the Farmers Home Administration of the Department of Agriculture should be utilized simply to extend their existing program from owners to renters or other non-owning domestic farm labor. It should be noted here that information received from Farmers Home Administration indicates that Congress may not presently be looking with great favor upon the existing programs, since all administrative funds for the small grants (as distinct from loans) were cut during the present session. (Information via Woolner.) Consideration should therefore be given to making all Federal assistance under this program (if it is adopted) in the form of loans.

c. Insurance of home loans for domestic farm laborers. The bill extends another existing program of the Housing Act of 1949 to domestic farm laborers (as well as the presently covered farm owners). The program is one to provide Federal insurance for home loans of up to 33 years at 4 per cent (according to the 1949 provision). This program is administered by Agriculture. Again, the administrative structure of Agriculture should be used if this program is adopted. The program may be too far removed from the concerns and techniques of the anti-poverty program, and perhaps should be eliminated completely.

d. Direct loans to provide housing for domestic farm labor. This is a new program. The administrator (Secretary of Agriculture) is authorized to make loans to:

- (1) the owner of any farm
- (2) any association of farmers
- (3) any State, or political subdivision thereof
- (4) any public or private non-profit organization
- (5) domestic farm labor

for the purpose of providing housing and related facilities for domestic farm labor. The loans can be up to 33 years, at 4 per cent. The applicant must demonstrate that it is unable to secure the necessary funds from other sources upon terms and conditions equally as favorable. In addition, in the case of all applicants, except the domestic farm laborer himself, the applicant must agree that the farm laborer will be given an opportunity to purchase such housing and, insofar as is practicable, will be given an opportunity to donate their services voluntarily in the construction of such housing with a view to keeping construction or acquisition costs low. \$25,000,000 was authorized as a revolving fund to carry out the section. Certain features enacted into the Housing Act of 1964 are also contained in this provision of S.981--namely, that the administrator finds that the construction will be undertaken in an economical manner and that it will not be of elaborate or extravagant design or materials; that the type of housing and related facilities to be provided is most practical, giving due consideration to the purposes to be served by such housing and the needs of the occupants thereof; that the applicant agrees to abide by

certain maximum rent schedules to be set by the administrator; and that certain provisions for fair labor standards be observed in the construction of the housing, both by contractors and sub-contractors, except where unemployed laborers or mechanics voluntarily donate their services without full compensation for the purpose of lowering the costs of construction. For the purposes of this program, the term "development cost" (which can be fully covered by the loan) is defined to include construction and necessary site improvement. It is probable that a large loan program like the one just described would not easily fit into the OEO structure or program, and that an existing loan program of 33 years at 5% (instead of 4%) in the Housing Act may be sufficient, particularly when supplemented by the new program of grants (as described above, on a 2/3--1/3 basis) in the Housing Act of 1964.

2. Sanitation (\$526).

- a. In general. Three kinds of programs are authorized, all in the form of grants to States. These programs are:
- (1) to assist in the construction of adequate sanitation facilities for the use of migratory farm laborers.
 - (2) to assist States in conducting surveys to determine the need, within the States, for the construction of such sanitation facilities.
 - (3) to assist States to develop demonstration projects for field sanitation.

These three program areas should be read in the context of the bill's declaration of purpose: "to assist, through a program of grants, in the construction of adequate sanitation facilities to serve the needs of our Nation's migratory farm laborers and their families."

b. Definitions. The bill sets forth four definitions, three of which should be carried over into the Economic Opportunity Act. The fourth, which defines "migratory farm laborer," should be disregarded in favor of the general definition contained in the Senate Report on the Economic Opportunity Act, as set forth above in Section A(3). The three appropriate definitions follow:

- (1) The term "sanitation facilities" means drainage, water, sewage- and waste-disposal facilities, and includes field-sanitation facilities.
- (2) The term "construction," when used in reference to sanitation facilities, includes expansion, remodeling, and alteration of existing sanitation facilities.
- (3) The term "person" includes any State (or political subdivision thereof), corporation, company, association, firm, partnership, society, or joint stock company, as well as any individual.

c. Construction grants. The bill provides that the administrator shall make grants to States which have submitted and had approved State plans for grants to assist in the construction of sanitation facilities for migratory farm laborers. To be approved, such a plan must --

- (1) designate a single State agency as the sole agency for carrying out such purposes;
- (2) contain information satisfactory to the administrator regarding the extent of the need for adequate sanitation facilities for migratory farm laborers, and the plans, policies, and methods to be followed in meeting such need;
- (3) provide that such funds shall be used solely to assist persons in constructing adequate sanitation facilities for the use of migratory farm laborers;
- (4) provide assurances that any sanitation facility, the construction of which is assisted with funds under this title, shall be maintained and operated in conformity with health standards prescribed by the State and will be available for use by migratory farm laborers for a reasonable time after the facility is constructed;
- (5) provide a schedule of priorities for determining the eligibility of persons to be assisted under this title based on
 - (1) the number of migratory farm laborers who would be served by a proposed sanitation facility,

(ii) the degree of inadequacy of the sanitation facilities presently available to serve such laborers, and

(iii) the financial need of the person seeking assistance under this title with respect to the construction of such facility.

(6) provide reasonable standards, consistent with the purposes of this title, for determining the amount of funds any person shall be eligible to receive with respect to the construction of any such facility.

Such standards shall be designed to afford the greatest assistance to persons with the greatest financial need, except that no person shall be eligible to receive more than 90 per centum of the cost of the construction of any such facility. In determining the financial need of any person for assistance with respect to the construction of a sanitation facility for purposes of this paragraph, due consideration shall be given to the amount of funds available to such person for the construction of such facility from other sources, and the terms and conditions under which such funds are so available.

The bill further provides that from the amounts determined by the administrator to be available during any fiscal year, to carry out the purposes of assisting in the construction of sanitation facilities, the administrator shall (pursuant to regulations issued by him) from time-to-time make allotments to each State which has submitted and had approved by him a State plan for construction grants. Such regulations shall provide that the amount to be allotted to any State shall be determined on the basis of:

- (1) the number of migratory farm laborers involved and the length of time they spent in the State, and
- (2) the extent of the need for the construction of sanitation facilities for such laborers in the State.

The amount of any allotment to a State for construction grants for any fiscal year which will not be required for carrying out the provisions of its State plan shall be available for reallocation from time-to-time, on such dates as the administrator may fix, to other States which the administrator determines:

- (1) have need in carrying out the provisions of their state plan for sums in excess of those previously allotted to them for construction grants, and
- (2) will be able to use such excess amounts during such fiscal year in carrying out such plan.

Any amount so reallocated to a State shall be deemed part of its allotment for construction grants. The amount granted to any State shall not exceed the amount allotted to such State by the administrator.

The bill further provides that the administrator shall prescribe by regulations standards as to the type of construction projects which will be eligible for assistance. Such standards shall provide that a project must:

- (1) be needed for the use of migratory farm laborers;
- (2) not be of elaborate or extravagant design or materials, and
- (3) be adequate in size, construction, and design to fulfill the purpose for which constructed.

d. Grants for surveys. The bill provides that the administrator may make grants for surveys to States that do not have adequate data regarding the need in the State for the construction of adequate sanitation facilities for the use of migratory farm laborers. The amount of such survey grant to any State shall be determined by the administrator on the basis of the cost of the survey, giving due consideration to the number of migratory farm laborers involved, and the length of time they spend in the State.

e. Demonstration grants. The administrator is authorized to make grants to States (or political subdivisions thereof) to pay part of the costs of providing demonstration projects for the purpose of developing improved methods of field sanitation which could be utilized by migratory

farm laborers. Such demonstration projects for which grants are made by the administrator shall be maintained and operated in conformity with health standards prescribed by the State in which such project is to be carried on.

f. Inapplicable portions of S.526. References above to the "administrator" appear in the bill as the Surgeon General; such references are inapplicable in view of administration by the OEO. The amounts authorized (\$2,500,000 total, of which \$500,000 was for demonstration grants) are also inapplicable in view of the authorizations contained in the Economic Opportunity Act, even though such authorizations do not deal specifically with sanitation for migratory laborers. Under the bill, the allocation between construction grants and survey grants was a matter left to the discretion of the Surgeon General. Also left out of the above description are the Congressional "findings of fact" supporting enactment, and the formal designations amending the Public Health Service Act, which was the form in which the bill was drafted.

g. Unresolved issues.

- (1) The Senate Report, in listing the four fields of housing, sanitation, education, and day care of children, states that organizations (other than public agencies and private nonprofit agencies, institutions, and organizations) and private individuals "will be eligible under this part (Title III-B) for assistance in the form of direct loans for those same purposes" of

their families in the four specified fields. There is confusion in Section 311 as to whether a private nonprofit organization is or is not limited to direct loans, as distinct from grants; the special point to ask here is whether individuals would be eligible for loans to undertake construction of sanitation facilities, or whether all assistance must be channeled, as S.526 provides, through grants to States. The same basic question must be asked about municipalities, counties, and public and private nonprofit agencies: not only can they be recipients of loans, but also can they be the recipients of grants at all, since S.526 limits recipients to States? There is some confusion on this point in S.526 itself, which provides under the section dealing with demonstration grants, that grants may be made by the administrator "to States (~~or~~ political subdivisions thereof)" even though the general section limits recipients to States. The absence of the reference in parentheses under either construction grants or survey grants suggests that the initial intent of the Senate, at least, was to limit recipients of construction and survey grants to States themselves.

There are thus the following questions:

- Must all assistance be in the form of grants, or are loans permissible?
- Can grants be made to subdivisions of a State for projects other than demonstrations?
- Can any form of assistance be extended to entities other than States or subdivisions of States? Are individuals eligible for loans?

Survey

(2) How can appropriate coordination be achieved with construction of other health facilities? S.526 put the program for sanitation facilities for migratory workers in the hands of the Surgeon General, presumably because there is some expertise in the Public Health Service about appropriate standards for the construction of such facilities. Assuming that OEO will administer this program (and assuming further that the administration will be delegated to CAP), effective coordination must be established with people who know about such appropriate standards, particularly since the emphasis of CAP is specifically not in the area of construction of facilities.

(Note: coordination should also be developed with the Migrant Health Act (Public Law 87-692), which was signed by the President on September 25, 1962, and which was

specifically referred to in the Senate committee report supporting S.526. This Migrant Health Act provides family health clinics for migrants, including - according to the Senate report - medical services, inoculations, and education in healthful living. The Migrant Health Act is administered by the Surgeon General.)

3. Education (S.521).

a. In general. The bill authorizes four types of educational programs:

- (1) Payments to certain State educational agencies for assistance in educating children of migrant agricultural employee parents.
- (2) Grants for summer schools for children of migrant agricultural employee parents.
- (3) Planning grants dealing with summer and regular school sessions.
- (4) Pilot projects in adult education.

b. Federal control of education prohibited. The bill provides that nothing contained in the Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system. It should be noted that this restriction is different from those contained in Section 205(a) and (b) of the Economic Opportunity Act,

which limit financial assistance for the conduct and administration of community action programs to "special remedial and other noncurricular educational assistance" and bar absolutely "general aid to elementary or secondary education in any school or school system." It would appear that to the extent that the programs authorized by S.521 permit it, Federal assistance to migratory workers can provide for general assistance to curriculum, so long as the bar against Federal direction, supervision, or control is observed. However, the distinction between "general aid to curriculum" and "special remedial and other non-curricular education" (as contained in Section 205, CAP Section) may be more a matter of words than of substance when applied to education of migrant workers and their children. Woolner feels that "general" aid to curriculum should be avoided, even if the statute permits it, partly because of the general aid to education bill which is likely to be a live issue in Congress, perhaps next session. It would seem that there are two distinctions at issue here: the one, the distinction between "special" and "general;" and the other, the distinction between curricular and non-curricular. It seems to me that the migratory provisions might appropriately limit assistance to "special" aid to children of migrant workers, without specifying that such aid must also be for remedial or non-curricular purposes. As just stated, however, these distinctions are probably more semantic than anything else.

c. Definitions. The definition of "migrant agricultural employee" set forth in S.521 should be discarded in favor of the definition of that term in S.522, in accord with the recommendation of the Senate Report, as

discussed above in Section A(3). The distinction between the two definitions (S.522 extends assistance to single migrant agricultural employees, as well as those with families) appears to be less relevant to the provisions dealing with education for children, but would be relevant to the provisions dealing with adult education. Also, the definition of the term "Commissioner" as the United States Commissioner of Education appears irrelevant in view of the determination suggested above that administration of all of the migratory labor provisions shall be in the hands of the Director of the OEO. In the description which follows, all references to the Commissioner have been changed to "the administrator." All other definitions set forth in S.521 should be adopted, as follows:

- (1) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary, secondary, and adult education, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.
- (2) The term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State, and includes any State agency which directly operates and maintains facilities for providing free public education.

- (3) The term "child" means any child who is within the age limits for which the applicable local educational agency provides free public education.
- (4) The term "parent" includes a legal guardian or other person in loco parentis.
- (5) The term "average daily current expenditures per public school child" means the total current expenditures for a State's public elementary and secondary schools during a particular year divided by the product of the average daily attendance in such schools during such year times the number of school days in such year; the term "current expenditures" means expenditures for free public education in such schools to the extent that such expenditures are made from current revenues, except that such term does not include any such expenditure for the acquisition of land, the erection of facilities, interest, or debt service; and for the purposes of payments under Title I (the provision dealing with payments to State educational agencies for assistance in educating children of migrant agricultural employee parents) for attendance during any academic year the administrator shall determine and use the average daily current expenditures per public school child for the year preceding such academic year.

(6) The term "institution of higher education" means any such institution which is accredited as such by a nationally recognized accrediting agency.

(7) The term "migrant agricultural employee State" means any State which has five hundred or more such employees in any five or less counties each of which has at least one hundred such employees, and determinations for the purpose of this definition shall be made for the most recent year that satisfactory population figures are available from reliable sources.

(8) The term "State" includes Puerto Rico, the District of Columbia, Guam, the Virgin Islands, and American Samoa.

d. Administration. Aside from providing that administration shall be in the hands of the Commissioner of Education, and that he has the authority to make such regulations and perform such other functions as he finds necessary to carry out the provisions of this Act, the bill also provides that the administrator "shall include in his annual report to the Congress a full report of the administration of his functions under this Act, including a detailed statement of disbursements." Presumably this requirement is applicable in any case under the reporting requirements imposed upon the Director of OED.

e. Payments to State agencies for assistance in educating children of migrant agricultural employee parents. The bill provides for application for assistance by the State educational agency of any migrant agricultural employee State. Upon such application for the school year beginning in 1963 (this would have to become 1964, would it not?) or for any of the four (should this be reduced to three? or to two?) school years, the administrator shall pay to such applicant agency an amount equal to 100 per cent with respect to the school years beginning in 1963 and 1964 (should this be changed solely to 1964, or should it become 1964 and 1965?), 75 per cent with respect to the school years beginning in 1965 and 1966, and 50 per cent with respect to the school year beginning in 1967, of the average daily current expenditures per public school child, for such State, for each day's attendance during such school year in a free public elementary or secondary school of a local educational agency in such State, by a child who attends any such schools in such State for at least five days during such year and whose parent is a migrant agricultural employee. Payments may be made at such intervals as the administrator deems appropriate; they shall be made for attendance during the regular school year beginning in 1963 (1964?) and the four (three? two?) succeeding school years. Such payments shall be made through the disbursing facilities of the Department of the Treasury and prior to audit or settlement by the General Accounting Office. An application under the provisions of this section shall be in such form and contain such information as may

be required by the administrator to carry out the provisions of this section, and the administrator may require such additional information and reports at such intervals during the school year as he deems necessary. No definite sum is mentioned in the authorization section, but the bill authorizes such sums as are necessary to carry out the section. It would seem that this program of direct grants to States in proportion to the number of migrant children in the State is inappropriate for the Federal anti-poverty program, since the program of S.521 contemplates aid to the States even if the migrant children are in regular school classes, while the anti-poverty program contemplates special classes and special services for migrant children. *Should be taken up with Gen. Hone?*

f. Grants for summer schools for children of migrant agricultural employee parents. The bill provides for application for assistance by a State educational agency. The administrator is directed to approve such application if it sets out the State program for summer schools to be conducted in such State by local educational agencies or institutions of higher education, or both; the necessity therefor; the operating costs of such summer schools; and the amount needed under the provisions of this title to defray such costs; and provides that such State agency will make such reports, in such form, and containing such information as the administrator may from time-to-time reasonably require, and, to assure verification of such reports, give the administrator upon request, access to the records upon which the information is based. The bill also

provides for an allotment of available funds (\$300,000 were authorized) for fiscal 1963 and each of the four succeeding fiscal years) among the migrant agricultural employee States on the basis of their relative populations of migrant agricultural employees during the normal summer school period for the most recent year that such populations are available from reliable sources. Payments are to be made for the operating costs of conducting necessary summer school sessions for children who have a parent who is a migrant agricultural employee, except that for the fiscal years beginning in 1965 and 1966, payments may amount to no more than 75 per cent of any such costs, and allotments for the fiscal year beginning in 1967 shall be available for paying not more than 50 per cent of any such costs. As used in this section, the term "operating costs" includes all ordinary costs of operation other than any costs for the acquisition of facilities or costs related to any such acquisition. The amount of any State's allotment for any fiscal year, which the administrator determines will not be required for carrying out the provisions of this title in such State during the period for which such allotment is available, shall be available for re-allotment from time-to-time, on such dates during such period as the administrator may fix, to other States in proportion to the original allotments to such States under this section, but with such adjustments as may be necessary to prevent re-allotment to any State of any sum in excess of the amount which the administrator estimates it needs and will be able to use during such period for

21

carrying out the provisions of this title. Any amount reallocated to a State for any fiscal year shall be deemed part of its allotment for such year.

g. Planning grants. The bill provides that planning grants may be made for a program which proposes to do all of the following activities:

- (1) to survey the need for summer school sessions for children who have a parent who is a migrant agricultural employee;
- (2) to develop plans for such sessions where needed;
- (3) to develop and carry out programs to encourage such children to attend school during the regular academic year and such summer sessions, and to improve the quality of education offered such children; and
- (4) to coordinate programs provided for in this bill with similar programs in other States, including the transmittal of pertinent information with respect to school records of such children.

The same declining proportion of available Federal assistance is ~~provided~~ contained in the provisions dealing with grants for summer schools, set out above in Section (f), and the same allotment and reallocation formulas, except that the formula is based upon the relative populations of migrant agricultural employees without specifying that the time

period during which such population figures are relevant is during the normal summer school period, as the summer school section did. It is specified that grants under this title shall not be available for the cost of acquisition of any facilities. It is provided that application must be from a State educational agency, and must set out such program in sufficient detail to satisfy the administrator that it carries out the purposes of this title and must provide that such agency will provide the necessary reports, as set forth above in the summer school section. The same provisions apply with respect to timing of payments and the method of disbursement. An appropriation of \$250,000 for fiscal 1963 and for each of the four succeeding fiscal years was authorized.

h. Adult education. The bill authorizes payment of the operating costs of pilot projects for adult education for migrant agricultural employees and their spouses in such migrant agricultural employee States as the administrator deems appropriate. As used in this section, the term "operating costs" includes all ordinary costs of operation other than any costs for the acquisition of facilities or costs related to any such acquisition. The bill provides that an application must come from a State educational agency, and must set out a program of adult education classes for migrant agricultural employees and their spouses which is to be conducted in such State on a pilot project basis by a local educational agency or an institution of higher education, or

both, to provide fundamental education and training for healthful modern living, including the operating costs of such classes, and the amount needed under the provisions of this title to defray such costs. The bill provides for the same requirements as to availability of records, timing of payments, and disbursement of payments as are set forth above. In addition, the bill requires the administrator to consult and cooperate with officials of the Federal Extension Service of the Department of Agriculture in carrying out the adult education provisions. The authorization is for \$200,000 for fiscal 1963 and for each of the four succeeding fiscal years.

4. Day-Care for Children (S.522).

a. In general. The bill authorizes the administrator to make grants to public and nonprofit agencies, institutions, and organizations for paying part of the cost of establishing and operating day-care facilities for children of migrant agricultural workers.

b. State standards. No grant under this bill shall be made for the establishment or operation of any such facility unless the administrator is satisfied that such facility (including private homes) and its mode of operation will meet any standards established for facilities of this type by the State wherein such facility is, or will be, located.

c. No duplication of assistance. In no case shall a State receive Federal financial assistance with respect to the same expenditure under this section and the provisions of Part 3 of Title V of the Social Security Act.

d. No residence requirement. No funds shall be payable to any entity for the purpose of establishing or operating within any locality any day-care facility if such entity imposes, as a condition of eligibility for day care for children of migrant agricultural workers, any residence requirement which excludes any otherwise eligible child who is physically present in the locality.

e. Definitions. The term "migrant agricultural worker" is defined as set out at the beginning of this memorandum, and is the one which seems best for adoption in the Economic Opportunity Act, as recommended by the Senate Report. The only other definition is:

- (1) The term "child" means a child who makes his home with his parent or the individual who stands in loco parentis to the child.

f. Inapplicable provisions. In the bill, the official referred to above as the administrator is the Secretary of Health, Education, and Welfare. This is inapplicable because of administration by OEO. A maximum of \$750,000 was authorized for each of three fiscal years beginning with the fiscal year ending June 30, 1964.

C. FURTHER EXCERPTS FROM POVERTY BILL COMMITTEE REPORTS

In the context of the above provisions of the four Senate bills, the following program description contained in the Senate Report of the Economic Opportunity Act takes on a degree of specificity:

Examples of programs which might be assisted by grants, loans, and loan guarantees under Part B would be:

- Insert 2*
1. provision of education for children in migrant families;
 2. establishment and operation of day care centers;
 3. field sanitation projects;
 4. provision of adequate farm-worker housing facilities;
 5. demonstration projects in any of these areas to develop improved methods of meeting the needs of migratory families; and
 6. projects involving cooperation of agencies in more than one State to provide services and benefits in any of these areas particularly fitted to meet the needs of such families who travel from State to State.
- omit underlining*

In addition, the Senate committee recommended that direct loans to individuals and organizations other than nonprofit organizations be subject to all the terms and conditions specified in what is now Section 305(a) through (f).

The House Report of the Economic Opportunity Act lists the same six program areas (as examples of the programs which might be assisted under Section 311) as the Senate Report does. In addition, the House Report states:

"The Director (of OEO) will promulgate regulations setting forth the conditions under which the financial assistance authorized in Section 311 will be made available. Other departments and agencies will participate as appropriate in the implementation of this part."

It would appear that such participation of other departments and agencies would be appropriate to carry out some of the programs contained in the four Senate bills.

D. RELATIONSHIP TO COMMUNITY ACTION

There will necessarily be a close relationship between the programs developed to assist migratory workers and those developed under the community action sections of the anti-poverty act. This relationship stems partly from the source of funds (since funds for migratory labor are expected to be taken from those available for community action), partly from the nature of the problem (since migrant workers may live at times in certain urban or rural areas which are applying, as an area, for assistance to a community action program), and partly from the nature of the statutory overlap. This statutory overlap is particularly important to note for purposes of determining the scope of assistance available to migratory workers. The most important fact to notice is that assistance can be made available to migratory workers for a greater variety of programs under community action than is possible under Section 311, which is limited to housing, sanitation,

would permit assistance, in addition, in such program areas as employment, job training and counseling, health (which is different from sanitation-- sanitation being limited to "drainage, water, and sewage- and waste-disposal facilities), vocational rehabilitation, home management, and welfare. In addition, the four program areas specified in Section 311 are also contained within the categories mentioned in Section 205. Thus, although a sanitation program for migrants could not include a health program, a health program under community action could include a sanitation program, since health is left undefined in the statute and can be defined more broadly. Similarly, day care programs would be authorized under the welfare provisions of Section 205; and education, so long as it is limited to special remedial and non-curricular educational programs, is specifically mentioned in Section 205. Housing is also one of the Section 205 categories.

This statutory overlap is important in several respects. First, it permits a program of assistance to migrants, when they are on the road in the migrant stream, to be broader than the four categories set forth in Section 311--so long as the program qualifies on an area basis as a community action program. Second, the overlap is essential at the migrants' "home base," where the migrants, for two, three, four, or five months of the year, often blend into the ranks of the non-migrant poor in areas of Texas, Florida, and California. At the home base, it is clear that the program for migrants must be broader than the four categories of Section 311; it is also clear that the program must necessarily be

geared to a group of beneficiaries which includes both migrants and non-migrants. Community action programs would thus be the appropriate device for dealing with migrants at the home base, supplemented as appropriate by the section 311 categories. The community action funds granted under Title II-A could be allocated, for OEO budgetary purposes only, between Title II-A and Section 311 in proportion to the percentages of non-migrants and migrants in the beneficiary population.

Thus, the statutory overlap between Section 311 and Title II-A is essential to an intelligent approach to the problems of the migrants, as well as required by the general aim of the anti-poverty program ^{to} ~~of~~ coordinating ^e ~~ing~~ all programs affecting the same group of beneficiaries.

E. SOME QUESTIONS TO BE RESOLVED

A number of decisions need to be made at a high policy level about the scope, procedures, and content of the programs to be authorized under Section 311. Such decisions should focus initially upon the extent to which the programs described in the four Senate bills will or will not be incorporated into the poverty program. Some of the decisions which need to be made are contained in the following questions:

1. Has a definite administrative determination been made that funds for the migratory worker provisions will be limited to \$15,000,000 for the fiscal year ending June 30, 1965? If so, has a definite administrative determination been made that the source of these funds

will be from those appropriated for Title II-A rather than from those appropriated for Title III? Or, should some combination of sources be adopted?

2. So far as housing is concerned:

- a. Is it agreed that the large program of loans for construction (with the \$25,000,000 revolving fund) is too far beyond the scope and techniques of the anti-poverty act to be workable within the anti-poverty program and that the need for this program is largely satisfied by the program of grants contained in the Housing Act of 1964?
- b. Is it agreed that the suggested program of insuring home loans is too far beyond the scope and techniques of the anti-poverty act to be workable within the anti-poverty program?
- c. Is it agreed that neither of these programs should be delegated to another agency, Farmers Home Administration, e.g., to run, and that they should be junked?
- d. If the above propositions are agreed to, this leaves only the program of small loans or grants (in amounts not to exceed \$1,000 for a ~~loan or~~ combined loan and grant; and not to exceed \$500 for a grant, whether or not combined with a loan) to improve existing dwellings. Should these limitations (enacted in 1949) be observed, or should they be increased?

- e. Should any limitation be made to the use of the loan f (or grant)--e.g., that not over a certain percentage of the money be used to purchase materials - or are the amounts small enough not to bother with such limitation?
- f. Is it agreed that Section 311 would prohibit grants to individuals under this program?
- g. Who should administer the program of small loans (and grants)--OEO?

3. So far as sanitation is concerned:

- a. Should the construction of sanitation facilities be limited to field sanitation facilities (e.g., portable chemical toilets) and camp sanitation facilities (e.g., buildings for toilets and showers), and not permitted to extend to sanitation facilities for home sites? (Woolner raises this question, since rural construction of this kind could be handled through existing Farmers Home Administration programs and urban construction through the Community Facilities Administration of HHFA.) Should a State plan be required? *Yes*
- b. Should the programs for surveys and demonstration projects be carried into the anti-poverty activities? If so, who should administer them--OEO? *No*

4. So far as education is concerned:

- a. Is it agreed that the direct payments to States in proportion to the number of migrant children is out of place in the anti-poverty program?
- b. Should the summer school, planning grants, and adult education programs be carried forth in substance into the anti-poverty program?
- c. Should the allotment and reallocation provisions be junked?
- d. Should educational assistance be available for general assistance to the curriculum, for special assistance only, or for special remedial and non-curricular assistance only?
- e. Should the educational assistance all be in the form of grants?
- f. Should applicants be limited to States or State educational agencies, or should a local educational agency be permitted to apply?
- g. Who should administer--OEO?

5. So far as day-care is concerned:

- a. Should the substance of the day-care program be carried into the anti-poverty program?
- b. Who should administer--OEO?
- c. Should the prohibition of assistance to any day-care programs which impose, as a condition for eligibility, any

residence requirement which excludes a child who is physically present in the locality be carried over into the anti-poverty program?

YES

6. Should OEO insist upon (give preference to?) a coherent program covering all four of the areas covered in Section 311, as well as some of the areas covered in Section 205 (CAP)?

Yes

7. Should applicants be required to furnish either a State plan or a local plan for the program or programs covered (thus encouraging Statewide plans where possible but permitting local communities to move ahead where this is impossible)? Are the State plan provisions of the sanitation bill suitable for use by OEO?

No?

8. Should applicants for all except the educational programs be permitted to come from all of those named in Section 311—States, political subdivisions of States, public and nonprofit agencies, institutions, organizations, farm associations, or individuals (with "institutions, organizations, farm associations, and individuals" limited to assistance in the form of direct loans)? Or, should all of these also be eligible for educational assistance?

9. Does the provision just mentioned mean (concerning direct loans) that indirect loans are prohibited to "institutions, organizations, farm associations, and individuals" - e.g., that a State could not put together a plan, financed in part with Federal funds, which would in

turn provide for loans to these persons or groups (assuming that grants, even indirect, to such persons or groups would clearly be prohibited)?

10. Should the various formulas for Federal-non-Federal contributions for grants be carried over from the bills? Or, should the CAP 90-10% ratio be applied instead?

11. So far as loans are concerned:

- a. Will loans be available for all four program areas, or only for sanitation and housing (eliminating education and day-care)?
- b. Are the terms and conditions for loans set forth in Section 305 appropriate to carry over into the migratory worker provisions, as suggested by the Senate Report? These terms and conditions are:

Loans pursuant to (Section 311) shall have such terms and conditions as the Director shall determine, subject to the following limitations:

- (1) there is reasonable assurance of repayment of the loan;
- (2) the credit is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;
- (3) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the

- (4) the loan bears interest at a rate not less than (a) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (b) such additional charge, if any, toward covering other costs of the program as the Director may determine to be consistent with its purposes;
 - (5) with respect to loans made pursuant to Section (311), the loan is repayable within not more than 30 years; and
 - (6) no financial or other assistance shall be provided to or in connection with any corporation or cooperative organization for the production of agricultural commodities or for manufacturing purposes.
- c. Does the condition set forth in subsection (4) above mean that interest would be at the rate of 3-3/4% (Woolner thinks so, on the basis of a present long-term cost to the Treasury of 3½%, with a mark-up of 1/4% to cover costs, including losses on loans.)
- d. Should the maximum of 30 years contained in subsection (5) above be retained, or should a 33-year, 40-year, or 50-year maximum be established? (If the loans are going to be only of the small variety, it would seem that the 30-year period should be more than ample.) Or, a shorter period? Are

there special administrative reasons for making the loan provisions of Title III-A identical with those of Title III-B?

- e. Should a maximum amount be allocated to loans out of the \$15,000,000? Should this maximum be \$5,000,000? At least as an initial guide to the Director of OEO?

12. Should overall amounts be allocated among the four program areas for guideline purposes?
13. Is the suggested definition of migrant agricultural workers satisfactory, including the citizenship or permanent-residence-for-citizenship addition?
14. Is the suggested restrictive interpretation of the amendment on the floor of the House - adding "and other seasonally employed" agricultural employees to the beneficiaries - wise, or should the group of beneficiaries be extended beyond migrants to the seasonally employed generally including non-migrants?
15. How can overall coordination with other programs, such as the Migrant Health Act (administered by the Surgeon General), be achieved?
16. How in particular can VISTA be tied inclosely?
17. How do the loyalty oath provisions of Section 616 apply, if at all? (Baker and Pollack should be consulted on this last question, as well as on the legal aspects of this entire memorandum.)