**ADVISORY COMMITTEE ON BIOTECHNOLOGY AND**

 **21ST CENTURY AGRICULTURE**

***“Who Pays?” Working Group Conference call—May 11, 2012***

*Conference Call Summary*

A two-hour conference call was held, with Working Group (WG) members Paul Anderson, Daryl Buss, Angela Olsen, Leon Corzine, Melissa Hughes, Darren Ihnen, Philip Miller, and Robert Uram participating. Michael Schechtman, Executive Secretary, AC21, facilitated the conversation and the AC21 Chair, Russell Redding, also participated. One other AC21 member who was not a member of the working group, David Johnson, also listened in on the conversation. The goals of call were to: complete review of potential principles list to see if consensus exists on any of few remaining as yet un-discussed potential principles to inform the “Who Pays” question; consider to what extent agreed-upon principles address “who pays” versus the type of compensation mechanism that might be adopted; and list potential sources of compensation funding that have been discussed by the WG and discuss likely market impacts of assigning funding obligations to each and why might those impacts occur

At the conclusion of the previous WG meeting call, only the following potential principles had not yet been discussed:

* Should be designed to minimize the need for compensation
* Voluntary participation
* Avoidance of policy or regulation that discourages innovation.

The WG began discussing the first potential principle above, “should be designed to minimize the need for compensation,” and several WG members expressed support for it. One member, however, did not understand what the principle was intended to mean. There was considerable discussion about possible meanings, relating to neighbor-to-neighbor relations, the creation of incentives by those responsible for funding the mechanism to reduce costs, the need to ensure that different parties are working together, and the need to promote stewardship. One WG, agreeing with most of those themes, noted that the principle as written could be interpreted in such a way that it would restrict access to compensation, and that interpretation would be unacceptable to her. A suggestion was made, which not all WG members supported, was that the intent was to promote stewardship. Some WG members could not support this interpretation either because “stewardship” was too open-ended or because the encouragement of stewardship suggested voluntary stewardship which was inadequate. There was discussion of whether problems that have arisen around coexistence have been “stewardship failures” or “contract failures.” One WG member suggested that the principle should read, “should be designed to fairly compensate losses.” While all members supported the concept of “fairness,” the concept of “fair compensation” was not one that members would agree to. The originator of the “fair compensation” idea suggested that his intent was to prevent abuse of system or mischief. The Chair noted that whatever compensation mechanism is put in place, if one is put in place at all, should be a last resort—there would need to be other “checkpoints” passed before arriving at compensation. After this discussion, WG members agreed to the following two proposed principles arising in this area:

* Should be designed to minimize need for, but not the access to, compensation.
* Should be designed to discourage fraud.

The WG then turned to the potential principle, “voluntary participation.” One WG member objected, noting his view that there is a need for fixed rules and obligations. Another WG member noted that for farmers, who try to do the best they can with variable circumstances, voluntary participation is a much better option and more practical option. An ambiguity around whether WG members were alluding to voluntary participation or voluntary stewardship, and whether voluntary participation meant voluntary participation in a compensation program, or making voluntary contributions to the payment mechanism. The Chair indicated that he did not understand how a compensation mechanism could be set up with voluntary contributions, and was reminded by a WG member that under a risk retention group scenario, those circumstances might occur. Dr. Schechtman suggested that the proposed principle might be re-written, “If a funding mechanism is set up, the choice of whether to seek compensation is voluntary. One WG member suggested that the suggested re-formulation was not relevant to the “who pays” decision. There was no consensus on including any formulation of this principle.

The WG then turned to the potential principle, “avoidance of policy or regulation that discourages innovation.” One WG member explained the motivation for this potential principle by noting that innovation is important for all types of farmers, not matter what they are trying to produce. Several members supported this idea, noting that innovation benefits farmers and companies of all sizes. One WG member asked, given the situation with alfalfa, that if alfalfa pollen travels two miles and a farmer is given compensation for GE alfalfa pollen that blew into his field, is that an action that “discourages innovation?” Another WG member noted in response that there are significant technologies that have been developed at Land Grant institutions, but essentially all are still regulated and none is currently on the market. If adding to this picture there were a “blanket compensation fund” and a developer of one of these products couldn’t enter the market unless they were able to pay into that fund, then a compensation fund could become a further burden. Another WG member indicated his opposition to the potential principle on the grounds that it is not relevant to the “who pays” discussion. No consensus on the proposed principle was reached.

Dr. Schechtman then reviewed the list of principles agreed to by WG members, namely:

* Clarity
* Autonomy and farmer choice
* Encouragement of good neighbor relations
* Fairness in treatment of different production practices, without a preference for one practice over another
* Based on sound science
* Should be designed to minimize the need for, but not the access to, compensation.
* Should be designed to discourage fraud.

He noted his impression that all the principles addressed the features of a compensation mechanism rather than specifically informing the question of “who pays?” One WG member expressed disappointment at this observation, with which he agreed. He noted that whenever there had been an attempt to consider principles that informed the “who pays” question more directly, there had been no agreement. He indicated that he would have preferred if the WG had been able to consider asking the GE sector representatives, assuming that they would have to pay at some time, how they’d like to do it? That question could then be followed up by asking other sectors, assuming that they would have to chip in some amount, how they would like to do that as well. He added that he had hoped this WG would be able to consider each mechanism and come up with how compensation payments would be structured for each. Another WG member suggested that that approach was based on premises with which he did not agree, suggesting that in his view, necessary compensation is addressed in contracts. Dr. Schechtman reminded the WG that as yet the AC21 had reached no consensus about if a compensation mechanism should be recommended, and that “who should pay” was a question subsequent to that one. Another WG member offered the view that USDA has no authority to institute any of the mechanisms and that there is as yet no definitive data on actual monetary losses. Dr. Schechtman offered his interpretation of the Secretary’s charge as suggesting that he thinks that a problem exists, and the “if any” phrase in the charge refers to whether any of the mechanisms is justified, or would provide a “cure” worse than the “problem.” Others pointed to the Secretary’s exact words at the last plenary session he attended, at which he used words to the effect that “I don’t know if there’s a problem. Tell me.” Another WG member supported the earlier comment that evidence of actual losses was still lacking. Another WG member reminded the WG that if any compensation mechanism were recommended, it would likely require new legislation, so that it might be appropriate to consider a recommended mechanism as something the Secretary might like to have “in his back pocket” to implement if needed or if circumstances change over time.

One WG member noted that global regulators will be looking at the AC21’s recommendations and that the group could be heading toward a dangerous place with respect to how trading partners view our actions. Dr. Schechtman reassured members that in all likelihood, based on the conversations he had heard to date at AC21 meetings, the report will need to be very conditional, and there will be a process for vetting a report and allowing for changes as well as the option of writing of minority reports. One WG member again cautioned about switching for asking whether there is a problem to asking whether a compensation mechanism is justified. He suggested that the problem is actually a perceived problem, perhaps a Washington, DC problem supplemented with a few neighbor-to-neighbor problems, and that the AC21 might be creating a solution in search of a problem. He reminded WG members that the outcome could affect his future and his family’s future. The Chair reminded WG members of the Committee’s obligation to respond to the Secretary’s 3-point charge and of the Secretary’s need to find an answer that strengthens coexistence. Another WG member questioned whether the Secretary would need to be told who should pay, as informed as he is of who is in value chain. Dr. Schechtman reminded WG members that a specific recommendation as to who should pay for a compensation mechanism is not within the Secretary’s charge to the AC21. One WG member suggested that the report to be drafted could lead to a desire on the part of a majority of AC21 members to write an alternative report. Dr. Schechtman reiterated the process for finalizing the report and noted the intent of him and the Chair to try to capture the range of committee views accurately in the report, noting that some subjects in the report will make some members uncomfortable.

The WG discussed who would serve as rapporteur at the upcoming plenary session. It was agreed that Leon Corzine and Melissa Hughes would collaborate to present the summary.