

Subject: DELEGATIONS OF AUTHORITY

8-100-00 Purpose

- 10 Legal Importance of Delegations
- 20 Legal Basis for Delegating Authority
- 30 Definitions
- 40 Responsibilities
- 50 Policies on Delegating Authority
- 60 Criteria for Delegating Authority
- 70 Form and Content of Delegations
- 80 Actions by the Delegating Official
- 90 Publication of Delegations
- 100 Reporting Delegations Affecting Regional Offices
- 110 Superseding, Amending, and Cancelling Delegations
- 120 Technical Assistance

Exhibit 8-100-A Sample of Delegation of Authority Memorandum

8-100-00 PURPOSE

This chapter sets forth Department policies and practices governing the delegating of authority. A companion chapter, Chapter 8-101, describes procedures for requesting the Secretary to delegate authority.

8-100-10 LEGAL IMPORTANCE OF DELEGATIONS

Delegations of authority are important to the operation of the Department. Without them the Department could not function very well since nearly all authority would reside with the Secretary. Delegations allow the Secretary and other officials to convey their authorities to subordinate officials so they may legally carry out the many activities of the Department. Carrying out these activities without legal authority could have a serious adverse impact on the Government, the Department, and the official who acts without legal authority. For example, an official who approves expenditure of funds without proper legal authority could be held liable for the funds.

It is essential that each official of this Department has written evidence of his/her legal authority before he/she takes any action to expend or use Government funds or resources.

8-100-20 LEGAL BASIS FOR DELEGATING AUTHORITY

A. Authority of the Secretary

The authority of the Secretary to delegate comes from these provisions of law:

1. Section 6 of the Reorganization Plan No. 1 of 1953 and Section 2 of the Reorganization Plan No. 3 of 1966 provide that the Secretary may make such provisions as he/she deems appropriate in authorizing the performance of any of his/her functions by any other officer or by any **agency** or employee of the Department.
2. 5 U.S.C. 301 authorizes the head of a Department to prescribe regulations for the distribution and performance of the Department's business.
3. 5 U.S.C. 302 authorizes the head of a Department to delegate to subordinate officials various powers pertaining to employment of personnel, purchase of articles from contingent funds, and other administrative matters.

In addition, laws which confer specific authorities upon the Secretary sometimes authorize the Secretary to delegate these authorities subject to certain conditions. For example, Section 856 of the Public Health Service Act (Act) authorizes the Secretary to delegate Title VIII authorities of the Act but prohibits the delegating of decision making authority on Title VIII grants and contracts to regional office personnel.

B. Authority to Delegate and Redelegate

1. The Secretary or any other Department officer may delegate and authorize redelegation of any authority conferred on him/her by law, unless the law prohibits such delegation.
2. The Secretary may **delegate** and authorize redelegation of any authority conferred on him/her by Executive Order if the Executive Order specifically authorizes **such action**. Otherwise, a legal interpretation must be obtained from the General Counsel whether such delegation and redelegation are permissible.
3. Any HHS officer or employee may redelegate any authority delegated to him/her unless the delegation document prohibits such redelegation.

4. Any BBS officer or employee who delegates or redelegates authority may continue to exercise the authority, since the act of delegating does not divest the authority from the delegating official.

8-100-30 DEFINITIONS

A. Delegation of Authority

Delegation of authority is the formal assignment or commitment of legal power, usually to a subordinate official, to make certain decisions and take certain actions that have legal significance. It may involve program authority, administrative authority, or both. It generally includes the authority to sign a legal document approving the taking of action by others. It not only empowers the delegate(s) with authority but may establish limitations on the exercise of the authority by others.

(Note. Certain employees of the Department have certain general authorities based on their status or position within their organization. For example, supervisors have the authority to assign work to employees under their supervision. These authorities are defined in position descriptions, functional statements, and other official documents. This chapter does not apply to these general grants of authority.)

B. Program Authorities

Program authorities are substantive authorities contained in Acts of the Congress or Executive Orders of the President that authorize programs. They authorize the taking of substantive actions such as issuing program guidelines, awarding grants, adjudicating eligibility for benefits, and analyzing applications for new drugs. Most program authorities of the Department are vested in the Secretary with the authority to delegate.

C. Administrative Authorities

Administrative authorities authorize the taking of financial, personnel, or other administrative actions in support of substantive programs, either directly or indirectly. Such actions include purchasing equipment, hiring employees, approving travel, issuing building passes, etc. These authorities are derived primarily from government-wide acts such as the Administrative Procedure Act of 1946, 5 U.S.C. 551 et. seq. or the Chief Financial Officers Act of 1990, 31 U.S.C. 901 et. seq., and from

regulations based on these Acts and are issued by central control agencies such as the Office of Management and Budget, General Services Administration and the Office of Personnel Management. These authorities generally reside in, flow through, or are coordinated by management staff offices which report to the head of an organization. For BBS, most of the administrative authorities flow through the Assistant Secretary for Management and Budget (Chief Financial Officer) and the personnel authorities (except as they relate to the Public Health Service Commissioned Corps) flow through the Assistant Secretary for Personnel Administration.

D. **Delegation/Redelegation**

Delegation and redelegation are acts of empowering others with legal authority. The term "delegation" describes the initial assignment of authority, while the term "**redelegation**" describes the reassignment of that authority.

8-100-40 RESPONSIBILITIES

A. **Delegation Control System**

The Head of each Operating Division (OPDIV), each Regional Director and the Assistant Secretary for Management and Budget for the Office of the Secretary (Headquarters) shall develop and maintain, within the guidelines of this chapter, a delegation control system for his/her organization that, at a minimum, provides for the:

1. Designation of a Principal Delegation Control Officer and, as needed, Delegation Control Officers for subordinate organizational levels.
2. Effective review of each delegation before putting it into effect to ensure that it meets the criteria stated in Section 8-100-60.
3. Prompt notification to all affected managers, supervisors, and other personnel of all changes in the authorities delegated to them.
4. Effective means for keeping all delegations current and available, including but not limited to these actions:
 - a. Prompt identification of the need to delegate authority.

- b. Filing of all delegations made to or by key officials within the organization with the organization's delegation control officer.
- c. Periodic review of existing delegations to ensure that they are needed, up-to-date, **and** consistent with current Department policy.

B. Delegation Control Officers

1. The HHS Delegation Control Officer, under the direction of the Office of the Deputy Assistant Secretary for Budget (DASB) develops Departmentwide policies and practices on the delegating of authority and provides Departmentwide instructions on those that are adopted, provides technical assistance on the use and application of delegations of authority, serves as the principal staff advisor within the Office of the Secretary on delegations of authority, coordinates review of proposed delegations submitted for approval by the Secretary, and maintains and indexes delegations made by the Secretary.
2. Each OPDIV Delegation Control Officer serves as his/her organization's principal advisor on delegations of authority, implements Department and agency policies and practices on delegations of authority, administers his/her organization's delegation control system, provides technical assistance on delegations of authority within his/her organization, and maintains and indexes delegations made to and within his/her organization.

C. HHS Managers

Each HHS manager is responsible for identifying the need for delegating authority within his/her organization and to subordinate organizations, for delegating authority to his/her subordinates and making certain that these officials understand the substance and limits of their authorities, and for periodically reviewing delegations in effect within the organization to insure their continued need.

8-100-50 POLICIES ON DELEGATING AUTHORITY

A. Level of Decision Making

It is Department policy to delegate decision-making authority to the organization level that will provide the

most timely, economical, and effective management and administration of programs and activities.

B. Flow of Deleated Authority

Delegations and redelegations of authority should follow organizational lines. Program authority usually flows from the Secretary through the Heads of Operating Divisions or Heads of Staff Divisions (such as the Office for Civil Rights) to operating officials at subordinate organization levels within the components or offices. Administrative authority normally flows from the Secretary through a STAFFDIV Head (such as the Assistant Secretary for Personnel Administration, the Assistant Secretary for Management and Budget, the General Counsel, etc.) to Heads of **OPDIVs**, Heads of other **STAFFDIVs**, and Regional Directors; and hence to operating and administrative officials at subordinate organization levels within the components or offices.

C. Authority to Redelegate

Any delegated authority may be redelegated totally or partially unless the delegation document or underlying legal authority prohibits or restricts redelegation. If the delegation document contains no such prohibition or restriction, redelegation may be made.

D. Delegating Authority to Positions and to Occupants of positions

Authority should be delegated to official positions (e.g., Director, Office of Resource Management) or authority may also be delegated by name to occupants of official positions (e.g., Marie M. Harris, Director, Office of Resource Management) under necessary circumstances. However, these restrictions apply when authority is delegated to a named occupant of a position:

1. No one else can use the authority--not even the occupant's deputy serving in an acting capacity.
2. The authority becomes void when the occupant vacates the position.

Since neither of these conditions applies to delegations made to official positions, it is usually more effective to delegate to official positions than to occupants of official positions.

E. Authority of **Deputies** or a **Principal Deputy**

A deputy or principal deputy does not automatically have the same authority as the senior official. The deputy's or principal deputy's authority is limited to the delegations specifically given to the position or the authorities the deputy or principal deputy may exercise when serving in an acting capacity during the absence of the senior official.

F. Authority of **Acting** Officials

Any employee serving in a position in an acting capacity can **exercise** any authority delegated to that position, unless prohibited from doing so by the terms of the delegation or the document designating him/her as acting, or unless such exercise of authority is not otherwise legally permissible.

G. Delegations to be in Writing

Each delegation shall be made in writing in memorandum format, addressed to the positions or persons to whom the authority is being delegated, and signed by the official with the authority to make the delegation. (See Section 8-100-70 for format and content of delegation documents.)

Manuals and other official publications may be used to reflect delegations, but not to make them.

H. **Effective** Date of **Delegations**

Each delegation becomes effective on the date specified in the delegation document. No delegation can be made retroactively effective. However, under special circumstances actions taken prior to the effective date may be ratified and affirmed by the delegating official with the approval of the Office of the General Counsel.

I. Review by **Legal** Counsel

Prior to their approval, all initial delegations of authority shall be submitted to the appropriate division of the Office of the General Counsel (OGC) for review to ensure their legality. Redelegations of authority should also be submitted to the OGC for review whenever the official making the redelegation questions the legality of any aspect of the redelegation.

J. Effect of Reorganization on Delegations

Whenever an organization is reorganized, delegations to and within that organization may remain in effect **in the** successor organization, generally, unless:

1. The reorganization document specifies otherwise.
(Note. The reorganization document should always contain a statement on how the reorganization affects existing delegations. See Chapter **8-60** of this Manual for details.)
2. Functions upon which the delegations are based, or positions to which the delegations are made, are transferred to another organization or are abolished.
(In these cases, the delegations are terminated on the effective date of the reorganization unless the reorganization document specifies otherwise.)

Delegations that remain in effect in the successor organization generally shall be reviewed and updated not later than 90 days after the reorganization becomes effective to reflect changes in: the flow of authority to and within the organization, the functions performed by the organization, the organization's structure and nomenclature, the key positions within the organization, and any other factor affecting the delegating of authority.

8-100-60 CRITERIA FOR DELEGATING AUTHORITY

The decision to delegate authority shall be based upon evaluation of pertinent factors, including the following:

- o Legality. Can the authority legally be delegated?
- o Funds. Have funds been specifically appropriated to implement the authorities? Or, have senior officials allocated funds to support the authorities? If yes, from what source?
- o Need. Will the delegation effectively improve management and administration?
- o Responsibility. Is the position to which the authority is to be delegated appropriate in terms of grade level and other assigned responsibilities?
- o Economy. Will the delegation eliminate procedural steps, **shorten** lines of communication, or otherwise result in **overall** savings?

- 0 Service. Will the delegation improve services to the Department's clients?

8-100-70 FORM AND CONTENT OF DELEGATIONS

Each delegation shall be made in writing in memorandum format, and shall be signed by the delegating official. It shall contain, at least, the following information:

1. The authority of the delegating official to make the delegation.
2. The authority or authorities being delegated.
3. Any restriction or limitation to be placed on the delegate(s) in exercising or redelegating the authority. Unless the delegation restricts or limits redelegation, a delegate can redelegate any authority delegated to him/her.
4. The identity of any special instructions, if any, the delegate is to follow in exercising the delegated authority.
5. The date the delegation becomes effective. If such a date is not included in the body of the delegation, the effective date is the date that the delegating official signs the delegation.
6. The identity of each delegation that the delegation amends, supersedes, or cancels. Every effort should be made to be specific. Phrases such as **"This** delegation supersedes all previous delegations on this subject" should be used when delegations are widespread or when delegations were never updated after one or more reorganizations.

Prior to issuing a delegation, the delegating official should have the delegation reviewed for technical correctness by the delegation control officer.

See Exhibit 8-100-A at the end of this chapter for a sample delegation of authority.

8-100-80 ACTIONS BY THE DELEGATING OFFICIAL

After signing a delegation, the delegating official shall make certain that:

1. Each delegate is promptly provided a copy of the delegation.
2. Each delegate has access to the policy or procedural instructions identified in the delegation that he/she will need to exercise the delegated authority. Where appropriate, these instructions should be provided to each delegate with the delegation.
3. The delegation or a summary of it is published as prescribed by Section 8-100-90.
4. A copy of the delegation is sent to his/her delegation control officer.
5. The official file copy of the delegation is maintained for, at least, the life of the delegation; or, maintained permanently where there is a potential for litigation when the delegation is no longer viable for present actions but may be needed to show that the authority existed at the times an action was taken.

8-100-90 PUBLICATION OF DELEGATIONS

A. **Delegations Affecting the Public**

Whenever an HHS official makes a delegation or redelegation of authority that may have a significant impact on the public, that official shall have the complete text of the delegation or redelegation published as a notice in the Federal Register. Examples of delegations and redelegations that might have **such** an impact include delegations of program authority by the Secretary, redelegations of program authority by OPDIV/STAFFDIV heads, and delegations and redelegations of procurement authority or any authority where there is a potential for litigation and the delegation is needed after the delegation is no longer viable, but is required to show that the authority once existed. Delegating officials should consult their delegation control officer and legal counsel whenever they question whether publication in the Federal Register is necessary. (Part 3 of this Manual contains instructions on publishing notices in the Federal Register.)

B. Delegations of Program Authority

Whenever the Secretary or another HHS official who has statutory power makes an initial delegation of program authority to the Head of an OPDIV or STAFFDIV, that OPDIV or STAFFDIV Head shall report the delegation in its functional statement in the HHS Organization Manual.

C. Delegations of Administrative Authorities

Whenever an OS official makes a delegation of administrative authority that has wide interest, that official shall publish the delegation, or a summary of it, in the appropriate HHS staff manual. Officials in OPDIVs shall similarly publish in their directives systems redelegations of administrative authority that have wide interest.

8-100-100 REPORTING DELEGATIONS AFFECTING REGIONAL OFFICES

OPDIV regional officials and OS regional officials not under the direct supervision of a Regional Director (RD) shall keep their RD apprised of the authorities delegated to them by their headquarters. They may do this by sending the RD a copy or a summary of each delegation or by using another effective means of keeping the RD informed.

8-100-110 SUPERSEDING, AMENDING, AND CANCELING DELEGATIONS

A. Superseding Delegations

Whenever a new delegation supersedes another delegation, the superseded delegation and all redelegations based on it become null and void on the effective date of the new delegation, unless the new delegation specifically provides otherwise.

To avoid disruption of operations, the superseding delegation may provide, if legally feasible, that redelegations based on the superseded delegation will remain in effect for a reasonable time (i.e., not more than 90 days) pending the issuance of new redelegations.

B. Amending Delegations

Only the official in the position (or successor position) which issued the original delegation can amend the original delegation. Amendments to the original delegation should be processed in the same manner as the original delegation.

C. Canceling Deleaatons

To cancel a delegation, the official serving in the position (or the successor position) which issued the original delegation shall prepare a canceling memorandum, in which the delegation to be canceled and the date of cancellation are identified, and shall have the memorandum sent to each delegate who has the authority being canceled.

Whenever a delegation is canceled, the delegation and all redelegations based on it become null and void on the date stated in the canceling memorandum.

8-100-120 TECHNICAL ASSISTANCE

Technical assistance on delegating authority and applying the provisions of this chapter may be obtained from delegation control officers or from the Office of Budget, Office of the Assistant Secretary for Management and Budget, Office of the Secretary. Information on delegations made by the Secretary may also be obtained from this Office.



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

SAMPLE DELEGATION OF AUTHORITY

MEMORANDUM TO: Assistant Secretary
for Children and Families

SUBJECT: Delegation of Authority for Family Violence
Prevention and Services Program

Authority to Delegate

I hereby delegate to the Assistant Secretary for Children and Families the following authority vested in the Secretary of Health and Human Services.

Authority Delegated. Authority to administer the provisions of The Family Violence Prevention and Services Act, 42 USC 10401 **et seq.**, and as amended, now and hereafter.

Limitations.

1. This delegation excludes the authority to issue regulations or submit reports to Congress and shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.
2. Responsibilities under this Act are to be carried out in accordance with the requirements of Section 307 of the Act. The Office of Civil Rights has been delegated enforcement authority under Section 307.

Effective Date. This delegation is effective immediately.

Effect on Existing Delegations. This delegation supersedes Memorandum dated April 30, 1986, "Delegation of Authority to Administer the Provisions of Title III of P.L. 98-457, The Family Violence Prevention and Services Act."

(Date signed)

(Secretary's name)