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Date: 3/19/2016 9:10:02 AM

Subject: Re: Phase in Proposal and Email

Good morning Monty—

These are my thoughts and I'd be happy to hear everyone else's. My understanding of the phasing purpose is that it is to avoid or mitigate a scenario where DSS (or the State/Gov) are constantly being reported as out of compliance or missing targets. Since the pressure to make quick progress on all targets at once is relieved, even more progress can be made on currently applicable targets.

To answer Monty's question, I think the benefit is that we are not found to be "out of compliance" with the Order in a published periodic report of the court monitors. I don't think the plaintiffs (or the monitors) are going to be agreeable to not measuring, and if they're measuring then plaintiffs will want some sort of report. But on the targets that are not yet current (those that aren't phased in yet), only those less formal internal reports will exist and they will be interim (not final, because those targets aren't effective yet)—the periodic report to the court will only have current-phase target data.

Since plaintiffs and monitors value the public accountability aspect, I was trying to describe the fact that data in possession of the agency is subject to ordinary processes for disclosure under the Freedom of Information Act (although in this situation we may have some exceptions based upon the litigation). But that process requires an inquiry where we are able to shape the response. For example, if someone requested interim data reports on not-yet-phased-in targets, we could provide a certain amount of the data, perhaps excluding some information based upon exemptions, but we have the opportunity to additionally communicate that the targets are not yet effective/enforceable. In other words, we have an opportunity to shape the message. In contrast, I think if the monitor's report to the Court simply says we missed currently applicable targets, and the press simply downloads the report, then the message is defined by the report itself and we lose an opportunity to affect it (although perhaps not our only opportunity—sometimes the press asks us for comment prior to a negative story, but we can't count on it).

It would of course be preferable if plaintiffs would agree to not measure or report on non-current targets, but I don't think they will. Both the plaintiffs and the monitors have a financial incentive to measure, generate and analyze reports.

Speak to y'all soon,

Tony

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On Mar 19, 2016, at 8:13 AM, Monty Todd <mtodd@sowellgray.com> wrote:

I may be missing the obvious, but if we are still going to be monitored and measured and if the measurements and data from the monitoring will be public information, do we gain any benefit from the phasing in of the goals other than avoiding a potential morale problem for not hitting measurements in the in first year or two of the expected agreement? Probably a better way to frame the question is "what benefits do we get from phasing in of the targets?"

From: Catone, Tony [<mailto:Tony.Catone@dss.sc.gov>]
Sent: Friday, March 18, 2016 5:27 PM
To: Becky Laffitte <blaffitte@sowellgray.com>; Monty Todd <mtodd@sowellgray.com>; hollypisarik@gov.sc.gov; Whittle, Amanda <Amanda.Whittle@dss.sc.gov>; Butch Bowers <Butch@ButchBowers.com>
Subject: Phase in Proposal and Email

Dear Becky and Monty,

On Tuesday we said we believed we could have something to the Plaintiffs by today that would show them our phase-in concept in writing. We have struggled with how to present this to the Plaintiffs so would appreciate any team feedback. Attached is a draft email to the plaintiffs along with draft phase-in plan. The email was written by Amanda based on her efforts and communications with the Monitors and I have offered revisions and a couple of comments. We would like to get this to the Plaintiffs, at least as a starting point. If you cannot review or get to it today because we're just now getting it to you, perhaps Monty could call Matthew and let him know we sent it and y'all are going to look over and send Monday. I also wondered to myself today whether Justice Corrigan could be helpful in this phasing strategy, as it seems we've concentrated so specifically on the co-monitors that I, for one, have not thought of her as a resource on this issue.

Thank you for your service as always,

Tony

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