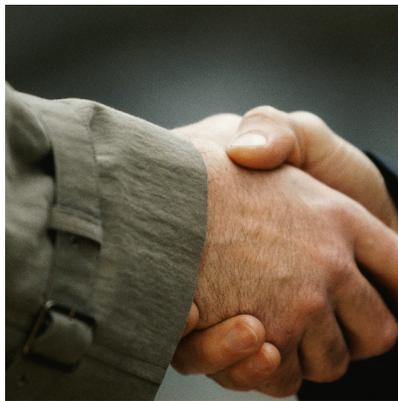
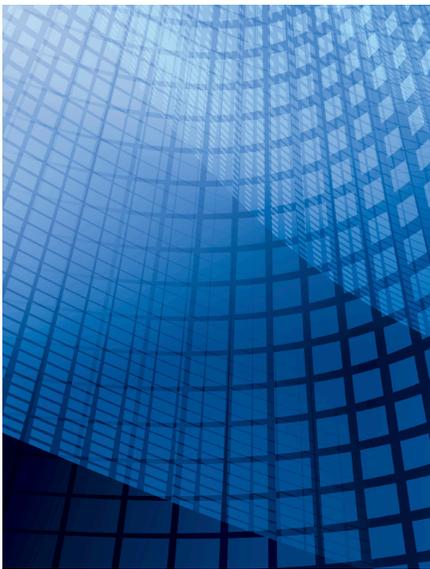


Restoring the Intergovernmental Partnership: What Needs to Change

AN ICMA WHITE PAPER

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Leaders at the Core of Better Communities

*Restoring the Intergovernmental Partnership:
What Needs to Change*
An ICMA White Paper

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Donna Milam Handley, Ph.D.

July 31, 2009

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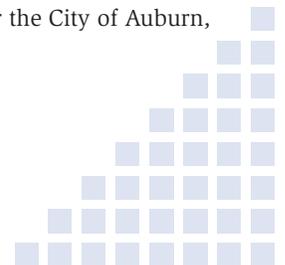
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Restoring the Intergovernmental Partnership: What Needs to Change

Executive Summary

The challenges of government are more complex than ever before. These challenges present new opportunities to address intergovernmental cooperation at all levels of government. Whether the discussion centers on economic recovery, healthcare, education, or natural disasters, there are multiple strains on the intergovernmental apparatus that are becoming increasingly acute at the state and local levels. As state and local governments are being asked to do more with less and to become more efficient and responsive, they also face a growing uncertainty in their relationship to the federal government, which often sets policy directives that create additional fiscal and administrative burdens at the state and local levels. Paradoxically, in many areas, the need only seems to be growing for enhanced sub-national capacity.

Challenges in the intergovernmental system are not new. From 1959 to 1996, an institution existed whose sole purpose was to study, advise, and make policy recommendations on issues of intergovernmental relations. The Advisory Commission on Intergovernmental Relations (ACIR) had a long and successful history of maintaining bipartisan neutrality and serving as a credible governmental information source, providing timely insight on various intergovernmental issues. By the early 1990s, critics argued the ACIR had become increasingly irrelevant, and, amidst controversy surrounding its study of federal mandates, it was terminated in 1996.

Though ACIR is no more, a pressing need still exists for an organization devoted to the analysis and study of intergovernmental policy questions. This report recommends the creation of a new agency that employs a flexible organizational structure for the study of pressing policy areas within the federalist system. Specifically, we recommend:

1. **Launching a systematic campaign to increase federal officials' awareness of the crisis in intergovernmental relations.** For action to take place, it

is necessary to first build awareness and consensus that a problem exists. The Big Seven state and local organizations have substantial expertise and an established network of valuable relationships. We recommend that, as part of a campaign to establish a new organization devoted to intergovernmental relations, the Big Seven engage in a campaign to build awareness of the significant problems that exist in the intergovernmental environment.

2. **Creating a core council of 20 to 25 federal, state, and local officials.** This core council would set specific policy priorities for the organization to study over the coming year and would create separate policy study groups with representation from a wide variety of relevant stakeholder groups. The first responsibilities of the council at startup would be (1) hiring a director and (2) working with the director to create a strategic plan and a budget for the next five years.
3. **Immediately studying the American Recovery and Reinvestment Act.** The GAO has noted a number of looming challenges with respect to the American Recovery and Reinvestment Act (ARRA). Specifically, there is limited state and local capacity to cope with reporting requirements, certain reporting features are still unclear, and there is concern that state and local governments may be held accountable for other entities that receive ARRA funds within their jurisdictions. Though many other pressing issues remain, given the high stakes and visibility of the ARRA, the concerns raised by ARRA should be addressed quickly. This urgent need presents a policy window that requires swift and decisive action. It is recommended that an ARRA policy study group be created immediately after the council and executive director have been identified.
4. **Subsequently identifying other salient intergovernmental policy issues.** Once the core council and formal organization are in place, it is recommended that the new agency work to identify other policy priorities and create study groups to work on those areas.

5. ***Beginning with substantial federal funding with a plan for a growing share of state/local support.*** Because time is of the essence, it is recommended that the federal government take the lead in funding this new organization in the start-up phase, for about the first three years of its operation. This would be done with the understanding that the federal funding would be supplemented by state and local support after the first three years or so. The planning for the organization should include a mechanism for phasing in state and local financial support in an effort to promote cost sharing.

In the face of growing challenges in the federalist system, the time is ripe for a new, reinvigorated organization devoted to the study and resolution of important intergovernmental policy dilemmas. The recent economic downturn and resulting American Recovery and Reinvestment Act have ushered in an unprecedented flow of federal dollars to state and local governments. The significant accountability requirements of the ARRA present a window of opportunity for creation of a new organization focused on intergovernmental relations. Moreover, this report identifies a number of policy domains where there are major unresolved questions, including Medicare, education, emergency management, and metropolitan governance. Drawing on the historical lessons learned from the Advisory Commission on Intergovernmental Relations, this report proposes a new organization devoted to the study of intergovernmental issues that would use a flexible and inclusive model for study of specific policy questions.

The Intergovernmental Policy Environment

As we approach the close of the first decade of the twenty-first century, the challenges of governing are more complex and the stakes continue to grow. Whether the discussion centers on economic recovery, healthcare, education, or natural disasters, there are multiple strains on the intergovernmental apparatus that are becoming increasingly acute at the state and local levels. As state and local governments are being asked to do more with less and to become more efficient and responsive, they also face a growing uncertainty in their relationship to the federal government, which often sets policy directives that create additional fiscal and administrative burdens at the

state and local levels. Paradoxically, in many areas, the need only seems to be growing for enhanced sub-national capacity. This paper makes the case for creating a wider awareness of the struggles faced by state and local governments under the current intergovernmental regime, as well as the need for a formal body devoted to the study and resolution of intergovernmental challenges. The first section of the paper analyzes some of the larger policy challenges in the context of the federalist system.

The Economic Crisis and the American Recovery and Reinvestment Act

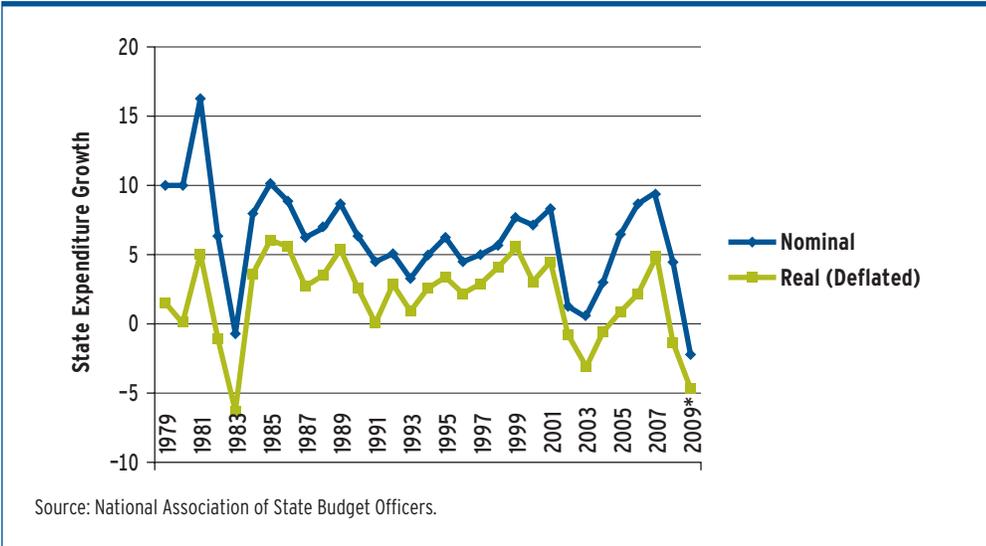
The economic recession that began in earnest in 2008 poses challenges for all levels of government. State and local governments have been particularly challenged as many are subject to strict balanced budgets that limit their ability to maintain expenditure and service levels. At the same time, recessionary pressures have led to increased demand for social safety net programs, such as Medicaid, food stamps, and Temporary Assistance for Needy Families (TANF), creating additional budgetary strains on state finances.

The state economic situation is particularly dire. The 2009 edition of *The Fiscal Survey of the States* paints a sobering picture of the effects of the recession on state finances. Budgeted state expenditures for 2009 are already 2.5 percent less than 2008 levels and are expected to decline another 2.5 percent in 2010. Figure 1 provides a picture of trends in state general fund expenditures since 1979. The current recession has brought state expenditure growth to new lows; cuts this large have not been seen since 1983.¹ Although similar data are not available for local expenditures, the news is replete with numerous accounts of draconian budget cuts at the county and city level nationwide.

On February 17, 2009, the American Recovery and Reinvestment Act of 2009 was signed into law by President Obama. This historic \$787 billion stimulus package contained significant allocations for state and local budget relief. Of the total stimulus, about \$250 billion will be administered by state and local governments. Though there are many categories of funding, the lion's share of funding to states and local governments comes in the form of "countercyclical" funds designed to stabilize state budgets for education and health

¹ National Governor's Association and National Association of State Budgeting Officers, *The Fiscal Survey of the States* (June 2009): Washington, D.C.

Figure 1 Nominal and Real Growth in State Budget Increases



care. State Medicaid programs are receiving relief through an \$87 billion The Federal Medical Assistance Percentage (FMAP) increase. Another \$48 billion comes from the State Fiscal Stabilization Fund (SFSF), of which nearly \$40 billion must be spent for K-12 and higher education. The remaining \$115 billion will come in the form of increases for other state and locally administered entitlement programs such as Temporary Assistance to Needy Families (TANF) and food stamps, as well as specific programmatic appropriations and other grant programs.²

The economic crisis accentuates a number of inter-governmental dilemmas. First, states and local governments are on the front lines of the nation’s safety net system. As demands for services continue to grow, at a time when funding is not keeping pace and many federal mandates remain unchanged, the devolved nature of the service delivery system will inevitably create lags in federal response to increased needs.

Second, the reporting requirements in the ARRA have the potential to create a number of challenges for federal-state and federal-local relations. The Government Accountability Office (GAO) issued a report in April 2009 outlining some of the key challenges posed by the ARRA’s reporting and accountability requirements to state and local governments.³ Although there

are a variety of state-specific challenges, there are also some general areas that GAO identified:

- *Ability and capacity to track ARRA funds to non-state grantees.* Several state financial officials expressed concerns as to how they would be able to track funds going directly to local governments or other sub-recipients. Other states have taken the position that they will not track those funds but will rely on sub grantees to report results directly. It is likely that as funds are released to other local and sub-grantee entities, the confusion over reporting and the responsibilities for doing so will increase.
- *Lack of sub-recipient or local capacity and expertise to track and manage federal funds.* At the same time that there is confusion over who will be ultimately responsible for reporting on the use of ARRA funds, GAO found that many state officials had concerns over the abilities and capacities of local and other sub-grantee entities to handle reporting requirements under ARRA. GAO noted that many do not have much experience with federal grants and reporting.
- *Hiring freezes mean less state and local financial oversight capacity.* Another theme that GAO reported was a concern over limited capacity for financial oversight due to manpower constraints posed by state budget cuts and hiring freezes. Federal grants provide some allowances for administrative overhead, but it is unclear if those allowances will be sufficient to finance the additional capacities needed to manage and oversee ARRA fund expenditures.

2 National Governor’s Association, *State Implementation of the American Recovery and Reinvestment Act* (March 10, 2009): Washington, D.C.
 3 Government Accountability Office, *Recovery Act: As Initial Implementation Unfolds in States and Localities, Continued Attention to Accountability Issues is Essential*, GAO-09-580 (April 2009): Washington, D.C.

- *Concern over proper procedures for estimating jobs created or retained under the act.* One of the principal objectives of the ARRA is to create or prevent the loss of jobs. As such, tracking jobs saved and created is a key component of reporting. Although the Office of Management of Budget has clarified some confusion over job reporting, many state officials remained perplexed as to how to estimate job impacts as a result of ARRA expenditures.

To recapitulate, the national economic crisis and the federal response have ushered in a new era of intergovernmental resource transfer. But accountability issues remain largely unresolved and could pose a threat to smooth intergovernmental relations if they remain unaddressed. For local governments in particular, the shift of funding resources for education and health care leaves the question of other resources unresolved. In 2006, 38 percent of local government general revenue was provided by intergovernmental transfers, and it is currently unclear to what extent these resources will be impacted by the ARRA and the tremendous fiscal crises that states are experiencing in 2009–2010.⁴

Healthcare

The rising costs of health care have had a profound impact on state expenditures. State Medicaid expenditures continue to grow rapidly. This intergovernmental program uses a combination of federal, state, and sometimes local funds to provide insurance and medical care to the poor. State Medicaid caseloads were on the rise even before the recession began, and many experts have cited caseload growth as one of the culprits for rising state Medicaid costs. In addition, actual costs of care continue to increase, driven by a variety of factors. Though rising health-care costs have an effect at every level of government, state and local governments have more often than not borne a larger portion of this burden over time. Figure 2 shows the percentage increase in Medicaid Title XIX expenditures from 1996 to 2007. In the past 11 years, the state and local increase in expenditures has been larger, sometimes much larger, on a proportional basis as compared with federal expenditures. Over the 11 year period from 1996 to 2007, federal Medicaid Title

XIX expenditures increased an average of 6.7 percent, whereas state and local expenditures over the same period increased an average of 8.3 percent.

Though the ARRA is providing some immediate relief to states in the form of increased FMAP monies for Medicaid, the long-term, chronic conditions which are driving increases in health-care costs will not be remedied by stopgap measures.

Finding ways for state and local governments to continue to deliver health-care access to their most vulnerable citizens without increasing strains on their own budgets remains a key issue. At the same time, the federal government cannot afford to absorb all of the cost increases in health care, either. Thus, while there are key intergovernmental issues to be resolved, health care as a policy issue transcends the boundaries of intergovernmental relations to encompass other areas of reform. Last, growth in Medicaid-related state fiscal pressure has happened at the same time that states are cutting expenditures or reducing budget increases for other social service programs, creating a zero-sum dynamic.⁵ To the extent that the social safety net in the United States relies on state and local apparatuses for delivery of services to the poor, tackling the challenges surrounding Medicaid takes on a new level of urgency.

In addition to Medicaid expenditure growth, provision of emergency medical care through local hospital emergency rooms is creating a burden on local governments. Over the past decade, there has been a marked decrease in the number of emergency medical treatment and trauma centers across the United States, due in large part to the large costs associated with providing emergency care. ERs have become the destination for uninsured patients, who often seek care there for chronic conditions that finally manifest in acute, life-threatening symptoms. Moreover, even those with insurance are coming to ERs because they are unable to see specialists in a timely manner. The growing demand for emergency care and decline in capacity have resulted in an emergency care system that is at or, in many cases, is above capacity. This has had a direct impact on state and local budgets for health-care services, which are absorbing huge expenditure growth without a concomitant offsetting growth in revenues.⁶

4 Urban Institute and Brookings Institution, “Tax Policy Center: State and Local Tax Policy: What are the Sources of Revenue for Local Governments?” (n.d.). http://www.taxpolicycenter.org/briefing-book/state-local/revenues/local_revenue.cfm (accessed September 25, 2009).

5 Thomas Gais, “Stretched Net: The Retrenchment of State and Local Welfare Spending before the Recession,” *Publius: The Journal of Federalism* 39, no. 3 (2009): 557–79.

6 American College of Emergency Physicians, *The National Report Card on the State of Emergency Medicine* (2008): Irving, Texas.

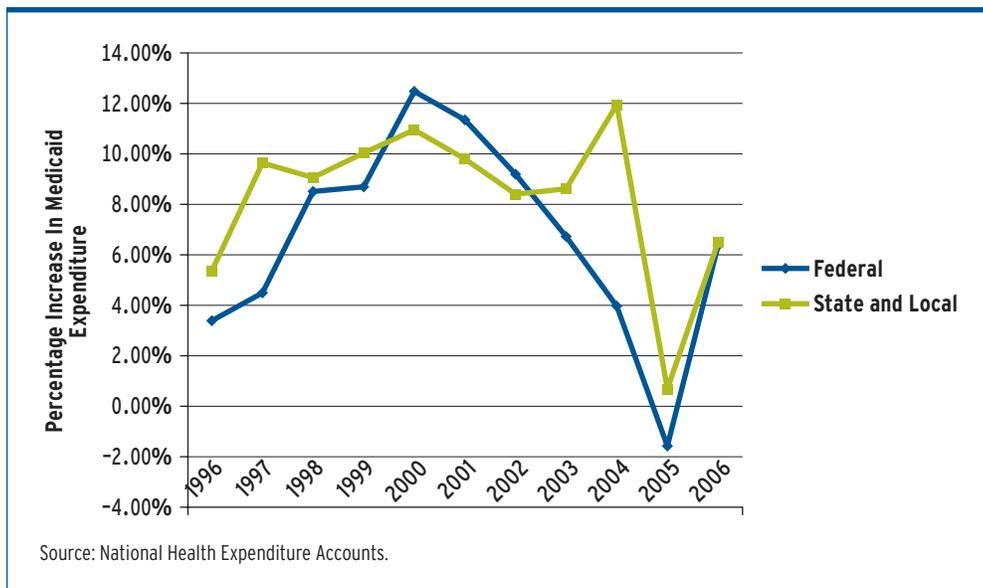


Figure 2 Federal and State/Local Medicaid Expenditure Growth

Education

Perhaps one of the most salient and enduring issues in federalism in recent years remains the controversial No Child Left Behind Act of 2001 (NCLB) legislation that thus far shows no signs of major revision under the Obama administration. Though the goal of NCLB has been to improve educational outcomes for children, particularly those in failing schools, there have been a litany of criticisms from state and local officials about the administrative burdens and other unintended side effects of the legislation. Many states have considered resolutions that memorialize opposition to NCLB, and a handful passed laws which formally oppose NCLB.⁷

The core requirements in the NCLB legislation require schools to meet state-specific Annual Yearly Progress (AYP) goals. If those goals are not met, those schools are labeled as “failing” and parents can then choose to relocate their children to other non-failing schools within the district. This reduces resources available to failing schools and shifts them to other schools. Local officials have complained that the AYP provisions are unrealistic and provide incentives to “teach to the test” rather than improve substantive learning outcomes. Other officials have expressed concern of the lack of flexibility and the administrative burdens created by NCLB. Scholars Gail Sunderman, James Kim, and Gary Orfield lamented in their 2005 book:

Since NCLB is by far the largest K–12 federal education program affecting disadvantaged students, it is imperative that the federal government brings state and local officials and educators into the process to work through administrative and policy issues. When the implementation of federal grant programs works well, there is collaboration across levels of government and federal deference to local priorities, something that has not been evident so far in the process of implementing NCLB.⁸

Despite the challenges, in the last few years there has been a resurgence of state attempts to innovate under the auspices of NCLB. Recently, the Secretary of Education granted waivers to a number of states in calculating how scores had changed year over year by allowing use of a growth model approach that allows for examination of the same student cohort over time. Other states are participating in a demonstration program that grants increased flexibility to states in their response to schools on the basis of their AYP performance.⁹

Nevertheless, significant issues remain with NCLB that require a new level of cooperation and inter-governmental collaboration. As the importance of education and its linkage to global economic competitiveness grows, finding practical and flexible education policy solutions across all levels of government becomes paramount.

⁷ Brian Shelly, “Rebels and Their Causes: State Resistance to No Child Left Behind,” *Publius: The Journal of Federalism* 39, no. 3 (2009): 444–68.

⁸ Gail Sunderman, James Kim, and Gary Orfield, *NCLB Meets School Realities: Lessons from the Field* (Thousand Oaks, CA: Corwin Press, 2005), 18.

⁹ John Dinan and Shama Gamkhar, “The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism,” *Publius: The Journal of Federalism* 39, no. 3 (2009): 369–407.

Natural Disasters and Emergency Management

The first decade of the twenty-first century has been an eventful one. Two key events that have left indelible impressions on American society are the terrorist attacks of September 11, 2001, and Hurricane Katrina and its aftermath in the late summer of 2005. These events also have significantly impacted the intergovernmental policy framework in a myriad of ways.

Following 9/11, there were immediate calls for improvement in the information sharing and response capacities of the federal national security apparatus to terrorism. These calls were met with sweeping and decisive centralization of federal national security resources under the auspices of the newly created Department of Homeland Security (DHS). Understandably, in the shadow of 9/11, the immediate priority for DHS was to ensure adequate local preparedness to manmade events.

The Federal Emergency Management Administration (FEMA) was one of the many agencies swept up in the new concatenation of entities under the DHS umbrella. Before 9/11 FEMA had traditionally played the lead federal role in responding to natural disasters. In addition, FEMA had begun some innovative hazard mitigation programs in the 1990s aimed at encouraging local governments to plan proactively to reduce exposure to natural hazards and the impact of future natural disasters. This focus for FEMA changed under DHS as FEMA was tasked more with responding to terrorism-related threats than natural hazards or natural disasters.

In August 2005, Hurricane Katrina made landfall on the Mississippi and Louisiana coasts, bringing a deluge of rain to the City of New Orleans that ultimately brought about a failure of the levee system, resulting in catastrophic flooding through much of the city. As the events unfolded, it became clear that many people had failed to evacuate the city. Many were stranded without food, water, or access to basic medical care. The response by the federal authorities was, by most accounts, slow. There was a great deal of confusion among federal, state, and local officials as to their appropriate roles and responsibilities in the wake of the storm. Looking back at the events since 2001, many scholars have concluded that the centralization of federal authority under DHS created a myopic policy framework that was largely driven by focus on the singular area of terrorism. Birkland and Waterman wrote, “These changes appear to have validated fears raised by critics before Hurricane Katrina that the reorganization designed to respond to terrorism

would undermine the nation’s ability to respond to natural disasters.”¹⁰ A key focus for intergovernmental relationships in emergency management has been the revision of the 2005 National Response Plan (NRP). The NRP had received scathing criticism from state and local officials for its lack of attention to local responder expertise and capacity, as well as its excessive centralization of disaster response responsibility into the federal branch. However, the 2008 revision, called the National Response Framework, took many of those earlier considerations into account and appeared to have more support from local officials and emergency managers.

The bewildering pace of change and significant events that have taken place since 2000 have provided the impetus for many sweeping policy changes, particularly at the federal level. As a result, states and localities will continue to have an increased role in the implementation of federal policies in this area. It is clear that many of the policy directives have led to a more centralized framework, which initially was focused almost exclusively on terrorism. Hurricane Katrina offered a painful lesson in the shortcomings of that approach. Going forward, it is clear that creating a cooperative and responsive intergovernmental framework for homeland security and emergency management is vital.

Land Use and Urban Sprawl

Metropolitan areas in the United States face their own sets of unique challenges. In years past, the metropolitan governance debate was dominated by concerns over efficiency and boosting economies of scale through regional governments and consolidated service delivery. Those debates have largely subsided as scholarship in public choice has demonstrated that the efficiency gains to be had through economies of scale in the production and delivery of services can be had without resorting to formal consolidation of governments.¹¹

In recent years, there has been a growing attention to the multifaceted problem of urban sprawl. Scholars have warned that sprawl is consuming vast amounts of open space and farmland; it increases reliance on automobiles with attendant impacts such as air

10 Thomas Birkland and Sarah Waterman, “Is Federalism the Reason for Policy Failure in Hurricane Katrina?” *Publius: The Journal of Federalism* 38, no. 4 (2009): 693.

11 Michael Howell-Moroney, “The Tiebout Hypothesis 50 Years Later: Lessons and Lingering Issues for Metropolitan Governance in the 21st Century,” *Public Administration Review* 68, no. 1 (2008): 97–109.

pollution and traffic congestion; and sprawl is responsible for the maintenance and growth of economic and racial segregation. In addition, new research in public health is demonstrating a link among sprawled development patterns, people's concomitant reliance on automobiles, and detrimental health outcomes such as obesity. Because urban sprawl crosses jurisdictional boundaries, it is difficult for any one municipal government to effectively curb it. Largely localized systems of planning and taxation are not equal to solving problems of regional scale such as sprawl.¹² As regionally scaled problems have become more prominent, there is a new opportunity for investigation of ways to create effective regional governance.

Summary

The forgoing analysis makes it clear that many pressing intergovernmental policy questions in various domains remain unresolved. It is also clear that the challenges to federalism are also somewhat unique given the policy context. In some cases there appears to be a need for enhanced federal support, and in other cases greater state and local autonomy or innovation may be appropriate. In short, the complex policy environment is increasingly dictating a *context-specific, flexible federalism*, not a one-size-fits-all approach that governs all manner of intergovernmental relations.

This challenging and often bewildering policy environment speaks to a compelling need for a new kind of collaboration and enhanced bottom-up communication from the state and local level to the federal level. There also appears to be a lack of general awareness as to the magnitude and extent of the challenges faced by state and local governments under the status quo. Currently, there is no single body that is devoted to studying and suggesting remedies for strains within the intergovernmental system, but this vacuum did not always exist.

Challenges in the intergovernmental system are not new. From 1959 to 1996, an institution existed with the sole purpose of studying, advising, and making policy recommendations on issues of intergovernmental relations. The Advisory Commission on Intergovernmental Relations (ACIR) had a long and successful history of maintaining bipartisan neutrality while providing timely insight on various intergovernmental issues. The next section of this paper provides a brief history of the ACIR and the reasons for its dissolution.

¹² Ibid.

Lessons from the Past: The U.S. Advisory Commission on Intergovernmental Relations

The Advisory Commission on Intergovernmental Relations (ACIR) was created by Congress in to manage intergovernmental relationships between the federal, state, and local governments. There were two primary reasons for the creation of the ACIR. First, there was an increasing awareness that the administrative relationships between federal, state, and local governments were growing more complex. Second, in the years prior to the ACIR's implementation, the recommendations provided by the Kestnbaum Commission to address intergovernmental problems had been largely ignored and thus the ACIR would be a bipartisan mechanism, uniquely commissioned by legislative authority, to draw attention to this area.¹³

ACIR reports were generally designed to provide problem-solving approaches and recommendations to either fiscal or structural issues pertaining to the U.S. intergovernmental system. The ACIR was legislatively charged with the task of considering and making recommendations on

- 1) common problems affecting the federal, state, and local governments; 2) the administration and coordination of federal grants and other programs; 3) the conditions and controls associated with federal grants; 4) technical assistance to the executive and legislative branches of the federal government, including review of proposed legislation to determine its possible effect on the federal system; 5) emerging public problems that are likely to require intergovernmental cooperation; 6) the most desirable allocation of functions, responsibilities, and revenues among the federal, state, and local governments; and 7) coordination and simplification of tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the federal, state, and local governments and to reduce the burden of compliance for taxpayers.¹⁴

ACIR was tasked with providing practical solutions for the imbalances within the intergovernmental system, and aimed to do this as an autonomous, nonpartisan, and research-focused entity that served not only

¹³ Deil S. Wright, "The Advisory Commission on Intergovernmental Relations: Unique Features and Policy Orientation," *Public Administration Review* 25, no. 3 (1965): 193–202.

¹⁴ Bruce D. McDowell, "Advisory Commission on Intergovernmental Relations in 1996: The End of an Era," *Publius: The Journal of Federalism* 27, no. 2 (1997): 111–27.

the federal government but also the states and municipalities within the United States.

The commission originally consisted of twenty-six members that were selected to represent each level of government. The staff included nine federal government officials, fourteen state and local government officials as representatives, and three members of the general public. Federal officials included three members of Congress and three senators. The other twenty officials were appointed by the president, and the president also appointed the chair and vice-chair of the commission. The president appointed the fourteen state and local officials. In addition to members, the ACIR had a sizeable research staff; at the peak of the ACIR's existence during the 1970s, the staff consisted of approximately fifty people.¹⁵

ACIR grew from a nondescript agency that avoided making headlines into a respected voice on intergovernmental issues. It was viewed as an entity that endorsed "cooperative federalism," as it recognized that most problems must be solved by multiple levels of government working together.¹⁶ ACIR was committed to fostering the health of state and local governments and to preserving their power and authority. Overall, ACIR was viewed as unique agency with a strong sense of collegiality among the staff, whose formal and informal networks placed them at the forefront of information on cutting-edge topics and developments within the U.S. federal system.

In the effort to navigate the administrative issues plaguing the federal system during the federal grant-in-aid explosion of the 1960s and 1970s, the ACIR made recommendations that were aimed at both state and local governments, in addition to the federal government. The commission's consistent monitoring of the grant system and its development were a valuable contribution to help government officials administering the grant programs. In addition, ACIR helped to develop enduring guidelines and principles for the creation and administration of block grant programs.¹⁷

In addition to its work on the intergovernmental grants system, ACIR delved into local public finance and metropolitan governance. In particular, it placed a focus on reworking systems of local public finance to

reduce fragmentation of tax bases and service provision. Reports also advocated for enhanced mechanisms for regional cooperation, particularly in the area of land use regulation.¹⁸

In most instances, especially early in the ACIR's history, the agency received positive feedback from its reports and was seen as providing productive and logical responses to various intergovernmental policy questions, especially in public finance.¹⁹ From its creation in 1959 to its termination in 1996, the ACIR produced dozens of reports, studies, and other publications on a wide range of intergovernmental fiscal and policy questions.

Difficulties Surrounding the ACIR

Despite efforts to strengthen the intergovernmental system and provide informative recommendations for positive change, the ACIR was often challenged by its critics on a number of issues. Criticisms included a bias towards incrementalism, or "taking an approach that is mildly reforming but not surgical."²⁰ From the commission's perspective, the aim was to address topics in which it could provide practical solutions that could be implemented feasibly in the governmental system. However, this incremental approach was interpreted by others as an avoidance of critical (and more controversial) intergovernmental issues. Moreover, commission reports were often characterized as ad hoc, as the agency often researched and reported on issues initiated by entities other than their own staff.

A second critique of the commission was its underlying political ties to the federal funding that supported the agency. Although ACIR was carefully designed to serve all three levels of government, the agency's primary funding was approved by Congress through the president's Executive Budget. This led some to interpret that the ACIR was "bought and paid for" by the legislature, and thus many believed that the recommendations were politically motivated to that end.²¹ Others countered that the commission staff design ensured a bipartisan membership and nonpartisan approach to problems and solutions, thus giving the agency credibility. However, the critics who

15 Ibid.

16 Deil S. Wright, "The Advisory Commission on Intergovernmental Relations: Unique Features and Policy Orientation," *Public Administration Review* 25, no. 3 (1965): 193–202.

17 Timothy Conlan, *From Federalism to Devolution: Twenty-five Years of Intergovernmental Reform* (Washington, D.C.: Brookings Institution, 1998).

18 Advisory Commission on Intergovernmental Relations, *American Federalism: Into the Third Century* (Washington, D.C., 1974).

19 Samuel K. Gove, J. Fred Giertz, and James W. Fossett, "ACIR: A Mixed Review," *Publius: The Journal of Federalism* 14, no. 3 (1984): 139–45.

20 Mavis Mann Reeves, "The ACIR: Its Mission and Operations," *Publius: The Journal of Federalism* 14, no. 3 (1984): 157–67.

21 Ibid.

believed that ACIR was a federal “watchdog” agency emphasized the budgetary link as an inevitable power over the commission, especially in its final years.²²

A third issue that caused problems for the ACIR was staffing as the agency moved into the 1980s and early 1990s. The original group of members was known as being unusually cordial and reputable, but turnover, absenteeism, and a lack of research concentration eventually plagued the agency. The high number of appointed political officials on the commission led to a high degree of turnover based on political terms. Also, a number of federal officials had inconsistent attendance at ACIR functions, thus leaving federal representation slim for commission meetings. The additional failure of many commission members to review materials prior to meetings was a noted issue that created delays for staff members in collaborating to produce fresh ideas and recommendations for the ACIR reports.²³

Fourth, although the ACIR was designed to represent bipartisan interests and promote consensus building, these goals were not always attainable. In some cases the commission recommendations on policy issues inevitably prompted conflicts from various groups. Although ACIR originally enjoyed a wide base of support from state and local associations, by the time President Clinton entered the White House, the Big Seven state and local associations demanded that the administration and the ACIR address specific topics to receive their continued support.²⁴

In the final years of the ACIR’s existence, another issue became one of the most controversial and ultimately contributed to the Congressional decision to cut the agency’s funding. Despite attempts by the Reagan administration to reduce the size and scope of the federal role, regulatory activity during the 1980s remained strong and resulted in tremendous financial burdens on state and local governments. As a result, many ACIR studies and recommendations focused on the federal regulations, warning of the impending fiscal crises “resulting from the multiplication of federal preemptions, mandates, and grant conditions.”²⁵ Commission reports were notably utilized in developing the Unfunded Mandates Reform Act (UMRA) of 1995. Some scholars believe that the ACIR’s study on

mandate reform crossed a political line that damaged the commission’s credibility and nonpartisan stance.²⁶ The political controversies surrounding this issue meant that reporting on the realities of federal mandates created both allies and opponents for ACIR.

By 1996, the agency staff was down to about twelve members, and the federal fiscal appropriation was earmarked for two specific purposes: to complete a study on the UMRA and to ensure the prompt and orderly termination of the commission. The UMRA studies charged the commission with

- 1) developing...methods to compare the full costs and benefits to state and local governments of compliance with federal law; 2) analyzing the impact of existing federal mandates on state, local, and tribal governments...and
- 3) [completing] annual reports on federal court decisions that impose mandates on state, local, and tribal governments.²⁷

The controversy associated with reviewing existing mandates arose when the ACIR preliminary report had focused on the most “burdensome” fourteen mandates from a list of two hundred federal mandates. The report called for significant changes in how and whether they should apply to sub-national governments. As a result, federal lobbying groups immediately voiced opposition to the report, a public hearing was conducted, and ACIR later revised the report, and removed the recommendation to exempt state and local governments from certain mandates. Instead, the revised report recommended that the federal government “work more closely with state and local governments to accommodate its mandates more easily within those jurisdictions’ varying conditions.”²⁸ The political pressure enacted by the lobbyist groups, in coordination with the Clinton presidential campaign, resulted in all Democratic members of the commission voting against the report, which was never published by the ACIR. During this timeframe, turnover in key ACIR staff, along with the increase in organized policy think tanks as alternative sources of information, contributed additional problems for the commission’s credibility and utility as an information source for the intergovernmental system.²⁹

The final death knell for ACIR came as a result of a flurry of agency terminations prompted by the 104th Congress. The Clinton administration endorsed

22 Ibid.

23 Ibid.

24 Bruce D. McDowell, “Advisory Commission on Intergovernmental Relations in 1996: The End of an Era,” *Publius: The Journal of Federalism* 27, no. 2 (1997): 111–27.

25 Ibid., 114.

26 Ibid.

27 Ibid., 115.

28 Ibid., 117.

29 Ibid.

continued funding of the ACIR, but it did not appoint federal members to the commission due to the threat of Congress cutting the funds. Therefore, Congressman Ernest Istook (R-OK) argued that the lack of presidential attention to the commission meant the agency was nonessential, and thus should be cut. Istook's third try to argue the case against ACIR worked, and the House of Representatives voted to stop appropriations to the commission. A small amount of funding provided by the Senate was for the purpose of terminating the commission's activities. Thus, the federal pipeline of funding was closed, and the agency officially ceased operations in the fall of 1996.³⁰

Lessons Learned

The history of the ACIR provides valuable insight into the complexities of the U.S. intergovernmental system, as well as the potential problems that exist when an entity is created to navigate through the problems and provide viable solutions that will strengthen intergovernmental relationships. When we consider today's intergovernmental landscape and the need for an agency to strengthen partnerships between the federal, state, and local governments, it is critical to understand the problems of the past to minimize their potential recurrences. Lessons learned from the ACIR include:

- *Conflict and partisanship.* The ACIR was originally chosen to be a bipartisan agency that would avoid making headlines and represent all levels of government. This approach along with a strong research agenda made the commission a reputable and credible source of information on intergovernmental issues. Over time, the dissolution of the commission was enacted in part due to disagreements over policy options and partisan positions regarding federal mandates. The commission's report had to take a side and identify "winners" and "losers." Once the "losers" had obtained enough political influence, the commission was deemed nonessential.
- *Turnover in commission staff members.* The early reputation of the staff as a cordial, thorough, and nonpartisan group contributed to its success. Notable members of the commission (including Ronald Reagan, Nelson Rockefeller, and Edmund Muskie) also made ACIR an entity worthy of national attention.³¹ However, a lack of commitment was demonstrated by federal government representatives. This,

along with ill-prepared staff members at meetings, was a negative aspect noticed by others.

- *Growing irrelevance.* Over its life span, it is clear that ACIR had peaks and valleys in its influence and relevance. From the 1960s through the 1980s, the ACIR was a central player in policy circles because it was able to bring its unique expertise on the intergovernmental grant system to bear. By the mid 1990s, ACIR appeared to have lost some of its relevance, particularly as other policy think tanks arose to provide their own perspectives on policy questions.

Why an Intergovernmental Agency is Needed Now

Though ACIR was eliminated, a new set of intergovernmental challenges has cropped up. In the opening section of the report, numerous policy questions that have an intrinsic intergovernmental dimension were discussed. Yet, there is no established organization that is uniquely focused on these issues from the standpoint of improving intergovernmental cooperation. The need for an organization devoted to intergovernmental relations is especially pressing now for several reasons:

- *The policy window created by ARRA.* As noted earlier in this report, the reporting and accountability requirements of the ARRA present potential problems from state and local governments that have been recipients of ARRA funds. The time to deal with these issues is now, before conflicts emerge. Thus, the unique circumstances created by the ARRA have also given rise to a concomitant need for an organization focused on enhancing cooperation and transparency in the intergovernmental system.
- *A unique offering.* The timing of this report may also complement H.R. 3332, also known as the Restore the Partnership Act of 2009. The purpose of this legislation is to "establish the National Commission on Intergovernmental Relations to facilitate the fullest cooperation and coordination between all levels of government."³² Proposed by Representative Gerald Connolly (D-VA), as of September 2009 the legislation had been introduced (on July 24, 2009)

30 Ibid.

31 Ibid.

32 Govtrack.us. "Govtrack.us: A Civic Project to Track Congress. H.R. 3332 Restore the Partnership Act of 2009" (n.d.). <http://www.govtrack.us/congress/bill.xpd?bill=h111-3332> (accessed September 24, 2009).

and referred to committee.³³ If a National Commission on Intergovernmental Relations was created, the agency recommended in this report could be a tremendous resource for the commission, providing policy guidance on key intergovernmental issues. The partnership with the commission may enable this agency to be a part of the legislative process, which would further strengthen the agency's credibility and authority in making policy recommendations, while providing a unique avenue of access that would differentiate this agency from other research entities that currently contribute to the field, such as the Brookings Institution and the National Academy of Public Administration.

- *The rising costs of devolution.* The development of the block grant system in the 1960s and 1970s furthered devolution, as the responsibility for functional activities was shifted to state and local governments at a much higher rate than previous years. This period was known as the “water tap” phase of federalism, as federal funding flowed freely to the other levels of government in the effort to utilize grants for the provision of services. Despite the implementation of UMRA in 1995, many areas such as education reform, homeland security grant conditions, and welfare reform are arguably not covered by the Act.³⁴ As a result, state and local governments have found themselves in fiscal distress as they look for options in providing services.
- *Continually increasing mandates.* Along with the transfer of responsibilities to states and municipalities for the implementation of programs that are partially or fully funded with federal dollars, tensions persist as the federal government maintains a set of requirements that accompany the funds that may not always accord with the unique circumstances of the sub-national government implementing the program.³⁵ Devolution has also prompted an increase in federal mandates that may or may not accompany the funds that are passed down the pipeline. These preemptive measures to maintain federal priorities have placed a tremendous fiscal burden on state and local governments,

thus reinforcing coercive techniques within the federal system. Further, scholars predict that federal mandates will increase in direct proportion to the degree of “cohesion” at the federal level among public officials.³⁶ Special attention to avoid conflicting policy directives that adversely impact local and state governments must be a priority directive to make this intergovernmental communication more effective.

- *A need to focus on collaborative intergovernmental partnerships.* State and local governments need to collaborate to share ideas and enhance their influence as a group on the national scene. Enhancing the framework for sub-national capacity is an urgent need. Cross-training and intra-jurisdictional data sharing must take place to strengthen governmental performance and accountability. Moreover, inter-state and inter-jurisdictional competition for federal dollars and economic development projects contribute to the burden on government units to fund programs and may detract from the benefits of working with the federal government to strengthen the intergovernmental relationship. Failure to collaborate at the sub-national level may also serve to increase the number of federal government mandates, to the extent that state and local units are not “effectively mobilized.”³⁷
- *A renewed interest in regional governance issues.* In recent years, there has been a renewed interest in the regional problems that best metropolitan areas. A new groundswell of support appears to be developing for policy aimed at sustainable development and smart growth. Yet, there is no one entity at the federal level working to promote transformative mechanisms for regional cooperation.

Policy Recommendations

Policy recommendations regarding the intergovernmental political landscape primarily focus on the creation of an independent agency focused on studying and producing policy recommendations on various intergovernmental questions. While the ACIR has served as a model for the proposed agency, reinstating the ACIR in its original design would not be appropriate. To mitigate the policy issues and tremendous

33 Ibid.

34 Paul L. Posner, “The Politics of Coercive Federalism,” in *Intergovernmental Management for the 21st Century*, eds. Timothy J. Conlan and Paul L. Posner (Washington D.C.: Brookings Institution, 2008).

35 Beryl A. Radin, “Performance Management and Intergovernmental Relations,” in *Intergovernmental Management for the 21st Century*, eds. Timothy J. Conlan and Paul L. Posner (Washington D.C.: Brookings Institution, 2008), 255.

36 Paul L. Posner, “The Politics of Coercive Federalism,” in *Intergovernmental Management for the 21st Century*, eds. Timothy J. Conlan and Paul L. Posner (Washington D.C.: Brookings Institution, 2008), 299.

37 Ibid.

economic strains that each level of government is currently experiencing, this redesigned agency has the potential to usher in a bold new era of cooperative federalism. In proposing this new organization, the report draws from past successes of the ACIR, while learning from past mistakes and utilizing these experiences to create a new entity with the capacity to overcome the obstacles faced by the ACIR. The following are general policy recommendations that could be useful in designing an agency to facilitate a more collaborative intergovernmental system within the United States.

Recommended Organizational Structure of the Newly Created Intergovernmental Agency

- ***A two-tiered organizational structure.*** Given the wide range of issues that such a body would be dealing with, a two-tiered organizational structure might provide the benefits of continuity and the needed “just in time” expertise for specific policy questions. There also might be policy groups that have a more permanent station in the structure, such as a state and local finance group or health-care issues group. This structure would provide the best of both worlds. The core council membership would provide a needed continuity to the organization, with an understanding of the broad issues of federalism and a commitment to the core values of the organization. The policy groups would bring in specific expertise on complex policy questions, adding a new depth of knowledge on specific topics.
- ***Core council.*** The core council for the organization should have wide representation from a number of federal, state, and local stakeholder groups. Like the former ACIR, representation from members of Congress, the Senate, and the White House would be critical. In addition, representation from GAO and possibly other federal agencies should be considered. There are many state and local organizations that would also be important to consider for membership on the core council, including the Big Seven state and local organizations: Council of State Governments, National Governors Association, National Conference of State Legislatures, National League of Cities, U.S. Conference of Mayors, National Association of Counties, and the International City/County Management Association.
- ***Policy study groups.*** The composition of the policy study groups would largely be dictated by the specific policy question. There should be some representative from the core council in each group to

ensure ongoing communication between groups. It would also be wise to include people from relevant federal and state/local groups with an interest in the policy question. For example, if the council determined that a policy group was needed to study emergency management issues, the group would want representatives from FEMA, Department of Homeland Security, and the National Association of Emergency Managers. Policy study groups might also benefit from academic expertise in their area by including researchers and other experts in particular policy areas.

The main advantage of this structure is that it attempts to involve *all* relevant stakeholders on specific policy questions. Thus, rather than creating reports and recommendations using solely “in house” staff, this ad hoc policy study group structure facilitates inclusion of outside interests on the front end of the process. Given that one of the principal reasons for ACIR’s demise was its perceived partisanship, the proposed structure seeks to be more inclusive to avoid such claims. Though it is unlikely that all stakeholders will agree with all findings and recommendations coming from any one policy group, a wider representation of interests will serve to lesson conflict and even out policy perspectives. As a result, a newly formed agency must heed these dangers; the proposed organizational structure in which a core council will facilitate policy study groups that will research multiple sides of the issues should help to deter the political fodder that could threaten the agency’s credibility and funding.

Agency Staffing Recommendations

- ***Agency funding and resources.*** The provision of funds from the president’s executive budget would serve as a sign of federal government support. However, as in the case of the ACIR, a budget based primarily on federal allocations is subject to claims of being a federal agency with partisan political influence. It is recommended that some sort of cost-sharing approach be investigated, with funding contributions from state and local sources in addition to federal funds.
- ***Staff turnover, meeting times, and attendance.*** While the turnover of staff members and elected officials serving on committees is an inevitable part of any agency staff, careful consideration of staggered terms is recommended to reduce vacancies especially for elected officials serving on the

committees. Less consistent meeting attendance by federal representatives was interpreted as a lack of commitment from the federal level. Thus, in moving forward with a newly created agency, commitment and attendance issues must be noted. Utilization of the policy study groups approach would obviate the need for a high frequency of council-wide meetings. Perhaps a quarterly meeting schedule would provide enough time for staff to complete research and reduce meeting times for elected officials.

Recommended Agency Reporting and Workflow

Policy Study Group Process

1. ***Determination of policy priorities.*** With the two-tiered organizational structure proposed here, one of the central responsibilities of the core council will be determining policy priorities for the coming year. The council should then determine the broad parameters for each study group: What questions should the group address? What outcomes are expected as a result of the group's report?
2. ***Group formation.*** Once the council has reached a reasonable consensus on priorities, the council or an ad hoc subcommittee would work to develop a list of relevant officials and stakeholders to be considered for each policy study group. If paid consultants or staff are required for the group, a budget would be set for these things as well. Formal invitations could then be issued for each policy working group along with communication of the group's objectives and timeline for project completion.
3. ***Formatting of reports and recommendations.*** The policy study groups would be required to submit a draft report to the core council so that each policy area receives an analysis from multiple perspectives. These reports would then be utilized by the core council and staff and would include counter-arguments along with the agency's final recommendations. This format would provide information in an effort to maintain a nonpartisan stance that represents opposing political views when necessary.

Data Collection and Analysis

It is recommended that the council conduct a systematic survey of state and local officials on an annual or biannual basis. A survey of this type would contain a common core set of questions that could be compared year after year. In addition, the survey would contain specific modules on special topics. The special topic

could be determined, in part, by the choice of policy priorities set by the core council in any given year and the data needs reported by each policy working group. Having a regular data collection effort of this type would provide a systematic mechanism for gathering needed information about the landscape of intergovernmental relations and a snapshot of the opinions and concerns of state and local officials nationwide. Several of the Big Seven organization already conduct survey research and have up-to-date databases that could be utilized for drawing appropriate samples.

A New Name?

This report does not offer a definitive answer to the question of what this new entity should be called. Given ACIR's unfortunate demise, using the ACIR name might cause some stigma for this new entity. ICMA recently advanced a proposal for an intergovernmental policy think tank dubbed the "Intergovernmental Policy Council." Another possible name that would emphasize the coming together of different levels of government would be CLASPP, the Council on Local and State Policy and Priorities. As formal proposals for this entity begin to take shape, an appropriate name can be chosen.

Immediate Implementation Steps

1. ***Launching a systematic campaign to increase federal officials' awareness of the crisis in intergovernmental relations.*** For action to take place, it is necessary to first build awareness and consensus that a problem exists. The Big Seven state and local organizations have substantial expertise and an established network of valuable relationships. We recommend that, as part of a campaign to establish a new organization devoted to intergovernmental relations, the Big Seven engage in a campaign to build awareness of the significant problems that exist in the intergovernmental environment.
2. ***Creating of a core council of 20 to 25 federal, state, and local officials.*** This core council would set specific policy priorities for the organization to study over the coming year and would create separate policy study groups with representation from a wide variety of relevant stakeholder groups. The first responsibilities of the council at startup would be (1) hiring a director and (2) working with the director to create a strategic plan and a budget for the next five years.

3. **Immediately studying the American Recovery and Reinvestment Act.** The GAO has noted a number of looming challenges with respect to ARRA. Specifically, there is limited state and local capacity to cope with reporting requirements; certain reporting features are still unclear; and there is concern that state and local governments may be held accountable for other entities that receive ARRA funds within their jurisdictions. Though many other pressing issues remain, given the high stakes and visibility of the ARRA, the concerns raised by ARRA should be addressed quickly. This urgent need presents a policy window that requires swift and decisive action. It is recommended that an ARRA policy study group be created immediately after the council and executive director have been identified.

4. **Subsequently identifying other salient intergovernmental policy issues.** Once the core council and formal organization are in place, it is recommended that the new agency identifies other policy priorities and creates study groups to work on those areas.

5. **Beginning with substantial federal funding with a plan for a growing share of state/local support.** Because time is of the essence, it is recommended that the federal government take the lead in funding this new organization in the start-up phase, for about the first three years of its operation. This would be done with the understanding that the federal funding would be supplemented by state and local support after the first three years or so. The planning for the organization should include a mechanism for phasing in state and local financial support in an effort to promote cost sharing.

Conclusion

In the face of growing challenges in the federalist system, the time is ripe for a new, reinvigorated organization devoted to the study and resolution of important intergovernmental policy dilemmas. The recent economic downturn and resulting American Recovery and Reinvestment Act have ushered in an unprecedented flow of federal dollars to state and local governments. The significant accountability requirements of ARRA present a window of opportunity for creation of a new organization focused on intergovernmental relations. Moreover, this report has identified a number of other policy domains where there are major unresolved questions, including Medicaid, education, emergency planning, and metropolitan governance. Drawing

on the historical lessons learned from the Advisory Commission on Intergovernmental Relations, this new organization would use a flexible and inclusive model for study of specific policy questions.

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