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LEGAL STRUCTURE OF THE FOUNDATION

The President's Advisory Committee on The Points of Light Initiative Foundation was charged with recommending the appropriate legal structure for the Foundation. The Committee considered the tax treatment of the Foundation, the issue of federal funding and the relationship to the Executive Branch, and procedural considerations regarding the Foundation's incorporation. To a great extent, these decisions influence the governance and operation of the Foundation as well.

TAX CODE TREATMENT

The Committee started with three assumptions regarding the structure of the Foundation: the Foundation should be structured so as to be tax-exempt under Title 26 Section 501(c)(3) of the U.S. Code; contributions to the Foundation should be tax-deductible under Section 170 of the Code; and the Foundation should be structured in a way that allows for some level of autonomy from the federal government, to minimize bureaucracy and maximize the Foundation's effectiveness and ability to perform diverse functions.

Given these conditions, the Committee recommends that the Foundation seek to qualify as a "public charity" under section 509 of the Tax Code. The term "public charities" encompasses certain traditional non-profit institutions like schools, churches and hospitals, and other groups with a broad base of support. Under the Tax Code, donations to a "public charity" are treated much more favorably than donations to the alternative, a "private foundation". Specifically, gifts of either cash or appreciated property are deducted at a greater rate, and a donor of appreciated property can determine the value of that property based on the current full market value.

Recommendations of the Committee

Tax Code Status and Source of Support. The Points of Light Initiative Foundation should be structured so as to be tax exempt under section 501(c)(3), with contributions deductible under Section 170 of that provision of the Code. Additionally, the Foundation should be structured as a "public charity" under Section 509 of the Code. Under this structure, the Foundation will best be able to encourage contributions and maximize its fundraising activities.

FEDERAL FUNDING AND RELATIONSHIP TO THE FEDERAL GOVERNMENT AND THE EXECUTIVE BRANCH

Federal funding can provide the Foundation with significant resources and help link private and public volunteer and community service resources. The President

has requested \$25 million in federal funds for each of four years for the Foundation. Acceptance of federal funding entails enactment of authorizing legislation and appropriately triggers Congressional and Executive oversight.

Closely related to the decision to accept federal funding is the decision to be a government or non-government corporation. If structured as a government corporation, the Foundation would require comprehensive authorizing legislation and would incur substantial Congressional and Executive oversight. However, if the Foundation is structured as a government corporation, the President may designate members of the Executive Branch to take an active and visible role in the activities of the Foundation as Members of the Board. This structure would best maximize the leadership by the President, and is necessary in order to obtain a Congressional appropriation.

Recommendations of the Committee

Receipt of Federal Funds and Structure as a Government Corporation. The Points of Light Initiative Foundation should be structured to receive federal funding and maintain an active relationship with the Executive Branch. This is best accomplished if the Foundation were ultimately structured as a government corporation, which entails seeking comprehensive authorizing legislation.

PROCEDURE PENDING ENACTMENT OF AUTHORIZING LEGISLATION

The final issue for the Committee regarding the legal structure of the Foundation concerned the procedure to be pursued in establishing a government corporation. Since authorizing legislation typically is not enacted in less than a year, the Committee considered whether to await operation pending enactment of such legislation, or to incorporate now as a non-government corporation pending eventual enactment of authorizing legislation. Incorporating now as a non-government entity will enable the Foundation to set to work as soon as possible to achieve the President's objective of mobilizing public interest and support for community service. Furthermore, as a successful and currently operating corporation, the Foundation would be in a better position to demonstrate to Congress the value and success of the President's recommendations.

Recommendations of the Committee

Procedure Pending Enactment of Authorizing Legislation. The Points of Light Initiative Foundation should begin operating as a non-government corporation as soon as possible, pending enactment of comprehensive authorizing legislation. This would allow the Foundation to begin operating in the near future, avoid the time delays associated with enacting legislation, and allow the nation to benefit almost immediately from the President's leadership and dedication to solving problems through community service.

GOVERNANCE OF THE FOUNDATION

The Advisory Committee has developed recommendations on four significant areas regarding the governance of The Points of Light Initiative Foundation. The Committee considered issues and options concerning the governance of the Foundation by a Board of Directors; the general staffing policies of the Foundation; the issue of Congressional and Executive oversight of the Foundation; and the relationship between the Foundation and the Executive Branch of the federal government.

BOARD OF DIRECTORS

Public non-profit corporations, regardless of their legal structure, are governed by a Board of Directors. These boards are charged with establishing the policy direction of the corporations and are responsible for ensuring that the purposes of the corporation are met. The Committee considered issues regarding the qualifications and procedure for appointment of board members, the size of the board, the composition of the board, and how the Chairman of the Board should be selected. The Committee also considered whether an affiliated group or groups should be formed to provide individuals, who cannot be placed on the Board of Directors, another avenue for a formal affiliation with the Foundation.

Recommendations of the Committee

1. *Size and Composition of the Board of Directors.* The Foundation Board of Directors should be composed of 19-25 individuals selected on a bipartisan basis, including women and minorities, who have made extraordinary contributions to community service and volunteerism and who represent the many constituencies involved in community service and volunteerism. For administrative efficiency, the Committee recommends that the Board of Directors appoint an Executive Committee to act for the Board of Directors in between meetings. Many Boards of Directors appoint special committees and task forces to work with the Board members to address particular issues of interest. The Committee anticipates that the Board of Directors of The Points of Light Initiative Foundation may want to consider this option as it proceeds with the work of the Foundation.

2. *Affiliated Organization.* The Committee believes that a National Advisory Council to the Foundation is unnecessary. Such an organization would duplicate the functions of the Board of Directors and could create a cumbersome administrative structure for the Foundation.

The Advisory Committee does recognize the need, however, for an association of individuals who are committed to The Points of Light Initiative Foundation and would like to contribute, with time, energy, and/or financial support, to its success. Because the eventual success of the Foundation will depend on its ability to ignite volunteer action and service by millions of individuals as part of their daily lives, it is essential for the Foundation to create support for its activities at the regional, state, and grassroots level.

Therefore, the Advisory Committee recommends that the Board of Directors establish national, regional or state-based entities to support the work of The Points of Light Initiative Foundation. The President may also select individuals to serve as members of these entities.

3. *Length of term of Board Members.* The Advisory Committee recommends that the members of the Board of Directors serve three year terms, with a maximum of two terms for each individual Board member. The resulting turnover among the Board will ensure constant infusion of new ideas and perspectives, and allow the broadest possible representation of constituencies supportive of volunteerism. To promote continuity in the Foundation's policies and activities, the Advisory Committee recommends that the terms be staggered among the members of the Board of Directors.

4. *Appointment of the Board of Directors.* The Committee recommends that the Board of Directors of the Foundation be appointed by the President of the United States, who will serve as Honorary Chairman of The Points of Light Initiative Foundation. The Committee further recommends that the President designate the Chairman of the Board of Directors from among the Members of the Board. All Board members will serve without compensation.

PERSONNEL POLICIES OF THE FOUNDATION

The Foundation will require a staff to administer and manage its day-to-day operations and activities. Government non-profit corporations generally are allowed more flexibility and discretion in developing personnel policies than federal government agencies. The Committee considered issues concerning the hiring and retention of staff, and the management of the day to day operations of the Foundation.

The Committee also considered whether the Foundation should be allowed and encouraged to accept staff and executives loaned from the public and private sectors to supplement the core full-time staff.

Recommendations of the Committee

1. *Personnel Policies.* The staff of the Foundation shall be named and appointed by the Board. The Advisory Committee recommends that The Points of Light Initiative Foundation Board of Directors be exempt from any requirement to hire staff subject to Civil Service requirements and regulations. This will allow the Foundation maximum flexibility in recruiting and retaining staff.

2. *Loaned Staff.* The Committee recommends that the Foundation Board of Directors accept staff and executives loaned, on a temporary basis, from other organizations in both the public and private sector. The Committee believes that the Foundation could benefit from the expertise and experience of such individuals. Further, many organizations may choose to contribute to the work of the Foundation by donating the time and salary of personnel. The Committee is emphatic, however, that all loaned staff should serve at the pleasure of the Foundation and that the Board of Directors need not accept the services of all individuals who may offer to assist the Foundation.

3. *President or Executive Director.* The Committee recommends that the Board of Directors appoint a President or Executive Director of the Foundation, to manage the day to day operations of the Foundation.

OVERSIGHT OF THE FOUNDATION

Historically, government non-profit corporations are subject to substantial Congressional and Executive oversight and review. This review is conducted by the authorizing Committees with jurisdiction over the corporations, as well as annual oversight by the relevant Appropriations Committee. The Office of Management and Budget also plays a role in overseeing budget requests and other functions of government non-profit corporations. Since the Advisory Committee recommends that The Points of Light Initiative Foundation ultimately be a government non-profit corporation, the Committee carefully considered the statutory requirements for The Points of Light Initiative Foundation to provide information to the Congress and the Executive Branch. The reporting requirements that the Committee recommends are similar to reporting requirements for other government corporations. The Committee believes, however, that the Foundation shall have complete discretion with regard to the expenditure of private funds it raises, and that such funds not be subject to any restrictions, whether substantive or procedural, imposed by either Congress or the Executive Branch on the expenditure of public funds.

The Committee emphasizes that these reporting requirements should apply only to appropriated federal funds for the Foundation after the Foundation becomes a government non-profit corporation and a beneficiary of a federal appropriation for its activities. Prior to the actual receipt of federal funds, when the Foundation is supported solely by private monies, the Committee recommends that the Foundation not be subject to Congressional oversight and reporting requirements.

Recommendations of the Committee

1. *Annual report.* The authorizing legislation for the Foundation shall specify that the Foundation will submit annually to the President and the Congress a report detailing its activities and use of funds. This report shall include the report of an independent auditor.

2. *Comptroller General.* The Committee recommends that the authorizing legislation further specify that the Comptroller General be authorized to conduct audits independently in any year in which the Foundation receives federal monies.

3. *Budget Process.* The Points of Light Initiative Foundation should participate in the budget review process conducted by the Office of Management and Budget to prepare the appropriations request to the Congress as part of the President's federal budget.

RELATIONSHIP TO THE EXECUTIVE BRANCH

Members of the Executive Branch may maintain a formal relationship with The Points of Light Initiative Foundation, without relinquishing their positions in the Executive Branch, if it is a government non-profit corporation as the Committee recommended.

Recommendations of the Committee

The Advisory Committee recommends that the President have the authority to appoint members of the Executive Branch to the Board of Directors of the Foundation. The Committee believes that this policy is compatible with the Committee's desire to recommend that the President have broad flexibility in establishing this Foundation.

OPERATIONS OF THE FOUNDATION

The Advisory Committee considered and developed recommendations on two issues concerning the operations of The Points of Light Initiative Foundation. First, the Committee reviewed those items and activities for which the Foundation would be authorized to make expenditures. Second, the Committee reviewed the Foundation's role in encouraging and generating private support and contributions.

AUTHORIZATION OF EXPENDITURES

Most government non-profit corporations are governed by specific language in their authorizing legislation and/or their Articles of Incorporation regarding the allocation and expenditure of funds. In structuring The Points of Light Initiative Foundation, the Committee considered authorizing expenditures for both specific, enumerated activities and for those activities that, although not specifically listed, were consistent with the purpose and mission of the Foundation and approved by the Board of Directors.

Recommendations of the Committee

Expenditure of Funds by the Foundation. The Points of Light Initiative Foundation should be authorized to expend funds for the following specific activities: to hire and retain staff; to purchase or lease real property; to reimburse expenses of the Board of Directors; to enter into contracts; and, to fund the activities of the Foundation. The Committee agreed that the Foundation charter should include general language, both in the authorizing legislation and the Articles of Incorporation, authorizing the expenditure of funds for activities that meet with the approval of the Board of Directors and are consistent with the mission of the Foundation. This general language will allow the Foundation to meet the future needs and activities of the Foundation without having to seek changes in the authorizing legislation or the Articles of Incorporation.

DEVELOPMENT OF NON-FEDERAL RESOURCES

A major purpose for establishing a Foundation is to encourage and generate private, non-federal contributions. These non-federal funding sources have several benefits. Private contributions can enable the Foundation to continue operating prior to the receipt of federal funds and in the event that federal funding ceases. They are also in themselves a form of community service and volunteerism that the President is seeking to encourage.

Given the role of private contributions as a supplement to federal funding, the Committee considered what requirements if any should be placed on the Foundation to encourage and generate private contributions.

Recommendations of the Committee

Development of Non-Federal Resources. The Points of Light Initiative Foundation should be encouraged to raise non-federal contributions. These resources will enable it to begin operations prior to receipt of federal funds and to continue operating in the event future federal funding is decreased or eliminated. The Committee recommends that the Foundation seek funds from both public and private sources.