

1.00 Introduction

Local government is the level of government which has the principal responsibility for providing services, solving day-to-day public problems and responding directly to the needs of citizens. The following chapter highlights important prerogatives of local governments and concerns about how federal policies impede and constrain the ability of local elected officials to fulfill their duties in our system of intergovernmental partnership.

A. Unfunded Mandates

The federal government should avoid policies that impose disproportionate responsibilities on local governments or increased financial liability without recognizing the fiscal impact of those policies. In particular, federal policies should not mandate new costs for local governments without providing adequate funds to reimburse local governments for new mandates.

B. Preemption

Activities such as franchising, zoning, issuing permits and licenses, and local code development are fundamental responsibilities of local governments. Federal policies should not undermine these activities or preempt local authority to protect the health, safety and welfare of local residents. Furthermore, preemptive policies constrain the ability of local elected officials to tailor policies to local needs and demands.

C. Fiscal Conditions

The economic fortunes of local governments nationwide are closely linked to the fiscal health of the federal government. Federal fiscal policies should not diminish the ability of local elected officials to respond to economic needs at the local level, especially during times of economic downturn.

D. Protect and Strengthen the Intergovernmental Partnership

The intergovernmental partnership must be strengthened to provide a framework of economic growth that balances the critical role of each level of government in the economic health of the nation, while also preserving important principles of federalism.

1.01 Intergovernmental Relations

A. Unfunded Mandates

The federal government must not initiate laws, rules and regulations, or take other actions and activities that will mandate new costs for local governments without

providing reimbursement funds to compensate local governments for such mandates. Any reimbursement program should deliver funding directly to the unit of government incurring the costs.

Cost-benefit and risk assessments of current federal programs, regulations, and policies (e.g., tax policy) must be conducted to determine their adverse cost, structural, and intergovernmental impacts on local governments.

Cost-benefit and risk assessment statements must be added to all proposed legislation, rules, and regulations. In the case of legislation, these statements and assessments must be available at the time of initial subcommittee consideration. In the case of rules and regulations, the statements and assessments must be included as part of the initial *Federal Register* publication. Assessment of proposed rules and regulations must be completed by Congress prior to enactment and/or enforcement. NLC encourages cities to separately display the costs of state and federally mandated programs in their budgeting and reporting.

Legislation and resulting regulations should be formulated on well-founded peer-reviewed science or fact, not speculation, exaggeration or scare tactics.

Local governments should be able to prioritize their resources to achieve the greatest risk reduction for the funds available.

The federal government should incorporate flexibility into federal and state regulatory processes because of variable local conditions. The federal government should avoid “one-size-fits-all” regulatory approaches to municipalities. While enforcement should be objective it should also take into account local conditions through the use of such mechanisms as variance/waiver procedures and locally-developed alternate compliance plans.

Local government should be afforded the opportunity for greater participation in the legislative and regulatory process. In developing and revising regulations, the federal government shall consider the impact of these regulations on municipal governments and shall reimburse municipal governments whenever these federal mandates impose significant new cost. Federal legislation requiring agencies to perform cost benefit analysis of “major rules” should define regulations having a significant impact on local government as “major rules.”

Municipal elected officials and governments should participate as partners in the development of federal regulations that have a significant impact on state and local government. Federal laws should provide that organizations representing elected state and local officials and governments are not subject to laws restricting entities subject to regulation from participating in consultative processes with federal agencies to make regulations workable. Such exemptions will help ensure that elected state and local officials participate at an early stage in the development of federal regulations.

B. Taxation of Interstate Sales

Federal legislation must be enacted permitting states and localities to require remote sellers, whether the sales are made electronically, by mail order or other means, to collect state and local sales and use taxes on orders made within their boundaries.

These state and local sales and use taxes are currently existing lawful sources of government revenue. Every year that such authority is not granted the federal government should reimburse state and local governments the lost (uncollected) revenue.

C. Collection of Business Taxes

NLC opposes any federal legislative efforts that have negative consequences for local taxing and regulatory authority and disproportionately affect local businesses.

D. Takings

NLC opposes federal regulations or statutes that place restrictions on state and local government actions regulating private property or requiring additional compensation beyond the continually evolving judicial interpretations of the Fifth Amendment of the U.S. Constitution.

The federal government shall indemnify a municipality for costs, including attorney fees, damages and awards, of litigation asserting inverse condemnation or regulatory takings claims, which arise from municipal actions necessitated by federal requirements.

The federal government should not enter into any international agreement that enables a foreign entity to seek damages predicated on the actions of a U.S. municipality, regarding alleged takings practices, which are legal under U.S. law.

E. International Trade and Local Authority

The federal government should include elected state and local government officials in international trade and all other treaty negotiations, because of their potential impacts on these governments.

F. Davis-Bacon Policy

The Davis-Bacon Act should be repealed.

G. Preemption of Municipal Regulatory Authority

The federal government shall not preempt municipal regulatory powers based on the police power of the state; however, when a clear and compelling need arises, the Congress must explicitly express its intent to preempt, and accompany any such proposals with a timely intergovernmental impact analysis, including estimated costs. Local elected officials cannot manage or guide the financial condition, character and personality, public health and safety, environmental protection or encourage the local self-determination of cities and towns without basic regulatory controls.

NLC opposes federal regulations or statutes that require retroactive compliance by municipal government. NLC also opposes federal regulations or statutes that preempt the power of a city to regulate conditions it may place on a shipping company docking at facilities located within that city.

H. Scope of Federal Regulation of Cities

The scope of federal intergovernmental regulations should be reduced and new regulations should be issued only when a clear and convincing case has demonstrated the necessity of federal regulations. In any event, federal regulation of cities should be confined to insuring individual political and civil rights, to providing for national defense, to regulating interstate commerce in resolving interstate disagreements, and to assuring the fiscal and programmatic integrity of federal grants and contracts. In all cases, maximum municipal flexibility and authority should be preserved.

In reviewing existing regulation of cities, the federal government should not use cross-over sanctions as a compliance technique, should consult with states and cities on regulations involving preemption of local authority or joint standard setting, and should simplify and standardize cross-cutting requirements.

I. Grant Reform and Administration

Federal grants to local governments should be used to provide fiscal support, initiate new programs or approaches to solving urban problems, increase socio-economic equity, and achieve national objectives. The following administrative and legislative measures would increase the effectiveness of this indispensable form of assistance to local governments.

1. Simplification of Procedures

The conflicting administrative and eligibility requirements accompanying federal assistance must be simplified and standardized. Such reforms would be intended for easing the administration of programs while not reducing the accountability of local government for

its expenditures of federal funds. Essential to simplifying the process of applying for federal assistance would be an enactment of a procedure for municipal governments to certify their compliance with cross-cutting requirements for achieving national objectives common to most grant programs. Organization-wide audits should replace grant-by-grant audits to rationalize the auditing procedure.

2. Consolidation and Integration

Municipal governments could utilize federal assistance more flexibly and efficiently if some of the narrow categorical programs were consolidated into broader categorical or block grants.

Legislation in three areas would greatly increase consolidation and integration. First, the President should have the power to consolidate related grant programs by Executive Order subject to Congressional veto. Second, the federal government should encourage joint funding by strengthening integrated grant procedures so related programs can be comprehensively financed through several agencies. Third, the federal government should authorize the consolidation of federal planning requirements and technical assistance programs.

3. Administration

The municipal role in the federal system should be strengthened by mandating the right of city governments to review and comment on all federal assistance programs which affect their jurisdictions, by further decentralizing the federal decision-making process, and by guaranteeing the right of city governments to participate in the agency rule-making process. The basis for grant recipient selection and the requirements for grant program administration and evaluation should be specified clearly and consistently by federal agencies. City governments should receive reimbursement for indirect costs associated with grant administration. Formulas for allocating funds should be periodically reviewed by the federal government to assure that programs serve actual needs.

4. Information and Statistics

The federal government should continually seek to improve its systems of providing information about grant programs and the availability of funding. Efforts to make materials and information known to small cities are particularly needed.

In order to increase the fairness and effectiveness of the distribution of federal funds, uniform use of population, employment, and other data should be made and ways of improving the accuracy and timeliness of all data should be found. In addition, methods of improving indicators of urban needs should be continually explored.

5. Audit Appeals

Federal legislation should be enacted to provide for the recovery from the federal government of legal, technical and operating costs associated with reviewing and commenting on any proposed and/or final federal audit report and/or the costs of appealing adverse grant eligibility determinations arising from such an audit report, which were incurred by a municipality, provided that the municipality substantially prevails against the recommendations of the audit report.

J. Municipal Postal Zone Names and Zip Code Assignment Process

In order to eliminate confusion among citizens and businesses and to reinforce community identities, the United States Postal Service should consult with municipal officials on postal changes affecting their communities and avoid, where practical, assigning territory of a municipality the mailing address of another municipality.

Recognizing the national interest in clarifying the ZIP Code designation process, NLC supports a directive to the USPS to reform and standardize the appeal process for municipalities in all ZIP Code related matters. These will include, but not be limited to, ZIP Code boundaries and default ZIP Code city designation. NLC also urges the federal government to work with municipalities via a transparent process that provides for due process and allows local governments to present concerns related to ZIP Code designation. The federal government should direct the USPS to improve efforts to educate municipalities of the reasoning behind the ZIP Code designation, boundary, and default city designation processes.

K. Municipal Annexation

Annexation procedures established by state law provide for orderly growth and development of cities and annexation of unincorporated areas. While states have and should continue to have the preeminent role in annexation regulation, actions of the federal government, through operation of many of its programs, can unintentionally or by design interfere with planned urban growth and annexation proceedings.

Recognition of the authority and ability of cities to deliver utility services is directly related to issues of growth and annexation. Federal policies must take account of this essential role of city government in determining the impact of legislation affecting the provision of such services in rural areas. Increased interest by rural electric cooperatives in competing with cities to deliver utility services in rural areas experiencing residential growth and commercial/industrial development has raised serious concerns for cities. Federal policy should require that

proposals to deliver such services in rural areas not duplicate the capacity of cities to serve those locations. Federal laws should not prohibit the option for cities to exercise extraterritorial jurisdiction over development, planning, and delivery of utility services in urban fringe areas adjacent to their corporate boundaries.

1. Rural Utility Services

Provision of utility services in rural areas must include the following:

- Recognition of the primary role and the existing or planned capacity of cities to deliver water and sewer services;
- Eligibility of cities for financing to extend or improve current municipal utility services to serve urbanizing rural areas;
- Direct participation of cities in the review and approval of rural electric cooperative project proposals to serve locations near cities; and
- Demonstration that such rural water and sewer facilities do not duplicate planned or existing city services.

2. Rural Electric Cooperatives

Any financing offered to any Rural Electric Cooperatives by a federal agency shall be offered to cities and towns on the same basis and at the same interest rate offered to the Rural Electric Cooperatives. That action should also contain a declaration that such financing is not intended to provide rural electric cooperatives with compensable water, sewer, or electric service territory rights in any state court or state agency proceedings.

If any rural electric cooperative is eligible to borrow funds for the establishment of water, wastewater, and electric systems, such proposals shall meet the following criteria:

- a. Demonstration that the proposal to serve the rural area with water, sewer, and electrical services will not encourage or result in the loss of valuable wetlands, agricultural land or resources;
- b. Completion of an environmental impact statement or other evaluation of the effect of such facilities on water resources, population settlement patterns, adopted local government land use development plans, and the availability of alternative financing, such as EPA or state-administered loans and grants; and
- c. Demonstration that the extension of such rural utility systems will not create obstacles to annexation and orderly growth of cities and towns. NLC opposes any and all efforts that would grant exclusive and perpetual federal franchises or territory rights to Rural Electric Cooperatives.

3. Rural Water Law

NLC urges Congress to amend Title 7 U.S.C. Section 1926 to eliminate any restrictions on the ability of a

municipality to provide a full range of services within any portion of a rural service district which is incorporated within a municipality. A mechanism should be provided allowing a municipality to make a negotiated cash payment to a rural district that will extinguish section 1926 territorial protection for specified portions of the district's territory.

L. Tax-Exempt Property

The federal government should pay to municipalities an annual sum in lieu of payment of real property taxes on federally owned, occupied, or controlled property otherwise exempt from such property taxes. Municipalities should in no way be constrained from collecting taxes of any type that are normal and fair from any individual, business, or corporation conducting activities on or within any federally owned, occupied, or controlled property or installation.

Federal pension law should not preclude the levy of non-discriminatory local taxes on entities that are otherwise taxable.

The federal government in its development of federal facilities should: comply with city zoning and land use practices; consult with local jurisdictions when preparing architectural and construction plans; adhere to nationally recognized building and fire and life safety code standards; maintain its facilities to the standards normally provided for similar public and private facilities; and should participate in paying the infrastructure and environmental impact mitigation costs and service fees related to the federal facility.

The federal government should not assert or cause its contractors to assert partial or full immunity from state or local taxes on a retroactive basis.

M. Federally Foreclosed Property

When in the course of its regulatory and other functions the federal government comes into possession of property which it does not intend to retain for its own use it should follow the following practices:

- Property tax obligations (both current and delinquent) on such properties should be paid pursuant to all state and local laws, as if the property was held in private ownership; and
- Federal agencies should operate in full compliance with all applicable federal, state, and local laws in its disposition of property, particularly in regard to environmentally sensitive property.

N. Census

The U.S. Census is of highest importance to America's cities and towns. The vital information provided is critical to many city activities such as community planning and redistricting. Statistics produced by the Census drive the allocation of federal and state funds.

Census numbers are also frequently used to help make decisions about the allocation of resources.

Cities are therefore vitally concerned that the Census produce the most accurate and timely information possible. Furthermore, the Census Bureau shall make every effort to reduce the gap in time between the reference date of statistics and their use in formulas.

In order to enhance the usefulness of the Census, Congress, working with the Administration, should create a Commission on the Census. This Commission should be composed of members of the executive and legislative branches and state and city officials. The Commission shall make recommendations for the most accurate census feasible. Whether or not such a Commission is convened, the federal government should create an advisory committee, including state and local government representation, to advise and comment on a continuing basis regarding the development and administration of census programs.

To improve accuracy the Census must include more effective ways to reduce the undercount and especially the differential undercount of ethnic groups. Methodologies implemented should provide for a more collaborative process between the Census Bureau and city governments, both to ensure more accurate initial counts and to provide for a process of validation. The full utilization of community partnerships is critical to a more accurate census count. Congress and the Census Bureau should be more open to innovations, including, but not limited to, contracting with communities to assist in obtaining an accurate count.

Selection of the method of Census administration to be employed in each decennial Census shall be made at least four years prior to the date of the census. Organizations of city governments shall be provided a formal opportunity to review and comment. The method shall be clearly defined and city government participation shall be incorporated. There shall be a release of preliminary Census counts to all jurisdictions. The appeals process for preliminary Census counts will be established in advance and should not involve costs to the appealing jurisdictions which effectively remove the appeal right. Adequate funding must be provided to achieve these objectives.

The final information from the U.S. Census should be made available to municipalities concurrent with its reporting to Congress. Information shall be released in multiple formats including an electronic format compatible with existing commercial and public domain redistricting and geographic information system software.

NLC supports the American Community Survey to improve the utility of census data and permit more frequent releases of data to demonstrate emerging local and regional trends.

To overcome the problem of non-response, NLC encourages the use of proven sampling methods and other processes which will instill confidence by the local population. If numbers are produced both: (1) employing sampling methods; and (2) not employing sampling methods, both sets of numbers should be made publicly available on the same time schedule and at the smallest possible geographic level.

O. Tribes and Trust Land

NLC recognizes and appreciates that Native-American tribes are independent governments and should be partners in developing policy.

In order that all lands can be uniformly regulated and taxed under municipal laws, lands acquired by Native-American tribes and individuals shall be given corporate, not federal trust, property status through negotiation or statutory change.

Nothing in this policy should be construed as affecting lands currently in trust.

P. Freedom of Information

The Federal Government must respond to requests by cities for non-classified federal information, directly relevant to the requesting city, under provisions of the Freedom of Information Act. The federal response must occur in ways that foster open intergovernmental communication and must not use fees charged for the cost of information production as a practical deterrent to such communication.

Q. Election Administration

Voting is fundamental to democracy in the United States' form of government. Citizen trust in the integrity of this process is essential. Procedures and administration of this process must be completely honest, transparent and impartial. State and local officials are primarily responsible for the voting process. Control of such processes should remain in the jurisdiction of state and local officials.

NLC does support federal establishment and enforcement of standards for voting for Americans overseas, particularly members of the U.S. military and federal government employees and their dependents. The federal government should annually review state laws for any procedural or statutory inconsistencies with applicable federal laws and promptly inform state governments, the state municipal league and the state association of counties in each state of any problems and ways to cure them.

R. District of Columbia

NLC recognizes and fully supports the right of the District of Columbia's elected representative to have full voting rights in the U.S. House of Representatives. The District of Columbia should be granted legislative and budget autonomy from the federal government.

1.02 Finance

A. The Intergovernmental Partnership

The health and vitality of local economies are critical to a robust and dynamic national economy. However, NLC believes the intergovernmental partnership, which has served as the foundation of economic growth and revitalization, is slowly deteriorating. In particular, federal budgetary conditions are prompting federal policymakers to assume a smaller federal role in assisting municipal governments with domestic priorities.

Instead, federal policymakers have increasingly shifted the burden of infrastructure investment and service provision to local officials without commensurate fiscal assistance. In addition to unfunded mandates, federal officials have further aggravated local economic conditions by preempting the authority of local officials to collect the necessary revenues to ensure that necessary infrastructure and services are adequately funded.

NLC believes current fiscal conditions reinforce the importance of a strong and effective intergovernmental system. NLC further believes the intergovernmental partnership must be strengthened to provide a framework of economic growth that balances the critical role of each level of government in the economic health of the nation, while also preserving important principles of federalism. To that end, the federal government should engage more directly with local elected officials to learn the impact of national policies and programs on America's hometowns by establishing a permanent venue of local, state and federal officials, as well as private citizens, to share information, develop consensus and report publically on policy ideas affecting local governments.

B. Federal Budgetary Practice

Representing elected officials and leaders of hometowns throughout the United States, NLC calls on Congress and the President to develop a non-partisan plan to reduce the deficit and bring the federal budget into balance over a defined period of years. While recognizing we cannot afford delay, Washington should recognize the health and vitality of local communities are critical to a robust and dynamic national economy. NLC certainly understands the potential for federal budgetary conditions may dictate a smaller federal role in assisting communities with domestic priorities just when the needs of citizens in our communities are greatest. Reductions in spending should not be based solely on domestic

discretionary programs essential to vibrant communities and the families who live in them. Any deficit reduction plan should not rely on accounting tricks by transferring responsibilities or imposing unfunded mandates on our cities and towns. It should not preempt local taxing authority or eliminate the Federal tax exemption on municipal debt so hometowns can continue to collect the revenue necessary to ensure that infrastructure and local services are funded adequately. Furthermore, any structural changes in federal programs implemented for deficit reduction should allow for an adequate transition period for our hometowns to be prepared for our shared sacrifice. As such, NLC asks for transparent decision making and for a seat at the table as options for cutting the federal deficit are considered.

1. Federal Budget Deficits

Large federal budget deficits have many destabilizing effects on the economy and continuing deficits jeopardize prosperity and cities' ability to finance governmental activities at reasonable interest rates. Therefore, the federal government should not incur them on a consistent basis but only in times of national emergency. When such a deficit exists, the President and the Congress should work together and develop a balanced plan of revenue increases and spending restraints that bring the budget into balance over a period of years.

Federal actions to reduce federal deficits that ultimately transfer responsibilities to or impose unfunded mandates on municipal governments must be avoided. Implementation of any federal deficit reduction plan must provide cities with sufficient regulatory flexibility to be able to operate efficiently under new fiscal realities. Any structural changes in federal programs implemented for deficit reduction, or for any other purpose, must allow for an adequate transition period. Cities should be a full partner with states and the federal government in this process.

2. Federal Budget Process

NLC urges the federal government to adhere to a budget process that presents the public with a candid and understandable assessment of the financial condition of the federal government and the long-term ability of the federal government to fund essential domestic programs. An analysis should be done of the intergovernmental fiscal and program impacts on cities or urban areas of new programs and any substantial modification in ongoing programs. Summaries of these analyses should be included in the budget document. An evaluation of the tax expenditures budget should be an important part of the federal budgetary process.

Specific plans should be prepared, based on current Congressional Budget Office projections, to guarantee the ability of the federal government to meet its long term future financial obligations, especially with respect

to all entitlement programs, trust funds, and federal loan guarantee programs. Alteration of accounting rules or the changing of other procedural or budget rules should not be used as a substitute for honest deficit reduction.

An annual summary budget report, designed for the general public, should be prepared and widely distributed. This summary should concisely illustrate the balance condition of the current budget, and also highlight the future projections for entitlement, trust fund, federal loan guarantee and other programs which involve major financial obligations for the federal government. Appropriations for federal assistance programs should, to the maximum extent practicable, be provided on a multi-year basis. The President's authority to defer expenditure of previously appropriated funds should not be utilized for policy purposes, but should instead be limited to its original purpose, as a cash management tool exercised under congressionally established procedures.

3. Federal Revenue Policy

Revenue policy influences the level and allocation of consumption, savings, and investment. These impacts are pervasive and critical to the health of city economies and, in turn, to the national economy of which these city economies are the major component.

Modifications of the federal revenue system should make equitable changes in existing tax burdens and not reduce the level of progressivity in the present system. The interrelationship of all revenue should be considered and their aggregate effect on progressivity evaluated. Modifications to the federal revenue system must also acknowledge the direct and indirect linkages between federal, state and local tax systems. Changes to the federal revenue system that reduce the ability of cities to raise revenues and capital must be accompanied by specific federal actions to address any adverse impacts.

Tax expenditures comprise such a large amount of the federal tax base that sound fiscal policy requires they be fully integrated into the Congressional budget process. All federal tax expenditures should be subjected to review and change so that these programs contribute, along with entitlement programs, to deficit reduction in a manner consistent with all other expenditure programs.

Tax cuts should not be made until concrete legislation to achieve a balanced federal budget has been implemented.

The current income tax system is too complex, and perceived to encourage noncompliance. Noncompliance is of special concern to cities, as most of their tax system relies upon public acceptance and voluntary compliance.

The provision of the federal income tax code that allows taxpayers to deduct their state and local tax obligations

from their federal taxable income is a fundamental statement of the historical right of state and local governments to raise revenues and of individuals not to be double taxed. It enhances the ability of state and local governments to raise revenues, promotes equity in the federal taxing system, discourages the migration of businesses and individuals for tax purposes, increases national productivity by avoiding excessive cumulative federal, state or local income tax rates, and enhances the autonomy of state and local governments.

For these reasons, NLC opposes the elimination or reduction in value of the deductibility provision for state and local taxes in the federal income tax code. NLC believes the federal government erred when the deductibility of state and local sales taxes was disallowed. In future revisions of the income tax, Congress should consider restoration of sales tax deductibility.

NLC also opposes the imposition of federal sales and excise taxes on municipalities and their essential functions, just as the federal government prohibits municipalities from levying sales and excise taxes on the federal government and their activities.

C. Municipal Finance Mechanisms

The constitutional principle making municipal government, in exercising its legitimate functions, immune from federal government taxation must be uniform and should not be challenged, altered, or circumvented by any law, rule, or regulation. Municipal revenue authority must remain intact. Finance mechanisms like municipal bonds are of critical importance to municipalities and directly support the building of local infrastructure, housing and hospital development projects, redevelopment of rural and urban areas, municipal utilities, among many other uses.

NLC supports current federal income tax exemptions for the interest on municipal bonds and the exclusion of the alternative minimum tax levies on some classes of municipal bonds.

NLC supports efforts to find alternative administrative remedies in situations when an outstanding municipal bond is found in violation of federal law and would otherwise be declared taxable.

The federal government should modify its laws imposing tests for tax exemption that are dependent on factors subject to change over time. The goal should be to create a one-time pre-issuance test of conformance to the requirements of federal law.

1. Regulation of Municipal Bonds

The authority of municipal governments or their agencies to issue tax exempt municipal bonds as legal obligations

of those governments or agencies should not in any way be reduced or constrained by the federal government. Specifically, the federal government should not restrict municipal bond issuance or tax the interest on municipal bonds when:

- No private entity owns the bond-financed project; and
- The issuing government retains substantial operational, functional, or regulatory control of the bond-financed project.

NLC supports efforts to make consistent the definition of a small issuer under federal law for purposes of the arbitrage exemption and eligibility for the bank interest deduction, as well as efforts to raise and equalize the eligibility threshold for both the bank interest deduction limit and the arbitrage rebate exemption.

For purposes of computing small issuer eligibility for the arbitrage rebate exemption the following types of bond issuances should not be counted:

- Private activity bonds; and
- The amount of a refunding bond that does not exceed the outstanding amount of the bond to be refunded.

In order to ensure an orderly market for municipal bonds, Congressional proposals to alter laws regulating municipal bonds should have effective dates no earlier than the final passage date of the legislation. Changes in federal municipal bond law should not apply to any municipal bond with an issuance date prior to final passage of the law making the change.

2. *Advanced Refunding*

Tax-exempt bonds are an important source of capital investment at the local level. NLC supports federal legislation that allows the number of times local governments can apply for advanced refunding in order to take advantage of lower interest rates for refinancing public debt. Additional opportunities for advanced refunding would allow local governments to access capital at lower costs, thereby mitigating the strain on already finite resources at the local level and ensuring that necessary services are not shortchanged, neglected or eliminated.

3. *Municipal Bond Market Transparency*

In order to increase competition, NLC supports a more transparent municipal bond market including instantaneous reporting of stock exchanges, private equity transactions, and underwriter discounts to reduce the cost of bond issuance.

4. *Bond Market Liability*

NLC supports federal efforts to increase confidence in municipal capital markets by exposing professionals serving the municipal bond market as advisors, counsels,

bankers, accountants etc. to full accountability in federal courts for actions relating to fraud with regard to the purchase or sale of securities.

Municipal elected officials should be absolved from liability for any change in the tax status of municipal bonds if they exercise due diligence in the issuance of municipal bonds.

5. *Arbitrage and Refunding Bonds*

NLC supports current restrictions against issuing new municipal bonds or refunding prior issues of municipal bonds solely for the purpose of gaining arbitrage profit. However, in those instances where a reasonable amount of arbitrage profit may occur as a result of a bond issuance, a bond refunding, or in the prudent financial management of an issue, NLC would urge that such obligations not be subject to federal taxation. Primary control of arbitrage and refunding bonds should be done through statutory provisions rather than through administrative rules and regulations. Federal restrictions in these matters should not interfere with normal financing methods.

NLC also supports current federal law which limits application of federal arbitrage restrictions only to bond issue proceeds, not to reserved, sinking, or dedicated funds collected by the issuing entity. Arbitrage penalties should not include the potential of retroactive determination. Calculations of cash flow deficits for purposes of arbitrage regulations should not consider restricted or segregated municipal funds.

Municipalities should be allowed to enter into supply contracts or use other financial mechanisms to secure supplies of commodities such as natural gas or electricity, without restriction, so long as the size and terms of contracts are reasonably related to the future needs of the municipality.

6. *Municipal Credit Enhancements*

It is in the interest of cities to have as many institutions as possible eligible to provide credit enhancements for tax exempt bonds. Therefore, NLC believes nationally chartered commercial banks should be permitted to underwrite all types of investment quality municipal revenue and general obligation bonds.

Congress should amend the Internal Revenue Code to add the Federal Home Loan Banks to the list of organizations that can provide standby purchase agreements, letters of credit and other credit enhancements to cities.

7. *Increasing the Supply of Municipal Capital*

The demands for capital improvements at the municipal government level should not be inhibited but supported by the federal government in the dual partnership

required to maintain and rebuild access to a better urban life quality. Criteria against which such proposals must be judged include the following:

- Any new financing mechanism must preserve the ability of cities to act independently on matters of purely local concern;
- Any financing mechanism should offer cities at least as much financial advantage as cities presently enjoy by virtue of the tax-exempt feature of their securities; and
- The choice of use of any available financing mechanism must be solely at the option of the user. The administration of such financing mechanism must not subject the user to administrative or other delay that could jeopardize the ability of the user to gain maximum financial advantages.

8. *Financial Reporting*

Financial records should be kept in accordance with generally accepted accounting and reporting standards; financial reports should be made available in a form that is clear and understandable.

Compliance with financial reporting standards and auditing and accounting guidelines should remain voluntary in nature and not subject to mandates by the federal government.

9. *Antitrust Issues*

The federal antitrust laws should be amended to exempt from antitrust challenge any municipal action which is based on an affirmative municipal policy of replacing competition or monopoly service to protect the general public interest.

In addition, the federal antitrust laws should be amended to permit local governments, to bring antitrust actions against their suppliers.

10. *Financial Emergencies and Municipal Tax Liens*

In financial emergencies the federal government should assist a municipality to obtain needed funding if the municipality has exhausted all reasonable and prudent steps to secure financing under its own authority. Federal assistance should be designed to return a municipality to its former state of financial independence.

NLC supports changes to federal bankruptcy law to protect to the maximum extent the tax claims of municipalities against private entities that file for bankruptcy protection. NLC believes that federal law should clearly state that the automatic stay provision of the federal code (section 362) does not apply to municipal tax liens; that payment of tax liens in full should be placed before junior lienholders; and other necessary changes to protect city revenues during private bankruptcy proceedings.

11. *Full Insurance of Public Deposits*

As long as state governments retain laws requiring substantial pledging of public securities for deposits of public funds in financial institutions, the federal government should not provide full insurance for those deposits because of the adverse consequences such action could have on the municipal bond market.

12. *Municipal Sale Leaseback Financing*

Current tax provisions for leasing equipment or using service contracts should be the same for cities and private companies.

NLC supports change in current law to provide for sale leaseback arrangements for buildings or facilities if they are for new construction or to finance substantial rehabilitation of an existing structure or facility.

However, if industrial development bonds are used to finance construction or rehabilitation costs, other than for resource recovery and municipal wastewater treatment plants, then the depreciation period should be extended.

1.03 **Municipal Administration**

A. Employee Relations and Benefits

1. *Municipal Pension Plans and Social Security*

a. **Municipal Pension Plans:** The primary responsibility for regulating municipal pension plans rests with either state or local government. The federal government should not attempt to regulate such plans, either by legislation or by regulation. Taxation of municipal pension plans and other employee benefit programs shall be opposed. Congress shall exempt municipal governments from the Internal Revenue Code, Section 415 limits, or allow municipalities to pay excess benefits to their employees.

b. **Social Security System:** Because of the unique, historical evolution of Social Security options and requirements for state and local governments and their employees, the Federal Government should not expand mandatory Social security requirements for state and local governments and their employees. Imposition of expanded requirements would create large costs for municipal taxpayers, threaten the solvency of state and local retirement systems and create irreconcilable conflicts among labor agreements, pension plans, contracts, state laws and constitutions.

The Social Security program should be taken “off budget” and should be operated under federal government supervision by an independent board put in place to determine policy and govern the program.

c. **Deferred Compensation Plans:** The federal government should recognize by law and regulation the unique status of section 457 deferred

compensation funds. This recognition should provide that employee contributed funds should neither be converted to use for municipal purposes or be considered assets of municipalities in bankruptcy proceedings. Limits on individual employee deferrals should be indexed so that these limits increase over time. Roll-overs to other deferred plans should be allowed.

2. *Employee-Employer Relations*

The federal government should not undermine municipal autonomy with respect to making fundamental employment decisions by mandating specific working conditions. The federal government should not mandate collective bargaining rights, legalize strikes, or require compulsory binding arbitration.

In view of the labor protections provided by state laws, labor agreements, city government civil service systems and municipal personnel procedures, NLC opposes federal legislation which singles out a class of municipal employees to be provided special investigative and disciplinary procedures.

3. *Municipal Employee Fringe Benefits*

The primary responsibility for determining, providing and financing benefits for municipal employees is and should remain the responsibility of local governments. The federal government should not enact laws imposing fringe benefit requirements, such as health insurance requirements and leave provisions, on municipal employers. Cities, as employers, are better suited to develop fringe benefit packages which are sensitive to local labor markets, city labor requirements and employer-employee negotiations.

NLC is opposed to federal government taxation of “bona-fide” fringe benefits. “Bona-fide” benefits are those provided by a municipality to its employees pursuant to state law or regulation, local laws and regulations, contracts or collective bargaining agreements.

4. *Drugs and Alcohol*

Drug and alcohol abuse can heavily impact the municipal work force. To combat this problem NLC would support federal actions such as legislation or technical assistance which would strengthen the ability of cities to initiate and carry out drug testing and treatment of city employees for drug and alcohol abuse.

5. *Fair Labor Standards Act (FLSA)*

NLC supports Federal government efforts to reform the following areas of the Fair Labor Standards Act (FLSA):

- a. The salary exemption test should be amended to provide an appropriately indexed exemption for executive, administrative, and professional

employees and to provide that the “duties test” would not be considered for such employees.

- b. The FLSA should be amended to allow state and local governments to deduct for absences of less than one day without losing exempt status for certain employees. Such an amendment will allow cities to discipline and control employees in the manner best suited to their individual situation.
- c. The FLSA should be amended to allow state and local governments to apply disciplinary sanctions for less than one week without losing the exempt status for such employees.

6. *Occupational Safety and Health (OSHA)*

NLC opposes any impairment of the ability of state and local governments to indemnify their agents, officers and employees against financial loss arising from the operation of locally adopted safety and insurance statutes.

7. *Americans with Disabilities Act*

NLC opposes any efforts by the federal government to dismantle the Americans with Disabilities Act.

B. Municipal Decision Making

1. *Civil Rights/Equal Opportunity*

Municipal governments support equal employment opportunities and have a vital and continuing interest in the development, maintenance, and extension of vigorous and effective civil rights policies. To achieve this goal, cities are committed to:

- a. Supporting fully the 1964 Civil Rights Act as amended;
- b. Removing artificial barriers in the recruitment, selection, hiring, promotion, transfer or discharge of employees which have no relationship to standards of performance;
- c. Developing and carrying out a written affirmative action program in the recruitment of minority groups, women, and the handicapped to upgrade these employees to permit greater career development potential;
- d. Making maximum use of opportunities to employ the disadvantaged-unemployed or under-employed persons with educational, training, economic, physical, or other handicaps in suitably structured jobs where they have the opportunity to acquire, through work experience and training, the additional knowledge and skills necessary for career advancement; and
- e. Assuring an equitable distribution of municipal services or benefits to all city residents.

Current duplication in federal civil rights provisions and inconsistency in federal agency interpretation of existing laws create confusion, impose unnecessary administrative burdens on municipalities, and do little to further the cause of justice for employers, employees, or

the general public. The federal government should strengthen its commitment to an effective and coordinated anti-discrimination effort by consolidating and vesting rulemaking and enforcement authority over existing and future civil rights provisions in a single agency.

Federal, state and local governments should all be held equally responsible for achieving diversity in their own personnel practices. Furthermore, local governments should call upon federal government to pursue vigorously affirmative action programs in its own personnel practices or grant to local governments any exemptions to federal discrimination laws, which the federal government now claims for itself.

2. *Municipal Service Provision, Right of Way and Franchising Rights*

The federal government should take no action, which abridges the right of a city to franchise, regulate, or control any person or enterprise that provides services within that city. Further, the federal government should take no action, which would intrude upon the authority of a city to directly operate, contract out or sell the operation of any service.

Public rights-of-way are properties held in common and controlled by municipalities for the benefit of the public. Municipal governments engage in a variety of activities to minimize service disruptions to the public, to protect public investments in the right-of-way, to assure the appropriate placement of service lines, to regulate the placement of service facilities, and to realize the value of this public asset. These activities include the granting of franchises and licenses, the promulgation of construction standards, the levy of taxes, the charging of fees, the levying of rental charges, and the issuance of permits.

The federal government should take no action that restricts the authority of municipalities in this area. The federal government should not enter into any international agreement that would enable any foreign entity to seek damages predicated on the actions of a municipality, regarding rights-of-way, which are legal under U.S. law.

3. *Regional Planning and Cooperation*

Urban problems frequently cross jurisdictional boundaries and require area-wide action to achieve measurable relief. If federal programs are to facilitate the efforts of local governments to deal with these problems, they should conform to several basic principles:

a. Any federal legislation or regulation which mandates area-wide planning should provide necessary resources towards the development of such an organization and establish flexible performance standards for the planning process.

- State and local elected officials must be included in the decisions regarding the purpose and responsibilities of area-wide planning organizations;
- b. Any area-wide planning organization will include proportional representation based on the population of participating jurisdictions;
- c. Regional planning bodies should be created to increase cost effective delivery of service. These sub-state districts or regional planning bodies should allow for flexible interpretation of federal guidelines as a result of local political, economic, and social conditions and should include controlling mechanisms for local participants.

4. *Municipal Liability*

In recent years, cities have experienced unprecedented increases in costs in protecting themselves from public liability. While municipalities must take steps to improve their own internal management programs and policies to identify, reduce, eliminate, and protect against the risks of carrying out public services, the federal government, in conjunction with state governments, can assist in these efforts by doing the following:

- Clearly defining and limiting the scope of public liability and exposure through legislation, including legislation reducing liability exposure under Section 1983 and related statutes by preventing the filing of traditional state tort claims in federal courts under the umbrella of civil rights actions or by other appropriate changes;
- Lessening the personal risks facing individual officers and employees while performing public duties;
- Encouraging and assisting municipalities in developing flexible, cooperative solutions and alternatives for insurance, reinsurance, pooling, and risk-management; and
- Providing training, technical assistance, and education, which will improve the state of the art and practice of municipal liability, insurance and risk management.

Some specific methods for reducing municipal liability that should be implemented are:

- Providing in federal law that in those states where municipal liability caps exist, such caps should also be applicable to liability arising from federal statutes;
- Providing in federal law that expose municipalities to liability that attorney fee awards should go to the prevailing party;
- Providing for a six-month notice of claim requirement when a municipality is the potential defendant; and
- Providing in federal law that the statute of limitations period should be the limitations period for personal injury actions in the state of occurrence.

The federal government should consider creating alternative dispute resolution procedures, which must be exhausted before recourse to the courts is allowed for claims against municipal governments.

The federal government should implement “settlement before trial guidelines” that would allow municipalities to avoid the payment of a plaintiff’s attorney fees, if an offer of settlement by the municipality made a specified period of time in advance of trial is greater than relief finally granted by the court.

In the drafting or revision of federal statutes that expose municipalities or their officials to liability, the following general principles should be respected:

- a. If monetary fines are imposed by the court on a municipal government there should be provisions allowing the municipality to apply these fine amounts to cure conditions giving rise to the imposition of the fine;
- b. Limitations should be placed on the extent to which a city or its municipal officials may be held vicariously liable for the acts of their employees;
- c. Federal law should not limit the ability of a municipality to insure or otherwise protect city officials and employees from personal financial loss connected to claims arising from their municipal government affiliation; and
- d. That to be eligible for the awarding of attorney fees the plaintiff must substantially obtain the relief sought and any such attorney fees should be reasonable in relation to the judgment.

Municipal government workers, including workers that perform a share of their duties on vessels operating in navigable waters, are protected by workers compensation laws, without regard to fault. The federal government should, therefore, amend the Jones Act to exempt municipal government employees from the provisions governing the death or injuries to an employee working on a vessel.

In those cases where there is a trade-off of municipal authority and rights in federal legislation, which also provides a legal remedy against cities, NLC believes that there should be specific statutory language declaring that the legal remedy specified is the exclusive remedy.

5. *Municipal Disaster and Terrorism Insurance*

In the wake of recent high-cost natural disasters and terrorist attacks, a number of insurance companies have been unable to properly cover the losses of their policy holders because the industry was overexposed to loss. Since the September 11, 2001 terrorist attacks, the industry has virtually eliminated its coverage of terrorism, and if available, it is prohibitively expensive.

This limited ability to obtain natural disaster insurance also has restricted or stopped property transfers in some real estate markets. The federal government has stepped in to provide assistance to the states whose residents have lost coverage from their insurance companies, but often this assistance comes at the expense of other federal programs.

The costs to the federal government continue to increase as people cannot or do not seek private insurance to help cover losses from natural disasters. Similarly, the federal government must address reinsurance for acts of terrorism. Although a concentrated effort to prevent reliance on a long-term, federally-subsidized disaster relief is necessary, an initial reinsurance system must be made available to bring stability to both industry and government as a safeguard against future acts of terrorism.

NLC urges the federal government to work with state and local governments, the insurance industry, and other stakeholders to:

- Develop insurance and reinsurance programs that will make it possible for private insurers and reinsurers to make affordable disaster insurance available to cover damage and loss caused by catastrophic natural disasters and terrorism;
- Encourage the insurance and reinsurance industries to provide incentives through rate adjustments that reward policy holders who take mitigation actions;
- Work to ensure that insurance companies do not overexpose or underexpose themselves to risk;
- Develop an incentive-based disaster insurance and mitigation system that would encourage property owners to build new homes outside high risk areas, retrofit existing structures to reduce future losses, and enable government and business to obtain the proper coverage necessary for public safety, the delivery of public services, flow of commerce, and economic development.

6. *Municipal Purchasing*

The federal government should not disqualify cities from the receipt of Federal Grant Funds where such procedures are based on objective and otherwise legal criteria. Cities may decide to adopt special provisions, for example: (a) grant preferred status to some classes of potential suppliers; (b) disqualify other classes of potential suppliers; or (c) grant less preferred status to other classes of potential suppliers.

7. *Right of Municipalities to Sue*

NLC opposes any federal preemption that would undermine the authority of municipalities to bring suits against other parties.

8. *Reducing Barriers to Municipal Contracting with Federal Facilities*

The federal government should eliminate legal and procedural barriers and solicit proposals from municipal governments to provide services to federal installations such as public safety services, ground maintenance, and public works.

9. *Equal Access to Justice Act*

The eligibility limits for units of local government on assets and the number of employees for awards under the

federal Equal Access to Justice Act should be eliminated. NLC has no position on the modification of eligibility thresholds for non-local government entities.

10. *Federal Consent Decree Fairness Act*

Congress should ensure that consent decrees imposed by Federal courts are drafted as narrowly as possible, limited in duration, provide for review of continuing need, and should respect state and local interests and policy judgment.