CSG’s 2013 and 2014 National Chairs, Sen. Gary Stevens of Alaska and Sen. Mark Norris of Tennessee, respectively, are pursuing a multiyear effort aimed at strengthening CSG’s role in advancing the role of the states in our federal system.

For 80 years, The Council of State Governments has helped states solve problems by connecting leaders to innovative ideas and successful policies within the community of states. State-based innovation, however, is increasingly impacted by a growing web of federal policies and regulations. If states are to continue to fulfill their role as the “laboratories of democracy” envisioned by our founders, then a fuller understanding is needed of the powers, duties and limitations inherent in our federal system.

A 2011 report by the White House’s Office of Management and Budget (OMB) noted that unfunded mandates and regulations cost states, cities and the general public between $44 and $62 billion each year. The same report stated that the public benefits of these rules far outweigh the monetary cost of compliance. For the states, businesses and communities left to cover the costs of a growing set of Congressional mandates and rulemaking actions, however, the balance often looks decidedly different. In addition, rules imposed on states by independent federal agencies such as the Securities and Exchange Commission and the Nuclear Regulatory Commission are not even calculated by OMB as they are not covered under the Unfunded Mandate Reform Act.

Given that the United States has entered into a new age of austerity, where grant flows from the federal government will be constrained for the foreseeable future, it is vital that states are afforded maximum flexibility in meeting the needs of their citizens and that our country reaches a much clearer understanding of the costs of mandates, regulatory action and pre-emption.

CSG Federalism Task Force
To that end, CSG developed a new Federalism Task Force charged with providing strategic direction and oversight to the enterprise-wide campaign to examine, highlight and advance the role of states in our federal system. Specific goals of the Federalism Task Force include:

- Examine the current federalism relationship between states and the federal government;
- Examine remedies to both the perceived and actual imbalance of power between states and the federal government, with particular attention paid to fiscal federalism;
- Develop principles that serve to guide CSG’s activities and programming as related to interaction with the federal government and advocating for the position of the states in a constantly evolving federalism dynamic;
- Develop a framework for the role of the states in reviewing and reacting to adverse policies adopted at the federal level, including coercive, unfunded and underfunded mandates;
• Develop a network of partner organizations committed to assisting CSG in its advocacy for a stronger state presence and role in federalism-related policy discussions and remedies, including other state/local associations, the Uniform law Commission and the Pew Charitable Trusts;
• Deploy short-term and long-term educational deliverables, campaigns, training and partnerships benefiting CSG’s member jurisdictions on federalism, supported through all levels of member engagement across the organization; and
• Sustain a lasting organizational emphasis on federalism through CSG’s national and regional programming, deliverables, meetings and services.

The CSG Federalism Task Force is guided by three key principles:

1. Bipartisan participation
2. Does not advocate for any special interest or single policy issue
3. Representative of all of CSG—national, regional and affiliate

Membership on the CSG Federalism Task Force includes:

Task Force Co-Chairs
• Sen. Mark Norris, Tennessee – CSG 2014 Chair
• Sen. Gary Stevens, Alaska – CSG 2014 Immediate Past Chair

Members
• Sen. Carl Marcellino, New York – CSG 2014 Chair-Elect
• Sen. Beau McCoy, Nebraska – CSG 2014 Vice Chair
• Sen. Jay Emelr, Kansas
• Sen. Bill Avery, Nebraska
• Sen. Bart Davis, Idaho
• Treasurer Manju Ganeriwala, Virginia
• Deputy Speaker Bob Godfrey, Connecticut
• Sen. Sampson Jackson, Mississippi
• Rep. Craig Johnson, Alaska
• Speaker Rebecca Lockhart, Utah
• Senate President David Long, Indiana
• Senator Michael Moore, Massachusetts
• Senate President Wayne Niederhauser, Utah
• Justice Nancy Saitta, Nevada
• Rep. Linda Upmeyer, Iowa
The CSG Federalism Task Force held its first hearing on Saturday, Sept. 21, 2013 in conjunction with CSG’s National Conference in Kansas City, Mo. Witnesses included nationally renowned historians, legal scholars and other top federalism experts from across the country. The hearing was held as an all-attendee plenary session. Three separate panels of experts provided informational testimony to the task force, serving the dual purpose of informing the group on several aspects of federalism and options for future CSG federalism emphasis/programming and educating the general audience on federalism.

The three panels included:

• Panel #1: The History and Evolution of Federalism in the United States
  Professor John Kincaid, Lafayette College
  Lisa Soronen, executive director, State and Local Legal Center

• Panel #2: The Legislative and Regulatory Impacts of Fiscal Federalism on Modern American States
  Former Vermont Governor Jim Douglas
  Former Maryland Governor Parris Glendening
  Nevada Supreme Court Justice Nancy Saitta

• Panel #3: The Way Forward: Options for States in Influencing the State-Federal Relationship
  Ingrid Schroeder, The Pew Charitable Trusts
  Anne Stauffer, The Pew Charitable Trusts
  Michael Bird, former senior federal affairs counsel, National Conference of State Legislatures

During the Kansas City meeting, the CSG Executive Committee approved a Statement of Principles on Federalism as CSG policy (previously endorsed by the CSG Leadership Council in June 2013). The policy resolution may be found online at: http://knowledgecenter.csg.org/kc/system/files/csg_statement_of_principles_on_federalism.pdf

CSG Capitol Ideas Magazine
The November/December issue of Capitol Ideas magazine featured as its Hot Topic the issue of federalism, with 11 articles on the topic from experts, academics and practitioners.

The Nov/Dec 2013 issue of Capitol Ideas may be found online at:
CSG Federalism Fly-In

November 12-13, 2013 – Washington, DC

Following the public hearing the CSG Federalism Task Force convened in Washington, D.C. to hear from additional experts in the field and to meet with key leaders in the White House and Congress.

During the meeting the task force members heard from:

- Barbara Rosewicz, The Pew Charitable Trusts
  State Fiscal Indicators Tool and Discussion of State-by-State Data

- Melissa Loeb, Federal Funds Information for the States (FFIS)
  Overview of federal spending and need for greater information and access
  http://www.ffis.org/

- Terry Morrow, Uniform Law Commission
  Briefing from the Uniform Law Commission, Committee on Federalism and State Law

The task force was then able to meet one-on-one for an extended session with senior staff at the White House, including David Agnew, Director of Intergovernmental Affairs and Tara McGuinness, Senior Communications Advisor. The session opened the door for additional conversations about ways in which state leaders may be accessed by the administration to review and respond to pending regulations and legislation. Later in the day the task force travelled to Capitol Hill for a meeting with the senior staff of House Majority Whip Kevin McCarthy.

During the Washington, DC Fly-In, the CSG Federalism Task Force members discussed several key elements of federalism as well as general follow-up items to advance their work. The group agreed on the following points:

- Avoid those issues that may divide our members and focus on those topics that serve to unite state leaders;
- Fiscal federalism is the key issue on which the group should focus its efforts; and
- The task force’s work needs to aspirational, yet realistic and achievable.

The group also identified several key areas related to federalism and asked CSG staff to explore and report:

- Advisory Commission on Intergovernmental Relations (ACIR)
- Consolidated Federal Funding Report (CFFR)
• Updates to the Unfunded Mandates Reform Act (UMRA)
• Articles and publications at CSG exploring federalism and federalism-related topics
• Unique educational and informational programming at CSG’s national and regional meetings in 2014
• Opportunities to work with other organizations similarly exploring federalism

**CSG Federalism Task Force Update Call**
**January 2014**

The CSG Federalism Task Force met via conference call on Friday, January 10, 2014 for a brief follow-up on the DC Fly-In and reaction to the major program suggestions from staff.

These programmatic suggestions (attached) included action on:

• Advisory Commission on Intergovernmental Relations (ACIR)
• Consolidated Federal Funding Report (CFFR)
• Updates to the Unfunded Mandates Reform Act (UMRA)

The task force members agreed that all were important and deserved attention, however the topic of unfunded mandates and the potential movement in Congress of updates to this act (HR 899; Rep. Virginia Foxx) should be CSG’s first priority. Since the conference call, CSG’s DC staff has been in touch with Rep. Foxx’s office and has had productive conversations. Staff has also had preliminary conversations with Sen. Joe Manchin’s staff about companion legislation in the U.S. Senate.

The task force members suggested that the ACIR and CFFR topics, being more technical in nature, be brought up with other Big 7 organizations as a starting point for coalition building. To that end, at the January 2014 Big 7 executive directors meeting, the group hosted John Thompson, director of the US Census Bureau and began talks with him about the history of the CFFR and potential future steps for resurrecting this valuable tool.

In addition, Sen. Norris suggested the convening of not only the executive directors of the Big 7 groups, but also the principal leaders from each of the membership organizations to discuss these topics and other federalism-related issues.

CSG’s regions reported that they are examining opportunities for federalism-related programming during their meetings this summer and CSG national will be hosting similarly-themed sessions during its meetings in June and August.
Originally established in 1959, the national Advisory Commission on Intergovernmental Relations (ACIR) was created as a 26-member committee to study and offer recommendations on the state and federal relationship and how the two levels could interact in the policy making process. Federal membership consisted of six Congressional leaders from the House and Senate; states were represented by four governors and three state legislators; and local government representation included four mayors and three county officials. Rounding out the Commission’s membership were three private citizens and three appointments from the federal executive branch.

The legislation creating the Commission in 1959 (86th Congress; Public Law 86-380; 73 Stat 703) denoted the ACIR as a “permanent, bipartisan body of 26 members, to give continuing study to the relationship among local, state, and national levels of government.”

The Act provided that the Commission would:
- Bring together representatives of the Federal, State, and local governments for consideration of common problems;
- Provide a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;
- Give critical attention to the conditions and controls involved in the administration of Federal grant programs;
- Make available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the Federal system;
- Encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;
- Recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government; and
- Recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers.

Following the adoption of the Unfunded Mandates Reform Act of 1995, funds were appropriated for ACIR in the Treasury, Postal Services and General Government Appropriations Act of 1996 (Public Law 104-52; 109 Stat. 468). For the fiscal year ending September 30, 1996, $784,000 was appropriated, "of which $450,000 shall be available only for the purposes of the prompt and orderly termination of the Advisory Commission on Intergovernmental Relations." ACIR closed in 1996.

Throughout its 37 years of operation, the ACIR provided in-depth reports, including annual surveys of citizen attitudes on government and taxes, over 350 policy reports on federalism, tax policy, and government accountability as well as unique data publications examining the financial relationships between the federal government and state, local and tribal governments.

**CSG Action Items and Advocacy Strategy**

1. Gather historical perspective from key state and federal leaders that participated in the activities of the Advisory Commission on Intergovernmental Relations, including Sen. Lamar Alexander, former Gov. Mike Leavitt and others.
2. Create an online database/dashboard of state-based and/or organizational activities currently underway around the country that are filling the ACIR void.
3. Meet with “Big 7” partners that have voiced similar frustrations with the loss of the ACIR mechanism and are willing to develop a vocal coalition to advocate for its resurrection.
4. Work with Rep. Gerry Connelly, sponsor of H.R. 534, the Restore the Partnership Act (which would establish the National Commission on Intergovernmental Relations, very similar to former ACIR) to include CSG in the listing of state and local organizations for membership.
5. Work with CSG’s Intergovernmental Affairs Committee, Leadership Council and Executive Committee to endorse specific policy calling for the creation of and funding for a revised Advisory Commission on Intergovernmental Relations and/or National Commission on Intergovernmental Relations and that urges member jurisdictions to vocally support the establishment of such a body.
6. Develop educational and/or advocacy articles in CSG publications educating members about the need and utility of an ACIR-like entity and advocate (per CSG policy resolution) for its creation.
UNFUNDED MANDATES REFORM ACT

The concept of unfunded mandates is rooted in the 1970s and 80s, when the nature of federal grant-in-aid programs and regulations affecting states began to change. Congress and the executive branch began to increasingly pass laws and regulations that were more compulsory in nature, making the threat of civil and criminal penalties, federal sanctions, and broader preemption of state law commonplace if states failed to comply. Many state leaders, feeling that this more widely employed policy perspective was inconsistent with traditional views of American federalism, which was based on cooperation, began to speak out against the practice. This eventually led to federal legislation to curb unfunded mandates.

The Unfunded Mandates Reform Act (UMRA)
Signed into law by President Clinton in 1995, the law generally aimed to force Congress and the executive branch to consider the fiscal impact that passing a law or regulation would have on states. The law directed CBO to provide cost-estimates, when feasible, on any proposed legislation that would have a budgetary impact on a state, and it required federal agencies to identify the fiscal costs and benefits of rules that would affect states to the expenditure (NOT cost) of $100 million or more. Agencies are also required to consult with state elected officials before proposing such a rule under UMRA.

There are, however, several exceptions. UMRA does not apply to federal assistance, duties stemming from participation in voluntary federal programs (which is widely interpreted to cover Medicaid, TANF, and other programs where states have legal flexibility in administering the program), rules issued by independent regulatory agencies (such as the FCC, NLRB, etc.), federal civil rights laws, or if a federal agency is “otherwise prohibited by law” (such as the Clean Air Act, where the primary purpose is air quality and the courts have ruled the EPA cannot consider the cost of applying standards), or rules that are not published in the Federal Register. Additionally, the provisions concerning CBO cost-estimates defer to CBO on feasibility, so if cost-estimates are determined to be not feasible, Congress can pass the law without a CBO analysis.

CSG Action Items and Advocacy Strategy

1. Meet with “Big 7” partners that have been active on UMRA over the years. NCSL and NACO have been particularly active. Their lack of current activity should not preclude CSG from being active, but the institutional knowledge would be useful.
2. Determine the UMRA exemptions that have been the most fiscally harmful to states and are the most politically feasible, for CSG internally and for Congress, to address. Potential provisions to consider: expanding UMRA to cover independent agencies and rules not printed in the Federal Register, enhancing the UMRA provisions that require a CBO cost-estimate.
3. Meet with Congresswoman Virginia Foxx’s staff to discuss H.R. 899, the Unfunded Mandates Information and Transparency Act of 2013, which she recently introduced. The bill has gained some bipartisan support in the House and is moving through committee, and CSG could provide additional state perspectives as it is considered.
4. Find a member of Congress to champion an UMRA Amendments Bill. Senator Joe Manchin is a potential ally here and there are several options in the House. Work with congressional staff to draft language that addresses the most fiscally harmful/politically feasible loopholes in UMRA.
5. Aim for introduction of legislation in the summer.
6. Work with CSG Intergovernmental Affairs Committee and Executive Committee to endorse the specific legislation in a policy resolution considered at the Annual Conference in Alaska (the Executive Committee passed a resolution in Kansas City that cleared us to work through step 4, but before we push on something more specific, I think it’s a safe route to seek that guidance from leadership).
7. Request CSG members to discuss the legislation with their congressional delegation and urge co-sponsorship.
CONSOLIDATED FEDERAL FUNDS REPORT

The Consolidated Federal Funds Report (CFFR), which contained critical federal spending data key to transparency, was discontinued in 2010 and there is significant interest among leaders of the Big Seven to regain access to that data. During a recent meeting that included a number of representatives from the Big Seven, there was a general consensus that it is unlikely that the Census Bureau will begin publishing the CFFR again, primarily due to recent budgetary cutbacks.

Summary

- The Consolidated Federal Funds Report has been discontinued and the data contained within it is not readily available using alternative sources.

- The data contained in the CFFR is needed to understand patterns of federal spending and identify emerging trends.

- There is an interest among leaders of the Big Seven to pursue this issue, particularly as it relates to concerns over federal transparency.

- There are two options for regaining access to the data in the CFFR: lobby the Census Bureau to reinstate the publication of the CFFR or develop an alternative method of aggregating the data contained in the CFFR.

Background

The Consolidated Federal Funds Report, or the CFFR, was an annual report prepared and released by the U.S. Census Bureau on the geographic distribution of federal spending that was discontinued in 2012. The final report was released in 2011 using 2010 data.

The CFFR contained data that was consolidated and tabulated in a standard format by the U.S. Census Bureau on federal government expenditures or obligations in state, county and sub-county areas of the U.S., including the District of Columbia and U.S. Outlying Areas. It was the most comprehensive data set available to track federal spending by location.

Some of the information published in the CFFR is now available through alternative sources, such as USASpending.gov, but these alternatives do not fully replace the data that was available through the CFFR. Further, there are some concerns regarding the accuracy and completeness of the data available through these alternative sources. The information contained in the CFFR was essential for state and local leaders to track and compare federal spending and was a key component of federal fiscal transparency. The flow of robust, timely federal data is critical to transparency and that the loss of the CFFR has negatively affected the flow of essential data.

The Council of State Governments, along with other leaders of the Big Seven, has expressed an interest in pursuing the reinstatement of the data contained in the CFFR, either by lobbying for the reinstated publication of the CFFR by the U.S. Census Bureau or by identifying alternative methods to recreate the data from other sources. Researchers at the Pew Center and the Federal Funds Information for States have also expressed an interest in pursuing this data and have offered expertise on recreating the data from alternative sources.

CSG Action Items and Advocacy Strategy

To move forward on this initiative, Big Seven leaders must first decide how they want to proceed. There are two options for moving forward:

1. *Census Bureau Reinstatement:* Leaders of the Big Seven must decide if they want to lobby the Census Bureau to reinstate the publication of the CFFR and if so, develop a plan to approach the Census Bureau in collaboration with research organizations, such as Pew and FFIS.

2. *Calculation of Alternative Dataset:* In the alternative, or if the Census Bureau rejects the proposal for reinstatement, Big Seven leaders will need to determine first if it is feasible to recreate the CFFR using alternative data sources, which may or may not require some assistance from the Census Bureau.