Putting *Federalism* To Work For America

Tackling the Problems of Unfunded Mandates and Burdensome Regulations

City of Chicago
Richard M. Daley
Mayor

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Richard M. Daley, Mayor

In conjunction with

Roosevelt University
Institute for Metropolitan Affairs

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EXECUTIVE SUMMARY

The United States faces unprecedented domestic challenges that will require tremendous resolve on the part of local governments large and small. While the problems are not confined to cities, municipalities of all sizes across the country have become focal points of the most pressing national concerns. As crime, drug abuse and unemployment rates continue to rise, Washington has provided more rhetoric and fewer resources. More importantly, cities nationwide have been saddled with a complicated array of statutory and administrative requirements that hamstring their ability to address critical issues. Chief among these are unfunded mandates and burdensome regulations.

The City of Chicago, in conjunction with Roosevelt University's Institute for Metropolitan Affairs, seeks to identify the causes and magnitude of the problems faced by cities and states weighed down by unfunded mandates and burdensome regulations, and to propose practical, principled solutions.

Preliminarily, it is important to note that this report does not seek to challenge the merits of individual federal mandates and regulations. Indeed, most mandates seek to advance socially laudable goals that are as unassailable as mom and apple pie. Yet, their accumulated weight has made it nearly impossible for local governments to prioritize among their residents' most pressing needs. Municipal officials, closest to the most difficult problems afflicting the nation, must be accorded the flexibility to prioritize among and address critical issues.

This report seeks to get at the heart of the problems posed by unfunded federal mandates and overregulation, and is organized into four sections.

Section I traces the historical and theoretical underpinnings of the unfunded mandates and regulation-related problems now faced by state and local governments. In short, these problems date back to the advent of the New Federalism. During this period, three developments converged to cripple states and local governments. First, the federal government discontinued revenue sharing and otherwise reduced appropriations for its programs without at the same time reducing the obligations already delegated to states and local governments to carry out these programs. Adjusted for inflation, Chicago today is receiving less than half of what it received in 1980 in federal aid -- accounting for 14% of the City's budget in 1993 versus 29% in 1980. Second, the federal government expanded existing, or imposed new, obligations upon states and cities without regard for their cost. Third, the federal government has bound the shrinking resources it provides to states and local governments in increasingly complex layers of red tape.

The most serious consequence of the changing nature of the relationship between the federal government and state and local governments is the breakdown in political accountability. While paying homage to the policy of ceding authority to states and cities to determine and prioritize their needs and act accordingly, the federal government in fact has sought to have it both ways. Unable to make difficult choices, the federal government has been creating and expanding further the responsibilities that state and local governments must assume without providing the wherewithal to carry them out. Those officials who set policy do so in a context devoid of any real consideration of the costs involved and the fiscal choices that their policy decisions necessitate. In imposing unfunded mandates and burdens on localities Congress is spending local tax revenues -- revenues for which it is not accountable for raising.

Section II, expanded upon below, offers specific recommendations for addressing the problems posed by unfunded mandates and burdensome regulations, with an emphasis on action rather than further study.

Section III contains stories -- specific examples of mandates that the City of Chicago must follow, or of regulations that impede the City's ability to get either its, or the federal government's, work done on a timely and cost-effective basis. These stories cover a broad array of federal policy and program areas, ranging from housing to transportation to the environment.

Finally, **Section IV** contains an inventory of onerous regulations and unfunded mandates affecting the City of Chicago. In 1991, compliance with these unfunded mandates and burdensome regulations cost Chicago a conservatively estimated $160 million.*

Returning to the recommendations, this report begins with the premise that any workable, principled solution to the problems posed by unfunded mandates and burdensome regulations must rest on a well-reasoned standard by which to determine the appropriate responsibilities of each level of government. The federal government appropriately is responsible for those areas of public policy in which there is a need for a single, coordinated national policy or where there is a compelling need to establish uniform policy or minimum standards on issues of pervasive national interest or where varying standards among the states would engender unhealthy competition or inefficiencies.

From this point, the recommendations in this report are presented in three parts. Part A tackles onerous regulations;

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* The City of Chicago and the Institute for Metropolitan Affairs acknowledge and express their appreciation to David M. Griffith & Associates for their invaluable assistance and technical support in connection with Section IV of this report.

Part B focuses on the problem of unfunded mandates; and Part C offers a recommendation addressing both unfunded mandates and burdensome regulations. In each area, all recommendations favor action rather than further study, and seek to offer immediate relief, while offering a longer-term strategy to prevent these problems from re-emerging in the future.

The recommendations targeted at burdensome regulations stress local flexibility to meet goals rather than adhere to rigid standards, and to address local needs. Chief among these are recommendations to create a fast track public works improvements program featuring minimal, outcome-oriented project compliance procedures that will put America back to work and that can serve as a model for future or existing federal programs; and expansion of the block grant basis for establishing and funding federal programs.

Recommendations targeting unfunded mandates stress political accountability, identification of the resources needed to pay for programs as they are created or extended, and local flexibility. These recommendations tackle the problems posed by existing unfunded mandates, and propose steps needed to ensure that no future unfunded mandates are generated. To the extent that there remain unfunded or insufficiently funded mandates, these recommendations offer relief for affected jurisdictions by seeking greater flexibility in meeting the goals of these mandates.

INTRODUCTION and STATEMENT of PURPOSE

The United States faces unprecedented domestic challenges. While the problems are not confined to cities, municipalities of all sizes across the country have become focal points for the most pressing national concerns: contending with mounting violent crime rates; achieving rapid workforce development; dramatically improving the quality of public education; ensuring that an acceptable level of health and human services is offered in every community; reducing racial polarization and improving inter-group relations; expanding the economic base in communities with high crime rates and other disincentives to business development; improving opportunities for an increasingly disenfranchised minority youth population and reaching consensus on critical environmental choices.

The ability to make headway on these issues will require tremendous resolve on the part of government at all levels. It is essential that municipalities have maximum flexibility in marshalling available resources to solve these problems. The decision, for example, to apply more dollars to fight violent crime as opposed to developing a local infrastructure project should be made at the municipal level. Likewise, local governments should be granted maximum discretion in fast tracking projects holding the potential to increase the employment of city residents.

Given the enormity of the problems faced -- and the consequences if we fail -- business as usual is no longer possible. As the policy pendulum swings towards domestic concerns, resources and organization must be applied where they are most needed. In this light, the modern day mayor must be viewed as a front line manager or a field commander, on the front and close to the action. Unlike their corporate or military counterparts, mayors must also be responsive to the vital social forces that are shaping our multi-cultural urban communities.

Unfortunately, rather than being a partner, the federal government increasingly impedes the ability of local governments to grapple successfully with these issues. As urban crime, drug abuse and unemployment have continued to mount, Washington, D.C. has provided more rhetoric rather than resources; more promises than progress. More importantly, cities nationwide have been saddled with a complicated array of statutory and administrative requirements that hamstring their ability to address critical issues. These barriers -- chief among them unfunded mandates and burdensome regulations -- lead to inflexibility, inefficiency and intrusiveness in the prerogatives of localities.[1] "While the intent of a mandated program may be good and noble, when considered in the aggregate and in priority with other local needs, the impact can be disastrous (Virginia Joint Legislative and Review Commission, 1992)."[2]

Unfunded mandates and burdensome regulations have come to characterize intergovernmental relations in the United States over the past twenty years (see Section I of this report). Within this framework, local governments have often been situated at the bottom of the totem pole. Cities are subject to mandates directly from the federal government. States may mandate local compliance with federal requirements imposed on them. States may also impose mandates on, or restrict funds to, local governments as an indirect result of federal mandates placed on them. In addition, independent of the federal government, states impose

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1 Advisory Commission on Intergovernmental Relations, Regulatory Federalism: Policy, Process, Impact and Reform, (Washington, D.C.: U.S. Government Printing Office, 1984).

2 Commonwealth of Virginia, Report of the Joint Legislative Audit and Review Commission on Intergovernmental Mandates and Financial Aid to Local Governments, No. 56 (Richmond, Virginia: House of Representatives, 1992).

their own burdensome regulations and unfunded mandates on cities. The accumulated weight of these unfunded mandates and burdensome regulations have made it nearly impossible for local governments to prioritize among, let alone carry out, activity to address their residents' most pressing needs.

For the purposes of this report, *burdensome regulations* are defined as process-related requirements (such as paperwork or procedures to be followed):

> *Usually emanating from an executive branch agency, whose cost clearly outweighs actual or putative benefits to the intended beneficiaries; or which delay the implementation of vital services or projects beyond reasonable limits or constrains the efficient operation of local government.*

An *unfunded mandate* is defined as:

> *Any federal-initiated statutory or executive action or state directive that imposes a substantive requirement upon state or local government to establish, expand or modify its activities without the appropriation or provision of funding necessary to carry out the requirement. Unfunded mandates include, but are not limited to:*
>
> > *Service Mandates*
> > *Mandates involving the creation and expansion of government service or delivery standards such as air pollution control, public health, education, water pollution control, and solid waste treatment and disposal.*

Organization and Structure Mandates
Prescribe the form or organization of local government and/or the administrative practices and procedures to be undertaken by local governments.

Due Process Mandates
Concern such matters as the administration of justice, notification and conduct of public hearings and the protection of the public from malfeasance, misfeasance and nonfeasance by local government officials.

Personnel Mandates
Concern or affect local government salaries and wages, employee qualifications and training, hours and working conditions, fringe benefits including insurance, health, medical care retirement, and other benefits.

The problems posed by unfunded mandates are distinct from, but related to, the problems posed by the burgeoning, often onerous, federal regulatory framework in which local governments are forced to operate. While the federal government increasingly abandons existing, or mandates new, responsibilities upon state and local governments, it has attached more and more strings to the diminished resources it provides to manage these programs through the creation of an increasingly complex and voluminous web of rules, forms and approval/monitoring procedures. Presumably promulgated to ensure that federal monies were well spent and not otherwise falling into the wrong hands, these regulations have increasingly had the effect of strangling, if not completely choking off, the very projects they were supposed to promote. The difficulty lies in striking the balance between ensuring that federal funds are well spent and delegating the authority to federal funds are well spent and delegating the authority to determine the best use of the same resources to those at the front lines.

And yet it is critical to strike this balance. At this time, there is much talk of making an earnest attempt to jump start the national economy through infrastructure and other programs. Critical to the success of these initiatives is a quick infusion of the capital, human and other resources needed to upgrade and rebuild the nation's infrastructure. Ironically, however, it is the federal government's very own approval, monitoring and regulatory schemes that will likely conspire to ensure that years pass before we see any real fruits of these ambitious and important initiatives.

Sections III and IV of this report offer illustrations of mandates as well as of regulations that impose undue barriers to realization of federal and local goals. Immediately following, however, is a tracing of the history of, and repercussions visited by, the dual federal interference problems posed by unfunded mandates and burdensome regulations.

SECTION I: FEDERALISM GONE AWRY

During the past few decades, a hidden transformation has taken place in the nature of our federal system of government. Throughout most of American history, states and local governments have been accurately described as the laboratories of democracy. It was at the level of the state legislature, the city council and the town meeting that American citizens confronted the issues and problems that beset them and developed particular and often innovative solutions to those problems. This system, as was envisioned by its founders, promoted two great principles: political accountability of officials and adaptation of government policies to local conditions.

States and local governments were directly and fully accountable for their policies to the citizens who elected them. The elected representatives who voted to provide new programs and services also had to approve funding for such programs and services. Many proposals made to develop new programs or expand existing services necessitated that other programs or services be cut or that taxes be raised. Local and state governments, unlike the federal government, do not have the option of running a deficit to fund programs. Instead, hard choices must be made every day.

Traditional federalism enabled state and local governments to work out solutions which addressed the particular circumstances and needs of individual communities. While some of the solutions developed at the local level were later developed on a national scale, the genius of the individually functioning laboratories of democracy -- the thousands of state and local governments across the nation -- was that experimentation and innovation could occur in the absence of a nationally imposed statutory or regulatory scheme. State and local officials could be evaluated by citizens based on their abilities to develop policies that were well suited to the circumstances of local communities.

Recent studies support the view that decentralizing government and re-invigorating our nation's myriad laboratories of democracy will cause government to work more effectively and efficiently. Osborne and Gaebler suggest that decentralization will promote several objectives: flexibility, effectiveness, innovation and higher morale, productivity and commitment of employees.[3] In the context of the debate about federalism, decentralization is desirable because the closer a government is to the people, "the more accountable its officials tend to be and the more likely they are to handcraft solutions rather than create one-size-fits-all programs."[4]

Even in a system marked by dramatic decentralization, the federal government would still play an important role. Washington could employ performance criteria and "exercise quality control without dictating program structure and content."[5] To encourage state and local government productivity and innovation, the federal government could establish challenge grants to promote the development of quality programs. The essence of this system, however, would be a decentralized approach to government in which accountability for governmental actions would be clearly affixed.

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[3] Osborne and Gaebler, Reinventing Government, at pp. 252-253.

[4] Id. at 277.

[5] Id. at 279.

The Changing Nature of Federalism

Since the New Deal of the 1930's, the federal government has played an increasingly active role in providing grant-in-aid programs to state and local governments. Such programs have served valuable social and economic purposes. Even when federal programs requiring state and local action were fully funded, however, the displacement of state and local authority had a debilitating effect on our system of federalism. Gradually, in the 1960s and 1970s, there was a creeping change in the nature of federal programs affecting state and local governments. More than 500 categorical programs were established by the federal government. Each program came with "detailed rules, formulas for matching and distributing the money, bureaucracies charged with carrying out and overseeing the program, and beneficiaries and professional groups with an interest in perpetuating and enlarging the grant."[6] Although the goals of these categorical programs generally are laudable, the development of such programs set the stage for a dangerous rearrangement of the federal system.

In recent years, the dynamic of the American federal system changed even more dramatically. In the early 1980's, the Reagan administration proposed a set of reforms generically known as the "New Federalism." The Reagan proposals called for severely reducing the federal role, deregulation, and a general reduction in governmental activism. Although much of the Reagan agenda was never carried out, a general reduction in federal aid to state and local governments was a clear result of the policies of the 1980s. Federal funding was cut, but mandated requirements on states and localities were not. According to the Advisory Commission on Intergovernmental Relations, federal grants constituted 26.5 percent of state and local outlays in 1978 but fell to

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6 Rivlin, Reviving the American Dream, at p. 98.

18 percent in 1988.[7] In inflation-adjusted dollars, federal assistance to the City of Chicago has been cut by more than fifty percent since 1980.

Reagan's "New Federalism" proposals, to the extent they were put into effect, were widely criticized as being more illusion than reality. Instead of creating more flexibility for state and local governments, "New Federalism" turned out to be a tale of broken promises: funding for various programs was cut while the promised revenue "turnbacks" and local flexibility never occurred.[8] "New Federalism" was legitimately blamed for provoking a budget crisis for states and localities.[9] As one observer stated, the "New Federalism" approach to government created "the worst of both worlds: Federal controls and red tape, with a diminishing federal pocketbook."[10]

Although there is no completely reliable study of the overall costs of federal mandates on all state and local governments, there is no doubt that the burden imposed by mandates is immense. For example, as discussed in Section IV of this report, the cost of federal mandates to the City of Chicago alone exceeded $160 million in 1991. It has been estimated that federal environmental laws will cost state and local governments $32 billion per year by 1995.[11] State costs incurred in connection

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7 Stanfield, "Rethinking Federalism," National Journal, October 3, 1992, at p. 2255.

8 See, e.g. Salisbury, "As Reagan Pledges Rights to States, Hill Trims Them," Christian Science Monitor, December 30, 1981, at p.3.

9 "'New Federalism' Seen Giving Cities Few Alternatives,'" The Bond Buyer, December 3, 1981, at p. 19.

10 Ravitch, "Transitory Federalism," The New York Times, October 2, 1981, at sec. A, p. 31.

11 "U.S. Adds Programs With Little Review of Local Burdens," New York Times, March 24, 1992, at p.1.

with the federal medicaid program will exceed $38 billion this year.[12] One estimate put the cost of mandates on states alone at $75 billion.[13]

The Rising Cost of Federal Regulations

In addition to imposing ever more expensive unfunded mandates on states and localities, many programs that are funded in whole or part by the federal government come with costly strings attached. As outlined below, while programs such as Head Start, Medicaid and the Job Training Partnership Act serve important social and economic objectives, far too much of the cost of these programs is eaten up by administrative requirements and red tape. Not only do regulatory hurdles sap precious personnel resources, but they also delay the implementation of important programs. Regulatory relief will not only reduce paperwork burdens, but will also allow "fast track" infrastructure programs to be implemented more rapidly. Relief from administrative burdens will put construction workers, not bureaucrats and consultants, to work.

The goal of creating a government closer to the people, where local officials who have the greatest understanding of local situations and needs are directly accountable for their decisions, would be well served by dramatically reducing regulatory costs of federal programs, and the bureaucracies that administer them, and the delay associated with regulatory requirements. To the extent that federal regulations continue to exist for such grant-in-aid programs, they should serve the objectives of promoting goal-oriented outcomes and flexibility in administration so that local officials will be able to carry out

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12 Id.

13 Corwin, "How Federal Mandates Manhandle States," Chicago Tribune (September 9, 1992), at p. 12.

such important programs in a manner that is consistent with local needs.

<u>The Consequences of a Disrupted Federal System</u>

The changing nature of the relationship between the federal government and state and local governments has had several fateful consequences for democracy in America. The most serious consequence is the breakdown in political accountability produced by a system in which those officials who set policy do so in a context devoid of any real consideration of the costs involved and the fiscal choices that their policy decisions necessitate. Unfunded federal mandates destroy the direct connection between the individual citizen and his or her government that the American federal system was created to enhance.

The costs of unfunded federal mandates are borne by citizens paying state and local taxes enacted by state and local legislatures. Local officials are held accountable for the level of these taxes and the efficiency and productivity of the purposes for which they are spent, as they should be, but they have no power to adopt, repeal or modify these purposes. In effect, Congress is spending local tax revenues -- revenues for which it is not accountable for raising.

The citizen is faced with a situation in which true accountability for spending decisions is hidden, and can be divined only through complex programmatic analysis and study of federal requirements. The seemingly inevitable result is a breakdown in confidence in government, as voters are faced with spiraling local tax burdens and service cuts in non-mandated local services no matter who is elected to local office. Programs that are developed at the local level must be scaled back so that federal mandates can be satisfied. Mandated programs and costly regulations effectively operate as a diversion of local and state resources from areas that local elected officials regard as important to areas given priority by the federal government.

Other consequences of this hidden transformation are equally insidious. The imposition of unfunded federal mandates upon state and local governments undermines their role as laboratories of democracy in two ways. The continually expanding slice of the state and local budgetary pie consumed by unfunded federal mandates crowds out funding for non-mandated state and local governmental services and programs. Taxes cannot be raised continually. This results in a stifling of experimentation and innovation. Local problems and concerns often go unrecognized in Washington. Instead of being autonomous, independent governmental powers, states and cities often play the role of delegate agencies for the federal government. The fact that a supremacy clause exists in the Constitution should not serve as a basis for repeatedly displacing states and localities as dynamic parts of the American federal system.

Additionally, the mandated areas themselves are largely immune from state and local modification to suit local needs and conditions. This is true whether the mandates are funded or not. In fact, much of the discussion of the need to reduce the federal regulatory burden to enhance productivity is conceptually linked to this point. Federal mandates and the federal regulations which accompany them by their nature are attempts to impose uniform national policies and procedures upon a rich and diverse society. Although American history has undoubtedly demonstrated that in certain instances, national uniformity is necessary to promote fundamental national goals such as preserving the rights of minorities, it has equally well demonstrated that the solution to every problem is not to be found in Washington.

Democracy in America was never meant to trickle down from Washington. Centralization of authority at one level in Washington has stifled innovation and has often prevented local elective officials from responding to changing local conditions. Many businesses have discovered the value of decentralized management structures in which those on the front lines have substantial decision-making authority. The American people are best served when local and state elected leaders are clearly responsible for weighing the costs and benefits of new or expanded programs, and for rejecting proposals which are not justified in light of additional taxes that would be required to fund such programs. America was founded on the belief that a direct, close relationship between average citizens and their elected public servants would most effectively promote healthy democratic ideals. This basic principle of American democracy has been threatened by the rising tide of unfunded mandates and burdensome regulations. This report makes the case for re-establishing closer ties between the government and the governed.

Towards a Re-Invigoration of Our Laboratories of Democracy

It is widely acknowledged that fundamental, structural changes are needed to restore political accountability, reinvigorate federalism, and ensure that policy functions are properly divided among local, state and federal governments. The proposals set forth below, if enacted, would dramatically re-introduce real political accountability at all levels of government. The proposals would return discretion to local and state elected officials by providing funding to states and localities for expenses required by federal mandate.

The aim of the proposals is to create the best of both worlds for states and localities: less red tape and regulatory oversight with stable financing sources for federal requirements that do remain in effect. In contrast to New Federalism's false promise of local control, the approach suggested here will promote real change and accountability at all levels of government. The federal government will not pass on new mandates to states and localities unless it also provides sources of funding for such mandates. Existing regulatory burdens on states and localities will be lifted, not in a ritualistic tribute to deregulation, but because targeted regulatory relief will assist States and localities in delivering services to the people in a more practical and efficient manner.

SECTION II: FINDING SOLUTIONS

A Foundation for Action

At the heart of any workable, principled solution to the problems posed by unfunded mandates and burdensome regulations must lie a well-reasoned standard by which to identify the appropriate responsibilities of each level of government. Below is an attempt to articulate such a standard; beyond that are concrete recommendations designed to put these principles to work instantly.

The federal government appropriately is responsible for those areas of public policy in which there is a need for a single, coordinated national policy. Among these areas are national defense, foreign relations, national economic competitiveness, aviation control and interstate transportation.

In addition, primary responsibility lies appropriately with the federal government in those areas of domestic public policy in which there is a compelling need to establish uniform policy or minimum standards on issues of pervasive national interest or where varying standards would engender unhealthy competition or inefficiencies among state and local governments. For example, environmental regulation is an area in which national policy is required given the realities that air and water pollution know no boundaries of city and state.

In domestic social policy, other areas appropriately within the federal government's domain include social security and health care. As basic social services, there is a strong argument that health care, pension and unemployment benefits require the setting of minimum national standards, which also serve to minimize the potential threat to the nation's economic health were people unable to move freely from region to region or state to state to pursue economic opportunity because of the chilling effect wrought by widely disparate health care or benefit standards. In addition, the health care cost crisis has vividly illustrated the largely unmet need for spending targets, a single-payer system and cost containment. Establishing a single source of authority would reduce administrative costs and help ensure that funds actually would meet important social needs.

Of course, the federal government must ensure that states and local governments can carry out effectively the important social goals entailed in such programs.

This hardly leaves state and local governments sitting by idly, leaving important social goals unaddressed. There is an abundance of policy areas and responsibilities left to state and local governments to undertake. Chief among them remain education, public safety and basic city services.

It almost goes without saying that all of these responsibilities must be undertaken by the various levels of government in a cooperative setting. Indeed, the concerns being expressed over these issues by a wide array of leaders at all levels of government without regard for political affiliation illustrate that the public sector as a whole is ripe to undertake this reorganization of responsibilities; an approach to intergovernmental relations we refer to as *Putting Federalism* to *Work for America* and define as:

> A new form of intergovernmental relations characterized by a high degree of cooperation among the federal government, states and local government in domestic priority setting, joint problem solving, setting regulatory parameters and achieving domestic policy goals. The federal government should concentrate on those functions that it is positioned to perform best, freeing states and local governments to

address those concerns for which they are responsible. A key emphasis is on stimulating maximum initiative and creativity at the local level, focusing on policy outcomes and enabling local managers to plan and manage with the widest discretion possible (see discussion at Section I, pp. 6-7, 10-13).

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To date, efforts to solve the unfunded mandate problem has been incremental and scattershot. Similarly, attention in the policy arena to federal overregulation of state and local government has been limited in comparison to the amount of attention accorded to regulation of the private sector.

Municipal officials, closest to the most difficult problems afflicting the nation, must be accorded the flexibility to prioritize among and address these issues. In short, the federal government ought not dictate to state and local governments what they must do and under what timetable without the wherewithal to ensure its mandates can be met. While policy direction from Washington, D.C. is appropriate for many issues, maximum discretion should be exercised at the local level. Unfortunately, what little funding the federal government is willing to make available has been increasingly bound in red tape so tangled that it ensures federal goals are not met. Indeed, many local resources needed to carry out important local functions have been diverted trying to meet overly burdensome federal mandate and regulatory requirements.

The recommendations below are divided as follows: Part A tackles onerous regulations; Part B focuses on the problem of unfunded mandates; and Part C offers a recommendation addressing both unfunded mandates and burdensome regulations. For each of Parts A and B, a set of governing principles is offered, followed by specific actions that are recommended. In discussing these recommendations, the following bears noting: mandates are primarily, though not exclusively, a Congressional (legislative) problem; whereas regulations tend to arise within executive branch agencies. Accordingly, reform of each area will require a different strategy. The solutions offered in both areas are designed to provide tangible and immediate relief, while offering a longer-term strategy to prevent these problems from re-emerging in the future.

A: BURDENSOME REGULATIONS

Principles to Avert Overregulation

The federal regulatory environment within which cities and states operate is inefficient, costly and unwieldy. It assumes that lower levels of government cannot be trusted to ensure that taxpayer dollars are managed well. Yet, states and local jurisdictions have amassed excellent records in developing controls to deal with vendors, contractors and delegate agencies.

Osborne and Gaebler offer a framework that reinforces this report's goal of minimizing the federal government's interference with local governments' ability to discharge their essential duties. The authors argue that the key to revitalizing government lies in promoting mission driven government:

> How do we create mission driven government? The first task is to scrape off the dead weight of accumulated rules, regulations and obsolete activities. Many people understand the need to deregulate the private sector, but few apply the same thinking to the public sector. Government needs some rules, of course. The ship of state needs a coat or two of paint; if we take it down to bare metal, it will rust. The problem is, most governments have acquired several dozen

coats of paint and layer upon layer of barnacles. The goal of deregulation is to get back to the one or two layers of protection we really need -- so the ship can move again.[14]

Osborne and Gaebler point to the need for results-oriented planning, management and budgeting. The key is to zero in on goals and on the quality and effectiveness of the services produced rather than on the mechanistic approach endemic to most federal mandates and regulations. Additionally, decentralized decision-making is a cornerstone to be referred to in defining federal and local government roles under federalism. The authors note, with pointed examples, that the decentralization of decision-making produces more flexibility than centralized approaches and enables quicker responses to changing circumstances. Public servants become more innovative, generate higher morale, more commitment and higher productivity.

These precepts are at the heart of the reform needed to break the regulatory stranglehold choking off innovation, progress and change.

The crux of the regulations issue is reasonable controls and flexibility. The federal government is entitled to satisfy itself that its taxpayers' dollars have been well spent. Excessive controls, in and of itself, ensure that vast amounts of taxpayer dollars, not to mention lost opportunities, are wasted. The current regulatory framework tends to work against high priority domestic policy goals that are shared by local governments, states and the federal government.

Accordingly, the following general principles should guide efforts to reduce counterproductive regulations:

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[14] Osborne and Gaebler, Reinventing Government, at p. 331.

- *Carefully delineate the minimum amount of essential information that the federal government needs in order to discharge reasonably its responsibilities for public funds.*

- *Do not front load paperwork and other regulatory requirements and approvals at the beginning of key capital development projects; rather, opt for a reasonable level of after-the-fact review designed to ensure that policy goals are met and the funds properly spent.*

- *Within the federal government, consolidate, then delegate decision-making authority wherever possible, thereby minimizing the number of stopping points that a project must cover.*

- *Optimize the flexibility accorded units of local government to determine the manner in which they intend to meet the intent of federal requirements rather than following prescribed, mechanistic rules.*

- *Permit the waiving or postponement of onerous regulations in critical areas such as job development and the economic revival of blighted areas.*

- *In general, authorize local government to fast track job development and workforce mobilization projects with a minimum of red tape at each stage of the process.*

Recommendations

1. Create a fast track public works improvements program featuring minimal, outcome-oriented project compliance procedures. The purpose is to foster swift implementation of large scale capital improvement projects. By focusing

initially on improvements to existing infrastructure (rather than new construction), the Clinton administration can minimize the regulatory hurdles often associated with brand new projects not yet in place. The regulatory groundrules under this fast-track program should:

- Avoid wherever possible front-loading procedural, paperwork and approval processes (possibly through local certification requirements) in favor of back-end, post-completion compliance procedures.

- Allow commencement of projects more quickly by allowing paperwork and approval processes to be completed within a reasonable period after the project has begun.

- Wherever possible, consolidate and delegate to a single point of responsibility, all federal (e.g. federal inter-agency, Washington,D.C./regional office) check-points and approval and monitoring requirements.

- Maximize local, rather than distant, compliance monitoring in accordance with federal guidelines.

- Maximize local flexibility to select and prioritize among projects that are subject to federal government funding or regulatory requirements.

For its part, the City of Chicago has devised a fast track program that has substantially reduced the time needed to get infrastructure projects underway.

The success of this fast track program at the federal level could then serve as a model to be duplicated for other, perhaps already existing programs.

2. <u>Where federally funded programs or funded mandates exist or are created, they should be established on a block grant basis to the maximum extent possible</u>. By doing so, the federal government maximizes the extent to which state and local governments have the flexibility to carry out these programs in a way that can best meet each jurisdiction's needs and priorities. Of course, regulations that impose approval, compliance, monitoring or other requirements or procedures should be promulgated in accordance with recommendation No. 1 above.

3. <u>Create a pilot program under a Regulatory Relief Act that would establish ten pilot local jurisdictions -- Regulatory Relief Sites (RRS)</u>. Under this program, the federal government would work in close cooperation with each RRS to fast track selected projects through the federal regulatory maze. This pilot program would entail:

   - Each RRS assembling an inventory of federal mandates and burdensome regulations that restrict municipal job development, workforce efficiency or economic revitalization.

   - Identification of initiatives or projects that would be ready to go immediately if fast tracked through the normal regulatory requirements. Selected projects from this list would then be targeted for fast tracking.

   - For each RRS, a federal/local response team working in tandem to ensure coordination and rapid project startup for the selected projects. For examples, requirements for each project pursued under this pilot program could be retrospectively met.

- This program could be linked to any new federal job creation or economic development program, such as the fast track program proposed in recommendation No. 1 above.

4. <u>Consolidate and decentralize federal decision-making and monitoring wherever possible</u>. For example, delegate the decision-making or monitoring authority to regional offices to the maximum extent possible. This serves two purposes: (1) elimination of the delay and frustration when thorough approval or monitoring processes undertaken by the regional office of a federal agency are followed by further, sometimes <u>de novo</u>, review by the central office; and (2) permits decision-making by those closer to the locality, who are typically more familiar with, and sensitive to, local needs. Chicago's experiences with federal agencies have been consistently characterized by relations with Regional Offices that are responsive and sensitive to local needs, only to be marred and delayed by second-guessing and additional layers of red tape imposed by the central office. The eighteen year-old Lake Michigan Shoreline erosion problems and the Northwest Incinerator litigation both vividly illustrate the uncertainty and protracted delays caused when decision-making and interpretation authority are not consolidated within the same federal agency (see Section III, pp. 36-38).

B: UNFUNDED MANDATES

Principles to Avert Unfunded Mandates

The time to reverse unfunded federal mandates and their costly toll is long overdue. To be sure, many mandates incorporate desirable goals that are consistent with states and local governments' policy agenda. Indeed, in preparing this report, city department heads and line managers often stipulated that the broad intent of federal and state mandates were positive, although extremely costly and significantly detracted from their department's ability to meet local needs.

Chicago and other cities have been forced increasingly to carry the cost of what had been federally mandated and subsidized programs. Although the federal government has paid homage to ceding authority and responsibility to lower levels of government in orchestrating policy, in fact the opposite has happened. Responsibilities imposed on state and local governments are on the rise, while federal support has waned to a level so low that contrary to the stated goals of federalism, local governments and taxpayers are now dipping well into local revenue sources to foot the bill for federal programs.

General principles to guide resolution of the unfunded mandate dilemma include:

- *Solving the unfunded mandate problem must focus on redefining federalism; specifically, in defining the appropriate roles for federal, state and local governments in implementing domestic policy.*

- *Political accountability for funding of required policies and programs (other than those setting national standards for basic, Constitutionally mandated rights), no matter how socially laudable, must rest with those imposing the requirements.*

- *Accordingly, cities (and states) should not be held accountable for any federal mandate for which funding is not provided.*

- *To the extent, if any, that currently unfunded mandates remain so or new unfunded mandates are created, local gov-*

ernment should be accorded the flexibility to develop local plans to meet the intent of federally mandated requirements, with wide discretion to delineate how they will meet these requirements within a reasonable period of time.

- *The degree of flexibility to be accorded local governments trying to meet unfunded mandates should be tied to a national standard.*

These principles offer a starting point from which to tackle the unfunded mandate and burdensome regulations dilemma. Below are action steps intended to put principles into practice.

Recommendations

Note: Recommendations 1-3 pertain to future federal mandates; recommendations 2-5 address problems associated with current unfunded mandates; additionally, some of these recommendations are mutually exclusive.

1. Steps must be taken to ensure that no future unfunded mandates are enacted. This is not to say that mandates should not be enacted under any circumstances; only that they must be paid for. As noted previously in this report, many mandates serve socially laudable goals. However, the federal government ought only enact mandates in areas of policy properly within its province, and even then only if the federal government is willing to assume responsibility for fully funding the policies and programs it seeks to impose on state and local governments. This will require action by both the executive and legislative branches of government:

    - The Executive branch must halt the promulgation of regulatory mandates, probably by executive order; and discourage the enactment of legislative mandates through the express and prospective vow of a presidential veto of unfunded legislative mandates.

- Congress, for its part, must refrain from enacting new, or extending existing, unfunded mandates. There is no mechanism to ensure this now; accordingly, this likely will require the proposal (and enactment) legislation requiring that any mandate concurrently identify the sources that will serve to fund fully the carrying out of the mandate.

This leaves state and local governments to pursue at their timetable, and in accordance with their own priorities and unique local needs, other areas of domestic policy.

2. Require Congress (by legislation) and the Executive Branch (by Executive Order) to fund fully the costs of complying with new or existing mandates. Funding to carry out these mandates could be generated by one or more of several mechanisms, including:

   - an incremental increase in income taxes;

   - a uniform value-added tax (that perhaps could substitute for state and/or local retail sales taxes); or

   - an energy, gasoline or other tax whose proceeds are targeted toward a related activity governed or imposed by federal mandate.

The proceeds of any of these common taxes could then be distributed to states and local governments on a block grant (e.g., formula or per capita) basis. As alluded to above, the imposition of these taxes could serve the additional purpose of reducing, or, in some cases, eliminating state and/or local sales taxes and/or local property taxes since at least some of the proceeds of these taxes have been needed to fund compliance with unfunded federal mandates. These reductions would enable these jurisdictions to compete for business on the basis of factors other than the local tax climate; and further simplify tax collection and compliance. States and local governments would, of course, retain discretion over the imposition of other taxes; however, one clear goal of the common taxing scheme would be to allow for the substantial reduction of such taxes.

3. <u>Provide for the automatic expiration of existing or future unfunded mandates within one year</u>. Renewal at the end of the year of any such mandate would be subject to the following tests:

   - A showing that the mandate pertains to an area of policy within the federal government's province.

   - Funding is provided; or

   - alternative methods of compliance are offered in order to give local governments the flexibility to comply with the goal of the mandate without sustaining undue burden.

   - In the rare case where a single procedure must be imposed, variations will be authorized in the timing and approach to compliance within appropriate parameters, proportional to the degree of hardship or potential program failure among affected cities.

As for existing unfunded mandates, one or a combination of recommendations numbered two and three above, and four and five below, will be needed.

4. Authorize local governments to determine and specify how they will meet the objectives of mandated programs for which there is insufficient funding. States and local governments should not have to observe any unfunded mandate that imposes undue budgetary drain or revenue loss to the jurisdiction. These jurisdictions should be allowed to stipulate how particular mandates will be met in order to fulfill national policy objectives. Using this locally devised plan, jurisdictions meeting pre-determined eligibility criteria would be released from the requirements of any unfunded federal mandate through:

- An opt-out of any unfunded mandate that imposes an undue financial hardship on the jurisdiction.
- The specification of alternative mandate compliance procedures.
- Additional time to comply with mandated responsibilities; and/or
- partial exemption from expenses associated with compliance.

C: RECOMMENDATION COVERING BOTH UNFUNDED MANDATES AND BURDENSOME REGULATIONS

1. Assign a trusted advisor to President-Elect Clinton the broader task of identifying and implementing ways to streamline the federal government in accordance with such sources as this report and the 1984 President's Private Sector Survey on Cost Control (better known as the Grace Commission Report). Addressing the issues raised in this report would be but one aspect of the broader responsibility to make the federal government more cost-effective and responsive.

Negotiation and/or consensus-building, to the extent that it is deemed necessary to carry out or otherwise address any of these recommendations, would also be the responsibility of this person.

All of these recommendations are intended to offer immediate as well as permanent relief for state and local governments struggling under the weight of unfunded mandates and burdensome regulations.

SECTION III: SOME CHICAGO EXAMPLES

Every time a city pays for an unfunded mandate or complies with excessive regulation, there are opportunity costs. Dollars spent inappropriately cannot be applied to higher priority uses. Correspondingly, the federal administrative maze diverts staff from their main responsibilities. This has a direct impact on the consumers of city services.

Public policy trade-offs are always difficult -- should $100,000 be made available for a single patient needing a liver transplant, or is the money better spent on immunizing thousands of children against preventable diseases? Should a city pay $50 million to cocoon a bridge to remove lead paint, or is the money better spent on police protection in high crime zones?

To the best extent possible, these difficult decisions should be made locally. If an issue is such that it must be addressed on a national scale through federal mandates, funding should be provided. And if funding is not available, it is necessary to grant local governments far more discretion on how they will comply.

When one looks at the bigger picture, an action that appears valuable on the surface (*e.g.*, making costly clean air improvements) can exact a cost too high for a community to bear (*e.g.*, restrict its ability to protect children from random gunfire). In the aggregate, unfunded mandates and burdensome regulations force cities to comply without adequately factoring in local conditions.

Examples of burdensome regulations and unfunded mandates faced by city line managers are presented below. The cases provided were chosen either because of the high price tag of the particular obstacle or because of the heavy administrative burden imposed on an agency.

A. The High Cost of Advancing National Goals

Environmental laws, labor statutes and aviation regulations place enormous financial burdens on the City of Chicago. While policy makers and residents strongly support the goals of a healthy environment, fair labor practices and safe airways, the unfunded costs of many programs are rapidly exceeding the limits of Chicago's resources.

Not only is the burden of mandates and regulations costly, but it interferes with Chicago's ability to respond directly to pressing concerns facing the city. Too often, mandates go well beyond specifying a required outcome. They also stipulate the precise implementation measures the city must take to achieve that outcome. This, in effect, translates into highly centralized planning -- preempting the ability of managers on the scene to make informed decisions. It also results in excessive red tape and administrative costs.

Unfunded Environmental Mandates: Land, Sea and Air

In 1992, the City of Chicago will spend over $95 million for capital improvements required by federal and state environmental mandates. City staff time devoted to these mandates will exceed

45,000 hours.[15] Twelve city departments are affected, and between them 51 unfunded mandate categories come into play (see table next page).

Prior to 1989, thirty-eight federal environmental mandates were in effect. This number has since doubled and is expected to continue its tremendous growth, often with little or no funding provided by the federal government. The definitive study of the municipal financial impact of federal environmental regulations was conducted in Columbus, Ohio. By 1996, compliance with environmental mandates is expected to account for 23.1% of the total budget of that city.[16] **Between 1992 and 1995, it is estimated the City of Chicago will expend $319,240,373 on unfunded environmental mandates alone (see next page).**

Some Specifics -- Air

The Clean Air Act will improve air quality in Chicago as it is phased in over the next decade. It will cost the City millions of dollars to carry out all of the provisions, however, and failure to comply could result in the loss of federal highway funds amounting to as much as $675 million.

[15] These costs are a function of the federal government's current role in regulating environmental issues. That role has increased dramatically since the middle of this century. Early legislation merely provided research and technical assistance to the states. In the 1950's, environmental issues were viewed as state issues. In the period from 1948 to 1966, however, the federal government's role grew far more pervasive. The Water Pollution Control Act of 1965 went well beyond providing technical assistance by authorizing the federal government to impose its own water quality standards on states in certain circumstances; the Air Quality Act of 1967 established similar regulation of air purity standards. In the years since 1967, federal environmental mandates have been enacted to insure safe drinking water, to regulate the disposal of solid waste and to set standards for the handling of toxic and infectious wastes. The number and scope of environmental mandates continues to grow, often placing a significant financial burden on the cities which must comply with them.

[16] City of Columbus, *Environmental Legislation: The Increasing Costs of Regulatory Compliance to the City of Columbus*, Appendix c 1.3).

UNFUNDED MANDATES AND BURDENSOME REGULATIONS
DEPARTMENTS IMPACTED BY ENVIRONMENTAL MANDATES

Department	RCRA	UST	Clean Water	Clean Air	Safe Drinking Water	Infectious Waste	AHERA (Abestos)	FIFRA Insecticide Fungicide	TSCA (Toxics)	Other
Aviation		●		●						●
Environment	●	●		●			●	●	●	
Fleet	●	●		●						
Health						●				●
Sewer	●	●	●		●					●
Streets and Sanitation	●			●			●	●		●
Transportation	●	●		●						
Water	●	●	●		●					
Law	●	●	●	●			●	●	●	●
Buildings	●						●			
Planning	●						●			●
Fire	●	●	●	●			●		●	●

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ENVIRONMENTAL MANDATES COST PROJECTIONS BY ACT					
Legislation	1992	1993	1994	1995	1992 through 1995*
RCRA	59,096,000	32,586,000	30,276,000	30,276,000	159,788,344
UST	1,055,000	1,055,000	1,055,000	1,055,000	4,480,020
Clean Water	2,000	2,000	2,000	2,000	8,493
Clean Air	28,808,333	33,708,333	33,708,333	33,708,333	138,241,223
Safe Drinking Water	100,000	3,500,000	3,100,000	3,100,000	10,580,038
Infectious Waste	1,000	1,000	1,000	1,000	4,246
AHERA	5,000	5,000	5,000	5,000	21,232
FIFRA	22,500	22,500	22,500	22,500	95,545
TSCA	5,000	5,000	5,000	5,000	21,232
NESHAP	6,000,000				6,000,000
EPCRA					
TOTAL	**95,094,833**	**70,884,833**	**68,174,833**	**68,174,833**	**319,240,373**

*4% Inflation Adjusted

The Act, which has undergone many changes since its original construction in 1955, will dictate the standards for retrofitting Chicago's Northwest Incinerator at an estimated cost of $40 million. Permitting fees at $18 per ton of particulate emissions represent another $6.5 million to be paid to the State of Illinois annually.

Going beyond the scope of the original act, additional provisions of the Clean Air Act now call for employee trip reduction programs and the development of alternative fuels for vehicles in severe ozone non-attainment areas. Both the employee trip reduction and the alternative fuels programs are under study by the City at this time, with significant expenditures due to begin by 1994. The employee trip reduction program, which will require the average vehicle miles traveled per employee to be reduced by 25%, will cost between $200 and $2000 per employee. The alternative fuels project will require the purchase of new vehicles or retrofitting of existing vehicles; additionally, a conservative estimate of the increased cost of the alternative fuel is $.05 per gallon, for a total increased expenditure of about one-half million dollars per year.

Painting Price Tag

The Calumet Skyway toll bridge provides another example of a high cost, unfunded mandate. The bridge must be painted regularly. It has been 14 years since the last paint job was completed. The traditional price tag to paint the Skyway Bridge was $10 million; the current cost has escalated to $40 million. The $30 million addition to the bridge painting bill is attributable to the Clean Air Act which requires that no sand blasting be used where lead-based paint is involved. The technique specified to strip the old paint cannot allow lead chips to enter the air. The paint removed must be cocooned and other safeguards applied, including disposal requirements. Public health specialists disagree on the level of risk that would be imposed by less severe safeguards. They do appear to agree that the primary risk is assumed by workers who could be protected at a dramatically lower cost. Similar problems have quadrupled the cost of re-painting the Loop elevated structure.

Costly Car Programs

Likewise, to meet federal Clean Air Regulations, the State of Illinois has established an automobile testing program in the Chicago metropolitan area. The City of Chicago has an agreement with the state to test one-third of its motor vehicles each year. With 1,000 vehicles to be tested per year and approximately one hour required for each test at a cost of $60 per hour down time, the cost for the first year is $60,000. It is estimated that 50 percent of the vehicles fail and must be retested. The cost of down time alone, therefore, is estimated at $90,000 per year. The cost of vehicle repair varies per vehicle and is not known.

Another state regulation requires the safe disposition of used oil and antifreeze. The City Fleet Management agency pays approximately $100,000 annually to dispose of these materials.

The state also requires the recapture of CFCs to prevent ozone depletion. Effective January 1, 1993, air conditioning gases from vehicles must be recaptured and not allowed to escape into the atmosphere. The City must purchase an air conditioning CFC recapture unit at $30,000. In addition, technicians must be trained to use the new equipment. Seventy technicians are to be trained at a cost of $60 per hour. The training takes 2-1/2 hours and the course fee is $20. Total down time and cost of training is $12,150. The total cost for this mandate is $42,150.

In the aggregate, the annual cost to Fleet Management from these environmental regulations is approximately $190,000 with a one-time capital outlay of $42,150.

Federal Involvement in Implementation

Federal regulations work best when they clearly specify the required outcome and leave implementation to the local authority in charge. Unfortunately, federal agencies often involve themselves in implementation issues, adding administrative burdens and excessive monitoring at the local level with no corresponding improvement in the outcome. Compliance with the carbon monoxide level requirements of the Clean Air Act provides an interesting example of how local issues are often better handled locally and regional or national issues are usually better handled at the state or federal level.

In order to comply with carbon monoxide standards, the City of Chicago, recognizing that traffic jams contribute greatly to these emissions, established a plan to increase the efficiency of the traffic flow in the city. This involved designating some streets as one-way, posting no-parking zones and enforcing these zones by towing. Even though the City achieved compliance with the carbon monoxide standards, as proven repeatedly by heavy monitoring by federal employees, the United States Environmental Protection Agency (USEPA) demanded documentation that <u>every</u> car parked in a tow zone was actually towed.

The City had taken the necessary steps to ensure compliance with the carbon monoxide emissions standard more than 20 years ago, but in 1989 the federal government was still questioning the number of tow trucks on the streets of Chicago. This occurred despite the fact that federal monitoring of carbon monoxide emissions proved that Clean Air Act standards were consistently met. At the same time that federal workers were monitoring towing in the City, the main threat to the Great Lakes was the disposition of airborne toxins from as far away as Mexico and Nebraska, a problem that should fall under the aegis of a federal agency.

More Specifics -- Solid Waste and Recycling

The Resource Conservation and Recovery Act (RCRA) regulates the disposal of solid and hazardous waste. The City's response to this mandate includes a $41 million bond issue to begin the blue bag recycling program. RCRA's objectives are to promote the protection of human health and the environment from potential adverse effects of improper solid and hazardous waste management, to conserve material and energy resources through waste recycling and recovery and to reduce or eliminate the generation of hazardous waste. Although RCRA does not specifically require a recycling program per se, the State of Illinois has set standards for recycling which the city must meet.

Costs of Waffling on Regulations

RCRA litigation which was brought against the City of Chicago in 1988 illustrates how a regulatory agency, in this case the USEPA, can cause significant problems by failure to establish clear standards.

The Environmental Defense Fund (EDF) and Citizens for a Better Environment are co-plaintiffs in a suit against the City of Chicago, alleging that the ash from the Northwest Incinerator is hazardous and that the city is not properly disposing of this waste. The issue is whether the ash from incinerated household waste should be categorized as hazardous. The USEPA issued statements on several occasions asserting that such ash is not hazardous; unfortunately, the USEPA also issued statements to the contrary. The City of Chicago won the case at the trial level and saw the decision reversed in the Seventh Circuit Court of Appeals. The matter has now been remanded to the lower federal courts by order of the United States Supreme Court. The USEPA has recently made an unequivocal statement that ash resulting from the incineration of household waste is not hazardous. It is not clear that the courts will accept this recent interpretation by the USEPA.

The issue here is not only the $210,000 which has gone into fighting this case and the alternative use which could have been made of the time invested. There is also the loss of research time to develop innovative uses for incinerator ash. There is also the affect which this pending litigation has had on other municipalities in the Seventh Circuit, including Minneapolis and Indianapolis, who are waiting to see what decision will be reached and the impact it will have on their handling of incinerator ash. All this could have been avoided had the USEPA been consistent in its statements on this issue.

Regional Issue -- Regional Control

Chicago's shoreline is a great asset to the City, and a source of pride and enjoyment to residents and tourists. Unfortunately, it is falling in. A study of shoreline erosion problems, begun in 1972, was completed in 1990. The City of Chicago, along with the Chicago Park District (CPD), Illinois Department of Transportation (IDOT) and the Army Corps of Engineers (ACE), is working to plan and implement erosion response and control measures. Cooperation at the district (regional) level of the Army Corps has been outstanding. Unfortunately, the division (national) level "second guesses" the recommendations made at the district level and works under internal guidelines that place a lesser priority on areas like the Lake Michigan shoreline which are deemed primarily recreational. This is a local problem that is best handled by local authorities: the City, CPD, IDOT and district level ACE. The interference of division level ACE has needlessly dragged out the project with over twenty years of study and negotiation. This is particularly unfortunate since ACE has a regional arm that understands and is responsive to local issues.

Implications of Chicago's Environmental Experience for Regulatory Reform

Like the shoreline and carbon monoxide emissions examples above, some issues are inherently local or regional; others are national. While the federal government may correctly perceive a need to set standards on some issues that have a local impact, it should leave to local authorities the development of specific plans for achieving these standards. Local decisions on procedures for handling solid waste and for achieving certain Clean Air Act standards are justifiable. Other issues, such as regional air quality standards, are better dealt with at the federal level.

Railroaded Underground: The Case of Storage Tanks

The USEPA issued regulations for underground storage tanks containing petroleum or hazardous chemicals in 1988. The cost of this mandate is estimated to exceed $4,770,000. The regulations require the City of Chicago to:

- Conduct annual testing of tanks to determine whether they are leaking;
- Immediately shut down leaking tanks until repaired or replaced;
- Clean up sites which have been contaminated;
- Compensate other people and their property for any injury sustained from explosions or fires caused by leaking tanks;
- Upgrade all tanks by 1998 to meet USEPA requirements regarding corrosion protection, and install devices to detect leaks and prevent spills and overfills.

To comply with the mandates, the City tested its 130 tanks located on 63 different sites at a cost of $450,000 over 2-1/2 years. The Department of Fleet Management which is responsible for the repair of the defective tanks estimates its cost to be $50,000 per tank, or $2,450,000 for the 49 tanks found to be defective. As additional tanks corrode, they will need to be repaired or replaced, adding to the ongoing costs of this mandate. To meet 1998 USEPA regulations, all tanks must be upgraded at an estimated cost of $20,000 per tank, or $1,620,000.

The Illinois EPA has established a fund to reimburse costs of soil remediation. Chicago is eligible to receive money from the fund, but any reimbursement will be nominal compared with costs to the City and in any case will not be available for years because the fund is insolvent.

Aviation Regulations: Up in the Air

Density Rules

The High Density Rule (HDR) [14 CFR 93] is a financially burdensome federal aviation regulation facing the City of Chicago. Passed originally in 1969 as a temporary measure, it has remained in effect with modifications for 23 years. Only four airports in the nation are affected by this rule: O'Hare, LaGuardia, JFK and Washington National.

The HDR limits the number of flights (takeoffs and landings) permitted at an airport during certain times of day regardless of weather conditions. At O'Hare, HDR restricts the airport to 155 flights per hour between the hours of 6:45 a.m. and 9:15 p.m. every day. This is a weighted average between visual flight rules for good weather conditions and instrument flight rules for poor weather conditions. Conservative estimates of the airport's capacity to accommodate flights on this weighted basis in the absence of the HDR is currently 161 rather than 155.

The average number of passengers per plane at O'Hare is 72.3. Assuming (conservatively) that passengers spend an average of $5 each at the airport, the lost revenue to the City (@ 25%) because of the HDR flight limitations is approximately $7,800 per day or about $2.9 million per year. The City could also raise an additional $9.75 million in landing fees if the HDR were lifted. If one were to add the $3.00 Passenger Facility Charge (PFC) which will be imposed in 1993, the amount of lost revenue to the City would be even higher.

The HDR also determines the jet and commuter plane distribution for landings and takeoffs slots at the four airports noted above. Of the 2,105 slots available daily at O'Hare, the HDR reserves 1,670 for jets, 327 for commuter aircraft and 108 for either type plane. Commuter operators are permitted to convert only 25 percent of their slots to jet usage. The large number of slots reserved for commuter planes reduces the number of passengers using the airport. This, in turn, greatly reduces the amount of money spent at the airport, potential collections from the PFC and auxiliary economic benefits. It is estimated that if commuter operators were permitted to increase their convertible slots from 25 percent to 45 percent, the City would gain an additional 1,650 jobs and generate $280 million in economic activity.

The retention of the HDR slot distributions, therefore, imposes an opportunity cost to the regional economy of at least $280 million and probably considerably more. The total financial burden to the City of the High Density Rule is over $290 million and may actually exceed this amount.[17]

Revenues Grounded

The Airport Improvement Program (AIP) provides federal funding for airports addressing problems related to capacity, safety, security, noise and noise abatement. Funding available to an airport under AIP is determined by a formula which considers the number of passengers boarding planes at the airport (the number of enplanements), the amount of cargo tonnage handled at the airport and a fixed amount of discretionary money. Enplanement funding is determined according to a sliding scale:

- $7.80 per passenger — First 50,000 passengers
- $5.20 per passenger — Next 50,000 passengers
- $2.60 per passenger — Next 400,000 passengers
- $0.85 per passenger — All additional passengers

This enplanement funding schedule has been overridden for three airports in the nation including O'Hare. In its place, the Federal Aviation Administration (FAA) has imposed regulation that stipulates a maximum dollar limit on the AIP entitlement funds these airports can receive for their enplanements. In the case of O'Hare, this limitation is $16 million per year.

In 1992, using the sliding scale for enplanement funding, O'Hare would have been entitled to $20,974,285 from AIP. Due to

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[17] The reason the airports cited were singled out for inclusion under the HDR was originally safety and workload. This is no longer valid due to installation of a flow control system headquartered in Washington, D.C. that controls air traffic nationwide, rendering HDR unnecessary for limiting the number of flights. Radar enhancements at O'Hare have eliminated the workload issue. Since the number of slots available to each airlines represents a tangible asset, it is possible to conjecture that the economic impact on airlines is a reason. Airlines can sell their slots or include them in their valuation at the point of acquisition or merger. Finally, it may be that the issue is simply limiting O'Hare volume in favor of other airports. This has had an additional adverse effect since the FAA has been reluctant to fund the airport for capacity enhancing technology which will go unused because of HDR.

the cap on its funding, it received only the prescribed $16 million, a shortfall of almost $5 million.

Over the next several years, this shortfall will increase dramatically. Congress has made available to a city the right to impose a passenger facility charge (PFC) of $3 per person enplaning at its airport(s). If the city collects this fee, however, its AIP funds will automatically be cut in half, commencing one year after the fee is initiated. O'Hare, therefore, will lose an additional $8 million per year if the PFC is collected.

It is anticipated that the PFC will be initiated in Chicago no later than 1993. By 1994, the reduction of AIP funding will occur. It is projected that in 1994 O'Hare would be entitled to close to $22 million under the regular AIP enplanement schedule because of the $16 million cap and PFC 50 percent penalty. However, O'Hare will receive only $8 million in AIP entitlement funds, a shortfall of approximately $14 million.

Although it can be argued that the PFC will provide the City with additional gross revenue of $90 million, the penalty which accompanies it as well as the AIP cap at O'Hare substantially reduce the net income to which the City would be entitled if O'Hare were not singled out for special, unfavorable treatment.

Fair Labor -- Unfair Restrictions

The Fair Labor Standards Act (FLSA) and its implementing regulations were designed to address the wage and hour practices of private employers, particularly those that operate in an industrial environment. They do not serve the needs of public employers or employees. On the contrary, the FLSA visits draconian liability on municipal employers for technical violations of statutory provisions enacted with private, for-profit businesses in mind. Of key concern to public employers is the application not only to the hourly-paid workers whom such provisions were intended to cover, but also to highly-paid, salaried employees to whom Congress never intended to extend such overtime benefits.

For example, the existing exemption for administrative employees is based on an analysis of whether the employee is engaged in production work as opposed to work related to management policies or general business operations. These standards were devised with private, for-profit businesses in mind and wholly ignore the fact that public employers are not in the production business. They lead to the anomaly that positions exempt from overtime pay in the private sector are not exempt in the public sector. This means that a factory foreman might be exempt while a director of a City agency would not. As a result, many of the most highly-paid public employees may be entitled to significant overtime pay.

The Act and its regulations fail to recognize the constraints placed on not-for-profit public employers as a result of the limited finances available through tax revenue, federal funding and other sources. They also do not take into account restrictions placed on local governments by principles of public accountability which require that all public employees -- including those who are otherwise exempt under the FLSA -- record and be paid only for actual hours worked. Relevant case law suggests that an employer cannot require exempt employees to maintain timesheets or require notification of supervisors when leaving the office, yet this is precisely what these regulations require.

Moreover, public employees are already entitled to greater protection than many employees in the private sector. This results from federal and state constitutional provisions and public sector personnel rules. The recent decision that a public employer is prohibited from imposing disciplinary deductions for non-safety related violations squarely contradicts established principles of progressive discipline and just cause required under most civil service acts and union contracts. As a result, municipal governments face massive, unwarranted liability in instances where they merely follow necessary disciplinary procedures.

The vast differences between public and private employers support a blanket exemption from the application of the FLSA to public employers or, at a minimum, amendments that would exempt public employees from FLSA overtime requirements -- particularly for police and fire department personnel (including paramedics) who frequently operate on a 24-hour schedule. Short of such an enactment, however, there are a number of areas in which action by Congress or the Department of Labor would minimize the unrealistic and unanticipated fiscal burdens the FLSA places on public employees.

For example, Congress should consider regulations previously proposed by DOL that would have preserved the overtime exemption for otherwise exempt, salaried public employees either, (1) where no actual part-day deductions were made or (2) where the public employer reimbursed its employees for any such deductions made prior to the effective date of such regulations. The implementation of such buy-back provisions would protect public employers from a rash of unanticipated employee suits.

Likewise, clarifying amendments to the FLSA are needed to alleviate the continuing confusion over whether Congress intended to include paramedics within the police and fire personnel exemption under 29 U.S.C. # 207 (k). Congress must amend the FLSA to explicitly state its intent to include paramedics within the parameters of police and/or fire protection personnel.

In addition, Congress also needs to address the question of retroactive payment of back wages to certain highly paid government employees for overtime worked during the period between the Supreme Court's ruling in Garcia in 1986 and the time when the Department issued regulations which exempted such employees from FLSA's overtime requirements. Recently published reports suggest that public employees could be awarded hundreds of millions of dollars unless Congress enacts legislation to eliminate such liability.

B. Administrative Overload

The City of Chicago needs effective programs to educate disadvantaged children, create jobs, deliver health care services and provide decent housing. While federal grants are available to help cities meet these challenges, the conditions that accompany them often create burdensome paperwork, excessive monitoring and frequent duplication of effort by city staff, federal and state agencies and local providers.

In addition to increasing administrative costs and deflecting resources from program delivery, the requirements and regulations sometimes prevent city government from responding to the immediate needs of Chicago residents. The following examples highlight how scarce program dollars are siphoned into paperwork and unproductive administrative activities.

Going In Circles

The Central Area Circulator Project is vital to downtown Chicago's economic future. It will create jobs and make Chicago's downtown area more accessible and thus more attractive to other job-creating enterprises. Like other economically significant ventures, the Circulator Project is bogged down in federal government paperwork requirements--in this case from the Federal Transit Administration (FTA). **Project officials estimate that unreasonable regulatory provisions accompanied by slowness in the federal review process have added at least a year's delay to the project and an overall inflation factor of 4 - 5 percent.**

The Draft Environmental Impact Statement prepared under FTA regulations is approximately 350 pages long. The mandated analytical procedures are identical for city applicants across the country. Older cities with mature public transit systems must meet the same requirement to prove demand for the systems improvements they propose as must newer cities who propose totally new systems. In a location like Chicago, where public transit is well-established, demand verification amounts to little more than a mammoth paperwork exercise. The exhaustive alternatives analysis called for is designed for new project starts in cities without verified demand. Cities requesting funds under FTA must provide full analysis of every option: light rail vs. heavy rail vs. bus service. The Final Environmental Impact Statement process during preliminary engineering is similarly burdened. FTA's approval of requested submissions is slowed by lack of review staff.

Additionally, the FTA requires that a full funding contract be signed before a project can begin final design and construction. Negotiations are detailed and time consuming. However, they cannot begin until the project has virtually completed preliminary engineering. There is no reason why a full funding agreement could not be negotiated during preliminary engineering, contingent upon completion of appropriate planning requirements. Such negotiations could begin at the 20 percent of final design point and be completed by the 30 percent mark, the usual close of preliminary engineering. The project would then be able to move promptly into its final design phase.

The regulations governing this kind of project cause extensive delay. In addition, contractors all down the line build in costs to meet these delays. One way to avoid these problems would be to make better use of an existing resource. The FTA currently requires that 1 percent of federal project funding be set aside for a project oversight consultant from the private sector. This individual should be granted authority to expedite the project review and approval process. The same resource could be used to fund supplemental legal support from outside counsel to expedite the full funding contract negotiations early in the preliminary engineering phase of a project. This "privatization" of roles currently performed inadequately by the federal government could significantly lower costs and speed the project implementation schedule.

Burdensome Regulations: A Head Start Backwards

The federal government recently changed the data format for certain forms required of Head Start delegate agencies under contract with the City's Department of Human Services (DHS). This deceptively simple change precipitated administrative adjustments that have significantly increased transaction costs to DHS and the delegate agencies which provide actual services under contract. **Expenses associated with helping the delegate agencies prepare and complete new forms have been conservatively estimated to be $150,000.** The cost to DHS for producing the document itself resulted in a 33 percent increase in production and staff time.

The director of one delegate agency recently commented: "The worst thing about this new format is that it serves no useful purpose in terms of improving the effectiveness or efficiency of providing services to children." This section will describe the situation in some detail since it is representative of many of the regulations faced by the City. The most devastating impact is how this expenditure of resources for bureaucratic paperwork may detract from the ability of these agencies to deliver needed services. **Using the standard figure of $2,600 per child for Head Start services, it is estimated that the city could serve at least 75 additional children were it not for these new paperwork requirements.**

Under the Head Start Act administered by the U.S. Department of Health and Human Services (HHS), Administration on Children, Youth and Families (ACYF), all Head Start grantees such as DHS and its delegate agencies have been required to submit applications for refunding on an annual basis. Beginning with those Head Start programs refunded on February 1, 1992, ACYF required completion of a revised form which added a detailed analysis of staff functions and other descriptive material not previously required. The new format markedly increased DHS costs. Where previously the City's application was 500-600 pages long, the new application totaled over 1,200 pages.

These format changes have had a devastating impact on DHS and its 45 delegate agencies. The most immediate result has been the added staff time required simply to submit the application. A total of nine DHS staff, including three fiscal people, one from the program division, two from planning and three area managers, were assigned full time for one month to help train delegate agency staff on the new requirements, review documentation and prepare the revised forms. While these nine staff members worked to complete the application, other work had to be put aside or delayed. Using an hourly rate of $25 per individual, this missed opportunity totals approximately $36,000 for one month lost. In addition to DHS, other city departments are involved in the grant application process, most notably the Office of Budget and Management, the Law Department and the Comptroller's office.

Delegate agencies experienced similar administrative shifts. Agency X is a full-service child care provider. It has been a Head Start delegate agency with DHS for at least 10 years, although it has provided services for a longer period of time. It currently serves 280 Head Start children in its half-day, full-day and "wrap around" (cooperative program using different funding sources) programs.

Agency X is experienced in preparing grants applications and has a reputation with DHS for needing little assistance and rarely requiring corrections or modifications. The previous format generally took the Executive Director 4-7 hours. However, with the new grant format, Agency X found it necessary to spend two full days to complete the application. In addition, another staff person and the accountant were required to convert the agency budget, particularly the staff positions and job functions, into the new format. Once the application was submitted to DHS, an additional two full days were spent by the Executive Director and a staff person reviewing the numbers with the fiscal person at DHS. Prior to this new format, this budget and application review was done individually by the DHS fiscal person, normally within 3-4 hours. The new format increased the time the agency expended to prepare the grant application by a factor of ten and the DHS time by a factor of four. Total time to apply for this single grant went from 11 hours to 80.

When the final application is run through the ACYF computer, it is expected that there will be a large number of exceptions that must reconciled with delegate agencies. DHS staff will then be required to return to the delegate agencies and work out these exceptions so that they can be resubmitted. Many agencies will need to repeat the process several times before the application is acceptable. It is not possible to project a cost for this follow-up work; however, depending on the number and kind of exemptions, the expense could be considerable to both central office and field staff.

In sum, as a result of a single regulatory revision, DHS and its delegate agencies have been required to expend considerable resources simply to reapply for funding. Although it is difficult to derive a verifiable dollar figure, the final total could approach $200,000. This is not a directly reimbursable expense. It puts additional pressure on DHS and its delegate agencies to stay within defined administrative caps.

FEMA Discussion

A particularly troublesome example of the cost of federal regulatory requirements is the response of the Federal Emergency Management Agency (FEMA) to the recent Loop flooding disaster in Chicago.[18] Based upon the flooding in a system of underground tunnels that spread to various buildings connected to the tunnel system, the President of the United States declared on April 15, 1992, that a major disaster existed. Instead of providing efficient and streamlined support to a city beset by a major disaster, FEMA's regulatory burdens created a series of roadblocks and hurdles that prevented the City from obtaining necessary assistance and reimbursement in a timely manner.

The initial problems that the City of Chicago encountered in its dealings with FEMA occurred in the early stages of the disaster. City personnel, who were already fully occupied in the effort to cope with the flooding disaster, encountered varying programs (each with its own distinctive requirements, limitations and reimbursement mechanisms) that come into play when a disaster occurs. The distinctive features and obligations imposed by various programs required a major diversion of resources and attention from the actual disaster to the regulatory aspects of the disaster. One such program, the public assistance grant program, establishes reimbursement for hard costs, associated expenses, extraordinary costs and also calculates administrative expenses on a sliding scale. Other programs, each with its own set of regulations and exacting requirements, including hazard mitigation grants and direct federal assistance, must be relied upon for other forms of relief. While the goals of these pro-

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[18] This analysis does not dispute that many dedicated, hard working FEMA employees have assisted Chicago in dealing with its recent disaster. The point is that reform in the statutory and regulatory framework of FEMA is required.

grams are generally praiseworthy, the complicated aspects of the varying disaster relief approaches do not promote the sort of efficiency that is imperative in times of disaster.

The Chicago Loop flooding disaster posed a set of problems which involved not only FEMA (and the State of Illinois as signatory to the FEMA-state agreement), but also necessitated the involvement of the Army Corps of Engineers. Although the Corps performed admirably in bringing about a halt to the flooding, its role highlighted a persistent theme in the disaster relief system: the presence of multiple, sometimes competing, bureaucratic entities which hamper the efficient handling of disaster aid. The creation of a single federal command structure, dedicated to expeditiously administering federal disaster relief, would represent a significant improvement over the current system.

Further complicating and delaying the City's response to the disaster is the requirement that, even in situations such as the Loop flooding disaster when the disaster is clearly confined within one local government jurisdiction, the agreement which governs FEMA involvement is between FEMA and the <u>state</u> where the disaster occurred. Thus, City officials were required to negotiate not only with federal officials to develop an agreement regarding the range of federal assistance that would be made available, but also with state officials. The extra layer of bureaucracy served no useful purpose and only delayed the relief process.

The array of programs and requirements, and the superfluous state role, are not well designed to foster an efficient, rapid response to a disaster. As discussed below, the use of block grants, in place of the proliferation of existing assistance programs, would likely create a more efficient federal disaster response system.

The FEMA enabling legislation (which is known as the Stafford Act) and associated regulations, establish a complicated, cumbersome system for governmental entities seeking reimbursement for disaster-related expenses. To support its request for various forms of reimbursement, the City's budget office has been required to assemble a large number of documents from a variety of departments. Reimbursement of personnel expenses has proceeded at a snail's pace as budget personnel have been required to explain, on a line-by-line basis, the salary and fringe benefit components of the reimbursement requests for all City employees who spent time responding to the disaster. It is estimated that, in the budget office alone, approximately 2500 hours have been spent compiling reimbursement requests and responding to FEMA requests. Personnel in other departments have worked over 1200 hours gathering required information. To comply with the labyrinth of regulatory hurdles, the City hired a consulting firm which specializes in assisting states and localities that receive FEMA assistance. The fact that a consulting firm is required to deal with FEMA's regulatory hoops speaks volumes about the need for a more efficient emergency relief system.

One clear improvement in the operation of FEMA would be to develop block grants that FEMA would dispense to states or localities affected by emergencies. FEMA officials, and representatives of state and local jurisdictions, would confer to determine the appropriate grant amount. Such grants could be used to cover personnel expenses, damages to public property, and other costs associated with a declared emergency. By using block grants, FEMA and affected jurisdictions could save vast amounts of time which are currently consumed by excruciating, line-by-line analysis of reimbursement requests. Officials of states and localities could devote their energies to alleviating the conditions of disaster instead of spending precious time overcoming regulatory barriers.

JTPA: Paperwork Overload

Many service providers complain that paperwork requirements have begun to overshadow service provision and quality assurance in publicly funded programs. At a hearing before the U.S. House of Representatives Committee on Education and Labor in Chicago (January 12, 1990), John Connelly, president of a local delegate agency (Jobs for Youth), testified how difficult it is to meet the administrative paperwork required under Job Training Partnership Act. His organization has provided much needed job training to Chicago for over eleven years. Mr. Connelly stated that paperwork is out of control:

> Since JTPA was enacted, the administrative requirements have continued to grow unchecked. It is at the point where many of us are forced to focus more intently on the administrative process rather than on the services we must deliver. It is mindless. Spending more time and money than we do now to precisely identify additional characteristics to determine an applicant's program eligibility could well bring our work to a halt.

He dramatically demonstrated the administrative excess by holding up a four page document, indicating that it was an application for admission to the University of Chicago. He then held up five pages, saying that the document was an application to the Harvard Business School. Holding up a bundle of papers, he then stated: "these 48 pages must be completed, not counting carbons, to provide services to our clients under JTPA as things now stand. To work with 400 kids under JTPA, we must generate 45,000 pieces of paper this year".

Another service provider, Jack Fitzpatrick, president, Employment and Employer Service (EES), states that JTPA regulations have become excessive since 1989. As a result, he has had