THE INS AND OUTS OF EXECUTIVE BRANCH FEDERALISM

CSG Civics Education eCademy Series

Tuesday, May 19, 2 p.m. EDT | CSG eCademy Webcast
Big Questions About Intergovernmental Relations

Carl W. Stenberg, III
James E. Holshouser, Jr. Distinguished Professor of Public Administration and Government
Disruptive Trends

• Federal pre-emptions
• Unfunded mandates
• Reduced discretionary spending
• Escalating health care costs
• Political polarization
• Unsustainable federal spending
• Post-recession state revenue weaknesses
• “Fend-for-yourself” federalism
Promising Developments

• Federal “cavalry” still riding (ARRA, Medicaid expansion)
• More state activism on federal policy and regulation
• State innovation laboratories re-opening
• Growing interest in federal block grants
• Increased use of waivers of federal regulations
How will efforts to remedy the federal government’s unsustainable fiscal condition affect state and local revenues?
Big Question 2

How can state governments be viable intergovernmental partners without greater fiscal capacity and fiscal responsibility?
Big Question 3

Should functional responsibilities be “sorted out” with turn-backs of responsibilities to the states in order to achieve greater efficiency and effectiveness?
Should federal categorical grants-in-aid be consolidated into block grants to reduce overlap, target resources, and improve results?
Big Question 5

What design features should accompany federal economic stimulus programs and regulatory reforms to facilitate more effective state implementation?
Big Question 6

Under what circumstances are unfunded federal mandates warranted or unwarranted, and when should the federal government preempt state authority or provide waivers for state exemptions and experiments?
Who Will Answer the Big Questions?

• Demise of intergovernmental institutions (ACIR, OMB, House & Senate subcommittees)
• Few congressional federalism champions
• Money and mandates trump management
• Polarization undermines collaboration
• Opportunities for CSG and other Big 7 organizations
Medicaid Provider
Taxes

Council of State Governments

Federalism in the Executive Branch-
Between States
and the Federal Government

May 19, 2015

Raymond Scheppach
University of Virginia
(Former Executive Director of the NGA)
History of Provider Taxes

- The Pro Cyclical Nature of Medicaid Creates Funding Challenges During an Economic Downturn
- After the Recession of 1983 States Began to Use Donations and Provider Taxes
- This Allowed States to Increase the Share of Medicaid Paid by the Federal Government
- States Gained, Providers Gained and the Federal Government and Taxpayers Lost
- In 1990 Rules were Promulgated to Restrict Donations and Taxes but there were questions about the legality of the rule
- The Rule Was Opposed by a Strong Coalition of States and Providers
- An Informal Invitation was made by HHS and OMB to Negotiate an Agreement
- In 1991, the Negotiated Agreement was enacted by the Congress (PL 102-234)
The Negotiation Was Challenging

- States Were Divided Into Three Groups
  1. Those Who Were Blatant Users of Provider Taxes
  2. Those Who Did Not Use and Were Opposed to Any Use
  3. Those Who Had Moderate Use

- NGA Had Limited Expertise Relative To HHS and OMB

- OMB and HHS had Different Goals

- Each State Was Unique and Needed a Unique Solution

- Timing was Critical

- Even if the Negotiation Was Successful, Would the Hill Enact it Without Amendments?
The Negotiation Process

- Created a Negotiation Team of 6 — 3 NGA and 3 from the Administration

- Met Weekly as a Team

- Asked each Governor to Appoint a Staff Member who Could Make Decisions

- Communicated Individually with States about their Unique Issues

- Communicated with Executive Committee on a Weekly Basis
What Did We Learn?

1. Need to Build Trust with the Other Side by Being Honest Regarding Problems.

2. Need to Communicate Directly via Phone with Individuals States and Be Prepared to go back to the Negotiating Team if there were Legitimate Issues.

3. Need to Brief Executive Committee on Both the Substance And the Extent to which Individual Governors were Opposed.

4. Need to Keep Other Stakeholders, such as Providers Informed.

5. Need to Communicate with State Legislators through NCSL and CSG.

6. Needed to Get a Commitment From the Administration that they Would Oppose any Legislative Changes that we opposed.

7. Allow the Administration to Take the Lead on the Hill as they were the Good Guys.

8. We Needed to Have the Executive Committee Vote to Adopt the Agreement.

9. Understand You are Personally In a Very Risky Situation.
Final Results

- Congress Enacted the Agreement Without an Amendment
- The Lead Negotiator from HCFA was fired for not keeping the Secretary Informed
- Most Governors were pleased, but 5-6 Were Very Upset
- The Most Egregious Practices have Stopped but Many Problems Remain
Federalism in the Executive Branch

May 19, 2015
The federal-state relationship is in the spotlight because of enormous fiscal challenges facing all levels of government. Tight budgets and a weak recovery in the wake of the Great Recession are leading to discussions about appropriate amounts of public spending and how costs should be allocated among local, state, and national government. Federal and state policy makers require solid data and analysis to engage in a meaningful debate and truly understand how their tax and spending
Federal share of state revenue

Percentage of State Revenue From Federal Funds, FY 2013

19.0% to 29.9%  30.0% to 39.9%  40.0% to 49.9%

pewtrusts.org/fiscal-federalism
Different kinds of funding relationships

- Federal government: $58 billion
  - State government: $45 billion
    - Local government: $26 billion
      - Transportation system: $109 billion
- State government: $89 billion
- Local government: $73 billion
- Transportation system: $109 billion

FY 2012
Over the last four decades, immigration to the U.S. has grown rapidly in both relative and absolute terms, as millions of foreigners herding from all parts of the world have made this country their home. While the federal government has been largely responsible for the admission of immigrants and the enforcement of immigration laws, states and localities have played a critical role in the integration of immigrants into communities. As the magnitude and nature of immigration—and the challenges associated with it—have transformed the political and policy landscape, the roles of the federal government and of the states have evolved, sparking both new
11 states and DC have enacted legislation to provide driver’s licenses to the unauthorized
Federalism in the Executive Branch

- Data
- Conversation
- Examples of Impact

Department of Transportation, “Beyond Traffic Trends and Choices”

White House Task Force on New Americans, “Strengthening Communities by Welcoming All Residents”
For additional questions or information, please contact:
Ingrid Schroeder
ischroeder@pewtrusts.org
202-540-6449
pewtrusts.org/fiscal-federalism
Lessons from the Recovery Act

Council of State Governments
May 19, 2015
G. Edward DeSeve
Executive in Residence
Brookings Executive Education
Recovery Act:

- Worse than they knew
- A memo to the President
- Mr. Biden’s fireplace
- Organizing for Recovery
- The role of State and Local Governments
- It takes a network
- Elements of Managed Networks
Worse Than They Knew

Figure 1: Monthly Private-Sector Job Gains and Losses

Monthly change in private payroll employment (thousands)

Jan-08  Jul-08  Jan-09  Jul-09  Jan-10  Jul-10  Jan-11

Recovery Act in effect
Worse Than They Knew

Figure 2: The Deepest Recession Since the Great Depression

There are three distinct recessions represented in the graph: the 1981 Recession, the 1990 Recession, and the 2001 Recession. The graph shows the private payroll employment as a percent of peak. The current recession is indicated by the dotted line, which shows a steep decline followed by a recovery phase indicated by the dashed line.
Biden’s Fireplace

About the Author

G. Edward DeSeve is the President of the Global Public Leadership Institute. He served as a Special Advisor to President Barack Obama. Mr. DeSeve oversaw the successful implementation of the $787 billion American Recovery and Reinvestment Act.

His career has included work in finance, academia, and government. Mr. DeSeve was the founder and president of Public Financial Management—the nation’s largest independent financial advisor to governments. He served as a tenured professor of public management and finance at the University of Maryland. His government service at the federal level included being Controller and Deputy Director of the Office of Management and Budget, as well as the Chief Financial Officer of HUD. He was the Director of Finance for the City of Philadelphia and served as a Special Assistant to the Governor of the Commonwealth of Pennsylvania.

At each level of government, Mr. DeSeve oversaw complex fiscal affairs. He was instrumental in balancing Philadelphia’s budget during two fiscal crises. At OMB, he helped balance the federal budget during the Clinton administration and oversaw implementation of the Balanced Budget Act of 1997. His work at the Global Public Leadership Institute focuses on the development of leaders who will shape the future of public management.
Lessons from Recovery

- Attention from the Top
- Transparency Minimizes Fraud
- Real Time Financial Information
- Technology Enables Direct Reporting
- Geospatial Mapping Adds Clarity
- Collaboration Through Networks Essential
The Role of State and Local Government

- The “Fifth Objective”
- Biden’s calls
- Linking “Single Accountable Individuals”
- We must be in Kansas
- A well lit house
# Table 1: Funding Categories and Major Programs

<table>
<thead>
<tr>
<th>Major Provisions:</th>
<th>TAX BENEFITS: $288 Billion</th>
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<tbody>
<tr>
<td>Individual Tax Credits $122.5B</td>
<td>First-Time Homebuyers. Transportation Subsidy. Education benefits. Earned Income Tax Credits.</td>
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<tr>
<td>Making Work Pay $89.3B</td>
<td>$400 tax credit for working individuals; $800 for working married couples</td>
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<tr>
<td>Tax Incentives for Businesses $33.4B</td>
<td>The Work Opportunity Tax Credit added unemployed veterans and 16-to 24-year-olds to the list of new hires that businesses could claim. The Net Operating Loss Carry-back allows small businesses to offset losses by receiving refunds on taxes paid up to five years ago.</td>
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<tr>
<td>Energy Incentive $9.3B</td>
<td>Tax credits for energy efficient improvements to residences. Tax credits for alternative energy equipment. Electric Vehicles Tax Credit.</td>
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<td>COBRA $3.7B</td>
<td>Assistance with Continuation of Health Coverage.</td>
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<tr>
<td>Manufacturing &amp; Economic Recovery, Infrastructure Refinancing, Other $2.1B</td>
<td>Tax-exempt bonds to expand industrial development. Bonds for investment in infrastructure, job training, and education in high unemployment areas. Increased available New Market Credits.</td>
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<td>Major Provisions:</td>
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<tr>
<td>$78.4B</td>
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<tr>
<td><strong>Transportation</strong></td>
<td>Highway Infrastructure. High-Speed Rail Corridors. Grants for Railroads and Airports.</td>
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<tr>
<td>$27.1B</td>
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<td>$22.8B</td>
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<td>$19.0B</td>
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<tr>
<td><strong>Housing</strong></td>
<td>Grants to States for Low-Income Housing. Public and Indian Housing. Rental Assistance Programs. Homelessness Prevention Programs. Homeowners Assistance Fund.</td>
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<td>$14.7B</td>
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<td>$12.6B</td>
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<tr>
<td>$8.6B</td>
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<tr>
<td><strong>Other Programs</strong></td>
<td>Administrative and Operational Costs for Recovery Programs. Offices of the Inspectors General Recovery Administration Costs.</td>
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<tr>
<td>$4.7B</td>
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<tr>
<td><strong>Family</strong></td>
<td>Temporary Assistance for Needy Families. Health Programs and Benefits.</td>
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<tr>
<td>Major Provisions:</td>
<td>Description</td>
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<tr>
<td>Medicaid Grants to States $84.1B</td>
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<tr>
<td>Unemployment Insurance Programs $60.0B</td>
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<tr>
<td>Family Services $25.2B</td>
<td>Foster Care and Adoption Assistance; Child Support; Food Stamp Program; Assistance for Needy Families.</td>
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<tr>
<td>Economic Recovery Payments $13.8B</td>
<td>One-time $250 payments to Social Security beneficiaries; Railroad Board payments; Veterans payments.</td>
</tr>
<tr>
<td>Agricultural Disaster Relief Fund $0.8B</td>
<td>Assistance for farm revenue losses due to natural disasters.</td>
</tr>
</tbody>
</table>

Source: [http://www.recovery.gov/Transparency/fundingoverview/Pages/fundingbreakdown.aspx](http://www.recovery.gov/Transparency/fundingoverview/Pages/fundingbreakdown.aspx)
Figure 3: Original Recovery Implementation Office Organization Chart

Recovery Implementation Office Organization Chart

OMB
- Mgt
- Budget

Office of VPOTUS/Chief of Staff

White House/Chief of Staff
- Cab. Affairs
- Leg
- Pub/IntG
- Comms
- Pol
- Press

RIO

Agencies

Recovery Accountability & Transparency Board

Grantees
Elements of Network Management

- Commitment to a common purpose or mission
- Trust
- Networked structure and use of technology
- Governance
- Access to Authority
- Resources
- Leadership
From Recovery to Opportunity

- Networks beyond disaster
- “Collaboration and network building are the most important foundations for transformative action in a city and a metropolis” The Metropolitan Revolution (Katz and Bradley, Brookings (2013))
- Managing risks with networks from Y2K to ACA
Why can’t we all just get along. . .
Questions?

Please submit them in the question box of the GoToWebinar taskbar.