

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
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Much of the paperwork in federal grant programs is driven by the nature of narrow categorical grants. For example, rather than providing assistance for health and mental health, the federal government separates these programs. Rather than providing a program for health, the federal government further divides these programs into individual health problems, etc. Recent moves to block grants have improved this situation somewhat but by no means solved the problems of large numbers of smaller categorical grant programs.

The narrow categorical programs inherently generate considerable paperwork just to make sure that funding affects the category defined in the program. This involves intricate tracking well beyond the federal funding itself. First, the use of the federal funds must be monitored and checked. Second, the uses of the state matching funds must be monitored and checked. Third, state funds not involved with the program must be monitored to avoid "supplantation" (substitution of federal dollars for what the state would do in any case), and to ensure "maintenance of effort" (avoiding reduction of state contributions in the same field).

Leaving aside the special problems of categorical programs, the federal agencies routinely require of state and local agencies detailed paperwork far in excess of the paperwork which the White House, Office of Management and Budget, and Congress require of the federal agencies themselves in federally administered domestic programs. Examples are:

ELABORATE PLANS AND APPLICATIONS: Applications for federal programs routinely run to hundreds of pages. New applications are required each year even though much information does not change. State agencies are required to describe their environment, provide maps, show population by sub-areas, etc., evaluate program inter-relationships, provide information on plans for designated subgroups, show evidence of considering alternative strategies, response to federal initiatives, etc.

CERTIFICATIONS: State and local governments are not permitted to certify their procurement systems, accounting, auditing, personnel systems, etc. on a one time basis or for many different programs at once. They must do it at least annually for each of the federal programs involved.

In addition, they must certify to all kinds of things they are not doing, such as not violating the nearly 60 cross cutting requirements.

DENIAL REPORTS: In many programs, states must report on what they do not do as well as what they do. Thus, they provide reports on persons they do serve and on persons to whom they deny service.

FISCAL INFORMATION: State and local governments are routinely required to provide fiscal information in federal formats, which often do not match state and local accounting systems, and for time periods which are incompatible with those used in their own systems.

PROGRAM REPORTS: These are the most understandable reports, although required in more detail than is used. These deal with what was accomplished with the federal money.

STEP-BY-STEP APPROVAL PAPERWORK: Some of the federal programs, particularly in construction programs for waste water treatment and highways, are based upon a presumption that state and local officials are incompetent, trying to rip off the federal government, or both. Thus, these programs involve detailed review of plans and drawings, contractor selection, specifications, progress payments, contract modifications, etc. by federal officials.

State and local officials generally find this quantity of paperwork onerous, particularly when they compare it to the paperwork the federal agencies do themselves or to the paperwork required of them in state-administered programs.

LOW PRIORITY PROGRAMS AND REGULATION: State and local officials often complain that they are driven to low priority use of funds by narrow federal categorical grants.

Sometimes this is a result of creating categorical grants within a narrow categorical grant program. For example, in a survey of regulations in grant programs by the National Governors' Association,* one state reported that it could not use funds for feeding programs for the elderly for transportation to where the food was offered. The result, in areas not served by mass transit, was to redefine recipients as those who needed the feeding and who also owned cars, which one suspects is the least needy portion of the potential client population.

*ELIMINATING ROADBLOCKS IN EFFICIENT STATE GOVERNMENT: THE GOVERNORS' GREEN BOOK, 1981

Often low priority uses of funds is a problem with a program, not within it. Narrow categorical programs deal with a need defined nationally that may not exist to the same degree in every state. Usually the problems of mismatch are not obvious and are hard to prove, as was the case in Southern states where officials found federal resources more than adequate for drug abuse but less than adequate for alcohol abuse. Sometimes, however, the mismatches are obvious as in the case of grade crossing protection funds allocated to Hawaii which lacks grade crossings and "weatherization" funds for that same state. Those funds were available to install insulation, caulking, etc. in a state where these are not pressing needs.

COST-INCREASING REGULATIONS: In the case of most federal programs, regulations that increase costs reduce the quantity of service that can be produced with any given quantity of federal dollars and state or local matching funds. However, in the open-ended programs of Medicaid and AFDC, such regulations increased total costs and thus the costs that had to be paid by state governments.

In 1980 some of the Medicaid regulation in effect required a state, to have any program at all, to adopt a complete schedule of basic services. If the state opted for additional services, it had to provide them to everyone, not just persons with the greatest need for them. States could not penalize Medicaid abusers by taking benefits away from them, could not steer patients away from high cost providers, and had to follow federal reimbursement standards even if they could make arrangements to buy the services for less. The Reagan administration has eliminated a number of these requirements, but a subsequent administration could reimpose them.

INCONSISTENT REGULATIONS: The premise of federal regulation involves substituting federal decisions for state and local ones. This presumes that federal officials know the right answer, that the right answer is the same for each state, and that state officials will not discover the right answers without federal guidelines. Considerable doubt arises about these premises when federal agencies issue inconsistent guidelines.

The most serious cases of inconsistent federal regulations occur in the federal cross-cutting requirements where a grant program in one field (e.g., transportation) is used to achieve other objectives such as historical preservation or equal employment opportunity. Problems arise through both legislation and regulation because the substantive and procedural requirements in one program's statute or regulations will differ from and/or partially duplicate those in the general statute dealing with the cross-cutting requirement. This problem frequently

arises in affirmative action requirements, where reporting problems and conflicting guidance have become a particular problem for universities. Another example is historical preservation values affected by highway programs, which are covered by two separate statutes. Examples of inconsistency appear in the paragraphs below.

How to handle purchases which involve the contractor's purchase of a commodity to perform work (e.g., asphalt for a highway contractor) is always a dilemma for private and public purchasing officials. If one does not permit the contractor to pass along a price escalation, some believe that contractors increase their bids by more than the amount of the likely escalation because of risk and uncertainty. Those officials prefer to absorb the price increase. Others believe that contractors may underestimate cost increases in their bid and do not permit escalation once the contract is signed. Current standard contract forms for the Department of Transportation reflect an attitude that federal officials have more insight on this issue than do state officials. Thus, both the Federal Aviation Administration and the Federal Highway Administration provide guidance on this subject. One prohibits escalation and the other requires it.

Dam safety requirements administered by the Corps of Engineers require that the safety of a dam be evaluated in terms of the risk involved in the event of failure, with the ability of an emergency spillway to pass a certain size storm for a given level of risk as the criterion. The problem is that federal agencies have inconsistent standards for the risk evaluation of dams, including having no agreement on the size of storms that should be used in such evaluations.

Different federal agencies have different standards for allowable costs, making it impossible to have a single automated accounting system that meets federal standards and state needs. For example, in highway projects the Federal Emergency Management Agency does not permit reimbursement of undistributed direct costs and workers' compensation. On the other hand, the Federal Highway Administration does.

Universities, particularly those using certain hazardous chemicals in research and practicing radiology in university hospitals, find dealing legally with pregnant women in "at risk" jobs impossible. Policies of the Nuclear Regulatory Commission and National Institutes of Health seek to exclude pregnant women from such jobs. On the other hand, civil rights requirements prevent discrimination based on pregnancy. States cannot achieve one objective without violating the other.

Federal agencies are also inconsistent on costs in the same project. For example, "weatherization" projects are often handled by workers paid through a Department of Labor program while materials are

purchased through a Department of Energy program. If a project is done by error (e.g., a project where the recipient's income was insufficiently low), Labor holds the sponsor liable, but Energy does not unless the error rate is above 3%.

CONTROL OF PROCESS, NOT RESULT: In general, state and local officials feel that federal agencies should be concerned with the results of programs -- persons provided assistance, jobs obtained, highways built, etc. -- in relation to funds spent. State and local officials resent excess federal dictation of processes that are used to achieve the results, particularly when the effect is to overlay a federal requirement on a state system that can and does achieve the same result. Examples are mandated forms of organizations such as advisory committees and boards, dedicated data processing, procurement rules, and personnel allocations.

SUMMARY: FEDERAL-STATE REGULATIONS IN GRANT PROGRAMS

There is general agreement by state and local officials and outside observers, such as the Advisory Commission on Intergovernmental Relations, that the federal system is badly congested and in considerable need of reform. This widely held view has given rise to reform efforts of various types that are described in Part Three of this report. The 1980's may be a time in which the political environment is right for a substantial reform of the way in which the federal government relates to state and local government, with grant reform being one cornerstone of the new relationship.

CHAPTER FIVE: OTHER FEDERAL IMPACTS ON ALASKA

INTRODUCTION

This chapter concludes the overview of current state-federal relations. Chapter 3 discussed federal law and regulation generally; Chapter 4 considered federal grant programs; and this chapter covers federal lands, federal employees and some issues, such as control of fish and game, that are of particular interest to Alaskans.

The purpose of this chapter is limited relative to the overall charter of the Statehood Commission. The commission is working separately on subjects, such as the implementation of the Statehood Act and the Native Claims Settlement Act of 1971, which are outside of the scope of this report.

FEDERAL EMPLOYEES AND INSTALLATIONS

There are a number of ways to consider the presence and impact of the federal government. One way is to consider the regulatory presence, the impact of federal laws, as was done in Chapter 4. Another approach is to consider federal money, taxes and spending. Still another approach is to consider federal personnel.

Interestingly enough, while the federal government has increased its financial and regulatory roles in the past several decades, there has been very little expansion of federal employment. Total federal civilian employment, including the Post Office, in 1981 was 2.9 million persons, about the same as in 1970. In the federal budget presented in early 1982, the president reported a reduction in employment from FY 1981 to FY 1982 and recommended further reductions of federal civilian personnel in FY 1983 and FY 1984. As a result of static federal employment and national population growth, federal employment as a share of population has been dropping.

While direct federal operations are a relatively insignificant economic factor in most states, they are economically very significant in Alaska. Estimated federal spending in Alaska on federal operations in FY 1981 was \$1.9 billion, much more than the \$495 million estimated to have been spent on grants. There were 41,200 federal civilian employees in Alaska in 1979, 22% of the Alaska non-agricultural work force. The

federal government in FY 1980 spent an estimated \$765 million in wages and salaries, a significant contribution to total Alaska personal income of about \$5 billion.*

To a significant degree, attention has been focused upon federal employment as a measure of the federal presence. Both Presidents Carter and Reagan have attempted to avoid increases in federal civilian employment as a matter of policy and, as indicated by the statistics above, have been successful in this policy. In the current political climate, it is reasonable to anticipate a continued attempt to reduce or at least not to increase federal non-military employment. As most of the federal employment in Alaska is military, this policy would not necessarily have an adverse impact on Alaska.

However, ceilings on federal employment have not proved to be effective ceilings on the federal impact on state and local government or citizens. For the administration of many domestic programs, the delivery system for federal programs is state and local government. The many state and local employees who are paid with federal funds are not included in reported totals of federal employment. In other cases, particularly in defense programs, the federal government has a choice between performing certain functions itself and contracting with firms to provide engineering, computer facility management and the like. It has been estimated that there are something like five million persons in the non-federal economy who are paid with federal funds.

Along with federal employees are federal installations, ranging from post offices and office buildings to military bases. One principle of federalism that has remained intact from the initial days of the United States is that state governments and their instrumentalities, specifically local governments, cannot tax federal property or operations and the counterpart doctrine that the federal government does not tax the states. The fact that federal property is exempt from taxation does, however, create a potential problem for state and local governments. These governments provide services to the installations (e.g., police and fire protection for a federal office building) without receiving the property tax revenues and various other revenues associated with comparable activity in the private sector. State and local governments also provide services to federal workers and their families without being able to tax the workplace of federal employees.

*Information on federal spending in Alaska is from Institute of Social and Economic Research, University of Alaska, FEDERAL REVENUES AND SPENDING IN ALASKA (1981 with a 1982 update).

This situation has created pressures to develop some method by which the federal government can pay some of the costs imposed on state and local governments by its employees and installations, without subjecting federal property to taxes. Excluding public lands, the result has been an ad hoc collection of payment devices including some payments in lieu of taxes and, most important, the impact aid program for schools. In certain cases, federal assistance has also been proposed for private economic activity encouraged by the federal government. The Coastal Energy Impact Assistance program is an example.

These programs have long been the subject of political controversy. Proponents contend that they are necessary to offset the costs which federal activities impose on state and local government. Opponents contend that, in many cases, the economic benefits and even favorable impacts on government revenues of federal installations are greater than the costs of additional public services, so that there is no burden to be offset. Numerous studies, particularly of the impact aid program, tend to show that circumstances vary from one federal activity to another, making it difficult to tailor a nationally uniform program. In a budget sense, these programs are treated as federal grants, not as part of the federal costs of doing business. They are included within national totals of federal grants to state and local governments and have suffered with other grants the impacts of federal funding reductions for grants.

Controversy over the extent of the federal obligation to reimburse state and local governments for lost property taxes and/or services provided to federal installations and employees has led to inconsistencies in federal policy from agency to agency and program to program. As ACIR puts it:

The one generalization that can best be made regarding the array of federally owned property is that there is no guiding principle regarding the extent to which the federal government as a property owner should contribute to the financial support of state and local governments....

In short, the federal payment and tax system is a patchwork of uncoordinated programs. The federal establishment could use similar amounts of real property in each of ten different localities and, depending on a host of different institutional factors, pay different amounts of tax revenues or in lieu payments -- or no payment -- to each of the ten jurisdictions.*

*ACIR, PAYMENTS IN LIEU OF TAXES ON FEDERAL REAL PROPERTY (1981), p. 3.

From the perspective of the state of Alaska, it is particularly important that the federal government's obligations as a holder of property and employer of persons be separated from federal grant policies and programs. Many of the proposals, for example, for the reform of the federal system involve sharp cutbacks in the federal role in elementary and secondary education. If impact aid is viewed as one of many grants by which the federal government enters the educational field, it is subject to elimination as part of a sweeping "sorting out" of federal and state and local functions. To the extent that impact aid and in lieu payments are part of the costs of doing business, as indicated by such shifts as putting the costs in the budgets of the agencies whose property gives rise to the payments, funding for these programs will not be affected by reforms aimed at the regulatory and grant-making role of the federal government.

PUBLIC LANDS

BACKGROUND: The public lands of the federal government represent another special case of federal-state relations that is of particular importance to the citizens of Alaska. Under the Statehood Act, Alaska is scheduled to receive about 103 million acres of federal land, 29% of the total acreage in the state. Before the bulk of these transfers, the federal government owned, in 1979, 89.5% of Alaska land, including over 52 million acres administered by the National Park Service. This land ownership is a key aspect of the relationship between the federal government and a number of Western states.

The original thirteen states existed before the federal government and there was no such thing as federal land until the federal government was created. When it was created, the states of Virginia and Maryland agreed to give the federal government a 10 mile square area which has become the District of Columbia. The other federal land in these states is land purchased by the federal government for office buildings, military installations, and national parks.

The westward expansion of the United States occurred through purchases of territory from other governments. The federal government established rules for the governance and settlement of these areas in legislation such as the Northwest Ordinance. In the Midwest, certain sections were set aside for public use by what were to become state and local governments and the remainder was deeded to the persons who settled it. Because settlement patterns were relatively dense and all the land was considered to be of value, practically all land went into private ownership and there were no significant residual interests in land retained by the federal government.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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This situation has created pressures to develop some method by which the federal government can pay some of the costs imposed on state and local governments by its employees and installations, without subjecting federal property to taxes. Excluding public lands, the result has been an ad hoc collection of payment devices including some payments in lieu of taxes and, most important, the impact aid program for schools. In certain cases, federal assistance has also been proposed for private economic activity encouraged by the federal government. The Coastal Energy Impact Assistance program is an example.

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In the West, the pattern was different. Land grants were made to settlers and some large land grants were made to railroads. However, large portions of the lands in the West and Alaska were simply not useful for the settlement patterns of division of land to individual farm families that would own and manage farms on the land. As a result, much of the land remained in federal hands. Starting with the admission of Ohio in 1802, the federal government has required states, as a condition of admission to the Union, to accept a "clause irrevocable" by which the state renounces any claim of title to federal lands within the state.

The application of this policy to the central portion of the United States made very little difference, leaving the federal government with title to lands that have been used for such purposes as national forests and parks. These landholdings are generally not the subject of significant controversy. The same cannot be said for the Far West, Alaska, or Hawaii. In these states, federal landholdings constitute large portions of the land area. Changes in technology, mineral exploration, and expanding population have increased the value of federal holdings and made land use controversial in the extreme.

CEDING FEDERAL LANDS TO STATE GOVERNMENTS: The tensions between Westerners and the federal government over land policy have a long history.* The issues have included grazing rights, water rights, timber cutting policy, mineral exploration restrictions, and various environmental controls. One obvious way for dealing with these problems is to remove the federal government from its major role as landowner, one theme of the "Sagebrush Rebellion."

The Rebellion can be viewed as a political movement with its core concern over federal land management. Its rhetoric is a collection of complaints over that management. Because the "rebels" have no single organization through which to decide policies, it does not have a definition of proposed remedies. However, it is clear that many concerned with this issue view ceding federal lands to the states as the appropriate solution. This view has been given some support by President Reagan who, in Anchorage in 1979, called the federal government, "land greedy, holding on to land that it was never intended to hold on to." In subsequent speeches, he indicated that he was one "who cheers and

 *For a good summary from a historical perspective, see Richard D. Lamm and Michael McCarthy, THE ANGRY WEST: A VULNERABLE LAND AND ITS FUTURE-1982 (Richard Lamm is Governor of Colorado).

supports the Sagebrush Rebellion" and during the campaign pledged that "My administration will work to insure that the states have an equitable share of public lands."*

The Statehood Commission's preliminary report reviews the prospects for forcing the federal government to relinquish federal lands by court action and concludes that such prospects are dim indeed. The report also considers the prospect of obtaining the same result by legislation, and concludes: "The western and Alaska public lands, as Alaskans know only too well, are looked upon by populations in other parts of the country as common goods owned by and to be used by all U.S. citizens."** The report reviews the mathematics of congressional representation, which makes it obvious that major land conveyance to the Western states and Alaska will not take place without a plan that is acceptable to a substantial number of persons East of the Mississippi River.

The problem, of course, is that the energy-poor East sees public land transfers as potentially shifting nationally owned energy-rich properties to states and individuals already becoming rich from control of energy resources.*** In addition, there are substantial and vocal groups throughout the nation that wish to maintain large areas in their pristine state and that concentrate on federally owned land for this purpose.

Furthermore, the objective of turnover of federal lands to the states is not accepted by all Western leaders. Governor Lamm, for example, argues:

Whoever the rebels are, whatever it is they want, their strategy is bankrupt. To the people of the West, the idea of land cession as leverage to extort improved federal public-lands management is risky enough. But the idea of land cession as an end in itself -- which is how most Sagebrush reactionaries see it -- is dangerous beyond imagination. The cession of the public domain to the western states would destroy the land and the states with it.****

*Lamm, as cited above, pp. 317-318

**MORE PERFECT UNION, p. 22)

***See, for example, Northeast-Midwest Research Institute, THE UNITED AMERICAN EMIRATES: STATE REVENUES FROM NON-RENEWABLE ENERGY RESOURCES (1981).

****Lamm, as cited above, p .307.

Lamm argues that the states would not retain lands transferred to them. Instead, they would sell them and they would be resold to major corporate interests. He quotes former Idaho governor and Interior Secretary Cecil Andrus as indicating that cession would place the West in the hands of "the Exxons, the Mobils, and the Gulfs."

MANAGEMENT OF THE PUBLIC LANDS: If the states, by reason of Eastern opposition to cession or lack of Western interest in cession, do not acquire the public lands, the problem of perceived excessive federal power must be handled in the context of land management. There are really two basic issues in land management, substance and process.

In procedural terms, many of the complaints regarding land management relate simply to how the federal government makes decisions, rather than the substance of those decisions. As Governor Lamm states the complaint:

The point is that, good laws or bad, the West has been voiceless in making them. That some have been good does not alter the hard fact that the West has become legally emasculated, that it is treated with arrogance and indifference, and that it still is living with the old, archaic federal-eastern assumption that the federal government is better equipped to rule the West than the West is to rule itself.*

The process by which public land decisions are made in Congress is inherently open, in the sense of being based upon open hearings and recorded votes. Decisions in Congress may be faulted in substantive result, and Westerners may resent not having a majority, but it is hard to fault the process. This is not necessarily true, however, in the administrative processes related to public lands. There questions of attitude, as expressed in concepts like Interior's current approach to being a "good neighbor," can affect substance as well as process. In addition, consultative mechanisms can be developed to reduce the friction between state and federal decision-makers. However, as noted in the chapter which follows, it is difficult for Alaskans, or anyone else, to guarantee meaningful federal consultation regardless of what the formal rules for consultation might be.

*Lamm, as cited above, p. 241

One consultative device for use of public lands that appears to have satisfied some state concerns is the Department of the Interior's Coal Policy Team concept. These teams are used to deal with decisions relative to leasing federal lands for coal exploration and mining in each of the regions (basically coal basin areas) where leasing is significant. Each team has a representative of the governor of each affected state and a Bureau of Land Management (BLM) representative from the same states. The team is chaired by a BLM employee from outside the region. All of these members vote. Thus, in a basin encompassing parts of two states, there would be five voting members, three federal and two state.

The teams structure the technical work (e.g., environmental impact assessment) of their own agencies and other federal, state, and local agencies. Their open meetings often involve participation by local officials and officials of the many federal agencies besides BLM with an interest in leasing activity on federal land.

The coal team approach was adopted administratively by the Department of the Interior. The approach was not mandated by statute or federal executive order. This means that any subsequent Interior Secretary would be free to drop or modify the concept.

In terms of the substance of land management, Alaskans seem to have their greatest complaint over the general category of restrictions on land use. The complaints vary from restrictions on hunting, overcommitment of land to wilderness status, restrictions on mineral development, etc. As discussed in the final chapter of this report, some of these concerns can, without cession, be dealt with in the context of devolution of federal power while others cannot easily be handled in this context.

The themes of this report on the devolution of federal power obviously have some applications to public lands. The ownership of vast quantities of land does contribute to the pervasiveness of federal influence, makes it more difficult for citizens of the states to manage their own affairs, and does contribute to the costs and size of the federal government. Those concerned over a return to the principles of the founding fathers can also recognize that none of the founders expected the federal government to exercise massive powers as a landlord. The provisions of the Constitution relative to federal property were clearly designed to deal with such subjects as the ownership of forts and arsenals.

Attempting to suggest possible lines of approach to the lands question that could be merged with other approaches to federalism involves speculation, as no attempt was made in the preparation of this

report to interview political leaders on their views of the relationship between lands questions and questions of the federal role in grants and regulation. While it is speculation, it may be useful for the Statehood Commission to consider possible connections.

At the outset it should be noted that there is a general national consensus on valid reasons for the federal government to own and control the uses of land. The federal government needs land for military installations and for a national park system, the keystone of which is ownership of places of unique natural beauty that could reasonably be expected to draw visitors from throughout the United States. However, persons from east of the Mississippi have become interested in recent years in making sure that the benefits of the national park system are not confined to the West and have encouraged national park development in such places as Tocks Island (New Jersey) and the Cuyahoga Valley (Ohio) so that more national park spending would occur closer to population centers. The National Park Service budget has been sufficiently tight in recent years that the current administration has called a moratorium on park acquisition in order to concentrate resources on parklands already owned by the federal government.

Obviously, having land already in federal ownership makes it considerably easier to put such land into the status of parks. Even easier is to put additional land into the status of wilderness, as citizens of Alaska should know better than anyone. It would seem highly unlikely that any lands that are currently a part of the National Park System would be given to individual states except as a part of land swaps. Wilderness areas might be another question, but would probably never be ceded without substantial land use restrictions and not until enough time has passed to provide reliable information on the extent to which such areas are used (or not used as the case may be).

For the remainder of land, there can be several approaches to the transfer issue, including approaching the issues through both economic and political aspects.

In terms of the economics of the situation, it would appear unlikely that the federal government would transfer valuable mineral rights to the Western states. If the concerns over public lands relate more to control questions and less to a desire to gain from mineral exploitation, exclusion of mineral rights is not necessarily a problem for those seeking to shift control of land out of federal hands.

If mineral rights are out of the picture, it becomes reasonable to look at the current costs and benefits of the federal government holding large quantities of land in the West. Holding this land to current standards of operation is not costless. The Department of Agriculture

and Bureau of Land Management spend considerable sums for public land management. Some of these costs (the federal budget is not designed to show how much) are costs associated with earning income such as management of the national forests, administration of systems for permits of various kinds, and surveys. Other costs are essentially deadweight costs, affecting the interests of the states in taking over these lands, but also potentially affecting the willingness of the federal government to give them up. Some sort of study of the costs and benefits of the federal government continuing to hold land would seem appropriate, with land differentiated by type and current use. The Reagan administration has indicated a commitment to analyze federal property on just this basis, although emphasis is on smaller landholdings.

There is one other possibility for dealing with the public lands issue in the context of a general sorting out of state and local and federal roles and financing. The proposals for a grand "sorting out" of functions among various levels of government that are most appealing to state officials involve a combination of termination of federal assistance to, and involvement in, functions such as local education and local transportation and federal assumption of all costs of one or more income tested programs such as Medicaid or AFDC. These proposals are presented and discussed by federal and state officials on the theory that steps will be taken to avoid such a swap having implications for individual states that are substantially different than for states as a group. In other words, the desire is to avoid windfall gains and major losses in any state.

Avoiding such gains and losses is difficult even in the context of an overall agreed swap. Giving income tested programs to the federal government tends to favor most (e.g., more per capita relief) those states which have traditionally had high payment levels in AFDC and high benefits in Medicaid and whose low income persons represent a relatively high proportion of total population. These states are generally those located in the industrial Northeast.

On the other hand, Western states tend to receive larger than average per capita amounts in programs of federal assistance that would be terminated in proposed sorting out arrangements, particularly in highway funding and elementary and secondary education. To make the Western states fare as well as Eastern ones, proposals for sorting out need some sort of extra payments for the Western states. In the administration proposal, for example, a trust fund would be established that would make payments to the states that lost the most from the swap of federal and state/local functions. However, to achieve the objectives of reducing the federal grant budget and eventually getting the federal government out of these programs, the trust fund must eventually

disappear, as the administration proposes. The eventual drying up of the trust fund reduces the attractiveness of the proposals to those states that lose by the swap.

One way to reduce the federal budget cost of swap proposals and at the same time to provide an asset (which current federal leadership may wish to sell in any case) of lasting value would be to provide some public land transfers as part of a New Federalism package for those states that have substantial public lands and would otherwise lose in the swap proposals.

For example, one proposed swap of functions would have the federal government assume full costs of income security functions, including Medicaid, welfare (AFDC), and food stamps. The federal government would stop funding elementary and secondary education, vocational and higher education, highways, transit, and certain other grant programs. A calculation of the financial effects of a proposal comparable to this shows that nationwide the program would be a "wash." That is, states in the aggregate would save exactly enough from the federal takeover of programs to fund the programs that the federal government would stop funding.*

However, some individual states would lose substantially by such a swap. Alaska would have the largest loss of any state, over \$260 per capita. Other states with large losses (\$50 to \$100 per capita) would be:

Arizona	North Dakota	New Mexico
Michigan	California	South Dakota
Montana	Mississippi	Wyoming

Most of these states are Western and all contain substantial public land holdings. To make the New Federalism proposals feasible, a way must be found to provide some offset for these states. In the administration's proposal, a new trust fund is the mechanism chosen, but a combination of a trust fund and public land cession is a potential alternative to just a trust fund.

 *The particular calculation used as an example is from ACIR, CHANGING THE FEDERAL AID SYSTEM: AN ANALYSIS OF ALTERNATIVE RESOURCE/RESPONSIBILITY TURNBACKS AND PROGRAM TRADE-OFFS (1982), p. 59. The numbers should be considered illustrative of this family of proposals. Exact numbers will vary with the year used for analysis, the exact programs to be turned back, and any supplements considered. However, all proposals in the family described above will tend to produce major losses in the states listed in the text.

FISH AND WILDLIFE

The management of fish and wildlife is of particular importance to Alaskans because of the much greater economic importance of fishing and hunting to Alaskans compared to citizens of most other states. Interaction with the federal government on fish and wildlife issues has not been a totally satisfactory experience for Alaskans as indicated by comments made at the convention of the International Association of Fish and Wildlife Agencies in 1979 by Alaska Fish and Game Commissioner Ronald O. Skoog. :

Historically, each state has had the primary responsibility for managing the fish and wildlife resources within its borders, and I think has done the job well. There is no need to change this role! Yet the trend of increasing involvement and interference by the federal government in state management programs is disruptive, not cost effective, and not in the best interest of the public nor the resources. Frankly, it is also quite unnecessary. I believe the state is in the best position for managing fish and resident wildlife most effectively...

People tend to resent regulations and they particularly resent them when they are developed or promulgated at a distance, such as in Washington, D.C., by people not knowledgeable about the state or its problems and in many cases not particularly sympathetic toward that state....This resentment is particularly true in Alaska...

TREATIES REGARDING FISH AND WILDLIFE: Part of the source of federal power regarding fish and wildlife grows out of the power of the national government to handle relations with foreign governments. In the early 1900's, the taking of migratory waterfowl was occurring so rapidly that it appeared likely that stocks would be depleted. Under the constitutional doctrines of the time (see Chapter 1), the control of shooting of ducks was clearly a state matter and federal legislation regulating the subject would have been unconstitutional. However, the subject was dealt with by a treaty which was implemented in the United States by an act of Congress. The Supreme Court upheld the constitutionality of the statute on the grounds that the foreign policy power, to be effective, had to include the power to implement what was agreed to in a treaty.

Since that time, the question has not been whether the federal government could regulate fish and wildlife management by treaty but

under what circumstances this would be done. Treaties of interest to Alaskans include those relating to migratory birds, endangered species, polar bears, and North Pacific fisheries. State officials have had major inputs into decisions about some of these, but not others.*

Discussion of a possible caribou treaty with Canada gives some indication of the issues that can be involved. The Tanana Chiefs Conference and others seek a treaty covering habitat management and taking. The state of Alaska has taken a position that the treaty would not be beneficial citing, among other things, that "The treaty ... would result in federal pre-emption of yet another traditional prerogative of the state -- management of its own game resources."**

MARINE MAMMALS: The Marine Mammal Protection Act of 1972 in essence federalized the management of marine mammals including polar bears, sea lions, walruses, and several species of seals. The legislation contained provisions permitting the federal government to return this power to states but only with certain restrictions. One barrier is that the federal legislation, before recent amendment, only authorized taking by Alaska natives. Such a provision under state management was viewed as running afoul of the equal protection provisions of the Alaska Constitution. Other barriers may appear in the interpretation of the recent amendment and committee report language. The Alaska Department of Fish and Game makes a strong case that the federal pre-emption eliminated a successful state program and replaced it with non-management by the federal government.

OFFSHORE FISHERIES: There is now dual control of offshore fisheries between the federal government and the state of Alaska, with Alaska having responsibility to the three-mile limit and federal regulation controlling outside the three-mile limit. Under the Fisheries Conservation and Management Act, the federal government is supposed to

*The treaties and the state role in them are detailed in a letter from Commissioner Skoog to the Executive Director of the Statehood Commission dated December 9, 1981.

**"State Announces Stand on Caribou Treaty," Department of Fish and Game press release, November 3, 1980.

manage in cooperation with the state, but a number of difficulties have developed in implementation. One of the many coordination problems concerns timing in such matters as catch limitations and opening and closing seasons. The state manages on a short turn-around basis, but the federal government has trouble doing this because of its procedural requirements (e.g., Federal Register publication of proposed regulations) and thus encounters difficulty in following state management policies even when trying to do so.

REFUGE POLICY: There is also conflict in the management policies applicable to national wildlife refuges. The basic conflict is that states tend to see the federal government as responsible for the refuge, but not the wildlife, per se. Some federal policymakers see their management responsibilities as extending to the wildlife while on federal land, and in more extreme cases to the wildlife even when not on federal land.

HUNTING ON FEDERAL LANDS: The Department of Interior generally follows a policy of discouraging non-subsistence hunting and fishing in national parks, and regulates these activities in natural preserves. The Department of Fish and Game and many Alaskans see the combination of these regulations and designation of massive land areas as parks and wilderness areas as reducing available hunting opportunities and increasing the difficulties of game management with no particular public benefit.

THE OPPOSING VIEW: Much of the federal intervention in wildlife management issues in Alaska can be understood as an Eastern public using the federal government as a way to enforce their views of appropriate wildlife management on Alaska and other states. An example of this point of view is a comment made by John W. Grandy, Executive Vice President of Defenders of Wildlife:

Defenders does not oppose cooperative, productive relationships between state and federal Governments. We do oppose politically motivated destructive, single-purpose "management" schemes, such as aerial wolf killing. And if saving wolves threatens traditional relationships, so be it. Traditional federal-state cooperative agreements are useful only if they serve the expanding public interest in perpetuating viable, natural wildlife communities on public land. In short, if we can't get states to uphold

responsibility on public land and do it right, we'll have to demand that the federal government uphold its ultimate responsibility.*

THE OVERALL LEGAL ENVIRONMENT:** It is well settled under the property clause of the Constitution that the federal government may exercise over its lands both the normal power of a landowner and such sovereign powers as declaring certain activities to be unlawful and enforcing such laws. However, the federal government has not normally sought to apply separate fish and game laws to its lands. For example, the Taylor Grazing Act of 1934 contained an express indication that it was not designed to interfere with state hunting and fishing laws. Similar law applies to activities at federal water projects and military installations. The governing law for management of national forests states: "Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several states with respect to wildlife and fish on the national forests."

The "Sikes Act" of 1974 affirmatively directs the Secretaries of Interior and Agriculture to develop plans with the states on wildlife conservation and development on federal lands. Further, the legislation stated that nothing implied by the term "conservation and rehabilitation programs" should "be construed as diminishing the authority or jurisdiction of the states with respect to the management of resident species of fish, wildlife, or game, except as otherwise provided by law." The Federal Land Policy and Management Act of 1976 also has a provision indicating that nothing in the Act shall be construed as changing the authority of the states for fish and wildlife management.

Thus, the various federal interventions in fish and wildlife policy are associated with special situations -- treaties, native claims settlements, endangered species, and marine mammals, but do not represent a general attempt to control fish and wildlife. The Department of the Interior and the state of Alaska have recently reaffirmed the state role by formal agreement***. This agreement presumes that the state and federal governments maintain complementary policies on subsistence hunting.

*In PROCEEDINGS OF THE SIXTY-NINTH CONVENTION -- INTERNATIONAL ASSOCIATION OF FISH AND GAME AGENCIES (1979).

**Materials provided by Paul A Lenzini of Chapman, Duff and Paul (which is counsel to the International Association of Fish and Wildlife agencies) provided considerable information useful in the preparation of this section.

***"State, Interior agree on wildlife management," ANCHORAGE TIMES, March 19, 1982.

FEDERAL ENTERPRISES: WATER, POWER, AND THE RAILROAD

One example of a potential devolution of federal power to the state of Alaska would be for the federal government to sell the properties associated with the Alaska Railroad or the Alaska Power Authority, or both, or to drop consideration of new federal river basin developments in favor of state responsibility for the same activity. All three of these issues are somewhat unique to Alaska, although there are some parallel situations in other parts of the United States.

THE ALASKA RAILROAD: Unlike many European nations, the United States government is not the fundamental provider of railroad services in this country. Federal land grants were used to stimulate railroad expansion in the West, but direct federal ownership was never involved. Currently, the federal government is in the rail business in three major activities: the Alaska Railroad, Conrail, and Amtrak. Conrail was the federal response to Penn Central's bankruptcy, where federal action was considered necessary to prevent the economic disruption of the Northeast. The clear intent of the legislation, the current position of the administration, and the position of Conrail's management is that Conrail should operate without federal subsidy and, as soon as possible, should not be owned by the federal government. Amtrak provides the nation's longer haul passenger service and is heavily subsidized. Again, the authorizing legislation, policies of the administration and of Amtrak's leadership all point toward movement away from subsidies and independent operation.

Finally there is the Alaska Railroad which was built by the federal government when Alaska was a territory. Legislation, which has the support of the administration, is now pending in Congress to give or sell the Alaska Railroad to the state of Alaska. There appears to be no significant argument over transferring the railroad to Alaska. While there is no argument over principle, there is an argument over price which could postpone the transfer.

ELECTRIC POWER: The federal government entered the business of generating electric power as a side effect of decisions to build large multi-purpose dams and reservoirs throughout the West. The trade-offs

inherent in operating such dams have made it impractical to turn them over to the private sector.* To market power from these federal projects, the federal government maintains power marketing agencies such as the Alaska Power Administration and the Bonneville Power Administration. In addition, the Tennessee Valley Authority provides generation in the Tennessee Valley, covering parts of Tennessee, Alabama, Kentucky, and Mississippi. However, TVA power operations are not now subsidized by the federal government.

These power marketing activities have been the subject of considerable controversy in the Lower 48 states. These controversies have often taken the form of public versus private power disputes based upon philosophical differences regarding the role of the private sector and government in the production of electric power. Generally, power produced from federal hydroelectric projects is cheaper than power produced in conventional steam plants. Certain users, particularly municipally owned electric systems and rural electric cooperatives, receive preference in the distribution of the limited supplies of federal power. When power supplies are not equal to demand, difficult choices have to be made, such as whether to integrate hydro with privately owned steam plants. In the Lower 48, proposals for the elimination of the power marketing administrations would encounter a general lack of state interest and probable opposition from the federal government's "preference" customers. States generally do not have power generating capabilities. The major exception, New York, created one such facility primarily to deal with the financial crisis of the public utility serving New York City.

The Alaska Power Administration administers two projects in Alaska -- Eklutna serving part of Anchorage's needs, and the Snettisham project serving Juneau. The state's Alaska Power Authority is involved in five power projects, a transmission line connecting Anchorage and Fairbanks, and has other projects under design including the Susitna hydro project. Officials of the Authority have indicated that some savings could be expected if the Power Administration and Power Authority activities were combined.

*Optimal use of a dam for recreation requires that the pond level be kept constant to avoid unsightly mudflats and various ecological disturbance. Optimal use of a dam for power is for peaking purposes which involve maximum flow for only a few hours a day and fluctuating pond levels. Optimal use for power involves using all water to generate power; optimal use for flood control may dictate sharp lowering of pond level to accommodate expected high volume flows. Private sector operators would not be expected to make these trade-offs in the public interest.

If the economical provision of power were the sole issue, there would seem to be every reason for such a combination. As the state of Alaska, rather than the federal government, is likely to be most heavily involved in new hydro projects, the Power Authority would seem to be the most logical surviving entity, removing the federal government from the power business in Alaska. From the federal perspective, such a federal withdrawal has the advantages of reducing federal employment and responsibility. From the standpoint of those who have long advocated an even greater role for the federal government in power transmission and generation, however, such a move might appear undesirable. The extent of local support would presumably depend upon such matters as what price, if any, the federal government would expect and the price impacts of the proposal on particular groups of customers.

A closely related question is the future federal role in water projects in Alaska. On a national scale, the Corps of Engineers and Bureau of Reclamation continue to plan and construct multi-purpose dams and reservoirs which are normally eagerly sought by states in order to benefit from improved navigation, cheaper power, flood control, and improved recreational opportunities. However, primarily for budget reasons, the Carter and Reagan administrations have sought to slow federal construction activities. Funds for surveys and project design have been cut back, some projects under construction have been slowed, and the federal government is increasingly looking for state and/or local financial contributions in such projects.

The demand by state officials for projects such as dredging, harbor deepening, flood control, and multi-purpose water projects is far in excess of the likely supply of federal funds for such projects. As a result, devolution of this particular federal activity in Alaska should not be difficult if state decisionmakers are willing to forego the federal subsidy inherent in the projects. A state willingness to construct projects and lack of pressure by the state's congressional delegation can virtually guarantee concentration of federal funds elsewhere.

SUMMARY: FEDERAL ENTERPRISES: The federal enterprises covered in this section are quite different from many of the subjects considered elsewhere in this report. In these enterprises, the federal government actually does something -- builds a dam, sells electricity, or runs a railroad -- as distinct from the normal circumstance where, through a law, regulation, or grant condition, the federal government tells somebody else to do something. In these cases, at least in the Lower 48, the federal presence is not often considered obtrusive on state powers;

in fact, states compete for the subsidies associated with using federal tax funds to pay some of the costs involved.

While attempts to reduce the federal role in Alaska in protection of marine mammals or civil rights will run head-on against interest groups that believe that the federal government should tell Alaskans what to do, the federal enterprises do not present the same obstacles to devolution. As with the Alaska Railroad, the argument is more likely to be over price than over principle.

EXERCISE OF FEDERAL POWERS FOR NATIONAL DEFENSE AND COMMERCE

In the course of its work, the Statehood Commission has received information on situations in which federal action is discriminatory in its effects on Alaska. Two such situations are the requirement that shipments from U.S. port to U.S. port utilize American ships and the prohibition on export of Alaskan oil. Another example, which may be viewed as positive or negative depending on one's role in the forest product industry, is placing restrictions on log exports.

For the purposes of considering devolution of federal powers -- the subject of this report -- the merits of these policies are not at issue.* The appropriate questions are whether it is appropriate to have the power to make such policies lodged in the federal government rather than state governments.

The rationale for a requirement for shipping in U.S. bottoms stems from the economic reality that U.S. shipping is more expensive than foreign shipping. It is widely believed that U.S. shipping would disappear completely in the absence of subsidies. That outcome is considered undesirable for national defense reasons, as there are many military scenarios in which the United States would want to conscript substantial capabilities in a merchant marine, just as the British did in the Falklands War. Thus, for defense reasons as well as concern for jobs for Americans on vessels and in shipyards, there are subsidies for the merchant marine. Some of these subsidies are direct, paid from funds appropriated to the Maritime Administration. Like many farm subsidies, some maritime subsidies are indirect, such as those paid by Alaska's consumers and producers.

*The author's conclusion regarding federal roles is not influenced by opinions on the merits of the policies. While I think all three policies are inappropriate, it is for reasons not related to the question of relative state and federal roles.

There are many reasons to argue for a change in the Jones Act policy and its discriminatory impacts on Alaska. However, it would seem hard to argue that the wrong level of government is making decisions about how large a merchant marine to maintain and what financing method to use to maintain it. It was for the purpose of making decisions such as these that the original thirteen states created a national government with the power to regulate commerce and provide for the national defense.

Export prohibitions are a major issue for many parts of the country. Farmers decry political constraints on farm exports that dry up natural markets and cause the U.S. to be considered an unreliable supplier. Computer manufacturers decry limitations on high technology exports. Drug companies object to being prohibited from marketing drugs in a country where they are legal simply because distribution is not approved in the United States. Firms with technology suitable for the Soviet gas pipeline object to sanctions associated with exports from third country subsidiaries to the Soviet Union. For the purposes of this report, however, the question is should the national government or the states have whatever power is to be given to any government to limit exports. The only sensible answer, which is consistent with the decision of the Founding Fathers in 1789, is that only a national government could effectively exercise such powers and carry out the negotiations required with foreign powers.

FAILURE TO RECOGNIZE THE UNIQUENESS OF ALASKA

In the course of this study, a number of staff members from the Alaska congressional delegation were interviewed about situations in which too much power is being exercised in Washington that could be exercised in Alaska. These individuals are in a good position to know things that irritate Alaskans with the federal government. As might be expected, there are some specific Alaskan examples of the types of problems with federal regulation and grants discussed in Chapters 3 and 4 of this report. Examples are:

QUARANTINE FACILITIES: The United States has strict controls over the importation of plants and animals to protect against new forms of plant and animal disease and new types of insects. Alaska has an interest in agricultural research, particularly in species that thrive in Arctic climates. When personnel in Alaska agricultural research facilities want to import living specimens they must do so through the agricultural quarantine facilities, which happen to be in the Caribbean, a roundabout trip involving a habitat that is not particularly conducive to

Arctic species.

WETLANDS: Responding to the excessive federal regulations for the most minor use of wetlands and conflicting state and federal regulations, the Corps of Engineers has been trying to streamline the approval process by allowing states to take over the program. There are some pre-conditions for state takeover which appear reasonable in the context of the Lower 48 but which can create problems in Alaska, which has vast areas of wetlands. The main problem for Alaska is the condition that the state must identify the wetlands. This work has long been done in most states but remains a major task in Alaska.

CLEAN AIR: There is a problem in the application of certain car design requirements in the context of the very cold starts required in Alaska. Apparently certain requirements that make sense in other contexts cause hard starting in certain Alaskan settings and, more importantly, cause more, rather than less, pollution.

REVENUE SHARING: The revenue sharing program provides assistance directly to essentially every general purpose local government in the United States. Because some Alaska villages are very small, the limited revenue sharing compliance requirements (e.g., reports and audits) can be burdensome, a problem that is not confined to Alaska.

WEATHERIZATION: Alaska has gotten into a dispute with the Department of Energy over uncommitted funds under the weatherization program. The federal side of the argument is that unspent funds indicate a lesser need for funds the following year. The Alaska side is that the Alaska weather patterns make the Alaska spending pattern logical and comparable to other states in real program impact and costs, though not in timing.

FOOD STAMPS: Federal food stamp regulations apparently create problems, and create error rates for which the state can be penalized, when applied to persons who come to Alaska with little money (i.e. backpackers).

MEDICARE: Many Medicare and Medicaid regulations on quality of service are excessively detailed and frequently do not fit well with the small health care facilities found

in rural areas. An example is (or was, if intervention by the Alaska delegation is successful) that the director of nursing in a nursing home has to supervise full time, with no paperwork and no work with patients. For a nursing home with only one nurse, this regulation does not make a lot of sense.

EDUCATION: Federal regulations in elementary and secondary education have been burdensome in Alaska, although block grant legislation and regulatory reform activities by the Reagan administration have cleared away many of the problems, though there is no guarantee that the regulatory burdens won't reappear. At one point the state Department of Education proposed substituting state for federal funds in vocational education, simply to get out from under federal reporting requirements.

SUMMARY

This chapter concludes Part Two of this report with its general survey of federal regulation, federal grant programs, and special problems of Alaskans -- some unique to Alaska and some examples of the problems with federal regulations and grants that both citizens and officials of many states encounter. Part Three, which follows, provides a discussion of the many problems of state-federal relationships discussed in this part.

PART THREE: APPROACHES TO CHANGE

CHAPTER SIX: THE POLITICS OF DEVOLVING FEDERAL POWERS

INTRODUCTION

This part of the report is a discussion of getting something done to change the situations reported in the previous part. From the Alaskan perspective, the kinds of changes that are needed range from constitutional revision, court action, and federal law changes, to interstate cooperation, and the regulations and day-to-day decisions of federal and state administrators.

For the citizens of Alaska, or citizens of any state, to have an impact on the current division of responsibilities between federal and state governments, they need two things: (1) a precise statement of what they want decision-makers to do, and (2) decision-makers who agree with them that changes are needed. They also need to convince decision-makers that the particular changes they seek are the ones designed to eliminate the problems involved.

The relevant decision-makers in our democratic system are people much like those doing the persuading. The current president and his immediate predecessor were both state governors before becoming president. Members of Congress have commonly served in state legislatures and/or as elected officials in local government before being elected to Congress. On the whole, these are not people who are remote from the people they serve. Nor are they people who necessarily favor the concentration of power in Washington as a philosophical matter.

Those people are decision-makers who, like the rest of us, have been subjected to training and history that condition their viewpoints. Unlike the rest of us, they are also subject to pressures from all directions as they make their public policy decisions. To understand how best to bring about a devolution of governmental power from Washington to the states, it is necessary to understand what political and ideological forces put the power in Washington in the first place and what forces tend to keep it there.

THE ROLE OF GOVERNMENT GENERALLY

DUAL THEMES OF LESS GOVERNMENT AND MORE STATE ROLES: Federalism and devolution questions are theoretically independent of what volume of government activity is undertaken. It would be intellectually possible to argue that government should intervene very little in the lives of citizens, and that existing social and economic regulation should be cut back substantially, but that whatever regulation remained should be conducted by the federal government. Conversely, one could argue for

major government roles, including an expansion of social controls of various types, larger income maintenance programs, etc., and at the same time argue that these programs should be decided upon and implemented by state and local governments.

However, as a practical matter throughout our national history those who have argued for an expansion of government's role have typically allied themselves with those that would have the federal government increase its role at the expense of the states. Those rejecting proposed expansions of federal power have often pursued two separate arguments: (1) that the power should not be exercised, and (2) that, if it is to be exercised, decisions about how to exercise it, and perhaps whether to exercise it, should be left to state and/or local governments. Examples of this approach can be seen in the Supreme Court opinions invalidating some of the early New Deal programs and in business rhetoric in dealing with business regulation from the period of the populists in the early 20th Century through environmental protection debates in the 1950s and 1960s.

The only logical link between opposition to government action generally and a preference for the locus of power being in state rather than federal hands is the presumption that state governments would be less likely to act than would the federal government. This presumption tended to operate in fields such as unemployment and worker compensation laws, labor-management relations, and more recently strip mining regulation.

The juxtaposition of views that government generally is too much involved in the life of the citizens and that power should be devolved to state and local government is still an important feature of the American political scene. These dual themes represented a major part of the basis on which President Reagan campaigned for the office that he now holds.

THE ROLE OF BUSINESS LEADERSHIP: However the American people may feel about these issues, those favoring devolution of power to the states have lost a major ally from earlier history. In issues of economic regulation, and by implication in issues of general philosophy, the business community was a major supporter of this perspective. However, the business community no longer plays this role. Business leadership generally has become quite pragmatic about the relationships of state and federal governments.

In 1982, some business leaders can be found who are encouraging shifts of power to state governments from the federal government, but many business leaders are doing the exact opposite. Major producers of energy were behind the proposals for power plant siting legislation,

which would have made it faster and easier to build new power plants by a federal permitting procedure that would override various state zoning, water quality, building permit, and land use controls. In the area of transportation of energy, one business group is pressing legislation for a coal slurry pipeline. The substance of the legislation is to apply federal rather than state rules for the involuntary taking of property for use by a public utility. Many companies are also looking for solutions to the nuclear waste problem that would preempt the exercise of state police powers.

In transportation, trucking companies are seeking national legislation overcoming state regulation of maximum truck weights and length. In banking, various interests went to the Supreme Court arguing for federal preemption of state laws governing the assumability of home mortgages. In product liability, many firms are supporting the concept of uniform national legislation on the subject to preempt various existing state laws. National no-fault auto insurance was a serious proposal for many years, backed, among others, by some large insurance companies. There is significant business support for federal legislation that would eliminate state usury laws, which set limits on permissible interest rates.

Thus, when one shifts from broader philosophical matters to practical decisions that together determine the relative roles of state and federal governments, the business community should not be assumed to be an advocate of stronger state roles.

OTHER SUPPORTERS OF DEVOLUTION: In fact, the intellectual inheritors of the business positions of the 1920s through the 1950s have become a quite different group. These are persons with no economic interest in the outcomes, who are opposed to extensions of federal power to state and local decisions and private conduct through the federal judicial system. The issues include the ability of state and local government to control abortion, the ability of school districts to have prayers as part of school activities, and the ability of school districts to set attendance areas (school busing). Often, however, the persons interested in these subjects are single-issue persons, with little knowledge of or interest in other subjects, such as relative state and federal roles in taxing, spending, and business regulation.

Thus, the potential forces that might form a coalition built around the notion of reducing federal powers would have to involve some "strange bedfellows". It is not at all clear that persons interested in issues such as school prayer would form common cause with the state and

local officials interested in devolution of federal power, nor that the state and local officials would be willing to make the concessions required to form such a coalition.

It is this political reality which tends to govern the politics of potential calls for a new constitutional convention. The problems surrounding calling a convention, and ways to deal with them, are discussed in the preliminary report of the Statehood Commission. The fundamental problem is that there are no rules governing such a convention, so it is unclear whether such a convention could be limited to a single purpose (e.g., federalism) or, once convened, could consider every subject.

RELATIVE COMPETENCIES OF STATE AND FEDERAL GOVERNMENTS

In the evolution of federal power from about 1910 to about 1970, perceptions of the relative competency of state and federal government played a vital role. Those perceptions, in reverse, could play a major role in creating a climate for the devolution of federal power.

The question of relative competence of the two levels of government is discussed at length in Chapter 2, with a conclusion that there is little basis for arguing that the federal government is more competent than state government or the reverse. However, in the context of promoting devolution, public disenchantment with the effectiveness of federal personnel and policies can be a helpful factor. Fortunately for those seeking devolution of federal powers, there is some factual base for this disenchantment.

Federal programs in elementary and secondary education are widely recognized as causes of an explosion in paperwork in education and as the source of a number of rules that make little sense to school officials. Detailed categorical assistance programs for health and social services became sufficiently unpopular so that there was considerable support for replacing them with block grants. Many believe that public housing and urban renewal were totally unsuccessful policies.

In short, it is not difficult to find problems in most programs where the federal government has used grant programs to inject federal policies into matters previously decided by state and local government.

PUBLIC OPINION

The opinion of the public is likely to be a key factor in determining the success of attempts to devolve power from the federal government to state and local governments. Fortunately, ACIR obtains information from a national poll that provides an indication on changes in public sentiment.* These data suggest that public attitudes are changing in directions supportive of devolution of federal power.

One key question has been asked every year since 1972. It is: "From which level of government do you feel you get the most for your money -- federal, state, or local?" In 1972, 39% selected the federal government and 44% selected either state or local governments, with 17% indicating that they did not know. Between 1972 and 1981, the percentage indicating state or local government increased to 58% and those indicating the federal government dropped to 30%. An important change also occurred in perceptions of taxes. In 1972 -- given the choices of federal income tax, state income tax, state sales tax, and local property taxes -- 45% identified the local property tax as least fair. Only 19% listed the federal income tax as least fair. In 1981, however, 36% identified the federal income tax as least fair, well above the 23% for state income and sales taxes combined.

Somewhat less encouragement for devolution comes from a question asked in May of 1978 and not repeated in subsequent surveys. The question was:

Which of these statements about the ability of state and local governments to deal with today's problems comes closest to your view?

1. State and local government is too fragmented and disorganized to be effective.
2. State and local government does an adequate job in dealing with today's problems.
3. State and local government should be given more authority because it is closest to the people.
4. No opinion.

This question is not particularly well-designed because someone could believe both the third statement and either the first or the second. The results indicated that 36% thought the first statement to be true; 22% opted for the second answer; 33% for the third, and the remaining 10% had no opinion.

*The data in this section are from ACIR, 1981 CHANGING PUBLIC ATTITUDES ON GOVERNMENT AND TAXES, 1981.

In a question asked only in the 1981 poll, respondents were given a list of services and asked: "President Reagan has indicated he would like to turn a number of programs back to the state and local governments and get the federal government completely out of the financing and administration of such programs. Various leaders and organizations have proposed that the following functions be turned back. From which functions would you like to see the federal government withdraw?" Because respondents could give more than one answer, the totals are more than 100%. The totals are:

Mass Transportation	30%
Day Care and Other Social Services	29%
Public Schools (kindergarten-12th gr.)	26%
Public Service Jobs	26%
School Lunch and Other Nutrition	25%
Highways	18%
Welfare (AFDC)	15%
Public Hospitals and Health	15%
Don't Know	13%

UNDERSTANDING HOW FEDERAL INTERVENTION OCCURS

Despite concerns about federal over-intervention in the daily lives of citizens and preemption of state and local responsibilities, federal power has continued to expand. This has developed despite the fact that national elected officials often have had backgrounds of service at the state and local level and many have strong platform commitments to limiting the roles and costs of governments. To understand proposals for breaking this pattern, it is important to know what has been causing the pattern.

Federal programs get started because someone sees a need for them. Generally there is a perceived problem, such as impure drinking water, rats in urban ghettos, loss of historic landmarks to new construction, bridges in need of repair, deaths due to drunk driving, or crowded public prisons. Often there is a constituency that is concerned with this problem and wants to see something done about it. Typically, there will also be journalistic attention paid to the problem, with television documentaries and the like.

A number of persons at the federal level will have an interest in a "program" to deal with the problem. Many members of Congress think they need positive actions which they can show to their constituents and, in Washington, passing a piece of legislation is considered the equivalent of positive action. Members, their staffs, and committee staffs all have an interest in legislative action. Federal agencies, which are often asked for cooperation in drafting and supporting legislation, may have

an interest in expanding their "turr", power, and appropriations. Even if these baser motives are excluded, federal line agency personnel are often dedicated to their missions and look for ways to do more to promote historic preservation, aid in preserving the public health, or whatever their mission might be. National interest groups also have an interest in action at the federal level. First, their members -- often organized around the need for action -- may want action. Second, the function of a national interest group is to deliver national policies, not state and local ones.

Typically, legislation will be introduced for federal action to deal with the problem. This legislation normally has common features such as federal regulation or federal minimum standards for state regulation, research, and perhaps grants to fund state and local activity. Such legislation typically does NOT involve federal assumption of responsibility for the problem as, often, the problems are substantially greater than could be handled with appropriations likely to be available at the federal level.

The interest groups, media, and congressional staff members interested in the legislation then work to bring to the public a perception of the severity of the problem and to Congress a perception of popularity of federal action to deal with the problem. Congressional hearings are held; TV interviews are held; investigative reporters find dramatic examples of the problem, etc.

State and local officials have typically played a significant role in this process. That role has not normally been to oppose grant legislation. The functionally specialized state and local officials assigned to deal with particular problems have typically been supportive of federal grants to deal with them. The resources available are inevitably less than what these officials think they need, so additional money from any source looks good. In addition, they may actually favor federal standards in their area on the grounds that those standards will force state and local officials to provide funding for better quality programs. Thus, organizations of school superintendents, teachers, librarians, police officers, and public health officials, to mention only a few examples, have often been supportive of expanded federal roles in their areas.

State and local elected officials typically do not oppose, and often have supported, additional federal programs on subject matters ranging from animal shelters to zoos. In deciding whether to support a new program for rat control or law enforcement, a state legislator, governor, mayor, or county commissioner does not have to deal with federal resource constraints. Money for the program is seen as being supplemental to funds already being received from the federal level. In

this sense, a new federal program is something for nothing.

In fact, many of the federal programs complained of as reflecting too much federal interference in problems inherently local were passed through the strong efforts of state and local officials. The federal program providing support for costs of improving bridges on local roads is a classic example. Past support of narrow categorical programs such as these has not prevented state and local officials from complaining about excessive federal regulation, but has certainly limited the seriousness with which the complaints are taken.

Likewise, state officials have not always objected to federal preemption of state and local decisions. A classic situation was federal preemption of state usury laws. Usury laws limit the rate of interest that can be charged in private transactions. When the market rate of interest exceeds the rate that can legally be charged in a particular state, no one wants to make loans in that state because they can make more money on loans in another state. In this situation, the usury laws tend to prevent credit financing of auto sales and housing, creating severe dislocations for those involved in those industries.

The solution is, of course, either for the state to repeal the usury law, change the allowable rate of interest, or simply decide that the law is worthwhile despite the negative consequences. Each one of these alternatives creates potential political problems for any state official selecting it. An easier solution for state officials appeared when language preempting these laws appeared, probably at the suggestion of banking officials, in federal legislation. The preemption removed the effect of the laws without making legislators change the interest rates or repeal the laws. A provision indicating that a preempted law could be reinstated by legislation at the state level passed subsequent to the federal law maintained the fiction that states were still controlling the subject matter. This legislation was welcomed, not opposed, by a significant number of state officials.

Thus, members of Congress have been expanding federal powers because of responses to constituency concerns coupled with a lack of substantial opposition to such expansion, particularly when new regulation of business was not at stake. The question is whether devolution of federal power and concern with new federal intrusions has any constituency at all.

SUPPORTERS OF DEVOLUTION

The examples above suggest that state and local officials, members of Congress, and business-oriented interest groups all take quite pragmatic views on individual issues involving creation of additional

federal controls through grant programs and preemption of state and local laws and regulation. This raises the question of where support for devolution of federal power is likely to come from.

One potential source is from national leadership and national political parties. It is possible that the collection of pragmatic decisions on particular issues results in an overall situation of government regulation and/or spending and/or disenchantment with the federal role that makes the situation an attractive issue for a political party and/or political leadership in a party. The situation in the United States has probably reached this point, although it is unclear how long the situation will last.

It will be recalled that President Carter obtained the Democratic Party nomination against a variety of potential opponents who more closely reflected the national Democratic Party's close association with activist federal policies dealing with social welfare and the growth of federal programs in the Kennedy and, particularly, Johnson years. Carter's primary campaign emphasis was strongly anti-Washington with stress on state and local control and a less active federal government in many areas of domestic policy.

Carter's presidential term was a mixed bag in terms of the administration's action on federalism issues. The administration encouraged the expansion of employment and training programs, particularly, and promoted the use of state and local government in counter-cyclical policy through local public works and public service employment programs. At the same time the administration supported a number of proposals to consolidate categorical assistance programs into block grants and implemented some measures to reduce the quantity of regulations and conflicting guidance by federal agencies to state and local government. However, this approach did not carry over into some issues of particular interest to Alaskans, such as public lands issues. Throughout his term, however, Carter used themes of restraining the size of government and increasing the efficiency of the federal government.

The themes of the Reagan campaign for the nomination included considerably more hostility to federal domestic programs generally than characterized the views of his primary opponents and the last Republican administration (Ford's). This rhetoric was also reflected in the campaigns of many persons running for Congress in 1980. The rhetoric began to become reality in 1981, as campaign themes were reflected in appointments to federal positions, administration positions on federal legislation, administration of existing legislation, and new proposals for "sorting out" the federal system that are discussed in detail in the next chapter of this report. In addition, many of the administration's positions on issues such as public land management were considered

favorable by state officials.

Obviously, a president and a substantial number of members of Congress were taking themes of smaller government and less intervention in state local affairs seriously, believing these positions to combine political appeal with substantive soundness.

State and local officials were also altering their views on federal programs and regulation, although views of individual state and local leaders differed, as they always had. These officials were aware of growing public hostility to spending at all levels of government, as reflected in votes for such expenditure and tax limiting proposals as Proposition 13 in California and Proposition 2-1/2 in Massachusetts. They were also becoming increasingly concerned over federal regulations affecting their day-to-day actions in local government.

This change was reflected in a number of different state and local leadership positions. Among Republican governors, there was no real replacement for Nelson Rockefeller who had been an influential advocate within the party for additional federal programs. Leadership among the Republican governors tended to fall to men like William Milliken (Michigan) and Richard Snelling (Vermont) who stressed themes of efficiency, management, and a reasonably trim public sector. Among Democratic governors, there were fewer governors aggressively seeking additional federal assistance, and more, such as Governors Busbee (Georgia) and Matheson (Utah), also stressing management themes. At the municipal level, mayors such as Carver of Peoria came to play major roles in the National League of Cities. Organizations such as the League of Cities, National Conference of State Legislatures, and National Governors' Association began to stress intergovernmental management more and expanding federal programs less in their relations with the federal government. This change affected the U.S. Conference of Mayors less, but the presence of officials such as Mayor Koch of New York, also tended to moderate the demands for additional federal programs by local officials.

One result was that support for new federal programs and added funding for existing programs was no longer automatically forthcoming from state and local officials. Elected officials and their organizations also took steps to limit the lobbying of appointed officials for programs in their particular areas and began serious consideration of proposals to "sort out" the federal system. Criticisms of federal administration of grant programs multiplied. As is the case with national leadership, however, one cannot predict with certainty how long this environment will last.

THE IMPACT OF THE FEDERAL BUDGETARY SITUATION

The condition of the federal budget has had major impacts on federal-state relations in the post Korean War period, particularly in the area of federal grants to state and local governments. The end of the Eisenhower administration probably marked the end of a period in which there were political constraints of major proportions against expansion of federal aid to state and local governments. From that point on, through administrations of both parties, less was philosophically at stake and much more depended upon specific circumstances surrounding individual federal intervention issues.

One key circumstance was that the federal budget was financed primarily by revenues from a highly progressive federal income tax. As a result, revenues rose much faster than gross national product and the federal role in the economy would automatically grow every year unless tax rates were cut. The worse inflation the nation encountered, the more this effect swelled federal revenues. Planned deficits were also acceptable, particularly when it could be shown that the deficit would disappear in a few years because of the growth of federal tax revenues without any change in rates, as was shown for deficits in the 1960s and 1970s.

So long as no one objected to an increasing federal share of Gross National Product (GNP), growth of federal grants could continue without squeezing other items in the budget. Thus, despite periodic tax cuts, federal outlays grew from 18.5% of GNP in 1960 to over 22% in 1980. Federal grants to state and local government were 15.9% of federal domestic outlays in FY 1960 and in FY 1983 were 17.3%. Thus, GNP grew with real economic growth and inflation, the federal budget grew faster than GNP, and the grant share of the federal budget grew even faster. The result was that total grants jumped from \$7 billion in FY 1960 to \$91 billion in FY 1980.

However, there was a limit to the tolerance of the public and elected leadership to constantly increasing shares of GNP being funneled into federal coffers. This resulted in commitments from various leaders, such as President Carter, to freeze the percentage of GNP taken by the federal government. Even stronger commitments to reducing the rate of growth in federal domestic spending have been made by the present administration.

If there is an effective political constraint against increasing the percentage of the GNP that is taken by the federal budget, then there are some built-in pressures to reduce grant outlays. This is most easily understood by considering the federal budget as having four components: (1) interest on the debt, (2) Social Security, (3) defense

and related programs, and (4) federal domestic programs other than Social Security. Interest on the debt has been rising faster than GNP as debt increases and lower interest rate debt is replaced with debt on which current higher interest rates must be paid. Social Security outlays are rising faster than GNP and will continue to do so even with modifications to the system that have been discussed in the past several years, but not enacted. National defense is not likely to decline, and it appears that congress will yield in 1982 as it did in 1981, to pressures for increases in defense spending greater than GNP growth.

If the percentage of the GNP taken by the federal budget is to be fixed or decreasing, and if two components (Social Security and interest) are to be growing, and one component (defense) constant or growing, it follows that the remaining component must be shrinking as a percentage of GNP. This is a mathematical fact, true whether liberal Democrats, conservative Republicans, or middle-of-the-road leaders of either party hold the White House or Congress. Not surprisingly, the amounts available for grants are dropping in absolute terms and dropping quite rapidly in relation to GNP. The details are comprehensively reported in other sources.*

The political implications of reductions in real (inflation-adjusted) grant outlays are substantial. First, as grants become less important in overall state-local finance, state and local officials can and will argue logically that the federal government should be having less impact on day-to-day decisions in areas supported by grants. Second, the need to cut grant outlays felt by members of Congress and the administration has led to genuine concerns on how to minimize adverse impacts on state and local finances and on service recipients. This has made them receptive to arguments that decreasing red tape and increasing flexibility will make it possible for state and local officials to get more bang for each grant dollar. Third, because grant dollars create their own constituencies of specialists, federal and state/local employers, contractors, grantees, and service recipients, shrinking grant funds will also shrink the constituencies for narrow categorical grants. Fourth, because certain federal regulations cause state and local costs that the federal government must share (e.g., water pollution control regulations and wastewater treatment grants), declining federal funding may cause reconsideration of various mandates applied to state and local government.

*For a review of the situation from a state perspective, see National Conference of State Legislatures and National Governors' Association, THE PROPOSED FY 1983 FEDERAL BUDGET: IMPACT ON THE STATES (1982).

These factors are likely to improve the environment in which further improvements in grant consolidation and management are being considered.

SUMMARY: THE POLITICAL ENVIRONMENT FOR REFORM

The history of increasing federal intrusion into matters previously considered of state or local concern has many causes. Not the least of these has been postures of business and state and local leaders who, on the whole, have not only acquiesced in the trend but have often encouraged specific federal interventions.

While those concerned about federalism and the other issues faced by the Statehood Commission can find potential allies in single issue groups opposed to the power the federal courts are having in particular fields, these groups do not seem likely to view their problem in the context of larger intergovernmental relations views, nor is it clear that elected state and local officials would be willing to align with such groups.

However, there are some politically encouraging factors from the perspective of those interested in devolution of federal power. These include: (1) state and local officials who, on the whole, are less concerned with trying to increase grant programs and more concerned about abuse of federal power through regulatory preemption and grant regulations, (2) increasing public trust of state and local governments and decreasing trust of the federal government, (3) clearly demonstrable federal policy failures in major domestic programs, (4) budget pressures at the federal level which will tend to discourage expansion of federal roles through spending programs, and (5) widespread endorsement of devolution by major political figures including the president of the United States.

Some of these factors may persist for a decade or longer. Some may be quite transitory. For example, political leaders are normally not chosen solely for their views on federalism and intergovernmental relations. Political change based upon factors such as the state of the economy or success or failures in international relations could bring changes in the persons controlling leadership positions in the White House and Congress, which might bring quite different views on federalism issues.

CHAPTER SEVEN: PROPOSALS FOR MAJOR CHANGES IN THE FEDERAL SYSTEM

INTRODUCTION

There have been many proposals for modification of the relationships between the federal government and the states. Some of these are highly detailed, such as the notion that federal agencies should not require state officials to report statistics to them when the statistics are generated by other federal agencies. Some are quite simple, such as the concept that state legislatures should be able to veto congressional enactments. Some changes are basically just changes in attitudes and general approaches; some involve legislation at the national level; some would even require amendment of the Constitution of the United States.

For convenience in exposition, these changes have been divided into groups: (1) "major changes" such as those involving constitutional amendment or major shifts in the division of responsibilities among levels of government, which are covered in this chapter, and (2) "less major changes", which are covered in the next chapter. As a general rule, the major changes offer more substantial devolutions of federal power, but have more difficulties associated with obtaining enactment.

CONSTITUTIONAL CHANGES

The United States Constitution can be amended in two basic ways. Both involve ratification by the legislatures of three fourths of the states. In one case, however, the amendment is submitted to the legislatures by a two-thirds vote of both houses of Congress. This is the method that has been used for all amendments that have been made to date. The second method is a constitutional convention called by Congress after being petitioned by two thirds of the state legislatures. This method has never been used, although the two thirds mark was nearly reached for the 17th Amendment before Congress adopted it, and now has been nearly reached for an amendment requiring a balanced federal budget.

The major problem with the second method is that no one knows exactly what the rules would be. Questions include what the basis for voting in the convention would be (one vote per state, one vote per delegate), whether the subjects considered could be limited to those in the states' call for the convention, how much time is available for the states to issue a call and whether a call can be rescinded once a state acts. Furthermore, there is debate over whether these rules can be set

by an act of Congress or whether setting them itself requires a constitutional amendment.

In its preliminary report, the Statehood Commission concluded that the absence of an authoritative determination of rules retarded use of the second method of amendment to the detriment of the states. The Constitution gave state legislatures a role, along with the national legislature in proposing constitutional change, but this power has been muted by concerns over a "runaway" convention. The commission recommended that Alaska join with other states in having Congress call for a constitutional convention limited expressly to development of procedures for the second form of amendatory procedure. ACIR has recommended that Congress pass legislation setting the rules which has been pending for over a decade.*

Once rules were established, there remains the question of what constitutional amendments would work in restoring balance to the American federal system. One approach, suggested by Governor Babbitt, would follow somewhat the mechanism used in Germany where the states are represented in an upper house of the legislature with veto over legislation passed in the lower house. Babbitt's proposal would allow the legislatures of two-thirds of the states to nullify any act of Congress, except those dealing with defense, foreign affairs, or civil rights.

It is something of an irony of history that the decision for an amendment to have U.S. senators elected by the people, rather than the legislatures, eliminated the concept of the Senate as a body representing states, per se, thereby creating the need, as seen by some people, for a new way to maintain constitutional balance through an amendment allowing state legislatures to veto federal legislation. At the time, state legislative leaders were a major force in causing direct election of senators.

Another potential constitutional amendment would follow procedures now in effect in California and some other states governing the relationship between state and local governments. Cast as a constitutional amendment, it would prevent the U.S. Congress, the federal courts, or both, from imposing cost-increasing requirements on

*See the discussion in ACIR, RESTORING CONFIDENCE, pp. 152-154.

state (or state and local) governments without appropriating funds to pay the added costs associated with complying with the requirement.*

If applied to the courts, such an amendment would have its primary effect in decisions that increase the costs of providing governmental services in the name of civil rights. Examples are the costs of school busing, educating the children of illegal aliens, and maintaining the standards in mental health and correctional institutions that the courts have said are necessary to comply with the Constitution.

As applied to Congress, such an amendment would have uncertain effects on conditions imposed in grant programs. It would be difficult to design an amendment to prevent such conditions from being imposed, so long as the amounts provided by the grant were sufficient to meet the costs imposed. Outside the grant area, the primary impact would be on attempted congressional regulation, such as the wages and hours controls rejected on other grounds by the Supreme Court and federal regulation of pollution control, which creates substantial state and local costs for wastewater treatment.

Other possibilities for constitutional amendment include:

- (1) More clearly defining interstate commerce to limit federal control to goods and services crossing state lines,
- (2) Expressly exempting state and local governmental functions from regulation by Congress, and
- (3) Limiting the capacity of the federal government to raise revenues for purposes other than national defense, foreign policy, and Social Security.

SORTING OUT THE FEDERAL SYSTEM

Over the past several years, critics of the current federal system have been looking seriously at ways to "sort out" the federal system. Those involved have included the nation's governors and legislators, presidents Reagan and Carter, and members of Congress. The sorting out proposals generally involve only areas where there is actual or potential federal funding, as distinct from regulatory policy. However,

*The "balanced budget amendment" has a section which states: "The Congress may not require that the States engage in additional activities without compensation equal to the additional costs."

CORRECTION

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HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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in the many cases where federal regulation follows federal grant dollars, regulatory policies would also be affected by the sorting out proposals.

Sorting out advocates begin from the position that the federal system is now hopelessly muddled. Practically every domestic policy of consequence -- health, welfare, social services, transportation, water supply and wastewater treatment, law enforcement, fire protection, education, natural resources -- has major involvement by the federal government and by state and local governments. This is seen as causing overlapping, duplication, and frustration in administration, creating excessive federal controls and federal spending, reducing accountability of officials at all levels of government, increasing administrative costs, and causing a host of other evils.

The objective of sorting out is to get the federal government out of some of these activities, making them more clearly a state and local responsibility. There are varied approaches to providing resources to state and local government to handle the costs previously borne by the federal government. The proposals also differ in whether or not some additional responsibilities would be shifted to the federal government. The three basic approaches can be characterized as (1) federal withdrawal, (2) federal withdrawal with revenue turnbacks, and (3) swaps of functions.

FEDERAL WITHDRAWAL

The obvious way to take the federal government out of various activities is simply to turn back the clock to restore the situation before the federal government entered those areas. From a federal perspective, this has the advantage of allowing reductions in federal personnel and the federal budget. It has the potential disadvantage of loss of federal control along with termination of funding, but in some areas for some federal decision-makers this is a desirable result, not an undesirable one.

From a state/local perspective, federal withdrawal combines the program implications of ending federal control with the financial implications of loss of grant funding. Those financial implications differ depending upon one's perspective and upon how state and local government budgets adjust to the withdrawal.

In many cases, the state/local response to the withdrawal of funding for a grant program will be to discontinue the activity that was financed by the grant. This has generally been the case, for example, when state and local governments have experienced reductions in programs funded by the Comprehensive Employment and Training Act. In such cases,

the federal withdrawal has little or no financial impact on state and local government as the cuts flow through to the beneficiaries of the program and those who provided services on a contract basis. State and local employees who lose their jobs because federal funds are cut are, of course, affected but not necessarily their government's fiscal situation.

In other cases, however, the state and local governments will find it necessary or desirable to increase local funding to make up for at least a part of the reduction in federal funds. In these cases, the fiscal position of state and local government will be affected.

The amounts involved in federal grants are substantial, accounting for nearly a fourth of state and local spending in 1981. Federal grant outlays for Alaska in FY 1981 were over \$1,100 for every person in the state, well above the national average of \$412.*

Withdrawals of assistance currently being provided on the grounds of inappropriate federal involvement, as well as on the basis of federal budget savings, were discussed as early as the Kestnbaum Commission under President Eisenhower. The first major withdrawal, from the Law Enforcement Assistance Program, began in the Carter administration. In its first (FY 1982) budget the Reagan administration proposed wholesale withdrawals from some programs, along with consolidation into block grants and/or reduced funding for others. Some programs were eliminated by Congress on the president's recommendation and more were proposed for elimination in the FY 1983 budget. For example, all economic development programs of the Economic Development Administration, the Title V regional commissions, and the Appalachian Regional Commission were targeted for extinction.

*National Governors' Association, "The Impact of the FY 1983 Federal Budget on the States: State-by-State Analysis" (February, 1982). This publication used the federal Office of Management and Budget definition of grants, which counts as grants certain shared revenues (e.g., mineral leasing). This factor alone tends to cause assistance to Alaska to be higher than other states. Because of concerns over grant program recipients (e.g., persons on welfare and/or receiving treatment under Medicaid) and the fiscal posture of state and local governments, state and local officials have preferred turnbacks and/or swaps to simple federal withdrawal from programs.

The result was that federal outlays for grants dropped from \$94.7 billion in FY 1981 to \$91.2 billion in FY 1982. As this was written, Congress had not yet acted on the FY 1983 appropriations, but the budget resolution indicated that Congress was moving in the direction of further reductions, though perhaps not to the \$81.4 billion in outlays for FY 1983 proposed by the president. Of course, with inflation affecting the costs of delivering service, actual increases in grants would be required for grants to maintain the purchasing power they had had in the past.

The concept of federal withdrawal as implemented by Congress in 1981 did involve some aspects of reduction in federal controls. Cuts in Medicaid and AFDC programs were accompanied by actions to reduce the many instances in which law, regulation, or both required states to spend more on these programs than state officials would have spent in the absence of federal cost-increasing requirements. The administrative provisions of the block grants were much simpler than the requirements of the narrow categorical programs they replaced.

Long-time observers of state-federal relations found 1981 an unusual year. Very few proposals were made for new grant programs. None were made by the administration although some thought was apparently given to a grant program for correctional institutions when this was proposed by a federal task force. State and local officials did not press for new programs and many acquiesced in the grant cuts being proposed, suggesting that the administration had picked its targets well and/or that many state and local officials concurred in the concept that grant cutting had become necessary.

The magnitude of the 1981 reductions, however, made it clear that another round of reductions was possible, and another, and yet another leading to a course of unplanned federal withdrawal. State and local officials feared this result. Administration officials recognized that as a result, another round of grant cutting might not be so easy to accomplish without a plan for where it would all end that would be acceptable to, or at least bearable by, state and local officials. The result was discussion of turnbacks and swap proposals.

TAX TURNBACKS

One concept for the reform of the federal system is for the federal government to relinquish funding and policy responsibilities to the states and local governments (as in sorting out) and to relinquish some federal revenue sources as well (rather than assuming new federal expenditures as would be the case with sorting out). The concept of revenue turnback has been considered from time to time for decades.

During the Eisenhower administration, considerable attention was given to identifying both expenditures and revenue sources that could be turned back. One of the more serious efforts involved a proposal that responsibility for vocational education and municipal waste treatment be turned back along with some revenues from the telephone excise tax. The proposals ultimately floundered over a problem of distribution among states, a topic that will seem to be relevant to the swap proposals discussed below. The patterns of federal aid distribution and of telephone tax revenues were quite different. Therefore, a turnback of nationally equal revenues and expenditures produced windfalls for some states and cutbacks for others. Because the cuts were unacceptable to officials of the states affected, the program was redesigned to include a grant component. With this redesign, the program had two major disadvantages: (1) the federal cost was substantially higher than continuing the status quo, and (2) the program did not achieve the objective of getting the federal government out of the business of providing grants in these areas.

The tax turnback approach was initially of strong interest to the Reagan administration. In his speech accepting the Republican nomination for president, Mr. Reagan stated: "Everything that can be run more effectively by state and local governments we shall turn over to the state and local governments -- along with the funding sources to pay for it." In March 1981, the WASHINGTON POST reported that the president told a group of county officials:

I have a dream of my own. I think block grants are only the intermediate steps. I dream of a day when the federal government can substitute for those, the turning back to local and state governments of the tax sources that we ourselves have preempted here at the federal level, so that you would have the resources.

There are four approaches to revenue turnbacks which involve quite different federal actions and potential state responses. They are:

1. federal withdrawal from certain tax bases,
2. a federal "pick up" tax,
3. return of revenue from a tax, and
4. a grant program from earmarked revenue.

Federal "preemption" of a particular tax, such as the personal income tax, may make it harder for states to tax the same source. In the federal withdrawal form of turnback, the federal government eliminates a tax, thereby making it easier to raise state taxes on the same source. However, federal withdrawal does not mandate state taxation, and federal

and state taxes on the same tax base can coexist indefinitely, as indicated by taxation of gasoline, cigarettes, and personal and corporate income.

The concept of a federal pick up tax is that the federal government levies a tax but allows a 100% credit for state tax payments against the federal tax liability. This induces all states to enact a tax up to the amount of the credit. States take this action because it does not change the liability of their taxpayers and provides the state with revenues it would otherwise not have. These arrangements are currently in effect for estate and unemployment compensation taxes.

While many states return revenues from particular taxes (such as shares of personal income taxes, auto registration fees, and gasoline taxes) to local government, the federal government does not now have such a program that returns tax revenues to the places where they were raised. A federal grant program from earmarked revenue, such as the highway trust fund, differs from returning revenues in that the allocation of expenditures is based upon measures of need for spending rather than on where the revenue was raised.

When the staff of the Reagan administration and ACIR began to look at specific ways to implement this turnback approach they discovered that there are few federal revenue sources that offer the potential for turnback. Individual and corporate income taxes are too important in terms of total federal revenues to be turned back. Social insurance revenues (e.g., Social Security) are already earmarked and airport and airway trust fund and highway trust fund monies are already returned as grants. Eliminating these taxes from the list of federal taxes leaves the sin taxes on alcohol and tobacco, what remains of the estate and gift taxes, the telephone excise, and the windfall profits tax. The windfall profits tax is not a suitable tax for turnback because it is temporary and revenues are concentrated in a few states. Receipts in FY 1980 from these taxes were alcohol, \$5.6 billion, tobacco, \$2.4 billion, estate and gift \$6.4 billion, and telephone, \$1.1 billion. The 1981 tax amendments will cause gradual reduction in estate tax revenues. Alcohol and tobacco tax revenues will not grow rapidly and may not grow at all, assuming no change in rates. Thus, these tax sources would not necessarily seem desirable from a state and local perspective as resources to finance growing expenditures in programs turned back by the federal government.

In 1982, Congress passed new tax legislation designed to reduce the deficit by increasing federal taxes. The tax increases included a doubling of federal cigarette taxes and an increase in the telephone excise. This development enhances the revenue raising capacity of these tax sources, but reduces the probability that federal officials will be

willing to abandon them to the states.

The idea of federal withdrawal from one or more of these tax bases was not, per se, particularly attractive to state and local officials because of the lack of growth of the base, the fact that state and local governments can already reach these tax bases, and recognition that the state and local officials would have to legislate state tax increases in order to capture any revenue to compensate for federal cutbacks. Pick up taxes or return of revenue from a tax would avoid legislatures having to adopt "new taxes", as the federal government would still be levying the tax.

The major problem with turning back revenues from a particular tax or group of taxes as compensation for termination of federal funding for a group of grants is that it is hard to match the revenue being turned back with the grants being lost. ACIR showed this problem in unpublished materials developed in 1981 which compared each state to the average of all states in revenues being obtained from turnbacks of various taxes and in expenditures from federal programs.

The contrasts in revenue raising capacity are particularly obvious for the taxes (sin taxes and estate and gift taxes) that looked the most promising for turnback. Utah, with its high proportion of persons who neither smoke nor drink, could raise only 53% of the national average revenue per capita from the sin taxes, by virtue of having less sin to tax. Nevada, which sells lots of alcohol and tobacco to visitors, would raise 2.5 times the national average from these taxes. Alaska would raise about 31% more per capita from the sin taxes. However, Alaska would do much worse with an estate tax turnback as Alaska, according to the ACIR figures, would only raise 36% of the national per capita average. While the Alaska numbers may change from the base year used by ACIR, the high numbers for Nevada and low ones for Utah are likely to be stable over time.

There is basically no relationship between the federal aid per capita in grant programs and the revenue per capita from potential turnbacks. Alaska, according to the ACIR figures, gets 260% more education aid per capita and 364% more transportation aid per capita than the average. Thus if the turnback revenues equaled the lost federal aid on a national basis, Alaska would lose substantially. A state like Connecticut with lower than average federal aid for education and transportation and higher than average yields from sin and estate taxes would be a gainer.

Like the Kestnbaum proposal described above, the turnback approach would produce politically unacceptable disparities among states through a pick up tax or return of revenue from a tax to the state where it was

raised. Thus, it was not an acceptable alternative to the Reagan administration.

The remaining alternative from the list of four turnback approaches presented above was to fund a grant program out of earmarked revenues. This was not attractive to the administration or other participants in turnback discussions. From an administration perspective it retained federal financing, which the administration was trying to reduce, and violated the principle of using trust funds only when true user charges were involved. Financing roads from gasoline taxes met this criterion, but financing education from alcohol taxes did not. From a state/local perspective it did not represent a real sorting out, and there was no guarantee that a switch in the source of financing would reduce the federal mandates associated with the programs involved.

Thus, the turnback proposals died in 1981 much as they had died in the 1950s in the Eisenhower administration. In their place emerged another set of proposals, built around the idea of swaps, as discussed in the next section.

PROPOSALS FOR SWAPPING FUNCTIONS

The concepts of federal withdrawal and turnbacks of functions and revenue sources involve a one way movement of federal activities to the states. However, much of the discussion of reforms in the federal system in the past several years have been concentrated on proposed two way shifts, with the federal government taking more responsibility for some activities and less for others. This approach has generally been more to the liking of state and local officials because the financial consequences are better than no federal assistance with withdrawal or chancy prospects of new revenues under turnback. In sorting out, the federal government could pick up some functions and, in the process, save state and local governments the money they now spend on them. These funds could be used to defray the costs associated with the ending of federal grants in other fields.

In November 1980, shortly after President Reagan was elected, the National Governors' Association and the National Conference of State Legislatures adopted a joint policy statement that called for, among other things, "sorting out roles and responsibilities among the three levels of government to recognize the primary federal policy and financial responsibility for national defense, income security, and a sound economy, and the primacy of state and local governments in such areas as education, law enforcement, and transportation."

After this general adoption of sorting out principles, staff members of various governors and legislators began to study specific sorting out proposals, as did the White House. For the state officials, the question of what functions the federal government might take was easily decided. The governors and legislators have consistently pressed for greater federal cost responsibility for welfare and Medicaid programs. During the Carter administration, this support took the form of support for welfare reform and health financing arrangements that offered considerable fiscal relief to states. The Reagan administration had little interest in these proposals, but was willing to consider proposals that would include relieving the federal government of some costs of major grant programs in return for more federal spending on welfare or Medicaid.

ADVANTAGES OF SORTING OUT: Sorting out offered many advantages from the perspective of those interested in it. First, responsibility for various activities would be clearly established. With such clear designation of responsibility would also come increased political accountability. Each level of government would be forced to deal with the consequences of its own actions, and the constant finger pointing and blame shifting that characterize the current intergovernmental

system would be lessened. This was attractive to state officials who had long felt they had responsibility inconsistent with authority in the state-administered programs of Medicaid and welfare and resented federal control in such fields as education. This was attractive to the Reagan administration because it, as a philosophical and budget matter, wanted to be out of detailed involvement in state and local affairs in as many programs as possible.

Second, many believed that with clear accountability would come increased program effectiveness. Program success or failure would depend on the developers and implementers, not on the complex mechanisms of intergovernmental relations.

Third, program administration would be more effective and efficient. Unnecessary and duplicative administrative and overhead expenditures could be avoided. At a minimum, federal, state, and local staff now devoted almost entirely to the maintenance of the intergovernmental system could be eliminated or reassigned to more productive activities. State bureaucrats could devote their attention to program management rather than to grantsmanship and lobbying with federal agencies. The fragmentation of planning and data processing systems could be ended.

Fourth, within each level of government there would be opportunities for more flexible program design and operation. It is inherently easier to modify a system where one level of government controls all the parts than when responsibility is more widely dispersed. In the particular case of income security programs, federal assumption of funding and policy responsibilities could reduce some of the extreme disparities which exist in the definitions of eligibility for assistance and the amount of assistance that is provided.

Finally, officials at each level of government saw possibilities for financial gains. States had the potential to unload all or part of the Medicaid program, with its history of escalating costs. By clearly assigning such functions as education out of the federal domain, federal officials saw ways to avoid pressures for increased spending in functionally oriented grant programs.

DETAILED SWAP PROPOSALS: The president released his "New Federalism" proposals in January 1981 indicating that he would like them to go into effect with the beginning of FY 1984, October 1983. The major components of the proposal were a swap of functions and trust fund financing of some state costs for a limited period.

In the swap component the federal government would absorb the entire costs of the Medicaid program, which is now cost shared between

states (and local governments in some states) and the federal government. In return, the states would assume all costs of the federally funded, cost-shared AFDC program and of the Food Stamp program which is now 100% federally funded for benefits and 50% federally funded for administration. This swap was seen as a financial gain for states in terms of the dollars involved, depending upon assumptions made about future cost growth and the starting year used for analysis.

The turnback component would involve ending about 125 federal grant programs in 43 program areas with estimated FY 1984 federal spending of about \$30 billion. A federalism trust fund of \$28 billion would be established to finance continued state and local spending on the federal program activities that were being eliminated and to equalize gains and losses from the swap on a state-by-state basis. Beginning in FY 1988 the federal taxes used to finance the trust fund would begin to be reduced, so that states would assume full financial responsibility gradually, using state taxes to replace those repealed, increasing other state taxes, or cutting programs, as state officials might decide.

Certain key details were not specified by the administration, including the extent to which the benefit levels of Medicaid would be retained under federal administration and the requirements that might be imposed on the states to maintain benefits in AFDC and Food Stamps. The administration indicated a desire to enter into discussions with state and local officials over these and other features of the plan.

When the governors held their winter meeting in February 1982, the state response to the federalism proposals was a key issue. Administration officials were seeking the support of state and local officials for the New Federalism proposals. It was generally believed that without this support, the many groups interested in continuation of narrow federal categorical programs would easily kill the administration's initiative. The "federalism policy" adopted by the governors at this meeting is quoted in detail below as it is an excellent indicator of how the governors of both parties reacted to the proposal. The legislators did not have a meeting format as convenient as the mid-winter meeting of the governors, but individual legislators expressed comparable sentiments. The statement of the governors included the following:

The time is at hand for national debate and action on the roles and responsibilities of federal, state and local government. The President, in his State of the Union message, set out a bold and specific proposal to realign the federal system to achieve more effective and accountable government at all levels.

The Governors have, with an increasing sense of urgency, placed federalism reform at the top of their national agenda. We share the President's strong dedication to the concept of federalism. ..

Our policy statements set forth many federalism principles and guidelines that are compatible with the President's proposals. We are in full accord with the President's proposal for a federal assumption of Medicaid. We also welcome his far reaching suggestion that a range of categorical programs be transferred to state responsibility....

The President's federalism proposals contain some elements that are not consistent with existing policy positions of the National Governors' Association, such as assigning responsibilities for food stamps and AFDC to the states. The Governors also believe that support for state and local governments should not be cut in the 1983 budget to the extent that state governments are weakened and left without the capacity to meet the new service delivery requirements of the president's plan for 1984 and beyond.

The Governors believe that these differences can either be reconciled by negotiation or temporarily set aside as we build a program based on existing areas of mutual agreement. The Governors believe that our areas of agreement with the President's proposal form the basis of a revolutionary restructuring of our federal system. ... The Governors stand ready to enter into immediate discussions with the administration concerning these areas of agreement and the subjects left open in our proposal. Our goal is to keep the federalism issue before the American people and to work with the President and the Congress at every opportunity to restore balance to our system of government.

The governors' statement went on to make a series of specific proposals including the federal takeover of Medicaid and the turnback of grant programs with an accompanying trust fund, but without turnback of AFDC or Food Stamps.

THE STATUS OF THE NEW FEDERALISM PROPOSAL: The New Federalism proposal was immediately characterized by some as an attempt by the president to divert attention from the serious economic problems then facing the country. However, the administration sought consultations

with state and local officials. These discussions were private, although news about them was released from time to time.

One change in the administration's posture related to the sources of financing for the proposed trust fund. The original proposal had contemplated that some of the funding would come from the windfall profits tax. This is a temporary tax designed to capture some of the difference between oil prices before decontrol and market prices. It was never seriously considered in the tax turnback proposals discussed above because of its temporary nature and because the benefits would be concentrated in only a few states. State officials did not want to see trust financing tied to a revenue source which, under current law, will soon cease to exist. The administration dropped its position that the trust fund financing had to come from earmarked taxes, such as the windfall profits tax.

State officials also argued that the Food Stamp program should remain a federal responsibility. Administration spokespersons indicated a willingness to consider this possibility. However, eliminating food stamps from the package would substantially reduce the amount of new financial responsibility being accepted by the states. In order to keep the swap relatively equal in financial terms, it became necessary to consider having the federal government take only a part of Medicaid costs. The negotiators discussed a somewhat different proposal for federal takeover of Medicaid, with the federal government taking only the Medicaid costs associated with typical private health insurance plans, including up to 100 days of hospital care. The states would be given considerable flexibility in deciding whether additional medical care would be provided to low income persons, to whom such care would be provided, and what types of care would be covered. The major impact of the proposal would be to leave the states with financial responsibility for "long term care", basically the significant costs incurred in some states of maintaining indigent and near indigent elderly persons in nursing homes.

In their meetings in the summer of 1982, both the governor and state legislators discussed the swap proposals at length. Both groups explored the many difficulties with the proposals, as discussed below. Some of the governors who had been most active in the negotiations indicated a desire to abandon discussions with the administration in favor of drafting a plan that would be presented directly to Congress. Neither the governors or legislators endorsed the plan that was then being supported by the administration.

Thus, as this is written, it is unknown whether or not the administration and large numbers of state and local officials can reach agreement on some sort of a plan. If they fail to do so, New Federalism

proposals have little chance of passage, although comparable results might be reached by different means as discussed below.

DIFFICULTIES IN NEW FEDERALISM PROPOSALS: From the perspective of the Statehood Commission, it is not necessary to examine minutely each variation of sorting out proposals. The details under discussion are likely to change almost weekly and the final plan may well not take shape until after the commission has made its report. However, an understanding of some of the obstacles to agreement between the administration and state and local officials is important. These obstacles are inherent in the basic concepts of sorting out and thus are independent of the individuals who happen at the moment to be in leadership positions in state governments, Congress, or the White House.

The difficulties with sorting out depend, of course, on what programs are involved. Assuming that the federal government acquired either of the major cost-shared income maintenance programs (AFDC or Medicaid), as often advocated by state officials, some difficult choices would have to be made at the federal level. These are essentially the same problems that were faced when the federal government assumed responsibility for the SSI program (Supplemental Security Income -- income maintenance payments for the aged, blind and disabled) in 1974. As is now the case with AFDC and Medicaid, eligibility for the program and payment levels differed sharply from state to state.

Federal takeover of SSI costs was urged as a step to shift financing burdens from fiscally pressed states to what was then perceived as a financially more comfortable federal government. In addition, the takeover, like welfare reform proposals, provided a national floor under eligibility criteria and benefit levels, resulting in more assistance to disabled individuals and the elderly poor in many states. There was no direct state quid pro quo for the takeover.

The federal government's cost to raise everyone's benefits to the level of the highest state was viewed as prohibitive. A benefit level was chosen that raised benefits for inhabitants of many states, but would have lowered them for inhabitants of other states. States were given the option of supplementing the federal payments, and many did so in order to avoid benefit cuts for their residents. However, later federal law "locked in" the states to their supplements which are currently about \$2 billion per year.

Current AFDC benefits for a family of three with no other income range from under \$100 in Mississippi to nearly \$500 a month in Vermont. Adoption of nationally uniform benefits at the Vermont level would increase the federal costs of takeover by billions of dollars over and

above the costs of picking up what states currently spend on the program. The obvious alternative is to set some lower level of payments, thereby cutting benefits for some program participants and reducing the federal budget cost. This problem can be delayed, but not prevented, by phase-in provisions. The likely solution would be the one used for SSI -- a nationally uniform benefit involving major benefit increases for some beneficiaries and reductions for others. If the SSI precedent were followed, states would be allowed to supplement benefits. If states decided to do so, the net improvement in their financial situation from federal takeover of the AFDC program would be reduced because they would be continuing to support AFDC beneficiaries at the same time they would have taken on new financial responsibilities in other federal program areas under sorting out. Thus, federalization of welfare might well involve higher federal costs than the state costs being assumed by the federal government because of need for uniformity in benefits nationwide and the state fiscal relief might be less than envisioned because of supplementation of benefits in some states.

Much the same situation exists in the Medicaid program, where some states have opted to provide the minimum array of services only to persons actually receiving cash assistance. At the opposite extreme are states that provide the full array of benefits to persons who are medically needy, though not on cash assistance, in addition to benefits provided to recipients of cash assistance. The federal government could match existing services only by perpetuating state-by-state differences in a national system. It could protect all current recipients only at considerable cost. It could opt for lesser coverage, but in the process would still incur some added costs and would cause the benefits of some recipients to be reduced. In the case of benefit reductions, the possibility of state supplementation would presumably be left open.

Thus, from a federal perspective, nationalization of either program would likely bring a combination of higher costs to bring low states up to national minimum standards and outcries from those whose state standards had been above the new national minimum.

Federalization of Medicaid or AFDC also carries some problems of administrative control. Currently Food Stamps are administered by the states using 50% federal money for administration and 100% federal money for the stamps. The income tests used for the program are somewhat different than those used for AFDC. AFDC and Medicaid are administered by state and local officials with some federal supervision of administration. AFDC recipients are automatically eligible for Medicaid. If the federal government has Medicaid cost responsibilities, it will thus be subject to the cost responsibilities based upon eligibility determinations in AFDC which are controlled by states. One way around this problem would be to have the states, with their existing

decentralized offices, continue to administer the intake procedures for both programs, but if this is done the sorting out of state and federal functions is less complete.

Another difficulty with sorting out is that the patterns of state expenditure on functions to be taken over by the federal government vary significantly from state-to-state as do the patterns of federal spending on programs that would be shifted to the states.* States such as New York spend much more per capita on Medicaid than, for example, do the Southern and Western states. However, most Southern and Western states get more per capita education assistance than states in the Northeast. Thus, a swap of Medicaid for education programs that involves equal national totals would not yield equal results state-by-state.

The Reagan administration proposal deals with this situation by the mechanism of a trust fund. The amount that each state would get under the trust fund would be the amount needed to replace the federal programs being lost minus the amount that the state gained from the swap proposal. This means that all states are "held harmless" in the base year for the swap. Difficulties arise, however, in any year after the base year. The first problem is that the trust fund replaces what would have been provided in the base year, not what would have been provided in the current year had the old federal programs continued. In cases of major shifts in population or the welfare of individuals, the trust fund allocation would grandfather old assistance patterns rather than meeting new assistance needs. This is not a major problem in the Reagan proposals, however, as the trust fund is intended only to be temporary.

However, if the trust fund is temporary, the states will, sooner or later, lose funding from it. When that happens the unequal aspects of the swap tend to dominate the equity of the results for individual states as those unequal aspects are no longer compensated for by the trust fund. Furthermore, state officials have to face the question of where to find the money to continue the programs previously financed out of the trust fund.

Another problem with the swap and sorting out proposals is the considerable likelihood that the level of government that is giving up a function will try to maintain some control of how that function is handled by the government that takes it over. For example, there is considerable discussion of minimum federal standards in the event that

 *The details are explored in considerable state-by-state quantitative depth in ACIR's staff working paper CHANGING THE FEDERAL AID SYSTEM: AN ANALYSIS OF ALTERNATIVE RESOURCE/RESPONSIBILITY TURNBACKS AND PROGRAM TRADE-OFFS (January, 1982).

programs such as AFDC or Food Stamps were turned over to the states. In the other direction, officials of states with generous Medicaid programs are desirous of a federal commitment not to reduce benefits in the event of a federal takeover. It is reasonable to anticipate that various groups would want guarantees of how states would spend money out of any new trust fund. Local government officials are, for example, looking for a mandatory "pass through" so that state officials would be required to pass along a specified amount of the state allocation to local governments in the same states. Groups interested in particular functional areas, such as elementary and secondary education, will undoubtedly seek to have strings attached to trust fund allocation to protect overall spending on the function in which they are interested.

These restrictions would, of course, somewhat defeat the philosophical objectives of sorting out -- making one, and only one, level of government responsible and accountable for individual functions rather than spreading accountability over several levels of government.

PROSPECTS FOR FUNCTIONAL REALIGNMENT

The proposals for ensuring functional realignment of state and federal governments without a constitutional amendment are all built on a political premise that it should be possible for state, local, and federal leaders to reach and have enacted some sort of agreement among themselves providing for sorting out of functions and financial responsibilities. There is certainly support in the examples of Canada, West Germany, and Australia that such actions can take place.

However, the American political system is much more fragmented than the political systems of these three nations. Those nations have strongly cohesive political parties which can provide one vehicle by which decisions are implemented. Furthermore, in their parliamentary system the head of the government is also head of the majority party in the legislative body. This means that, unless the government falls, the chief executive can normally deliver on commitments that require legislation for implementation. This is clearly not the case in the United States at either the state or federal level. Agreement by state leaders and the president does not necessarily result in state legislators considering themselves a party and certainly would be less than binding on Congress.

Furthermore, the United States has many more actors than the other countries. Not only do we have 50 states, many more than Canada, Australia, and West Germany, but our local governments have close financial and regulatory ties to the federal government to which state governments are not a party. Much of the federal assistance that would be given up in any swap or turnback proposal would be assistance such as

Community Development Block Grants, mass transit assistance, school aid programs, and wastewater treatment grants, that go directly to local governments without even passing through the states. Representatives of these local governments will not necessarily view an even swap at the state level to be even relative to them if they assume that the states will keep many of the benefits of swaps and turnbacks while letting the negative impacts of the cut-off of federal aid fall directly on local government.

Furthermore, the swap and sorting out proposals will substantially reduce the power of many actors in the current intergovernmental system, and cost some of them their jobs. This is most obvious in the case of executive branch officials who earn their living passing out federal dollars and writing regulations for programs that would be ended under the proposals. Also important are the specialized staffs in congressional committees and the interest groups that have built up over exercising some control over the amount and purposes of federal assistance in these programs.

These considerations and the substantive difficulties with the proposals as outlined above suggest that it will be difficult, if not impossible, to reform the federal system through one grand plan such as the president's proposals. However, even if reform cannot be accomplished in one major step such as a constitutional amendment or a major swap, there are many less major steps that can be taken. These are discussed in Chapter 9.

CHAPTER EIGHT: PROPOSALS FOR LESS MAJOR CHANGES IN THE FEDERAL SYSTEM

INTRODUCTION

The topic of shifting functions among governments, as discussed in the preceding section, has occupied considerable attention in 1981 and 1982 because of the major changes being made in federal taxing and spending patterns and an administration with strong views on returning power to state and local governments and the private sector. However, over the past decade, most attention was paid to reform proposals that did not involve shifting functions but rather took the existing funding patterns and functional interests of the federal programs as given. These reform proposals are discussed in this section in terms of four basic concepts affecting federal grant programs: (1) broadening the purposes of grants, (2) transferability, (3) joint funding, (4) consultative procedures, and (5) other reforms. In addition, the relationships of state and federal governments are potentially affected by regulatory reform, which is discussed at the end of the chapter.

BROADENING THE PURPOSE OF GRANTS

Many of the criticisms of the existing federal grant system can be reduced by the combination of a number of categorical programs into one new program encompassing the purposes of the prior programs. Such action provides more state and local flexibility, eliminates or reduces mandates to use particular providers or technologies, makes it possible for the priority setting system to more closely conform to local institutions, and can reduce reporting and administrative costs. Whether these results follow in all cases, of course, depends upon the controls, institutional requirements, etc. of the new program that is created.

The basic concept involved has been given a number of names. These include:

- Grant Consolidation
- Block Grants, and
- Special Revenue Sharing.

In addition, proposals in particular functional area such as the Allied Services Proposal in social services, have elements of grant consolidation.

DEFINING BROAD-BASED GRANTS: There is inherently no single best way to define what is a "block" grant, or a broad-based grant. Some programs traditionally defined as broad-based block grants, such as the Law Enforcement Assistance Program, evolved various categorical aspects such as federal earmarking of funds for particular subfunctions within the

grant (e.g., corrections). Within each grant program, state and local flexibility varies from time to time by virtue of changes in both legislation and regulations.

The classification system that is most widely used is that of the Office of Management and Budget which defines three major categories of grants: (1) General Purpose Grants, (2) Broad-based Grants, and (3) Other Grants. Using these categories, OMB defines general revenue sharing and certain specialized revenue sharing programs, such as sharing of timber revenues with local governments, as general purpose grants. These grants normally have no restrictions on the purposes to which the grant funds may be put. OMB defines broad-based grants to include such programs as Community Development Block Grants, comprehensive health grants, certain titles of the Comprehensive Employment and Training Act (manpower training), the Social Services grants, law enforcement assistance, impact aid, and the local public works program. Under these definitions, the new block grants enacted in 1981 are broad-based grants.

STATUS OF BROAD-BASED GRANTS: In FY 1981, general purpose grants accounted for 7.2% of federal grant outlays and broad-based grants accounted for 10.6%, leaving over 80% of grant outlays in the category of "other". The adoption of some of the administration's FY 1981 block grants increased the broad-based grant percentage to 13.5% in FY 1982 and administration projections indicated that a level of 17.1% would be reached in FY 1983. Meanwhile, general purpose grant outlays would remain under 10% of a declining total grant allocation.*

While the administration has indicated a preference for block grants over narrow categorical programs, in many key areas it would rather take the federal government out of the function with turnbacks or swaps rather than support the function with any kind of grants.

DEVELOPING A BROAD-BASED GRANT: The development of a block grant involves a number of steps as outlined below:

- (1) The programs to be consolidated must be defined, normally in terms of some organizing concept such as preventative health or social services;
- (2) The basis for allocation must be established, typically on a formula basis;
- (3) Transition provisions must be developed to deal with situations in which the new formula causes sharp changes in funding;

*U.S. BUDGET, SPECIAL ANALYSIS H, p. 21.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
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- (4) Earmarking, requirements for continued support of certain activities, etc. must be specified; and
- (5) New administrative provisions, dealing with auditing, reporting, etc. , must be specified.

Each of these steps can involve considerable controversy. As the debate over the block grant proposals showed in 1981, it is possible to combine some programs and to label the result as a block grant while retaining many of the features of categorical grants.

Because the categorical programs are themselves established by legislation, the normal mechanism for achieving block grants is through legislation that eliminates the categorical programs and establishes the new block grant. However, a somewhat different procedure is involved in the proposed Federal Assistance Improvement Act (S. 807). Title I of this legislation uses the legislative veto for dealing with grant consolidations, a procedure generally associated with the president's power to reorganize federal agencies subject to legislative veto. The basic mechanism involves a presidential decision to consolidate grants, notification of Congress, and automatic implementation of the decision unless vetoed by Congress. The legislation is designed to make it easier to consolidate grants as congressional inaction works on the side of change not on the side of the status quo and members of Congress may be able to avoid an actual vote on some consolidations.

The approach of allowing the president to consolidate grant programs, subject only to the possibility of legislative veto, has been advocated for some time by state and local elected officials. The logic is that enactment itself would encourage the president to propose consolidations and that groups interested in the survival of particular categorical grants would find it more difficult to engineer a resolution of disapproval in one or both houses of Congress than to block passage of new legislation, which is the only way currently available to consolidate grants. This same logic, naturally, leads to opposition to the proposal by persons interested in preserving particular categorical grants.

The legislative veto aspect of the legislation also raises policy objections to it. From the perspective of some members of Congress, the legislative veto alters the legislative process by giving the president the power to write legislation and have it adopted by default. From an executive branch perspective, the legislative veto may increase presidential powers in some areas (e.g., reorganization and grant consolidation) but reduce them in other areas such as congressional review of proposed arms sales, administrative regulations, and sales from the national stockpile.

In addition, grant consolidation proposals often present tricky jurisdictional issues within Congress, as is the case when a program under the jurisdiction of one committee is to be consolidated with a program under the jurisdiction of another. The congressional committee system is not well adapted to dealing with such proposals.

Despite the obstacles, block grants are likely to continue to be favored by state and local officials and do offer a way to improve federalism without total federal withdrawal from fields where considerable assistance is now provided by the federal government.

TRANSFERABILITY

The fundamental concept of transferability is that the grant recipient, a state or local government, could transfer funds from one grant program to another. The individual proposals specify what programs can be affected, the maximum amount of possible transfer, which is usually stated as a relatively small percentage (e.g., 10-33 percent) of the program totals, and the administrative procedures for the transfer. The basic concept is to allow state and local officials to reflect unique local priorities and problems that could make the optimal local distribution of uses of federal funds different from the distribution called for by the national legislation establishing each program. Transferability is also reflected in S. 807 in that legislation's Title V which allows recipients to transfer up to 20% of funds from one program to another among programs covered by an integrated plan developed at the state or local level.

Although experiments with transferability have been suggested by a number of state and local officials, the United States has no experience with transferability of grant funding. However, certain implications of the concept are obvious. One of these is that the provision would provide a kind of grant popularity context that would be likely to affect future funding. Consistent transferring of funds out of certain programs would suggest that local decision makers accorded a lower priority to that program than past congressional fund allocations would indicate. To proponents of the activity involved, this would suggest the need to protect the program from transfers out of it. To federal budget-cutters, this would suggest the potential for reductions in the program.

JOINT FUNDING

Frequently, single projects or facilities at the state and local level are supported from more than one federal grant source. This raises the possibility of a different kind of grant consolidation. Instead of consolidating programs at the federal level, the existing programs could

be combined at the level of the regions, states, project or facility being supported by different federal sources. This offers the theoretical possibility of eliminating duplicating reports to various federal agencies and of tedious audits to make sure that each federal agency's funds were used only for exactly what that particular agency can support. The assumption is that monies are saved and more services can be delivered. Further the aggravations of people and problems "falling between" federal programs would be reduced.

The desire to exploit these possibilities received considerable attention in the 1970's. One result was the Joint Funding Simplification Act of 1974 which followed various administrative experiments with "integrated grant administration." The fundamental concept was that one set of reporting and auditing requirements and one application could serve the needs of many federal agencies that all support the same basic activity. Although much ink has been spilled in describing the promise of these actions and in writing regulations, they have had little impact on grant programs.* The fundamental problem has been that the relevant congressional committees and administering federal agencies have been reluctant to drop what they consider to be their minimum legal obligations on the control of spending as established by their authorizing legislation. The Joint Funding Simplification Act has now expired, but joint funding would be included as a title in the Federal Assistance Reform Act discussed earlier.

CHANGES IN FEDERAL CONSULTATIVE PROCEDURES

Over some 20 years, there have been constant attempts to try to improve the consultative arrangement between state and local governments and federal officials. However, it is hard to say that any systematic improvement has occurred. Basically, whether and how consultative arrangements work is still largely a function of the general attitudes of the particular federal officials involved toward consultation and the aggressiveness with which the particular state and local officials wishing to consult on a particular subject pursue their desires.

*A comprehensive history of the various grant reforms of this type will be found in Chapter 5 of ACIR, IMPROVING FEDERAL GRANTS MANAGEMENT (1977). The General Accounting Office has issued a number of reports on the same subject. These are summarized in PERSPECTIVES ON INTERGOVERNMENTAL POLICY AND FISCAL RELATIONS (1979).

Obviously, from a state perspective, the ideal arrangement would be one that made it impossible for the federal officials to do anything but consult. Having an upper house of state representatives would clearly serve such a function as would a constitutional amendment that would give the legislatures of the states a chance to reject laws passed by Congress. However, these solutions are not likely to be available in the near term.

In consideration of shorter term needs, the issue is normally discussed in terms of consultations with the federal executive branch. Because the federal legislative process is inherently an open one with published bills, open hearings, open debates, etc., state officials and their organizations normally have little difficulty in keeping posted on what is going on and generally do not have difficulty in reaching, as distinct from persuading, their elected officials in Congress. Within the agencies, however, is another matter, particularly in such fields as the drafting of proposed regulations.

With some support from their reading of the Advisory Committee Act, federal officials tend to look upon state and local officials as just another interest group. They see relations with state officials as appropriately conducted in the same fashion as relations with industry groups. State officials receive notification of pending proposals through the Federal Register, just like others, and are consulted with in the same time frames and formats as representatives of particular industries.

State and local officials do not see themselves in the same role as industrial spokespersons protesting economic regulation and resent this federal approach to consultation. Instead, they see themselves, at a minimum, as the subordinate delivery staff in federal programs that are delivered through state and local government and would prefer to be considered as partners with the federal government in the delivery of services. In this capacity, they feel they have roles in the early stages of policy formulation on the grounds that they have unique information and perspectives which can be useful in improving the administration of federal programs. In regulatory programs, such as those involving wetlands, state officials see themselves as having concurrent jurisdiction with the federal government and desire to be consulted in that capacity. In programs, such as fish and wildlife, state officials see themselves as having primary jurisdiction and want the federal government to follow state rules and certainly to consult extensively before any failure to do so.

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CORRECTION

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example, to notify states of grant applications and awards, it is difficult to define exactly when in the process of evolving policy federal agencies should consult with state and local officials and equally hard to define just what officials should be consulted.

One organizational change made by the Carter administration was to require that each federal department have someone responsible for intergovernmental relations at the assistant secretary level with an intergovernmental relations staff. Such units are now common, but reviews of their effectiveness are mixed. In some cases, they seem to be an effective part of the agency's decision-making processes, but in other cases they operate more like messengers to and from state and local officials and officials of the agency's line bureaus.

Another, much older, organizational change was the federal regional councils. Federal regional offices were shifted to ensure that at least most agencies had common regional structures. The heads of the field offices in each region were established as a federal regional council with a head in each region appointed by the White House. These officials were to bring a more grass roots orientation to federal policy in each region. Furthermore, they were supposed to be able to handle situations in which the federal agencies might be taking inconsistent positions in dealing with state and local governments.

There has now been enough experience with the councils to suggest that they did not solve the problems they were designed to solve, and probably inherently could not do so. For regional organizations such as the councils to work there had to be enough power delegated to the regions so that staff of federal agencies at the regional level were making meaningful decisions. However, as a practical matter Congress was defining programs and criteria in considerable detail and each agency was adding to the detail, and decreasing local flexibility, with regulations and guidelines of its own. As a result, the councils could do little to adapt any federal programs to the needs of state and local government as seen by those near the scene. It became increasingly obvious that, at least in the U.S. federal government, field and regional offices were not likely to bring decisions closer to the people, as the mere establishment of these offices took no real power away from the Washington headquarters of the agencies.

Thus, one is left with what amounts to ad hoc consultative relationships between state governments and the federal government. The federal government may consult states in a fashion through a grant notification system, may be a "good neighbor" in the management of federal lands, may consult with Alaska fish and game authorities in a proposed treaty on caribou migration, and may establish bodies such as the Interior Department's Regional Coal Policy Team. Yet it is hard to

see structured ways to guarantee these relationships, which are ultimately based on the power of the parties. The president and/or Congress can order consultation, but cannot find a way to order that the consultations be meaningful or that federal officials listen to state and local officials.

How much federal officials listen is probably set by other factors. One of the most important of these is how much state and local officials seem likely to influence the outcome. When that power is perceived as high, because of White House ties or whatever, there is likely to be more consultation.*

OTHER REFORMS

There are a variety of other reform proposals which fall within the general rubric of improving grants administration without affecting the fundamental nature of the categorical programs. These include:

AUDIT REQUIREMENTS: State and local officials have pressed, with some success, for the substitution of state, local, and/or private audits for federal audits and for uniform approaches among federal agencies.

CERTIFICATIONS: Current federal grant programs dictate, sometimes inconsistently from program to program, state and local personnel procedures, data processing use, indirect cost reimbursements, purchasing procedures, etc. The fundamental position of state officials is that one uniform federal minimum standard should be set in general terms and that a single certification of a jurisdiction's procedures should satisfy the requirements of all federal programs. Failing this, state and local officials would at least like federal agencies to have uniform requirements.

*A good example of this was found in interviews on the extent of federal consultation in treaties affecting fish and game matters. Apparently, a major shift occurred in the level of consultation some years ago after state officials persuaded Congress not to ratify a treaty negotiated by the State Department with little consultation with those officials.

CROSS-CUTTING REQUIREMENTS: There is clearly demonstrable inconsistency in the administration of cross-cutting requirements (e.g., affirmative action and historical preservation) from federal agency to federal agency and considerable state and local concern with the delays and paperwork associated with these requirements. These problems are addressed in the federal assistance reform legislation and are being continuously addressed administratively by OMB and the president's regulatory reform task force.

SIMPLIFIED PLANNING REQUIREMENTS: Typically, federal grant requirements involve comprehensive "plans" and have required detailed application documents that are resented as excess paperwork by state and local officials. Potential partial remedies include allowing the submission of a single plan to accommodate the requirements of several programs, reducing the frequency of plan submissions, and reducing the number of elements required to be included in such plans.

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS: During the years when federal grant programs expanded substantially in number and funding, state and local officials began to object that the system was becoming uncontrollable. Elected officials, such as city council members, mayors, state legislators, and governors claimed that they could not even find out what federal grants were coming into their areas, much less have their comments considered on proposed grants. These criticisms led to three changes in federal grant procedures. The first was to reduce the degree to which grants were given to non-governmental units, such as community action program agencies. The second was a procedure, established by OMB Circular A-95, that gave state and local governments the opportunity to comment on proposed federal grants affecting them. The third involved attempts to improve federal reporting of grants being made in particular areas. In addition to these federal actions, some states and local governments changed their own rules to strengthen review by elected officials of grant applications. State executive branch review was strengthened by establishing central clearance points for review and approval of grant applications by state agencies. Legislative review was strengthened in many states by requiring that federal funds be appropriated by state legislatures before they could be spent by state agencies.

On July 14, 1982 President Reagan issued an executive order designed to strengthen these procedures while reducing the paperwork that had been associated with Circular A-95, which the administration's press release indicated was costing \$50 million a year. The new executive order is to be fully implemented by April 30, 1983. It is, of course, too early to know exactly how it will be implemented, but it does offer considerable promise for improved intergovernmental

relations.

The executive order requires federal agencies to "support state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, state and local elected officials." This section of the order should discourage federal mandates for the creation of bodies outside of normal state and local government administrative structures. A good example of the type of body that would be discouraged are local health planning bodies.

The order also eliminates the A-95 review and comment procedure and allows states to establish their own procedures for receiving notice of proposed federal actions such as grants and property acquisitions or improvements. The flexibility accorded to the states appears to be total, permitting everything from decisions not to review at all to use of very formal mechanisms such as review by a state legislature. Federal agencies are required to notify states of proposed actions and either accept the state comments or explain "in a timely manner" why they are not being accepted and acted upon.

The order also encourages federal officials to allow states to substitute state plans for federally mandated ones "where state planning and budgeting systems are sufficient and where permitted by law." This part of the order will have little immediate effect as much of the specialized state plan submissions are mandated by law.

OTHER INDIVIDUAL REFORMS: The listing above does not cover the many other subjects touched upon by grant reform proposals. Other aspects include federal aid information systems, changes in matching and maintenance of effort requirements, and administrative details such as property accountability. Each of these has various advantages and disadvantages and supporters and detractors.

ACIR RECOMMENDATIONS

The Advisory Commission on Intergovernmental Relations has made a number of different proposals for improvement of the federal system. Many of these have been covered above and in the preceding chapter, but all are collected in this section for an overview.

The capstone to ACIR's multi-year review of the federal role in the federal system was an agenda for American federalism published in mid-1981. This report contained a series of recommendations for "decongesting the federal grant system". ACIR (with a few dissenting

votes) reaffirmed its recommendation that AFDC and Medicaid become clear federal responsibilities and that employment security, housing assistance, and basic nutrition be added to the federal list. At the same time, the commission recommended that "the number of remaining federal assistance programs should be reduced very substantially through termination, phase-out, and consolidation." It provided criteria for selecting programs to be consolidated or terminated.

The commission also recommended a number of procedural steps to avoid unintended impacts of federal actions on state and local governments. One of these was that fiscal notes be prepared on pending legislation that would give members of Congress knowledge of the financial effects on these governments. This is now being implemented in Congress. ACIR's suggestion for regulatory impact analysis is now being implemented administratively and is included in recently passed regulatory reform legislation. ACIR also recommended that OMB be given the authority to temporarily suspend the impact of cross-cutting requirements in specific grant programs, a step that has not yet been taken but is favored by many state and local officials.

The commission also made recommendations for strengthening the political party system which are not discussed here as they are likely to be a bit afield from the Statehood Commission's mandate.

ACIR's recommendations for state action included various state-local matters, state participation with federal officials in determining how best to decongest the federal system, considering priority accorded by state and local officials to various federal grant programs, and "establishing jointly on a permanent basis a state-local legal defense organization, with adequate funding, professional staffing, and appropriate assistance from the states' attorneys general, to monitor and institute legal action opposing 'coercive' conditions attached to federal grants and 'intrusive' congressional exercise of the commerce power."* This recommendation has already been endorsed by the Statehood Commission in its preliminary report.

The commission also endorsed the concept of a convocation on federalism to raise public and decision-maker consciousness about federalism issues and action to end uncertainties in now the constitutional amendment process works, as discussed earlier in this report.

*RESTORING CONFIDENCE, p. 145.

REGULATORY REFORM

One of the elements of the president's economic recovery package was regulatory reform, defined to apply to federal regulation of state and local government as well as federal regulation of private business. The president has issued guidelines to agencies on regulatory reform, strengthened the functions of OMB in this area, and through a task force headed by the vice president has pressed agencies to reduce the amount of their regulations and the burden of those regulations on state and local government and the public.

These efforts and the general environment of trying to make the federal government less oppressive have undoubtedly had some impacts on the extent to which state and local governments are regulated by federal officials. The limited paperwork and regulations associated with the new block grant programs are just one example.

SUMMARY OF LESS MAJOR CHANGES

The many proposals discussed in this chapter reflect an accumulation of over 20 years of experience of state, local, and some federal officials and a number of studies by ACIR and other groups. There is merit in many of the proposals, without doubt. However, all of them are, with the exception of deregulation, designed to make improvements within a system where the impact of improvements that can be made is inherently limited by the characteristics of the system itself.

However, in terms of major improvements to the system of federalism, the problem is not to make a system many find unworkable slightly less unworkable, but to find a system that will avoid the many problems associated with current federal-state relations. Thus, many of the proposals discussed in this chapter are "on the back burner" because of consideration of the New Federalism proposals discussed in Chapter 7. Obviously, if serious consideration is being given to eliminating hundreds of federal programs, it makes little sense to devote much time to questions such as reducing the paperwork associated with auditing and reporting in those programs. Thus, the federal assistance reform legislation is simply not a particularly high priority in the current session of Congress.

Chapter 9 explores whether there are changes, major or minor, in the federal system that might be consistent with the mission of the Statehood Commission, substantively useful in reforming the federal-state relationship, and potentially achievable through legislation and administrative actions.

CHAPTER NINE: CONCLUSIONS AND RECOMMENDATIONS

INTRODUCTION

As noted in the introduction to this report, the commission in its preliminary report concluded that reversion from statehood status was not in the best interests of the citizens of Alaska but that Alaska citizens would do well to make common cause with citizens of other states to promote reforms in the relationship of the federal government and the states. This report has reviewed the historical relationship of the federal and state government, explored some basic principles of federalism and their application in the United States and other countries, examined the current relationship of federal and state governments in the United States, and inventoried and assessed the many proposals for the reform of the American federal system.

The question remaining to be addressed is what significance all of this information has for Alaska. The purpose of this chapter is to relate all of the information in the preceding chapters to the specific question of what the Statehood Commission should recommend to the citizens of Alaska and their leaders on subjects related to the devolution of federal power.

DECONGESTION OF THE FEDERAL SYSTEM

The covering letter of the commission in transmitting its preliminary report noted that "Alaska can do little to make unilateral structural changes in its statehood status; but Alaska can and should make efforts to explore the full power of the states within our Union." The cover letter continues:

We expect to reach conclusions on ways to improve our federal system for we do feel that the federal-state balance is seriously askew. States are losing their vital place in our system of government.

This report concludes that the belief that states are losing their place in our system of government is widespread and that a substantial number of politically significant actors are intent on doing something about it. However, the loss of state roles has its roots in strong economic and political forces, so the task will not be easy.

Much of what the citizens of Alaska can accomplish will depend upon a national political environment. Specifically, it will depend upon the extent to which Americans recognize the institutional inability of a national government to set and implement policies that deal with the day-to-day functioning of state and local government. Enough evidence is

in to conclude both that a policy of detailed federal intervention into matters formerly of state and local concern has high costs and massive unintended consequences and that the American public and political leadership are increasingly aware of this fact. The question is whether and how this awareness can be converted into specific actions that satisfy the widespread concerns of Alaskans.

In the Lower 48 states, much of the concern over federal-state relations has been focused upon federal grant programs. This emphasis contains hazards and opportunities for Alaska. The opportunity is that Alaska can, with 49 other states, reduce the intrusiveness of the federal government, refocus control of Alaskan activities in Alaska, and rid itself of red tape and administrative controls from Washington.

The hazard is that in the rush to decongest the federal system, leaders of the federal government and other states may overlook the unique situation of Alaska. Alaska receives more per capita in federal grant spending than any other state by a wide margin. There are some logical reasons for this, including the large land area of Alaska, the high proportion of native Americans, and expenditures associated with the large federal presence in Alaska through the military and public lands. It is very much in the interest of Alaska's citizens to make sure that federal "grant" spending associated with the commitments of the Statehood Act (e.g., mineral leasing payments) and with the federal presence in Alaska (e.g., impact aid) become disassociated from traditional federal grants that are under attack in budget battles in Washington and potential candidates for "swaps" of federal and state responsibility. Alaska's leaders will also want to be careful to ensure that any New Federalism proposals they support do not place larger future fiscal burdens on Alaska than on other states.

With these concerns out of the way, there is much to be said from an Alaskan perspective for support of the devolution of federal power as it is exercised through the federal grant system. In this effort, Alaskans will be making common cause with leaders of 50 states. However, it should be recognized that issues which are paramount to leaders of many states, such as shifting income maintenance responsibilities to the federal government, are not necessarily the most compelling concerns in Alaska and that Alaskans will want to use the concerns associated with the federal grant and regulatory presence as a climate in which to seek other improvements in Alaska's status.

PUBLIC LANDS

It is unrealistic to expect that the majority of Americans, indeed the majority of American political leaders, will ever fully understand the problems of states with large federal landholdings. For Americans