

NOMINATION OF CESAR A. PERALES

HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

THE NOMINATION OF

CESAR A. PERALES, TO BE AN ASSISTANT SECRETARY OF HEALTH,
EDUCATION, AND WELFARE FOR HUMAN DEVELOPMENT SERVICES

MARCH 20, 1980

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NOMINATION OF CESAR A. PERALES TO BE AN ASSISTANT SECRETARY OF HEALTH, EDUCATION, AND WELFARE FOR HUMAN DEVELOPMENT SERVICES

THURSDAY, MARCH 20, 1980

**U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.**

The committee met, pursuant to notice, at 10:10 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (chairman of the committee) presiding.

Present: Senators Long, Ribicoff, Moynihan, Dole, Packwood, Heinz, and Durenberger.

The CHAIRMAN. Let me ask everyone to take their places, please.

We have before us the nomination of Mr. Cesar A. Perales to be an Assistant Secretary of HEW.

Senator MOYNIHAN. Mr. Chairman, may I join my fellow New Yorker here?

The CHAIRMAN. Would you please, sir?

Senator MOYNIHAN. I would simply like the honor, Mr. Chairman, to introduce Mr. Perales to the committee. He is a New Yorker. He has, until recently, been in charge of region II of the Department, which is based in New York and extends to Puerto Rico and the Virgin Islands. He brings to this policymaking position within the Department an administrative experience which is rare and, I think, welcome.

He has a long career in city government, has been associated with State enterprises, and has served in the neighborhood legal services. From the first, he was one of the now not inconsiderable number of young political executives who began his work in the OEO programs of the mid-1960's. He has advanced on the basis of performance and competence and commitment.

Many have gone elsewhere now. He stays at his work and we are proud of him and I am happy to introduce him to the committee.

He obviously will answer such questions as you may have.

Mr. PERALES. Thank you very much, Senator.

The CHAIRMAN. Would you tell us a little bit about your experience, Mr. Perales?

[The biographical data of Mr. Perales follows:]

BIOGRAPHICAL DATA OF CESAR A. PERALES

EMPLOYMENT

1977-Present.—Principal Regional Official, Department of Health, Education, and Welfare, Region II (serving New York, New Jersey, Puerto Rico, and the Virgin Islands), New York, N.Y.

Provides policy leadership, coordination, evaluation, and general administrative support to the region, carrying out the Secretary's and the Administration's policies. Has primary responsibility for all HEW intergovernmental activities in the region.

1976-1977.—Director, New York City Criminal Justice Coordinating Council, New York, N.Y.

Responsible for the direction, operation, and control of the Criminal Justice Coordinating Council staff in the Office of the Mayor of New York City. Approved the award of LEAA grant funds, conducted research and studies related to criminal justice and monitored operations of various crime control and related programs throughout the city.

1975-1976.—Private practice of law, offices at 189 Montague Street, Brooklyn, N.Y.

1974-1975.—Project director, decentralized bilingual criminal court feasibility study (under contract with P.R.C. Metronamics, Inc., Brooklyn, N.Y.).

Supervised the development and implementation of the research design for the collection and analysis of data to establish the need for introducing a decentralized and bilingual arraignment system into the criminal court of New York City.

1974.—Candidate in the Democratic Primary Election for Representative in Congress for the 14th Congressional District in Brooklyn.

1972-1974.—Executive director, Puerto Rican Legal Defense and Education Fund, Inc., New York, N.Y.

As first executive director, acquired initial funds, established the office, recruited the staff, selected the issues to litigate, and directed the implementation of all program activities.

1970-1972.—General counsel, model cities administration, office of the mayor, New York, N.Y.

Responsible for the legal affairs of the administration, which planned and coordinated the expenditure of Federal moneys in target neighborhoods in an effort to improve delivery of service, physical environment, and quality of life.

1969-70.—Associate general counsel, Community Action for Legal Services, Inc., New York, N.Y.

Supervised the senior staff lawyers who were responsible for legislation, litigation, and coordination of the efforts of 26 neighborhood law offices offering assistance to thousands of indigents.

1968-69.—Attorney in Charge, Williamsburg Neighborhood Legal Services, Brooklyn, N.Y.

Established the office, recruited the lawyers and ancillary staff to provide legal assistance to hundreds of clients each month, as well as conduct research into general legal problems and suggest and interpret legislation affecting the poor.

1966-68.—Staff attorney, Legal Services Unit, Mobilization for Youth, Inc., New York, N.Y.

Provided legal assistance to indigent persons and community organizations. Instituted test cases in the area of poverty law.

EDUCATION

1962.—B.A.—City College of the city of New York.

1965.—LL.B.—Fordham University School of Law.

PROFESSIONAL ACCREDITATIONS

1966.—Member of the bar of the State of New York.

1967.—Admitted to practice before the U.S. District Courts in the southern and eastern districts of New York.

STATEMENT OF CESAR A. PERALES

Mr. PERALES. As the Senator indicated, after graduating from law school, I spent the first few years of my career as a neighborhood legal services lawyer in New York City. I spent time in New York City government as general counsel to the model cities administration. I returned to city government a few years later to run the criminal justice coordinating council which is the city agency administering LEAA programs in New York City.

I also spent a few years doing civil rights work as the executive director of the Puerto Rican legal defense and education fund in New York. Approximately 2 years ago, I was pleased to become the principal regional official for the Department of HEW in New York and served in that capacity until I was nominated by the President for this post.

The CHAIRMAN. All possible conflict of interest matters have been cleared up and discussed? There is no problem?

Mr. PERALES. No problem. I have discussed it with Mr. Stern.

The CHAIRMAN. Whom are you succeeding in this job?

Mr. PERALES. Arabella Martinez.

The CHAIRMAN. I see.

Are there any questions, gentlemen?

Mr. Dole?

Senator DOLE. Mr. Chairman, I have no questions, but Senator Heinz, who unfortunately cannot be here until about 11:30—he is on a panel this morning with some of his colleagues on both sides in some meeting downtown—he does have questions, not about your qualifications but just about HEW and some of the specifics in that area, and he would like to have an opportunity to address those questions to you.

He should be here at about 11:30. I am wondering if it is possible to have Mr. Perales stand by until that time. If Mr. Heinz does not come by then, or if the committee should break before then, perhaps he could submit those questions in writing. It would be easier for you.

Mr. PERALES. I would be pleased to wait, yes.

The CHAIRMAN. All right. That is fine.

If there are no further questions now, we will call you back later.

Mr. PERALES. Thank you, Mr. Chairman.

[Thereupon, at 10:15 a.m., the committee proceeded to the discussion of other business.]

[Whereupon, at 11:35, the committee resumed discussion of the previous matter.]

Senator MATSUNAGA. Mr. Perales, do you have any opening statement to make?

Mr. PERALES. I do not, sir.

Senator MATSUNAGA. Senator Heinz, you may question—the committee will come to order.

Senator HEINZ. Thank you very much, Mr. Chairman. Indeed, this may be a subject that you too are interested in. I recall your very active role in the concerns of the aging when we served in the House together and as we both know, Mr. Perales is being nominated as Assistant Secretary of HEW for Human Development Services.

Mr. Perales, I do not know to what extent you are aware of this, but there has been a continuing conflict between the executive branch and Congress over the role of the Administration of Aging, which is statutorily created by Congress in the Older American Act. What AoA's reporting relationships are to the Secretary, which of its responsibilities and powers may or may not be delegated, and what kind of preemption of the staff slots should and should not occur.

First of all, I have a few basic questions for the record.

Is the Assistant Secretary for Human Development Services a statutorily created position, or is it a part of the office of the Secretary?

STATEMENT OF CESAR PERALES—Resumed

Mr. PERALES. I believe it was created originally a part of the Office of the Secretary. I do not know of any legislation that has created the position of Assistant Secretary.

Senator HEINZ. My understanding is that you are correct. It is not statutorily created, that it exists in the Office of the Secretary.

As you understand it, does the Commissioner on Aging answer directly to the OHDS Assistant Secretary, or through staff components within OHDS?

Mr. PERALES. The Secretary has delegated to the Assistant Secretary responsibility for the Administration on Aging and the Commissioner on Aging reports directly to me.

Senator HEINZ. It is my understanding that, while that may be your intention, the Commissioner on Aging, in fact, is really not reporting to the Assistant Secretary, but to and through OHDS staff.

If you find that in your job, would you stop that?

Mr. PERALES. Yes, I would.

Senator HEINZ. Are you aware that the statute specifically says that the Commissioner on Aging will report directly to the Secretary?

Mr. PERALES. No; I am not aware of it.

Senator HEINZ. Let me suggest when you have a chance—I know many things are on your mind—that you read that portion of the Older Americans Act.

Mr. PERALES. I do not know that the act precludes the Secretary from delegating that authority to an Assistant Secretary.

Senator HEINZ. Section 201, of title II of the Older Americans Act as amended, 201(a) reads as follows: "There is established in the Office of the Secretary an Administration on Aging (hereinafter in this act referred to as the Administration) which shall be headed by a Commissioner on Aging. * * * Except for title V, the Administration shall be the principal agency for carrying out this act." "In the performance of his functions, the Commissioner shall be directly responsible"—directly responsible—"to the Office of the Secretary. The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner."

The key word is the word "directly" which suggests that the Commissioner on Aging should report directly to the Secretary and not through an Assistant Secretary.

Mr. PERALES. I believe it has been interpreted to mean the Office of the Secretary.

Senator HEINZ. It does say the "Office of The Secretary"—I think you are correct in that, he is responsible to the Office of the Secretary.

In your judgment, if the Commissioner were to report to you through OHDS staff, do you believe that arrangement would be consistent with this mandate?

Mr. PERALES. No; it would not be.

Senator HEINZ. Very good.

Are any of the functions authorized under the Older Americans Act of 1965 as amended such as rulemaking, contracting, reporting, advocacy, administration of OAA moneys, et cetera—carried out by the Office of Policy and Management Control, the Office of Planning,

Research and Evaluation, the Office of Administration and Management, the Office of Legislative Affairs or Public Affairs or Regional or Intergovernmental Relations or any other units within OHDS.

Mr. PERALES. That is a rather complicated question. I can respond by saying for example, the contracting functions—which, I believe, are primarily administrative—are conducted in the Office of the Assistant Secretary for all of the social service programs that come within the purview of the Assistant Secretary for Human Development Services. I do not believe that, for example, involves policymaking.

The only area in which I am aware that there has been some limited amount of dispute within HEW has had more to do with the approval that is maintained by the Office of the Assistant Secretary in regard to the letting of research and development contracts on grounds that there is presently, and it is something that I am examining, a process by which all human development services grants and contracts for research, development and evaluation, et cetera, are reviewed centrally in an effort to assure that there is no duplication and that there is a central focus for all of our social services research and evaluation.

Our feeling is that it is probably true in the area of evaluation. I am not so sure that, for example, questions of research and development ought not to be more within the province of the Commissioner on Aging and my concern in terms of evaluation is that perhaps it would be more appropriate for the Office of the Assistant Secretary to evaluate, rather than the Administration on Aging, evaluating itself to determine the effectiveness of some of those programs.

Senator HEINZ. That may or may not be the case. The statute would appear to be quite clear on what the intent of Congress was. "The Secretary shall not approve any delegations of the functions of the Commissioner to any other officer not directly responsible to the Commissioner."

That is rather unusual language for a statute. It says that the Secretary cannot delegate anything out of the Administration on Aging to anybody else.

Mr. PERALES. I am not sure what part of my answer you are referring to as being inconsistent with the legislation.

Senator HEINZ. I did not say you were necessarily being inconsistent. I am saying that to the extent that your Office of Human Development Services undertakes functions that properly the responsibility of the Commission on Aging that those actions would be inconsistent with the statute.

I understand what you said, you have told this committee research evaluation, contracting, et cetera is done by the Office of Human Development Services—or do I misunderstand you?

Mr. PERALES. No, you did not. As I indicated I am a part of the Office of the Secretary. For purposes of economy of scale and things of that nature we, for example, do ministerial work such as all of contracting centrally, within the Office of the Assistant Secretary with the staff that has been assigned to me as Assistant Secretary for Human Development Services.

Senator HEINZ. The distinction between the review of contracts and the recommendation or the initial approval of them is not a semantic one.

If you in fact initiate the contracts yourself, if you decide what kinds of evaluation you want to do and the Commissioner is not making those recommendations in the first instance, were that to be the case, it would appear to me that the Office of Human Development Services would be running directly contrary to the statute and its activities.

Mr. PERALES. That is a difficult question. The reason I hesitate in my response is because it is felt that the Secretary ultimately has the responsibility for some of these functions and I, in representing her, have a responsibility to oversee what is going on in the Administration on Aging.

Senator HEINZ. The statute is somewhat unique. It does not, like many statutes, say that the HEW Secretary has these authorities and that he or she may, delegate these functions within the Department.

It gives the authority to administer the aging program—time after time—to the Commissioner, not to the Secretary.

It then says, the very first section, as I stated before, that the Secretary shall not approve any delegation of those functions to any other official within the Department who is not responsible to the Commissioner.

Interestingly, there is some legislative history that goes back a few years. At one time the statute permitted a very limited amount of delegation of authority by the Secretary of HEW if the delegation was approved by the Congress. There was a 30-day period for the Congress to act to disapprove a proposed delegation.

Indeed, on one occasion, former Commissioner Flemming did, in fact, propose a planned delegation of certain functions. Congress not only said no to that, but they abolished the section that permitted the Commissioner and/or the Secretary to come to the Congress and ask for permission to delegate.

The intent of Congress has been made very clear on that point through the abolition of even that limited delegation authority.

Mr. PERALES. Again, I am unable to respond specifically since I do not know what that plan was. I can assure that in the regions, for example, the responsibility for the granting of contracts, and overseeing of contracts, is done by the people who report directly to the Commissioner and that is the only way that we can interpret that law.

I think, and do not mean to be evasive, where I am having difficulty responding is to the extent to which the relationship between the Secretary and the Commissioner, the extent to which she has delegated authority to me, to act on her behalf.

Senator HEINZ. I understand the distinction. That is not, at this moment, the concern that I am expressing my concern involves the delegation of authorities properly vested by statute in the Commissioner to you or to other people. That troubles me.

Mr. PERALES. My only response is —

Senator HEINZ. You should not take it personally.

Mr. PERALES. No, I recognize that.

Senator HEINZ. This is not a question of your ability or not.

Mr. PERALES. No; I understand that.

I can only say that I support the decision of the Secretary, both the last Secretaries of HEW, to create a structure of Assistant Secretary for Human Development Services that would make an effort to coordinate all of the social service programs and that, as a part

ot that, we have attempted through the use of bringing together staff, for example, that would conduct certain ministerial functions whether they be personnel, administration, the contract administration, a variety of functions that I think are necessary to be carried out centrally, if only to save staff and money.

Senator HEINZ. Do you know if there are any staff positions that are allocated, or budgeted for AA but are currently filled by people who really work for the Office of Human Development Services?

Mr. PERALES. I do not know of any. I could look into that for you.

Senator HEINZ. Could you do that? There may be positions which are allocated to AA filled by people from Human Development Services.

Let me ask you this, as you understand it, is the regional aging specialist responsible to the regional HDS Director, or directly to the Commissioner on Aging?

Mr. PERALES. As I indicated, directly to the Commissioner on Aging.

Senator HEINZ. I think you and I will want to have some further discussions about these personnel issues as soon as you are in a position to find out exactly who is in what slots doing what.

May I ask you to advise us on that, assuming that you are confirmed—and I think you will be?

Mr. PERALES. Yes; I will be pleased to do that, sir.

Senator HEINZ. Let me give you one hint, as they say, which is to specifically check to see if in Seattle, in Region X, the OHDS Director is still in an AA designated position?

[The following was subsequently supplied for the record:]

RESPONSES TO SENATOR HEINZ' QUESTIONS

Question. Specifically, check to see if in Seattle, Region X, that the OHDS Director is still in an AA-designated position?

Answer. I have learned that no one in the office of the OHDS Regional Administrator in Region X is filling an AA-designated slot—nor does it appear that this was ever the case. In fact, in Region X, AA has just gotten three new positions. The Regional Administrator's office has also been providing clerical and administrative assistance to the Regional Program Director's office through its own personnel.

Mr. PERALES. Yes; I certainly will look into that.

Senator HEINZ. All right. I would appreciate that.

That is the kind of thing that we are concerned about, because the mission of the Commissioner on Aging has grown vastly over the last decade. The budget has grown rapidly. The demands on the State and area agencies on aging have increased and it would appear that if there are OHDS people in AA slots, it would make it much more difficult for those responsibilities to be effectively met.

Mr. PERALES. I quite agree. I am as concerned, Senator, as I can be about the Administration on Aging. I have had a series of meetings with the Commissioner. In fact, we are currently discussing the possibility of my making available from my own staff some support for him.

Senator HEINZ. Very good.

It is my understanding that in 1979, your predecessor indicated that there would be a staff increase of 60 positions to improve the capacity of the Department to carry out the Older Americans Act.

Could you find out for us, for the record, how many of those slots were actually assigned to the Administration on Aging?

Mr. PERALES. I will look into the fact of whether we ever actually got the 60 positions and I will certainly give you the answer to that question.

Senator HEINZ. All right, Mr. Perales. Thank you.

[The material to be furnished follows:]

Question. In 1979, the Assistant Secretary—your predecessor—indicated that there would be a staff increase of 60 positions to improve the capacity of the Department to carry out the Older Americans Act. . . . how many of those were actually assigned to the AA?

Answer. There were no requests for new positions by the Assistant Secretary for Human Development Services in either fiscal year 1979 or 1980. In the Department's fiscal year 1981 budget request, a request has been made for 100 new positions for the Office of Human Development Services. Out of that request, 25 are to be allocated to the Administration on Aging; one financial management support staff person per region, and 15 positions for support to the long-term care and discretionary program.

Senator HEINZ. As long as you are doing that for us, would you also provide us with information as to how many slots are currently assigned overall for AA, both headquarters and regional. To what extent they are filled by AA personnel, people reporting directly to the Commissioner?

I think we probably did ask for that a few minutes ago, but I wanted it to be clear on the record so that there is no misunderstanding.

[The following was subsequently supplied for the record:]

Question. As long as you are doing that for us, would you also provide us with the information as to how many slots there are currently overall for AA, both headquarters and region and to what extent they are in fact filled and B, are filled by AA people, people reporting directly to the Commissioner?

Answer. AA operates under a ceiling of 246 positions, of which 8 positions are allocated to the Federal Council on Aging. Of the remaining 238, as of February 29, 232 were filled. All report directly to the Commissioner.

Senator HEINZ. One other question. Are you in a position to state what role OHDS did play, or is playing, in shaping policy decisions regarding the yet-to-be-finalized regulations for the 1978 amendments to the Older Americans Act?

Mr. PERALES. No; I could not answer that question specifically since that, no doubt, went on prior to my being designate for this position.

Senator HEINZ. There is some concern that those regulations are really being written by OHDS rather than by the Administration on Aging. It is now 18 months since the bill was signed, sealed, and delivered, we still are without regulations.

Mr. PERALES. I do not think that that is true. What I do know about the regulations is that there is a group within the Office of the Secretary that is involved in the review of all regulations within HEW and that they are currently reviewing those regulations.

Senator HEINZ. Mr. Perales, my last request is for you to supply the committee with an organization chart of the Office of Human Development Services with an indication of who is in what box or slot.

It would be very helpful for us to know that. It took us 3 days to get an organization chart that we believe is somewhat dated. Since you have a fairly heavy burden of responsibilities, we would like to know how you approach them.

Mr. PERALES. I will be pleased to do that, sir.

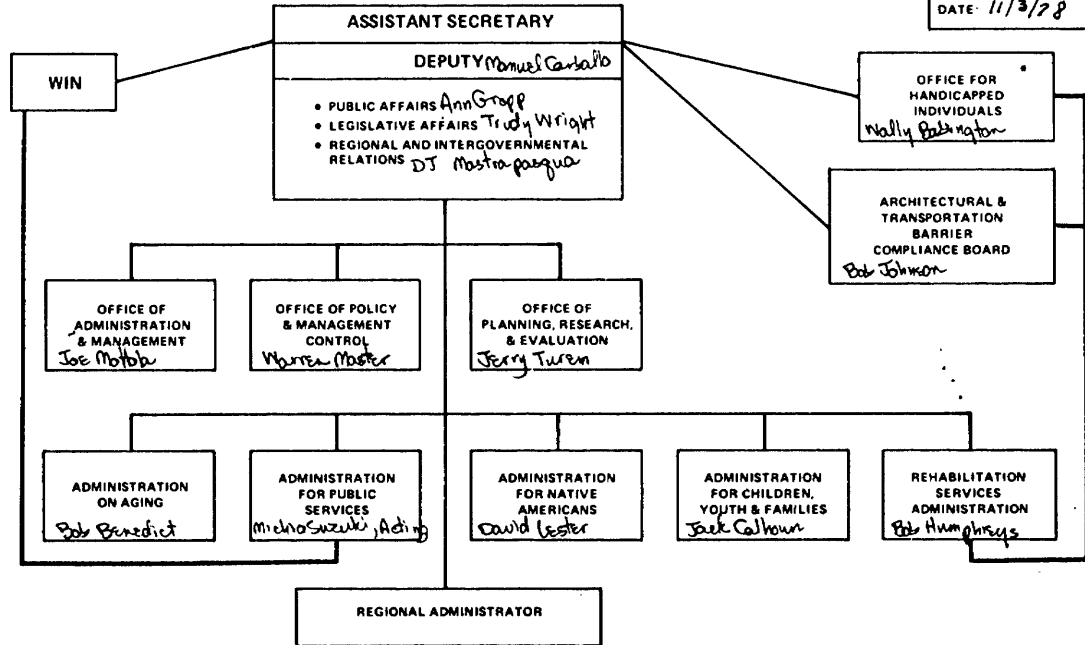
Senator HEINZ. All right.

[The material to be furnished follows:]

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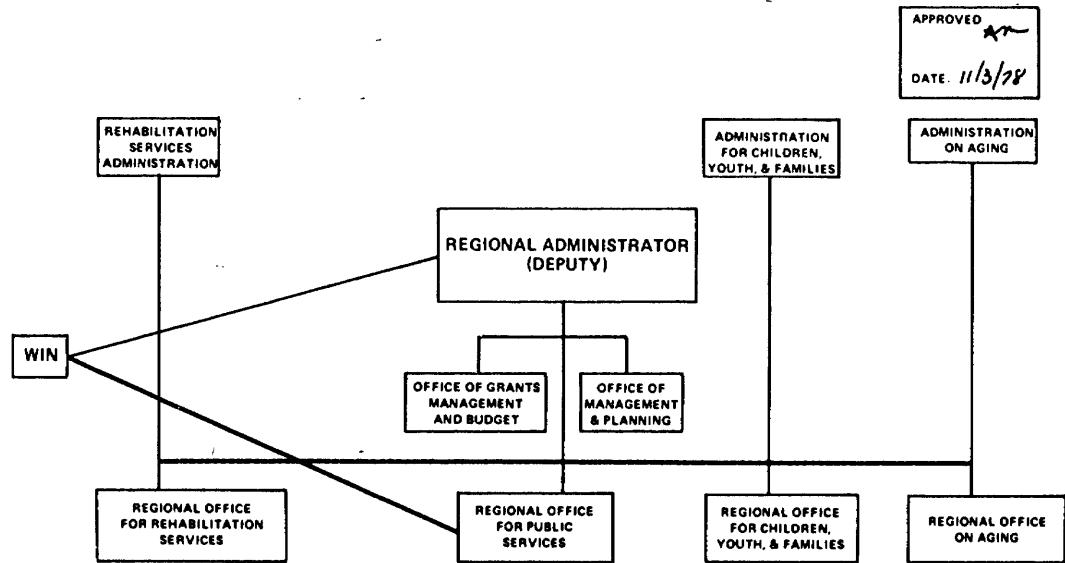
OFFICE OF HUMAN DEVELOPMENT SERVICES

APPROVED *Am*
DATE: 11/3/78



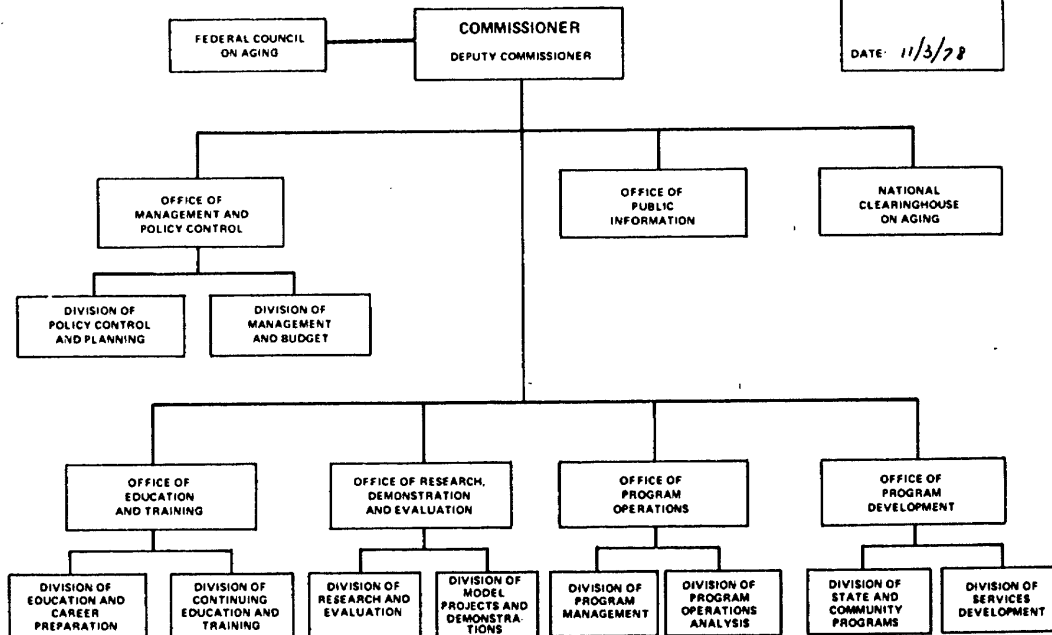
* Legislative changes will be sought to eliminate the need for a separate OHI reporting directly to the Assistant Secretary. Functions would be lodged in RSA, Office of Advocacy & Coordination.

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
REGIONAL OFFICE STRUCTURE**



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
ADMINISTRATION ON AGING

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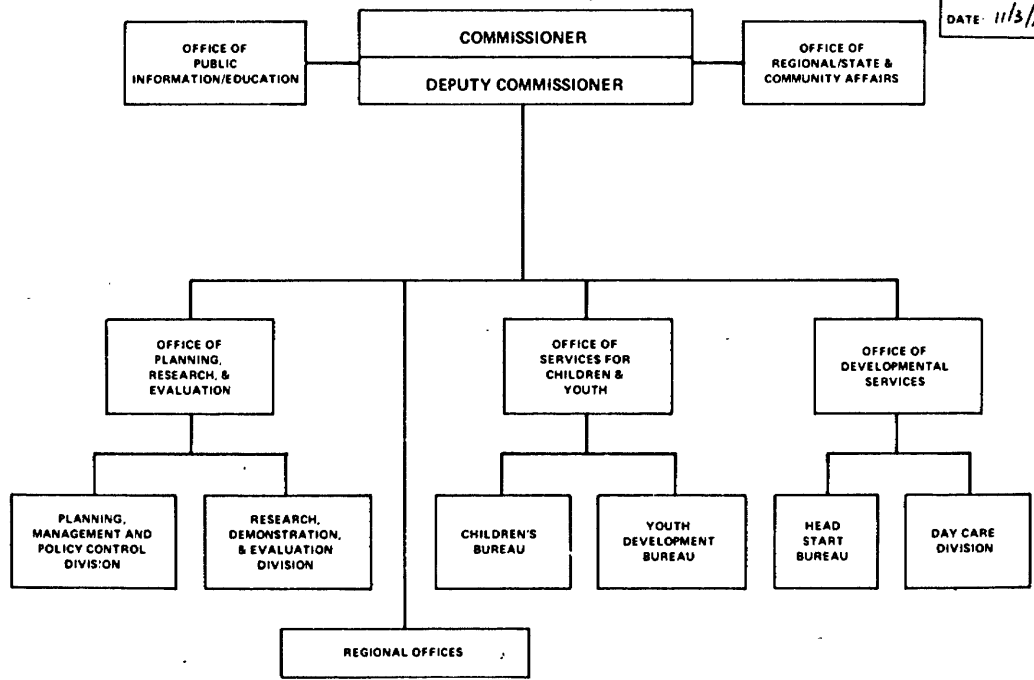


DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

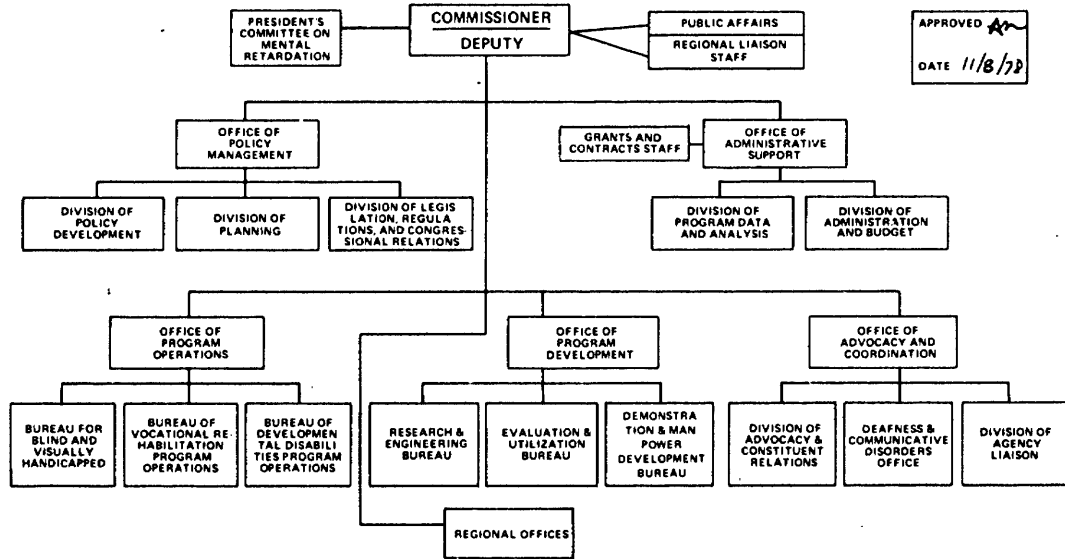
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ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES

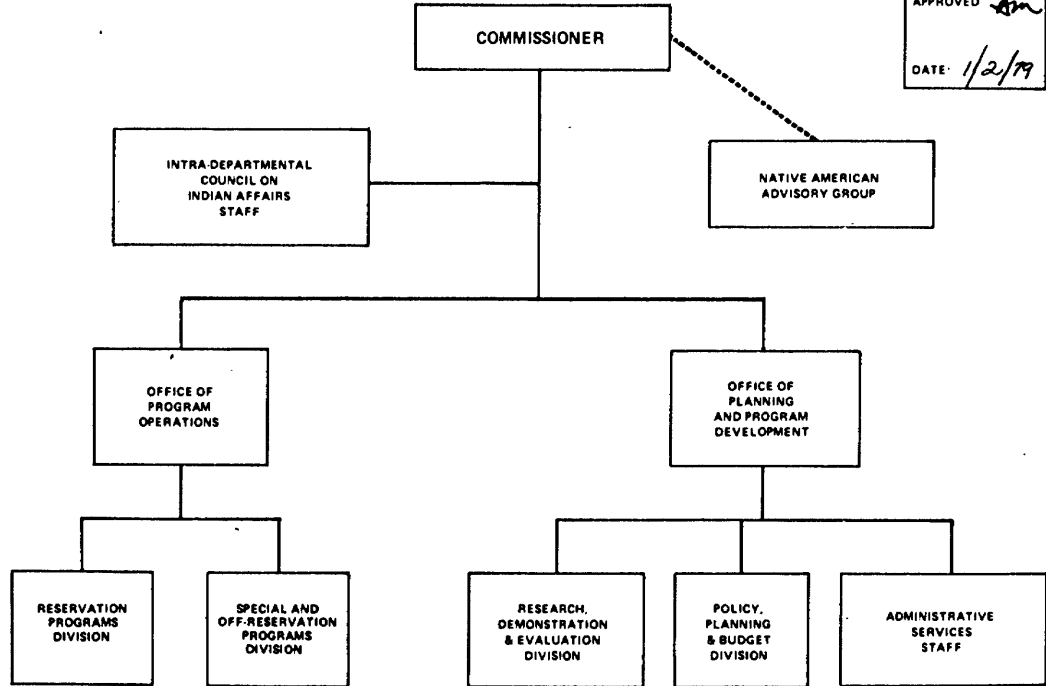
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REHABILITATION SERVICES ADMINISTRATION

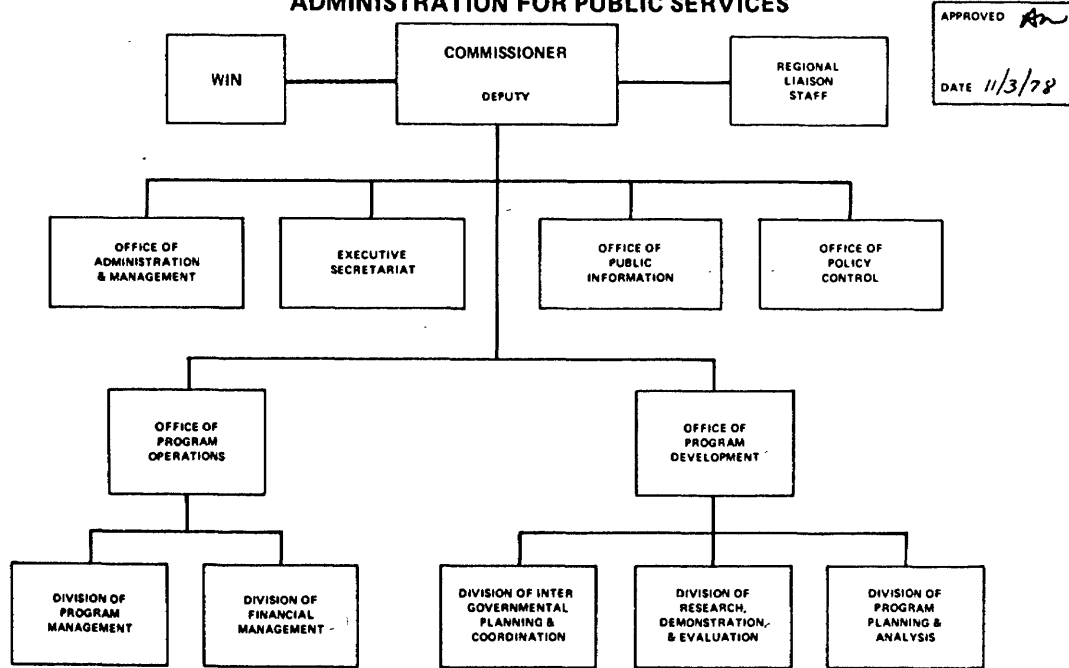


DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
ADMINISTRATION FOR NATIVE AMERICANS



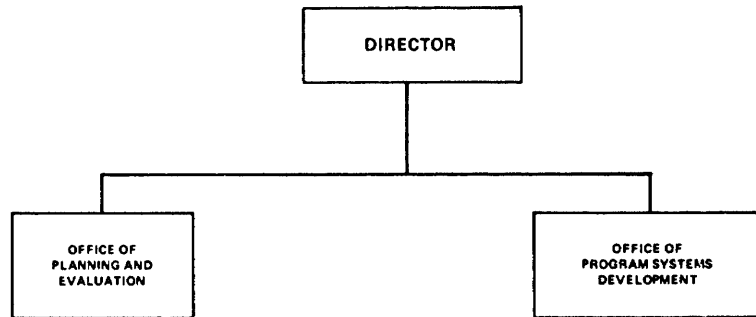
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ADMINISTRATION FOR PUBLIC SERVICES



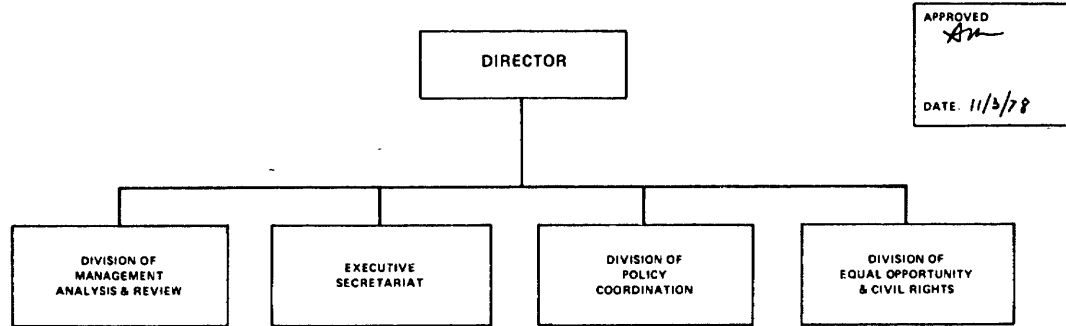
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OFFICE OF HUMAN DEVELOPMENT SERVICES
OFFICE OF PLANNING, RESEARCH, AND EVALUATION

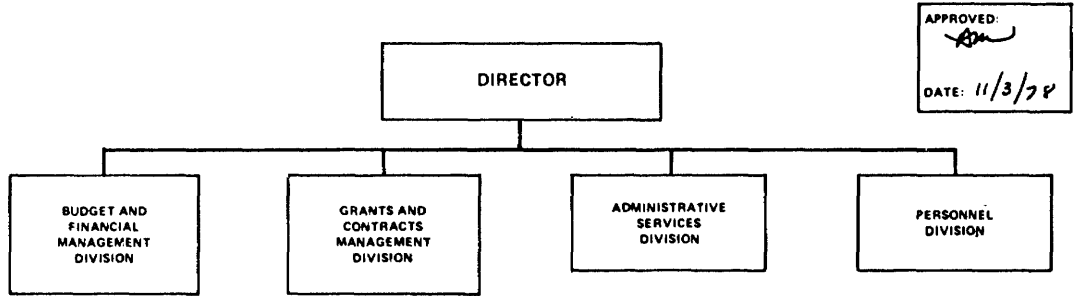


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DATE: 11/3/78

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
OFFICE OF POLICY AND MANAGEMENT CONTROL



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
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Senator HEINZ. Mr. Chairman, thank you very much. I appreciate the committee giving me the opportunity to put these questions to Mr. Perales.

Thank you, Mr. Chairman.

Senator MATSUNAGA. If there is no further business to come before the committee, the committee will stand in recess until 10 a.m. on Tuesday, March 25, when the committee will take up H.R. 6029 dealing with implementation of international sugar agreement and will continue its consideration of health legislation.

[Thereupon, at 11:55 a.m., the committee recessed, to reconvene at 10 a.m. on Tuesday, March 25, 1980].

○