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104TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–847

LOCAL EMPOWERMENT AND FLEXIBILITY ACT OF 1996

SEPTEMBER 26, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

R E P O R T

together with

MINORITY AND DISSENTING VIEWS

[To accompany H.R. 2086]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 2086) to increase the overall economy and efficiency of Government operations and enable more efficient use of Federal funding, by enabling local governments and private, nonprofit organizations to use amounts available under certain Federal assistance programs in accordance with approved local flexibility plans, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Local Empowerment and Flexibility Act of 1996".

SEC. 2. FINDINGS.

The Congress finds that—

(1) many Federal programs have addressed the Nation's problems by providing categorical financial assistance with detailed requirements relating to the use of funds;

(2) although Federal financial assistance has been directed at critical national needs, some inflexible program requirements impede the effective delivery of services;

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(3) State, local, and tribal governments and private, nonprofit organizations are dealing with increasingly complex problems that require the delivery of services in many different ways;

(4) the Nation's communities are diverse, and national needs often require different solutions in different communities;

(5) many recipients of Federal financial assistance have innovative planning and public involvement strategies for providing services which, if given sufficient flexibility to integrate Federal financial assistance from multiple programs or with State, local, tribal, or private, nonprofit programs, could be used to maximize the effectiveness and efficiency of Federal financial assistance; and

(6) it is more important than ever to—

(A) promote more effective and efficient delivery of government services to meet the needs of individuals, families, and communities;

(B) respond flexibly to national needs in the Nation's diverse communities;

(C) reduce the barriers between programs that impede the ability of State, local, and tribal governments and private, nonprofit organizations to effectively deliver services, and meet national as well as community objectives;

(D) coordinate the delivery of programs and services by administering agencies; and

(E) allow State, local, and tribal governments and private, nonprofit organizations to be innovative in creating solutions to address national policy goals in ways that recognize the diversity of our Nation's communities.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) ensure the more efficient use of Federal, State, local, and tribal resources through program flexibility and coordination;

(2) place emphasis in Federal programs on achieving Federal policy goals;

(3) remove Federal impediments to local service delivery;

(4) enable State, local, and tribal governments and private, nonprofit organizations to adapt programs of Federal financial assistance to the particular circumstances of their communities, by—

(A) integrating appropriate Federal financial assistance programs into flexibility or coordination plans that increase the effectiveness and efficiency of those programs in their communities;

(B) simplifying procedures across Federal programs to avoid needless duplication, overlap, and cost; and

(C) authorizing Federal officials to waive some program requirements when necessary to enhance the delivery of services; and

(5) encourage State, local, and tribal governments and private, nonprofit organizations to work together to build stronger cooperative partnerships to address critical needs and problems.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) APPROVED FLEXIBILITY OR COORDINATION PLAN.—The term "approved flexibility or coordination plan" means a flexibility or coordination plan (or part of such a plan) that is approved by the Community Empowerment Board under section 8, and for which the President certifies that approval under section 8(g).

(2) BOARD.—The term "Board" means the Community Empowerment Board established under section 6.

(3) COMMUNITY ADVISORY COMMITTEE.—The term "community advisory committee" means such a committee established or designated by an eligible applicant in accordance with section 10.

(4) COVERED FEDERAL FINANCIAL ASSISTANCE PROGRAM.—The term "covered Federal financial assistance program" means an eligible Federal financial assistance program that is included in a flexibility or coordination plan of an eligible applicant.

(5) ELIGIBLE APPLICANT.—The term "eligible applicant" means—

(A) a State, local, or tribal government, or qualified organization that is eligible to receive financial assistance under 1 or more eligible Federal financial assistance programs; or

(B) a qualified consortium.

(6) ELIGIBLE FEDERAL FINANCIAL ASSISTANCE PROGRAM.—The term "eligible Federal financial assistance program"—

(A) except as provided in subparagraph (C), means a domestic assistance program (as defined under section 6101(4) of title 31, United States Code)

under which financial assistance is available, directly or indirectly, to eligible applicants;

(B) includes any component of a program described in subparagraph (C), under which financial assistance is provided to pay administrative costs if the level of Federal funding for those costs is, by statute or regulation, established separately from the level of Federal funding for benefits provided under the program; and

(C) except as provided in subparagraph (B), does not include a program carried out with direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(8)).

(7) FLEXIBILITY OR COORDINATION PLAN.—The term "flexibility or coordination plan" means a comprehensive plan for the integration and administration by an eligible applicant of financial assistance provided by the Federal Government under 2 or more eligible Federal financial assistance programs, that—

(A) combines funds from Federal, State, local, or tribal government or private sources to address the service needs of a community; or

(B) is a strategic plan submitted in an application for designation as an enterprise community or an empowerment zone under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(8) LOCAL GOVERNMENT.—The term "local government" means—

(A) a political subdivision of a State that is a unit of general local government (as defined under section 6501 of title 31, United States Code);

(B) any combination of political subdivisions described in subparagraph (A) that submits an application to the Board; or

(C) a local education agency (as defined under section 14101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(18)).

(9) PRIORITY FUNDING.—The term "priority funding" means giving higher priority (including by the assignment of extra points, if applicable) to applications for Federal financial assistance submitted by an eligible applicant pursuant to this Act.

(10) QUALIFIED CONSORTIUM.—The term "qualified consortium" means a group that—

(A) is composed of any combination of eligible applicants described in paragraph (5)(A); and

(B) includes not less than 3 eligible applicants described in paragraph (5)(A) that provide services under eligible Federal financial assistance programs in not less than 3 of the following areas:

(i) Education.
(ii) Head Start.
(iii) Child care.
(iv) Family support and preservation.
(v) Maternal and child health.
(vi) Job training.
(vii) Housing.
(viii) Nutrition.
(ix) Juvenile justice.
(x) Drug abuse prevention and treatment.
(xi) Community and economic development.

(11) QUALIFIED ORGANIZATION.—The term "qualified organization" means a private, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. 501(a)).

(12) STATE.—The term "State" means each of the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands.

(13) STATE LEGISLATIVE OFFICIAL.—The term "State legislative official" means—

(A) the majority leader of a chamber of a State legislature; and

(B) the minority leader of a chamber of a State legislature.

(14) TRIBAL GOVERNMENT.—The term "tribal government" means the governing entity of an Indian tribe, as that term is defined in the Federally Recognized Tribe List Act of 1994 (25 U.S.C. 479a).

SEC. 5. PROVISION OF FEDERAL FINANCIAL ASSISTANCE IN ACCORDANCE WITH APPROVED FLEXIBILITY OR COORDINATION PLAN.

Notwithstanding any other law, amounts available to an eligible applicant under a covered Federal financial assistance program included in an approved flexibility

or coordination plan shall be paid and administered in the manner specified in the approved flexibility or coordination plan.

SEC. 6. ESTABLISHMENT OF COMMUNITY EMPOWERMENT BOARD.

(a) IN GENERAL.—There is established a Community Empowerment Board, which shall consist of—

(1) the Secretary of Housing and Urban Development,
(2) the Secretary of Health and Human Services,
(3) the Secretary of Agriculture,
(4) the Secretary of Transportation,
(5) the Secretary of Education,
(6) the Secretary of Commerce,
(7) the Secretary of Labor,
(8) the Secretary of the Treasury,
(9) the Attorney General,
(10) the Secretary of the Interior,
(11) the Secretary of Energy,
(12) the Secretary of Veterans Affairs,
(13) the Secretary of Defense,
(14) the Director of the Federal Emergency Management Agency,
(15) the Administrator of the Environmental Protection Agency,
(16) the Director of National Drug Control Policy,
(17) the Administrator of the Small Business Administration,
(18) the Director of the Office of Management and Budget, and
(19) the Administrator of General Services.

(b) CHAIR.—The President shall designate the Chair of the Board from among its members.

(c) FUNCTIONS.—The Board shall—

(1) receive, review, and approve or disapprove flexibility or coordination plans in accordance with section 8;

(2) establish interagency teams to provide training and technical assistance to eligible applicants, comprised of representatives of the agencies that administer eligible Federal financial assistance programs;

(3) monitor the progress of development and implementation of flexibility or coordination plans;

(4) review regulations governing, and identify more efficient operation and coordination of, eligible Federal financial assistance programs in the areas of—

(A) education;
(B) Head Start;
(C) child care;
(D) family support and preservation;
(E) maternal and child health;
(F) job training;
(G) housing;
(H) nutrition;
(I) juvenile justice;
(J) drug abuse prevention and treatment; and
(K) community and economic development;

(5) coordinate and assist Federal agencies in eliminating, revising, and coordinating regulations under eligible Federal financial assistance programs;

(6) coordinate and assist Federal agencies in creating a uniform application to be used to apply for assistance under eligible Federal financial assistance programs in the areas listed in paragraph (4);

(7) coordinate and assist Federal agencies in creating a release form to be used to obtain consent from beneficiaries under eligible Federal financial assistance programs to facilitate, where appropriate and otherwise lawful, the sharing of information across such programs;

(8) coordinate and assist agencies in creating a system under which an eligible applicant may use one proposal to apply for funding under multiple eligible Federal financial assistance programs; and

(9) evaluate current performance standards and evaluation criteria for eligible Federal financial assistance programs, and make specific recommendations to agencies regarding how to revise such standards and criteria in order to establish specific and measurable performance and outcome measures upon which program success and success of approved flexibility or coordination plans may be judged and future funding decisions may be made.

(d) FLEXIBILITY COUNCILS.—

(1) IN GENERAL.—The Chair of the Board may appoint a Flexibility Council to review any application for approval of a flexibility or coordination plan. The Flexibility Council shall consist of 5, 7, or 9 members of the Board, and shall include the Board members representing the departments most affected by the flexibility or coordination plan for which the council is appointed. The Flexibility Council shall review the plan under section 8 and make recommendations to the Board regarding approval or disapproval of all or part of the plan.

(2) AUTHORITY TO APPROVE PLANS.—The Board may delegate to a Flexibility Council the authority of the Board under section 8 to approve or disapprove the flexibility or coordination plan for which it is appointed, if the application for approval of the plan—

(A) does not contain a request for a waiver under section 8; or

(B) only contains requests for waivers under section 8 for which alternative measures are not required under section 8(d)(5).

(e) GUIDANCE AND OTHER MATERIALS.—The Board shall—

(1) issue guidance to implement this Act within 180 days after the date of enactment of this Act; and

(2) issue other subsequent materials that may assist eligible applicants in the development and implementation of flexibility or coordination plans.

SEC. 7. APPLICATION FOR APPROVAL OF FLEXIBILITY OR COORDINATION PLAN.

(a) IN GENERAL.—An eligible applicant may submit to the Board in accordance with this section an application for approval of a flexibility or coordination plan.

(b) CONTENTS OF APPLICATION.—An application submitted under this section shall include—

(1) a proposed flexibility or coordination plan that complies with subsection (c);

(2) written certification by the chief executive of the applicant, or in the case of a qualified consortium by the chief executive officer of each eligible applicant that is a member of the consortium, and such additional assurances as may be required by the Board, that—

(A) the applicant has the ability, authority, and resources to implement the proposed plan, throughout the geographic area in which the proposed plan is intended to apply; and

(B) amounts are available from non-Federal sources to pay the non-Federal share of all covered Federal financial assistance programs included in the proposed plan;

(3) all comments on the proposed plan submitted under subsection (d) by a Governor or State legislative official of a State or a chief executive of a local or tribal government that would be directly affected by implementation of the proposed plan, and the applicant's responses to those comments;

(4) public comments on the proposed plan, including the transcript of at least 1 public hearing and comments of the appropriate community advisory committee designated or established under section 10 for the plan; and

(5) other relevant information the Board determines, after consultation with the applicant, to be necessary to approve the proposed plan.

(c) CONTENTS OF PLAN.—A flexibility or coordination plan submitted under this section shall include—

(1) a brief description of the plan;

(2) the geographic area to which the plan would apply and the rationale for selecting the area;

(3) the agencies and organizations that will collaborate to provide services and benefits under the plan;

(4) the particular groups of individuals, by service needs, economic circumstances, or other defining factors, who would receive services and benefits under the plan;

(5)(A) general goals and measurable performance criteria, and a description of how the plan is expected to attain those goals and criteria;

(B) a description of how performance shall be measured; and

(C) a system for the comprehensive evaluation of the impact of the plan on the community in the geographic area covered by the plan, and of program costs, that shall include—

(i) a list of goals to improve the community and the lives of its citizens;

(ii) a list of goals identified by the State in which the plan is to be implemented, except that if no such goals have been established by the State the plan may propose the goals; and

(iii) a description of how the plan will—

(I) attain the goals listed under clause (ii);

(II) measure performance;

(III) collect and maintain data;

(IV) identify specific subgroups of individuals within the geographic area covered by the plan; and

(V) measure the impact of the plan on those subgroups;

(6) the eligible Federal financial assistance programs included in the plan as covered Federal financial assistance programs and the specific benefits to be provided under the plan under such programs, including—

(A) criteria for determining eligibility for benefits under the plan;

(B) the services to be made available or activities to be undertaken;

(C) the amounts and form (such as cash, in-kind contributions, or financial instruments) of nonservice benefits; and

(D) any other descriptive information the Board considers necessary to approve the plan;

(7) any Federal statutory or regulatory requirement applicable under a covered Federal financial assistance program included in the plan, the waiver of which is necessary to implement the plan, and justification for the waiver, except that if the applicant is uncertain whether a waiver or waivers are required the applicant may request that the Board make such a determination after the application is accepted for consideration;

(8) any State, local, or tribal statutory, regulatory, or other requirement, the waiver of which is necessary to implement the plan, and indicia of commitments by the relevant State, local, or tribal governments to grant such waivers;

(9) fiscal control and related accountability procedures applicable under the plan;

(10) a description of the sources of all non-Federal funds that are required to carry out covered Federal financial assistance programs included in the plan, and indicia of commitments to provide those funds;

(11) written certification from each State, local, or tribal government for which certification is required under subsection (b)(2);

(12) the estimated duration of any additional planning, training, or system development period that is required between approval of the plan and implementation of any waivers approved by the Board; and

(13) other relevant information the Board may require to approve the plan.

(d) PROCEDURE FOR APPLYING.—

(1) SUBMISSION TO AFFECTED STATE AND LOCAL GOVERNMENTS.—An eligible applicant that is not a State shall, at least 60 days before submitting an application for approval of a proposed flexibility or coordination plan to the Board, submit the plan to—

(A) the Governor and each State legislative official of each State that the applicant considers to be directly affected by the plan;

(B) the chief State school officer of each State that the applicant considers to be directly affected by the plan, if the constitution of the State—

(i) provides for the election of such an official by the voters in the State; and

(ii) vests primary authority over education programs of the State in such an officer; and

(C) each tribal government that the applicant considers to be directly affected by the plan.

(2) ACTION BY AFFECTED GOVERNMENT.—Each person that receives an application submitted under paragraph (1) may, by no later than 60 days after the date of that receipt—

(A) prepare comments on the proposed flexibility or coordination plan included in the application, including a statement of approval or disapproval of all or any part of the plan;

(B) describe and make commitments to waive any State or local laws or other requirements that are necessary for successful implementation of the proposed plan;

(C) describe and make commitments to provide any financial and technical support that is necessary for successful implementation of the proposed plan; and

(D) submit the comments and commitments to the eligible applicant.

(3) SUBMITTAL TO BOARD.—If the Governor or a State legislative official of a State or the chief executive officer of a local government—

(A) fails to act within 60 days after receiving an application under paragraph (1);

(B) does not make and submit to the eligible applicant the commitments referred to in paragraph (2) (A) and (B); or

(C) disagrees with all or part of the proposed flexibility or coordination plan;

the eligible applicant may submit the application to the Board if the application is amended as necessary for the successful implementation of the proposed plan without cooperation of the State or local government, including by adding a discussion regarding the ability of the proposed flexibility or coordination plan to meet plan goals and satisfy performance criteria in the absence of statutory and regulatory waivers and financial and technical support from the State or local government.

(e) TREATMENT AS APPLICATION FOR COVERED FEDERAL FINANCIAL ASSISTANCE PROGRAM.—Notwithstanding any other provision of law, an application for approval under this Act of a flexibility or coordination plan—

(1) shall be considered by each affected agency as an application for assistance under each covered Federal financial assistance program included in the plan; and

(2) shall be given priority consideration for funding under that program.

SEC. 8. REVIEW AND APPROVAL OF FLEXIBILITY OR COORDINATION PLANS AND WAIVER REQUESTS.

(a) FLEXIBILITY OR COORDINATION PLANS ACCEPTED FOR REVIEW.—The Board shall review at least the first 50 applications submitted under section 7(a) each year. The Board—

(1) shall give priority consideration to applications that—

(A) are submitted from communities that applied for designation as an enterprise community or an empowerment zone under section 1391 of the Internal Revenue Code of 1986;

(B) coordinate covered Federal financial assistance programs in at least 3 of the areas of—

(i) education;
(ii) Head Start;
(iii) child care;
(iv) family support and preservation;
(v) maternal and child health;
(vi) job training;
(vii) housing;
(viii) nutrition;
(ix) juvenile justice;
(x) drug abuse prevention and treatment; and
(xi) community and economic development; or

(C) are reviewable by a Flexibility Council under section 6(d); and

(2) may develop criteria to govern the factors to be applied in determining which additional applications it reviews after the first 50 each year.

(b) REVIEW OF APPLICATIONS.—Upon acceptance of an application for review under this section, the Board shall—

(1) notify the applicant of the Board's acceptance of the application for review and the procedures for consultation with the applicant during the review process;

(2) by a majority vote, approve or disapprove all or part of the plan within 120 days after accepting the plan for review, except that the Board may extend this period by another 60 days if—

(A) the Board determines through consultation with affected Federal agencies that a waiver of 1 or more Federal statutory or regulatory requirements is necessary to implement the plan;

(B) the Board determines that additional information or clarification is needed from the applicant to make a decision regarding the application; or

(C) the applicant requests additional time to strengthen its application because of information that it has obtained from the Board;

(3) notify the applicant in writing of that approval or disapproval by not later than 15 days after the date of that approval or disapproval of certification by the President under subsection (g); and

(4) in the case of any disapproval of a plan, include a written justification of the reasons for disapproval in the notice of disapproval sent to the applicant.

(c) APPROVAL OF PLANS.—

(1) IN GENERAL.—The Board may approve a flexibility or coordination plan for which an application is submitted by an eligible applicant under this Act, or any part of such a plan, if the Board determines that—

(A) the plan or part will improve the effectiveness and efficiency of providing benefits under covered Federal financial assistance programs in-

cluded in the plan or part by reducing administrative inflexibility, duplication, and unnecessary expenditures;

(B) the plan or part does not result in a qualitative reduction in services or benefits provided to individuals and families that receive benefits under covered Federal financial assistance programs under the plan or part;

(C) the eligible applicant has adequately considered, and the plan or part appropriately addresses, any effect that administration of each covered Federal financial assistance program under the plan or part will have on administration of the other covered Federal financial assistance programs under the plan or part;

(D) the eligible applicant has or is developing data bases, planning, and evaluation processes for determining whether implementing the plan or part includes the specific goals, measurable performance criteria, comprehensive evaluation system, and other matters required under section 7(c)(5);

(E) the plan or part will more effectively achieve the general goals of each covered Federal financial assistance program under the plan or part at the State, local, and tribal level and will better meet the needs of State, local, and tribal citizens;

(F) implementation of the plan or part will achieve the purposes of this Act and of each covered Federal financial assistance program under the plan or part;

(G) the plan or part and the application for approval of the plan comply with the requirements of this Act;

(H) the eligible applicant has—

(i) waived the requirements of its own laws and regulations the waiver of which is necessary for implementation of the plan or part; and

(ii) obtained commitments for any additional necessary waivers from other State, local, or tribal governments;

(I) Federal funds made available under the plan or part will not supplant non-Federal funds for existing services and activities that promote the goals of the plan or part; and

(J) none of the Federal or non-Federal funds used under the plan or part will be used—

(i) to pay the non-Federal share of activities under programs that are not covered Federal financial assistance programs under the plan or part; or

(ii) to meet maintenance of effort requirements of such an activity.

(2) LIMITATION ON AUTHORITY TO APPROVE CERTAIN PARTS OF PLANS.—The Board may not approve a part of a flexibility or coordination plan—

(A) if implementation of that part would result in any increase in the total amount of obligations or outlays of discretionary appropriations or direct spending under covered Federal financial assistance programs included in that part, over the amounts of such obligations and outlays that would occur under those programs without implementation of that part; or

(B) in the case of a part that applies to assistance to a qualified organization under an eligible Federal financial assistance program, if the qualified organization does not consent in writing to the receipt of that assistance in accordance with the part.

(3) REQUIREMENT TO DISAPPROVE PART.—The Board shall disapprove a part of a flexibility or coordination plan if the Board determines that the part fails to comply with paragraph (1).

(4) SPECIFICATION OF PERIOD OF EFFECTIVENESS.—

(A) IN GENERAL.—In approving any part of a flexibility or coordination plan, the Board shall specify the period during which the part is effective, which—

(i) may not begin before the date the President certifies approval of the plan under subsection (g); and

(ii) in no case shall be greater than the 5-year period beginning on the date of that certification.

(B) EFFECTIVENESS AFTER TERMINATION OF THIS ACT.—An approved flexibility or coordination plan (or part of a plan) shall be effective for the period of time specified by the Board, regardless of whether that time extends beyond the date of the termination of the effectiveness of this Act under section 14.

(C) EFFECTIVE PERIOD SHORTER THAN PROPOSED.—The Board may specify an effective period for an approved flexibility or coordination plan (or part

of a plan) that is shorter than a period proposed by the eligible applicant for the plan.

(d) WAIVERS OF FEDERAL REQUIREMENTS.—

(1) IN GENERAL.—Subject to the limitations in paragraphs (2), (3), (4), (5), and (6), the Board may waive any statutory or regulatory requirement of a covered Federal financial assistance program included in an approved flexibility or coordination plan, and any procedural, administrative, or reporting requirement of a statute or regulation generally applicable to eligible Federal financial assistance programs, if that waiver is reasonably necessary for implementation of the plan.

(2) EFFECTIVE PERIOD OF WAIVER.—A waiver under this subsection shall terminate on the earlier of—

(A) the expiration of a period that shall be specified by the Board in making the waiver, and that may not exceed the 5-year period beginning on the effective date of the waiver; or

(B) any date on which the flexibility or coordination plan for which the waiver is granted ceases to be effective.

(3) REQUIREMENTS THAT MAY NOT BE WAIVED.—The Board may not waive under this subsection—

(A) any requirement that enforces any constitutional right;

(B) any requirement under—

(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(iii) title IX of the Education Amendments of 1972 (86 Stat. 373 et seq.);

(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(vi) the Fair Housing Act (42 U.S.C. 3601 et seq.); or

(vii) the Individuals With Disabilities Education Act (20 U.S.C. 1400 et seq.); or

(C) any requirement that enforces any other civil right or nondiscrimination provision, including any requirement under—

(i) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(ii) the Equal Pay Act of 1963 (29 U.S.C. 206(d)); or

(iii) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.).

(4) WAIVERS THAT MAY NOT BE GRANTED.—The Board may not waive under this subsection a requirement if—

(A) the waiver would—

(i) diminish national labor relations or labor standards;

(ii) diminish national environmental standards;

(iii) diminish educational equality or opportunity;

(iv) create a threat to public health or safety;

(v) diminish financial management requirements or impair the Federal Government's position regarding loans or loan guarantees;

(vi) diminish occupational health or safety;

(vii) diminish banking or financial service standards; or

(viii) impair pensions; or

(B) the waiver pertains to taxation.

(5) WAIVERS FOR WHICH ALTERNATIVE MEASURES REQUIRED.—

(A) IN GENERAL.—The Board may not waive any procedural, administrative, or reporting requirement described in subparagraph (B) unless the approved flexibility and coordination plan for which the waiver is made contains, and the eligible applicant for the plan commits to undertake, alternative measures to replace the requirement to be waived.

(B) REQUIREMENTS DESCRIBED.—Subparagraph (A) refers to the following requirements:

(i) Any procedural, administrative, or reporting requirement in any statute or regulation that establishes or enforces labor relations or labor standards.

(ii) Any procedural, administrative, or reporting requirement in any statute or regulation that establishes or enforces environmental standards.

(iii) Any procedural, administrative, or reporting requirement in any statute or regulation that establishes or enforces educational equality or opportunity.

(iv) Any procedural, administrative, or reporting requirement in any statute or regulation that protects public health or safety.

(C) FINDING BY THE BOARD.—The Board may not waive any requirement described in subparagraph (B) unless the Board determines that the alternative measures contained in the plan with respect to the waiver will maintain or advance national goals, standards, or protections as effectively as the waived requirement.

(6) STATE, LOCAL, OR TRIBAL AUTHORITY.—Nothing in this Act shall be construed to grant the Board or any eligible applicant authority to waive or otherwise preempt—

(A) any State, local, or tribal law or regulation; or

(B) any State plan for the use of Federal financial assistance.

(7) NOTICE OF REQUESTED WAIVERS.—Prior to submitting an application to the Board, eligible applicants shall provide notice of all waivers of Federal, State, and local laws and regulations that are requested. Notice shall be provided to the community or communities deemed by the eligible applicant to be affected by the waivers via publication in a newspaper of general circulation. Whenever possible, notice of the requested waivers shall be provided as part of the notice for the public hearing.

(e) MEMORANDA OF UNDERSTANDING REQUIRED.—

(1) IN GENERAL.—The Board may not approve any part of a flexibility or coordination plan unless each eligible applicant that would receive Federal financial assistance administered under the plan enters into a memorandum of understanding under this subsection with the Board.

(2) CONTENTS.—A memorandum of understanding under this subsection shall specify all understandings that have been reached among the Board, Federal agencies that administer covered Federal financial assistance programs under the flexibility or coordination plan, and approved applicants that are subject to the plan, regarding the approval and implementation of all approved parts of the plan. The memorandum shall include understandings with respect to—

(A) all requirements under covered Federal financial assistance programs that are to be waived under subsection (d);

(B) all State, local, or tribal statutory and regulatory requirements that are to be waived;

(C)(i) the total amount of Federal funds that will be provided as benefits under or used to administer covered Federal financial assistance programs included in those parts; or

(ii) a mechanism for determining that amount, including specification of the total amount of Federal funds that will be provided or used under each covered Federal financial assistance program included in those parts;

(D) the amounts and sources of all non-Federal funds and technical support that will be provided as benefits under or used to administer those parts; and

(E) measurable performance criteria that will be used during the effective period of those parts to determine the extent to which the goals and performance levels of the parts are achieved, and the data to be collected to make that determination.

(f) LIMITATION ON CONFIDENTIALITY REQUIREMENTS.—The Board may not, as a condition of approval of any part of a flexibility or coordination plan or with respect to the implementation of an approved flexibility or coordination plan, establish any confidentiality requirement that would—

(1) impede the exchange of information needed for the design or provision of benefits under the plan; or

(2) conflict with any law related to confidentiality.

(g) CERTIFICATION BY PRESIDENT REQUIRED.—

(1) IN GENERAL.—A decision by the Board to approve or disapprove a flexibility or coordination plan under this section, or to terminate the effectiveness of such a plan under section 9, shall not be effective until the end of the 60-day period beginning on the date the President certifies that the approval or disapproval is in accordance with this Act.

(2) TIME FOR CERTIFICATION.—The President shall make a certification for purposes of paragraph (1) regarding a decision of the Board, or issue a written finding that the certification may not be made, within 15 days after the date of the decision by the Board.

SEC. 9. IMPLEMENTATION OF APPROVED FLEXIBILITY OR COORDINATION PLANS.

(a) SPECIAL ASSISTANCE.—To the extent permitted by law, the head of each Federal agency shall seek to provide special assistance to an eligible applicant to sup-

port implementation of an approved flexibility or coordination plan, including expedited processing, priority funding, and technical assistance.

(b) EVALUATION AND TERMINATION.—

(1) REPORTS AND EVALUATIONS BY APPROVED APPLICANTS, GENERALLY.—An eligible applicant for an approved flexibility or coordination plan, in accordance with guidance issued by the Board, shall—

(A) submit any reports on and cooperate in any audits of the implementation of the plan; and

(B) periodically evaluate the effect implementation of the plan has had on—

(i) individuals who receive benefits under the plan, including the specific subgroups identified in the plan under section 7(c)(5)(C)(iii)(IV);

(ii) communities in which those individuals live; and

(iii) costs of administering and providing assistance under covered Federal financial assistance programs included in the plan.

(2) INITIAL 1-YEAR REPORT.—No later than 90 days after the end of the 1-year period beginning on the date of the approval by the Board of an approved flexibility or coordination plan of an eligible applicant, and annually thereafter, the eligible applicant shall submit to the Board a report on the principal activities and achievements under the plan during the period covered by the report, comparing those achievements to the goals and performance criteria included in the plan under section 7(c)(5).

(3) TERMINATION OF PLAN BY BOARD.—

(A) IN GENERAL.—The Board may terminate the effectiveness of an approved flexibility or coordination plan if, after consultation with the eligible applicant and the head of each Federal agency responsible for administering a covered Federal financial assistance program included in the plan, the Board determines that—

(i) the goals and performance criteria included in the plan under section 7(c)(5) have not been met, and those goals and criteria are sound;

(ii) the goals and performance criteria included in the plan under section 7(c)(5) are not sound, and the plan would not meet goals and criteria that are sound;

(iii) the eligible applicant for the plan is unable to meet its commitments under this Act; or

(iv) there has been fraud or abuse involving Federal funds under the plan.

(B) TRANSITION PERIOD.—In terminating an approved flexibility or coordination plan under this paragraph, the Board shall allow a reasonable period of time for appropriate Federal agencies and eligible applicants to resume administration of Federal programs that are covered Federal financial assistance programs included in the plan.

(C) EFFECTIVENESS OF DECISION TO TERMINATE.—A decision by the Board to terminate the effectiveness of a flexibility or coordination plan shall take effect as provided in section 8(g).

(4) REVOCATION OF WAIVER AUTHORIZED.—The Board may revoke a waiver under section 8(d) if the Board finds that the eligible applicant—

(A) fails to comply with the requirements of the plan;

(B) fails to make acceptable progress towards achieving the goals and performance criteria included in the plan under section 7(c)(5); or

(C) fails to use funds in accordance with the plan.

(c) FINAL REPORT; EXTENSION OF PLAN.—

(1) FINAL REPORT.—No later than 60 days before the end of the effective period of an approved flexibility or coordination plan, the approved applicant shall submit to the Board a final report on its implementation of the plan, including a full evaluation of the successes and shortcomings of the plan and the effects of that implementation on individuals who receive benefits under covered Federal financial assistance programs under the plan.

(2) EXTENSION OF EFFECTIVE PERIOD OF PLAN.—The Board may extend the effective period of an approved flexibility or coordination plan for up to 5 years, based on the report of an approved applicant under paragraph (1).

SEC. 10. COMMUNITY ADVISORY COMMITTEES.

(a) ESTABLISHMENT.—An eligible applicant that applies for approval of a flexibility or coordination plan under this Act shall—

(1) designate an existing organization that meets the requirements of subsection (c) to be a community advisory committee for purposes of this section; or

(2) establish a community advisory committee in accordance with this section.

(b) FUNCTIONS.—A community advisory committee shall advise an eligible applicant in the development and implementation of its flexibility or coordination plan, including with respect to—

(1) conducting public hearings; and

(2) reviewing and commenting on all community policies, programs, and actions under the plan that affect low-income individuals and families, with the purpose of ensuring maximum coordination and responsiveness of the plan in providing benefits under the plan to those individuals and families.

(c) MEMBERSHIP.—The membership of a community advisory committee shall—

(1) consist of—

(A) persons with leadership experience in the private and voluntary sectors;

(B) local elected officials;

(C) representatives of participating qualified organizations; and

(D) the general public; and

(2) include individuals and representatives of community organizations who will help to enhance the leadership role of the eligible applicant in developing a flexibility or coordination plan.

(d) OPPORTUNITY FOR REVIEW AND COMMENT BY COMMITTEE.—Before submitting an application for approval of a final proposed flexibility or coordination plan, an eligible applicant shall submit the final proposed plan for review and comment by the community advisory committee designated or established under this section.

(e) COMMITTEE REVIEW OF REPORTS.—Before submitting any annual or final report on an approved Federal assistance plan, an approved applicant shall submit the report for review and comment to the community advisory committee.

SEC. 11. TECHNICAL AND OTHER ASSISTANCE.

(a) TECHNICAL ASSISTANCE.—The Board may provide, or direct the head of a Federal agency to provide, technical assistance to an eligible applicant in developing information necessary for the design or implementation of a flexibility or coordination plan, if the eligible applicant submits a request that includes, in accordance with requirements established by the Board—

(1) a description of the flexibility or coordination plan the eligible applicant proposes to develop;

(2) a description of the groups of individuals to whom benefits will be provided under covered Federal financial assistance programs included in the plan; and

(3) such assurances as the Board may require that—

(A) in the development of the application to be submitted under this Act for approval of the plan, the eligible applicant will provide adequate opportunities to participate to—

(i) individuals and families that will receive benefits under covered Federal financial assistance programs included in the plan; and

(ii) governmental agencies that administer those programs; and

(B) the plan will be developed after considering fully—

(i) the needs expressed by those individuals and families;

(ii) community priorities; and

(iii) available governmental resources in the geographic area to which the plan shall apply.

(b) DETAILS AND ASSIGNMENTS TO BOARD.—At the request of the Board and with the approval of a Federal agency head who is a member of the Board, staff of the agency may be detailed or assigned to the Board on a nonreimbursable basis.

SEC. 12. REPORTS BY BOARD.

No less than 18 months after the date of the enactment of this Act, and annually thereafter, the Board shall submit a report to the President and the Congress on the Federal laws or regulations that are most frequently waived under section 8(d) with respect to approved flexibility or coordination plans.

SEC. 13. REPEAL.

(a) IN GENERAL.—This Act is repealed on September 30, 2001.

(b) CONTINUED APPLICATION WITH RESPECT TO PLANS IN EFFECT.—Notwithstanding subsection (a), this Act, as in effect immediately before the date specified in subsection (a), shall continue to apply to any approved flexibility or coordination plan in effect immediately before that date, and any waivers granted under section 8(d) with respect to such a plan shall continue in effect, until the end of the 6-month period beginning on the date of termination of effectiveness of the plan or waiver, respectively, in accordance with this Act.

I. BILL SUMMARY

The purpose of the Local Empowerment and Flexibility Act is to ensure the more efficient use of Federal, State, local and tribal resources through program flexibility and coordination. The bill enables State, local and tribal governments and nonprofit organizations to adapt Federal grant programs to the particular circumstances of their communities by (1) integrating Federal programs into "flexibility plans" that increase the effectiveness of the programs; (2) eliminating wasteful duplication across Federal programs; and (3) authorizing Federal officials to waive statutory and regulatory program requirements to enhance the delivery of services.

A "flexibility plan" or "coordination plan" is a plan for the integration and administration of at least two Federal grant programs with State, local, or tribal government or private sources of funds to address the service needs of a community. Plans submitted for designation as an empowerment zone or enterprise community may also be considered "flexibility plans."

Flexibility plans may include a request for any Federal statutory or regulatory waivers necessary to implement the plan. Plans will also include the agencies and organizations that will collaborate to provide the services and benefits, the particular groups of individuals who would receive services and benefits, and the general goals, performance criteria and accountability measures which will be used to evaluate the plan. Eligible applicants must involve the community in writing the flexibility plan, and must give the State government and affected local governments an opportunity to comment on the plan before it is submitted to the Community Empowerment Board.

The Community Empowerment Board (CEB) shall approve or disapprove flexibility plans (in whole or in part), including any requests for waivers of statutory and regulatory program requirements. The CEB may approve plans that improve the efficiency of Federal grant programs and the delivery of services to the public, and which do not reduce the quality of services for individuals and families. The CEB may not approve any waiver which, if implemented, would diminish civil rights, labor, environmental or financial service standards, or would threaten public health and safety. Further, the CEB may not approve any waiver which would increase Federal obligations or outlays.

This legislation would be repealed on September 30, 2001.

II. SCOPE OF COMMITTEE REVIEW

Pursuant to rule X of the House of Representatives, the Committee on Government Reform and Oversight has jurisdiction over the "Relationship of the Federal government to the States and municipalities generally." Within the Government Reform and Oversight Committee, the Subcommittee on Human Resources and Intergovernmental Relations has jurisdiction over the relationship of the Federal Government to the States and municipalities.

H.R. 2086, the Local Empowerment and Flexibility Act, was referred to the Committee on Government Reform and Oversight and forwarded to the Subcommittee on Human Resources and Intergov-

ernmental Relations. The subcommittee amended the bill and forwarded it to the full committee on March 14, 1996. The full committee further amended the bill and ordered it reported favorably by a vote of 21 to 19 on April 24, 1996.

The Human Resources and Intergovernmental Relations Subcommittee held three hearings on H.R. 2086, on August 3, 1995, September 20, 1995 and February 22, 1996.

A. HEARINGS

1. August 3, 1995

On August 3, 1995, the Subcommittee on Human Resources and Intergovernmental Relations held the first of three hearings on the Local Empowerment and Flexibility Act. The Subcommittee heard testimony from: Senator Mark Hatfield (R–OR) sponsor of S. 88, the Senate companion bill; Judy A. England-Joseph, Director, Housing and Community Development Issues for the General Accounting Office (GAO); Charles Griffiths, Director, Intergovernmental Liaison for the Advisory Commission on Intergovernmental Relations (ACIR); and Carl W. Stenberg, Director, Chair of the Standing Panel on the Federal System for the National Academy of Public Administration (NAPA).

The Subcommittee heard that the current inflexibility in federal grants wastes resources which could be used to achieve program goals. The current system is overly burdensome for organizations to administer. To be effective, federal, state, and local programs must recognize the difference among communities, permit variation in spending and administration based on local needs and changing conditions, and seek to provide flexibility while enhancing accountability for results that really matter. The Subcommittee also heard testimony that a past federal effort to allow integration of grant funds failed because of interagency fighting at the federal level and statutory barriers to program coordination.

The Senate sponsor of the Local Empowerment and Flexibility Act, Senator Mark Hatfield, testified that his motivation for introducing the bill was two-fold. According to his testimony, national policy objectives often stifle creativity at the State and local level because authorities are compelled to comply with rigid federal stipulations. Senator Hatfield also told the Subcommittee that as an appropriator, he has witnessed first hand the shrinking pool of federal resources for local and State governments. Senator Hatfield testified that this decline is unavoidable and more should be done to make the most of the scarce dollars that are available.

Senator Hatfield testified there are four crucial aspects to the Local Empowerment and Flexibility Act. First, that different levels of government have different strengths. The Federal Government effectively establishes broad goals that tie us together as a nation and can achieve certain economies of scale which cannot be attained at the local level. However, local and State governments are innovators.

According to Senator Hatfield, the second aspect is that the Local Empowerment and Flexibility Act will encourage solutions that best fit the local context. According to Senator Hatfield, universal requirements often force Congress to legislate to the lowest com-

mon denominator. Consequently, few governments perform to their full capability. In addition, providing flexibility will eliminate regulations that force local governments to 'solve' problems they do not have.

Third, the Subcommittee heard that the legislation will create a new system of accountability. Senator Hatfield testified that currently the Federal Government holds State and local governments accountable through regulation, procedures and paperwork. This system is very good at determining where federal money is spent, but it tells very little about whether results are actually achieved. The current structure of accountability has made the Government and the grant recipient responsible to each other, rather than to the citizens that both are supposed to serve.

Finally, Senator Hatfield testified that all governments must be re-tooled for this new relationship. They must be re-equipped to function in a new cooperative environment, and federal bureaucracies need to renew their ability to listen to and learn from State and local governments.

The Subcommittee heard testimony from the GAO that was based on a February 1995 report, "Community Development: Comprehensive Approaches Address Multiple Needs but Are Challenging to Implement." (GAO/RCED/HEHS–95–69) The GAO examined multifaceted, or comprehensive, approaches taken by four community-based nonprofit organizations to improve conditions in distressed urban neighborhoods.

According to GAO testimony, the proliferation of federal grant programs and the lack of coordination among federal agencies that administer the programs impose a burden on local organizations that attempt to piece together programs to serve their communities. The neighborhood organizations GAO studied found it burdensome to manage multiple programs with individual funding streams, application requirements, and reporting expectations.

The Subcommittee heard that the Federal Government assists distressed urban communities and their residents through a complex system involving at least 12 federal departments and agencies. Together, these agencies administer hundreds of program in the areas of housing, economic development, and social services. The GAO testified that there are, for example, at least 154 employment and training assistance programs, 59 programs that could be used for preventing substance abuse, and over 90 early childhood development programs. According to GAO testimony, many of these categorical programs make sense when considered individually; together, they often work against the purposes for which they were established.

The GAO said that one organization reported it had strained its managerial and financial systems to meet federal record-keeping and accounting standards for several funding sources. While the organization implemented the necessary procedures to comply with the standards, officials said the administrative burdens nearly forced the organization to reduce the scope of its services.

The GAO elaborated on the problems caused by federal inflexibility with grant programs in its report on Community Development. According to the report:

> Representatives from three of the organizations said that they have turned down funding from certain federal programs or have chosen not to apply for some federal grants because the programs were not flexible enough to be used to address community needs. For example, one organization decided not to apply for a community development initiative loan from HUD because it did not believe that the repayment term was realistic for the planned project. Another organization does not use federal funding for some of its programs because beneficiaries would be required to meet stricter eligibility standards than the organization deems reasonable. A third organization intended to use funds from HUD's Nehemiah Grants program to support its development of new homes in the community. However, since mortgages supported by a program grant could not be assumed by future home buyers, the organization could not ensure that the housing would be kept affordable for future home buyers. Because of this restriction, the organization decided not to accept the funding.[1]

Mr. Stenberg testified that the federal categorical grants system has grown like topsy. In his testimony Mr. Stenberg cited a 1995 study by the Advisory Commission on Intergovernmental Relations (ACIR) that there were 618 categorical programs available to State and local governments as of January 1, 1995. The count included 110 education programs, more than 100 health care grant programs, 82 social service grant programs, and close to 30 grant programs dealing with community and regional development. The Subcommittee heard that as the number and variety of categorical grants has grown, so too has the list of requirements and restrictions imposed through both statute and regulation.

Mr. Stenberg testified that while categorical grants were born of good intentions, in practice they can hinder or frustrate effective efforts to achieve the ambitious goals these programs have established. As Mr. Stenberg told the Subcommittee, negotiating the maze of mandates related to planning, applying for, and administering some of these programs would test the patience of Job and the wisdom of Solomon. It also imposes significant compliance costs. Scarce resources are diverted from the intended recipient to administration and overhead.

The Subcommittee also heard from Mr. Stenberg that:

> In the kind of overly centralized, prescriptive system that's been created, we also pay a price for limiting the ability of others to experiment and to learn how to get the public's work done better, faster, or cheaper. Setting priorities and ensuring accountability for producing real results are the responsibility of top policy makers and political leaders. Dictating the details of the strategies, methods, and procedures applied to meet those goals may be counterproductive, however. The control of discretion and resources does not guarantee that the holder has a monopoly

[1] General Accounting Office, Report #GAO/RCED/HEHS–95–69, Community Development: Comprehensive Approaches Address Multiple Needs But Are Challenging to Implement (February 1995); p. 42.

> on the knowledge about how to adapt and respond to the disparate needs of communities across the country. America is too diverse for "one size fits all" policies and programs. Administrative "stovepipe" mentality precludes addressing functionally related needs. To be effective, federal, state, and local programs must recognize the difference among our communities, permit variation in spending and administration based on local needs and changing conditions, and seek to provide flexibility while enhancing accountability for results that really matter.[2]

Mr. Stenberg provided an example of how, * * * the burden of federal compliance and oversight measures can be overwhelming and often wasteful and detrimental to achieving program goals. For example, in Multnomah County, Oregon, a local community college leads a consortium that has integrated a wide range of services and is showing remarkable success in supporting the transition from dependency to work for local welfare recipients. A portion of the funds are provided by the Job Training Partnership Act (JTPA). The JTPA link created two administrative problems. First, although JTPA funding amounts to less than 10 percent of the community college's overall funding, a separate accounting process is required to meet JTPA's precise financial monitoring and reporting requirements. Second, in some cases equipment purchased with JTPA funds cannot be use by clients or students who do not meet JTPA eligibility requirements. To comply with the letter of the law, some equipment would be left idle when it could be put to fuller use with clients who are not JTPA eligible.[3]

The Subcommittee heard testimony from Charles Griffiths of the Advisory Commission on Intergovernmental Relations about a past effort to provide flexibility with federal grant programs that failed because of interagency fighting and statutory barriers to program consolidation.

According to Mr. Griffiths' testimony, the Integrated Grant Administration (IGA) was initiated in 1972 by the Office of Management and Budget (OMB) as a test for simplifying the funding and administration of federal program assistance. As with the Local Empowerment and Flexibility Act, the central objective of the IGA was to simplify the process by which state and local grantees identified, applied for, and administered funds comprised of more than one Federal assistance program to carry out a single project.

To qualify as an IGA project, the federal programs involved had to be included in a single application, be related by a common purpose or ability to support related goals, and based on an overall strategy to achieve a common objective. One federal agency "point-of-contact" was appointed to process each consolidated application, rather than making an applicant deal with multiple federal agencies. A single grant award notice was issued with synchronized funding periods. Funding was pooled from the different federal agencies, and delivered as a single funding stream through one fed-

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[2] Testimony of Carl W. Stenberg, Director, Center for Public Service at the University of Virginia, representing the National Academy of Public Administration, before the Subcommittee on Human Resources and Intergovernmental Relations Hearing on H.R. 2086, the Local Empowerment and Flexibility Act of 1995 (August 3, 1995); printed transcript, p. 42.

[3] Id.

eral agency. Grantees were required to submit single financial reports to a single federal agency. These reports were guided by one set of coordinated federal requirements to monitor progress. The IGA began with 24 approved projects totaling over $33 million dollars.

According to Mr. Griffiths's testimony,

> OMB's [Office of Management and Budget] first assessment of the program was a favorable one. For example, the assessment found that the IGA promoted improved intergovernmental working relationships. On the other hand, assessments by OMB and GSA [General Services Administration] found a need for greater commitment on the part of federal agencies for participating in this program. Problems of "turf", as well as statutory barriers to program consolidation were seen as stumbling blocks to agency cooperation. It was also found that the IGA required more time and effort by federal agencies than what would be normally expected with individual categorical grants. Observers believed this to be a normal part of the "learning curve", and not necessarily a long-term condition. This latter finding suggested that significant changes to existing financial assistance processes required several years to implement and refine, before their full potential could be realized.[4]

2. September 20, 1995

At the September 20, 1995 hearing the Subcommittee heard from: Howard Glaser, Deputy Assistant Secretary for Operations, Office of Community Planning and Development for the Department of Housing and Urban Development; John Koskinen, Deputy Director for Management for the Office of Management and Budget; Gary MacDougal, Chairman of the Governor's Task Force on Human Services Reform for the State of Illinois; Norma Paulus, Superintendent of Public Instruction for the State of Oregon; Peter Lehner, Senior Attorney for the Natural Resources Defense Council; and David Baker, Director of the Public Division of the Service Employees International Union.

The Subcommittee heard from Mr. Glaser that the Local Empowerment and Flexibility Act would complement the objectives of the Empowerment Zone/Enterprise Community Initiative and that some of the lessons learned from that program, and the regulatory waiver authority connected with it, were applicable to the legislation. According to Mr. Glaser's testimony, of the 271 waiver requests made by the 12 Empowerment Zones, 115 were beyond the statutory authority of the agencies responsible for program administration. The requests for relief made by communities cannot be accomplished without statutory changes, or the ability to waive statutory requirements.

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[4] Testimony of Charles Griffiths, Intergovernmental Liaison, Advisory Commission on Intergovernmental Relations, before the Subcommittee on Human Resources and Intergovernmental Relations Hearing on H.R. 2086, the Local Empowerment and Flexibility Act of 1995 (August 3, 1995); printed transcript, p. 35.

Mr. Glaser also testified that many of the waiver requests were really requests for assistance which would be resolved through dialogue between the appropriate federal, state and local agencies. Nevertheless, the requests have prompted a productive discussion between local governments and federal agencies. This ongoing dialogue is one of the prime benefits of the Empowerment Zone/Enterprise Community effort.

The Subcommittee heard from Mr. Glaser that another benefit of the Empowerment Zone/Enterprise Community effort is the wealth of ideas on the creative use of federal programs. It also provides a valuable source of information for policy-makers seeking to identify the sticking points in regulatory mechanisms, and reduce regulatory and statutory barriers to local flexibility. Mr. Glaser testified that,

> Where several communities identify similar program impediments, it makes sense to consider whether statutory or regulatory changes are appropriate, rather than granting relief on an ad-hoc basis to communities which request it. For example, in response to the ideas contained in the EZ/EC [Empowerment Zone/Enterprise Community] waiver requests, the Department of Housing and Urban Development completed a page-by-page review of all of the Department's regulations, eliminating 65 codes and 2800 pages of regulations. An additional 153 codes and regulations will be simplified and streamlined. As a result of these changes, localities no longer need waivers from HUD to accomplish a number of their objectives. The legislation under consideration by the Committee would facilitate this process by requiring reports similar to those produced by the EZ/EC Task Force on the federal regulations most frequently waived.[5]

In his testimony, Mr. Glaser stated that, "* * * the Department believes that H.R. 2086 would support and expand the Federal Government's ability to respond to local innovation and creativity in kind.[6] The Subcommittee heard two suggestions from Mr. Glaser to improve the legislation. Mr Glaser told the Subcommittee the Community Empowerment Board, which reviews waiver requests under the Empowerment Zone/Enterprise Community program, should be given the responsibility of reviewing waiver requests under the Local Empowerment and Flexibility Act.

Mr. Glaser also said the existing Community Empowerment Board should replace the Flexibility Council which would be created under the legislation to administer the federal responsibilities of the act. According to Mr. Glaser, the Community Empowerment Board has a membership and mission very similar to that outlined in the bill for the Flexibility Council. Furthermore, the Community Empowerment Board has proven to be an effective entity for man-

[5] Testimony of Howard Glaser, Deputy Assistant Secretary for Operations, Office of Community Planning and Development for the Department of Housing and Urban Development, before the Subcommittee on Human Resources and Intergovernmental Relations Hearing on H.R. 2086, the Local Empowerment and Flexibility Act of 1995 (September 20, 1995); printed transcript, p. 59.

[6] Id., p. 60.

aging interagency cooperation and ensuring federal responsiveness to locally driven, "bottom-up" strategic planning.

Mr. Glaser suggested including States as eligible participants, and noted that some federal departments, including Education, Labor and Health and Human Services, make a large number of categorical grants directly to state agencies. Therefore, States are important partners in any attempt to devolve flexibility to local governments.

A second Administration witness, Mr. Koskinen, testified that in a time of declining availability of federal resources, granting waivers and providing flexible funding streams are two ways to increase the impact of federal programs. Mr. Koskinen pointed out that in September 1993, the National Performance Review (NPR) recommended bottom-up grant consolidation to encourage innovation and create flexibility in the face of grant proliferation.

Mr. Koskinen told the Subcommittee one of the major impediments to empowering State and local governments the Administration attempted to remove was the myriad regulations, applications, and red tape associated with the ever-growing number of grant programs.

While the Administration has taken steps to devolve power to the local level, Mr. Koskinen testified that for federal grant programs to work, the Administration strongly believes the Executive Branch agencies must have the flexibility to waive statutes and remove barriers that interfere with communities trying to improve their economic and social conditions.

Mr. Koskinen told the Subcommittee the Administration would like to support the Local Empowerment and Flexibility Act if agreement could be reached on issues that the Administration considered critical to the effectiveness of the legislation. Those issues include: (1) lengthening the time frame for reviewing waivers and ensuring that the process does not become so complex and difficult to administer that it unnecessarily delays community efforts; (2) making approval of plans by the Flexibility Council contingent upon the submission of a strategic plan containing specific goals and measurable performance criteria; (3) making States as well as local governments eligible for waivers and expanding the involvement of States in the review of proposed waivers; (4) providing additional exclusions for certain areas, such as tax policy, worker safety, environmental protection, financial management, and public health; (5) providing appropriate authority for federal agency heads to approve waiver requests and sufficient administrative support for the interagency mechanism to respond efficiently to the local strategic plans and waiver requests; (6) replacing the Flexibility Council with the Community Empowerment Board, removing the Assistants to the President for Domestic and Economic Policy, and maintaining the President's discretion in choosing the Community Empowerment Board's members; (7) tying the continuation of waivers to the performance measures provided under related strategic plans; and (8) narrowing the criteria of those who can apply or providing some priority consideration to communities of greater need or distress so that the departments can process requests in reasonable time frames.

The next witness, Mr. MacDougal, described to the Subcommittee the efforts of Illinois Governor Jim Edgar's Task Force on Human Service Reform. The Task Force was charged with the responsibility to reexamine Illinois' Health and Human Service delivery system; determine the nature and scope of the problems of the system as experienced by citizens, providers, advocates, and public services; and develop community-based strategies for implementation of statewide reform.

As part of the effort, five pilot sites in ethnically and geographically distinct areas were chosen. These sites are referred to as Federations and the composition of each is inclusive of all segments of the community. The role of a Federation is to determine the needs of their communities and to develop strategies that enable the state human services system to effectively reach specific outcomes relevant to those needs.

The cornerstone of the Illinois effort is to decentralize the systems to get closer to the people, link the systems to communities and to the private sector, and measure the outcomes to see whether the spending changes the life of a human being.

Mr. MacDougal noted that while measuring outcomes sounds obvious, it is usually *process* which is measured. Measuring processes can verify the funds were spent as intended, but not whether the funds produced any difference in anybody's life.

Mr. MacDougal applauded the intent of the Local Empowerment and Flexibility Act, and in particular, the act's emphasis on listening to local communities, which he said is the absolute key to the Illinois effort. He added that providing flexibility in use of funds could not be more important.

Mr. MacDougal gave the subcommittee two examples of how providing flexibility could result in less waste. Mr. MacDougal said he visited the Project Chance welfare-to-work program in Illinois and asked the project director, who holds a master's degree in social work, what percentage of the participants get jobs. The answer was three percent or less. Mr. MacDougal asked why then the program was being run. The project director responded that it was what the regulations called for in order for the participants to be eligible for other programs.

Mr. MacDougal said he then asked the project director what he would do if it were his money funding the program. The response was, "That is easy. I would get a van and I would run it from Robert Taylor Homes (public housing) to Elk Grove Village where the jobs are."

Another example of program rigidity related to the use of a Special Supplemental Food Program for Women, Infants, and Children (WIC) computer. Mr. MacDougal told the Subcommittee there is a WIC computer that by federal law cannot be used for any services other than WIC. Yet one of the big needs at the community level is integrated management information systems, so that when a person who is receiving services comes to an intake worker, the information can cover the whole range of services provided.

Mr. MacDougal continued that he asked the Governor what he thought about the service delivery system. The Governor responded that 70 percent of the problems are related to the Federal Govern-

ment. If those problems could be addressed, more could be done with less money in terms of outcomes.

The state of Oregon has already started to use flexibility with grant programs through the "Ed-flex" waiver authority with education programs. Ms. Paulus told the Subcommittee that flexibility has been beneficial in Oregon in a multitude of situations. She provided three examples.

> Federal dollars for mathematics and science education restrict teacher training to school workshops. With ed-flex, school districts in Oregon may use the money to send teachers to businesses and industries where they can learn how mathematics, science and technology are used in the workplace.
>
> Oregon has a K–14 system. The Oregon Office of Professional Technical Education urged the forming of regional consortia because school reform and school-to-work initiatives tend to be regionally focused. This is a different configuration than suggested in the Carl Perkins Vocational Education Act. Without ed-flex, it would not have been possible for Oregon to receive funds for their efforts in vocational education.
>
> Title 1 regulations require money to be targeted to schools most in need. With ed-flex, administrators can distribute the grant throughout the district in turn helping all children. In addition, Title 1 migrant and English-as-a-second-language regulations typically require children who receive these services to be pulled out of the regular classroom. With ed-flex, all students may participate in the entire school program. These students receiving special services will no longer feel isolated from the rest of their class.[7]

Ms. Paulus added that each Federal grant program comes with its own paperwork and mandates compliance with its own set of regulations and restrictions. With ed-flex, administrators can allocate Federal money where it is most needed, accounting for its use as a whole. She continued by saying the existing accountability structure is very good at determining where Federal money is spent, but it tells us very little about whether we are actually achieving results. Local administrators know best how to achieve the maximum results from the scarce Federal dollar.

Ms. Paulus told the Subcommittee the Federal Government should compliment, not hinder the efforts of innovators at the local level. She said the need to provide flexibility to local and State governments is immense. These localities need to be able to use their acquired funds in a manner suitable to the needs of their communities. According to Ms. Paulus, the Local Empowerment and Flexibility Act will permit variation in how local governments meet national goals, encourage solutions that best fit the local context, and

[7] Testimony of Norma Paulus, Superintendent of Public Instruction for the State of Oregon, before the Subcommittee on Human Resources and Intergovernmental Relations Hearing on H.R. 2086, the Local Empowerment and Flexibility Act of 1995 (September 20, 1995); printed transcript, p. 87.

eliminate regulations that force local governments to solve problems that they do not have.

Two witnesses testified about concerns they had with the Local Empowerment and Flexibility Act. Mr. Lehner told the Subcommittee the Natural Resources Defense Council supports the concept of local input in establishing Federal spending priorities at the local level. However, he stated, the challenge of the bill is to tap into the knowledge and energy of the local level without hindering the attainment of important baseline national environmental health and safety safeguards.

Mr. Lehner continued that this enhanced role must be guided and bound by three key principles. First, trade-offs between programs must be limited to those groups of programs where the benefits of the trade-offs can be understood and balanced, rather than based on the vagaries of political power and media hype. Second, flexibility should not jeopardize fundamental health, safety and environmental protections. Third, important procedural requirements that now exist, particularly those relating to public input on decisions and access to information and data, need not and should not be waived. Finally, the flexibility should relate to the establishment of relative schedules for funding environmental improvements; it should not allow environmental requirements to be weakened.

Several additional issues were of concern to Mr. Lehner. He told the Subcommittee it was not clear if environmental programs are meant to be covered by the bill. He also expressed concerns about the scope of the bill. Mr. Lehner said that some procedural safeguards such as those relating to public input, review and access are important and there would seem to be no need to waive those requirements in order to enhance municipal flexibility.

In addition, he noted that many environmental limits are based on scientific assessments about levels of certain pollutants which could cause human health or environmental problems. Mr. Lehner said a flexibility plan should not be able to alter scientific and health reality underlying those standards. While there could be flexibility as to the timing of environmental improvements, there should not be any waivers of the environmental standards or requirements.

Another witness, Mr. Baker, told the Subcommittee the Service Employees International Union opposed the Local Empowerment and Flexibility Act. According to Mr. Baker, the bill would allow localities to waive critical labor and environmental statutes and regulations, all in the name of local innovation and flexibility.

Mr. Baker told the Subcommittee, "According to H.R. 2086, the Flexibility Council can waive any requirement under Federal law for the administration or provision of benefits under Federal assistance programs as long as the waiver is "reasonably necessary for the implementation of the plan." Such language grants localities broad discretion in seeking waivers for Federal statutes and regulations. The SEIU [Service Employees International Union] is par-

ticularly concerned about the threat these waivers may present to maintaining essential labor standards.[8]

Of additional concern to Mr. Baker was that the Community Advisory Committee established under the bill does not require inclusion of representatives from the public sector, other than local government officials, and does not require the inclusion of the unions representing the public sector workers.

Finally, Mr. Baker said the bill fails to take into account the needs of low-income individuals or the communities in which they live. He testified he thought the bill provides no assurance that low-income communities will benefit from the Federal grant programs.

3. February 22, 1996

At the third hearing the Subcommittee received testimony from: Congressman Steny Hoyer of Maryland; Connecticut State Representative Andrew Norton on behalf of the National Conference of State Legislatures; Angela Park, Coordinator, Sustainable Communities, President's Council on Sustainable Development; Lloyd Smith, President and Chief Executive Officer of the Marshall Heights Community Development Organization, Inc.; Dick Cowden, Executive Director of the American Association of Enterprise Zones; and Eddie R. Battle of Eddie Battle Associates.

Congressman Hoyer said he wanted to work with the Subcommittee to make Federal programs for children and families work better and more efficiently. Congressman Hoyer described the problem.

> Over the years, Congress has created hundreds of categorical programs to help communities and families deal with the myriad of issues confronting them. Each of the programs was created with its own rules and regulations to deal with a particular problem.
>
> In some areas, where local needs don't fit the problems covered by our categorical programs, our services for children and families are vastly inadequate. In other areas, services overlap and duplicate each other; for example, multiple programs may provide case workers to a single family, but each case worker deals only with one aspect of that family's needs.
>
> Case workers spend far too much time dealing with red tape and paperwork, juggling multiple programs with multiple eligibility criteria, application processes and service requirements. The Federal Government has created hundreds of different taps through which assistance flows—and communities, programs and families must run from tap to tap with a bucket to get the help they need.
>
> I welcome your work on H.R. 2086 because I believe that a concerted federal effort to rationalize and coordinate programs for children and families is long overdue. This effort

[8] Testimony of David Baker, Director of the Public Division of the Service Employees International Union, before the Subcommittee on Human Resources and Intergovernmental Relations Hearing on H.R. 2086, the Local Empowerment and Flexibility Act of 1995 (September 20, 1995); printed transcript, p. 108.

> should eliminate federal red tape and unnecessary regulations. It should give local programs the flexibility they need to address local problems. It should create incentives for program coordination which services kids and families better while making more efficient use of our resources.[9]

Congressman Hoyer told the Subcommittee he planned to introduce legislation based on the Local Empowerment and Flexibility Act that would make several additional changes to strengthen the waiver process of the legislation.

According to Congressman Hoyer, there should be a greater emphasis on cross-program coordination, which he said is the key to improving service quality and efficiency. The Subcommittee learned that his bill would allow the creation of consortia of program providers in a community. Consortia members could include State government, local government, and not-for-profit organizations which provide services to children and families. Each consortium would have to include providers in at least three of the program areas of Elementary and Secondary Education, Head Start, child care, job training, housing, WIC, maternal and child health, and Family Support and Preservation. The consortium could then develop a flexibility plan and waiver request which would coordinate their services to children and families.

The second concern of Congressman Hoyer was that the Local Empowerment and Flexibility Act places the burden of fixing federally-created problems on local and state programs. It was his opinion that the Federal Government has the responsibility to fix the problems it created. In Congressman Hoyer's bill, the Flexibility Council would be responsible for overseeing federal efforts to eliminate regulations, simplify requirements, and make waiver requests unnecessary.

In Congressman Hoyer's bill, programs would be automatically exempted from meeting duplicative requirements as long as the requirement was met by the consortium or one of its members. Congressman Hoyer told the Subcommittee that authorizing legislation requires many programs to assess community needs each year and to provide case managers to assist families. However, it does not make sense for each program to repeat work done by several others. Congressman Hoyer said that under the Local Empowerment and Flexibility Act a consortium would have to ask for a waiver to stop doing duplicative work while under the Hoyer bill the waiver would be automatic.

Finally, Congressman Hoyer told the Subcommittee his bill would provide a workable system for tracking and evaluating federal investments and ensuring accountability. Under the Hoyer bill, states would identify desired outcomes and flexibility plans would identify a short list of goals from the state list which the plan is designed to promote. Consortia with approved plans would be responsible for collecting data over time to measure progress towards these goals. Data would be collected on a community-wide

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[9] Prepared written statement of the Honorable Representative Steny Hoyer (D–MD) before the Subcommittee on Human Resources and Intergovernmental Relations Hearing on H.R. 2086, the Local Empowerment and Flexibility Act of 1995 (February 22, 1996).

basis, disaggregated by appropriate subgroups as identified by the consortium, and published.

Congressman Hoyer argued that four purposes would be met by collecting and publishing data in this way. First, collection of data would show how well the programs accomplish their goals for all people in the community, and allow the consortium to improve and adapt services as necessary. Second, publication of data would create bottom-up pressure within the community to serve all segments of the community. Third, disaggregation of data would help to prevent programs from cherry-picking the "best" clients just to improve their outcome statistics, and would create incentives to address the needs of the hardest to serve as well as the easiest. And fourth, collection of this type of data would allow the Flexibility Council to evaluate the effectiveness of its waivers and its financial investment.

The second witness was Connecticut State Representative Andrew Norton. Representative Norton testified on behalf of the National Conference of State Legislatures that the Local Empowerment and Flexibility Act represents a tremendous opportunity to continue the reinvigoration of the intergovernmental trust that has been built up during the 104th Congress.

Representative Norton told the Subcommittee that legislation giving State and local governments greater flexibility would help make more progress in addressing many of the nation's domestic problems. Representative Norton said that over the years, federal rules and regulations have made an already puzzling grant system counterproductive to efficiency. They have stifled creative local approaches to managing change. The myriad of programs designed to get at the same basic issue are overly targeted and duplicative and take more resources than necessary to administer and evaluate.

Representative Norton told the Subcommittee the National Conference of State Legislatures is very supportive of the concept of the Local Empowerment and Flexibility Act and could strongly endorse its passage if three points were addressed. Those points were making States eligible to submit plans and apply for waivers, involving the state legislative branch in the review and application process, and keeping the application and review process as simple as possible.

States should be eligible, according to Representative Norton, because States manage a significant portion of the general domestic agenda of the Federal Government. In addition, where rural and more sparsely populated communities are involved, States are often the level of government most involved in the programs that serve those communities. Furthermore, States are actively involved in the process of change and experimentation, and can share successful approaches with each other.

With regard to the second point, Representative Norton said the state legislative branch should be involved in the review and application process because state funds are appropriated by the state legislative branch and federal funds are currently appropriated by the state legislature in most states as well.

Finally, Representative Norton urged the Subcommittee to keep the application and review process as simple as possible. He said it is not appealing to have to jump through a dozen hoops to avoid

having to jump through two dozen others. Keeping the process simple by working with the state and local organizations will help insure the most positive results.

Representative Norton told the Subcommittee about Connecticut's Neighborhood Revitalization Zone program which allows neighborhoods to identify local and state codes and regulations that are impediments to the neighborhood's revitalization plans, and request waivers and modifications of those regulations. As Representative Norton said, the Local Empowerment and Flexibility Act would dovetail nicely with what Connecticut is already doing since many of the dollars a community receives flow from the Federal Government.

Representative Norton also observed that oversight would be increased under the Local Empowerment and Flexibility Act.

> One of the things I have noticed in our State when towns make applications, they start to get clever about how to apply for things. And we had one case in which they were trying to get together an AIDS hospice in one of our cities, and we were going through, and eventually the names started coming up again, and they were applying for grants under the Department of Health and under the Department of Welfare and under the Department of Housing. They were doing their job.
>
> This local group was doing everything they could to get every type of money from [sic] this different area. But in the meantime, we had no idea how much money the State was giving them, because it was coming from so many different areas. If a group like that could just come to the State Government, be honest and say we want $700,000, can you give it to us, we could probably do it. But they get $150,000 here and there, I got to tell you, if we had a clean system where we could do that, we would have better oversight and we would know what they were doing. [10]

The Subcommittee heard from its third witness, Ms. Park, about the President's Council on Sustainable Development. Ms. Park told the Subcommittee that sustainable development is about doing things in ways that work for the long run because they are better from every point of view—better economically, environmentally and socially. Sustainable communities flourish because they build a mutually supportive, dynamic balance between social well-being, economic opportunity, and environmental quality.

According to Ms. Park, the role of communities is becoming increasingly important as the United States, and much of the rest of the world, moves toward more decentralized decision-making. The Federal Government will continue to bear the responsibility for bringing together diverse interests to establish national standards, goals and priorities. However, she said the Federal Government is providing greater flexibility and expanding the roles played by

[10] Testimony of the Honorable State Representative Andrew Norton (CT), on behalf of the National Conference of State Legislatures, before the Subcommittee on Human Resources and Intergovernmental Relations Hearing on H.R. 2086, the Local Empowerment and Flexibility Act of 1995 (February 22, 1996); original transcript, p. 95.

States, counties, and local communities in implementing policies and programs to address national goals.

Ms. Park observed a trend that is quickly growing into a movement in communities throughout the United States is that of broad, community-based planning. The first recommendation in the Sustainable Communities Task Force report is to bring people together to identify, prioritize, and learn about key issues in their community. The next step is to develop a vision of what they want their community to be and set goals for realizing that vision. Then they must establish indicators for measuring progress, identify the resources needed to reach the goals and implement actions that will advance them.

Ms. Park testified that categorical financial assistance is a barrier to local innovation because it forces a community that has used a holistic, broad-based planning process to identify key community needs to then turn around and force its projects into often narrowly-structured federal grants.

The Subcommittee heard from three witnesses representing organizations and communities that believe greater flexibility with federal grant programs would improve the programs they administer.

For example, Mr. Smith made the same observation as Representative Norton, that one of the biggest benefits of the Local Empowerment and Flexibility Act would be greater oversight coordination since communities would be allocating resources based on a single plan.

Mr. Cowden explained to the Subcommittee how the Local Empowerment and Flexibility Act would help the City of New Orleans work with Tulane University to improve opportunity for that city's youth. The proposal developed by the university and city, Project Fulcrum, will involve comprehensive improvements in housing, public schools and jobs development. The two partners will marshal their own resources and will seek assistance from the State. However, they will also pursue federal support through programs such as the Community Development Block Grants, Home Investment Partnerships, Job Training Partnership Act, Rehabilitation Act Special Demonstration Projects and Community Policing. Mr. Cowden testified that all of these measures could add substantially to Project Fulcrum's chances for success. However, if Tulane, the City and organizations participating in Project Fulcrum must comply with a complex series of application, administration, monitoring and auditing procedures, the project will suffer.

B. DISCUSSION

The Local Empowerment and Flexibility Act allows for the more efficient use of federal, state, local and tribal resources through program flexibility and coordination. The legislation enables state, local and tribal governments, and non-profit organizations to adapt federal grant programs to the particular circumstances of their communities by: (1) integrating federal programs into "flexibility plans" that increase the effectiveness of the programs, (2) eliminating wasteful duplication across federal programs, and (3) authorizing federal officials to waive statutory and regulatory program requirements to enhance the delivery of services.

The purpose of the bill is to make each program included in a "flexibility plan" more effective so that it better serves individuals and the community. To get approval of a "flexibility plan" an applicant must be able to demonstrate that each program included will be at least as effective as it would have been if it had not been included in the plan.

A bipartisan history

The legislation has a bipartisan history. In the 103rd Congress, legislation to provide greater flexibility and allow the waiver of regulatory and statutory requirements was introduced by Congressman John Conyers (D–MI), then-Chairman of the House Government Operations Committee. That legislation, H.R. 2856, the Local Flexibility Act of 1993, was cosponsored by Congressman William F. Clinger, Jr., then-ranking minority member of the committee.

The Local Flexibility Act of 1993 received the support of key Democrats such as then-House Majority Leader Richard A. Gephardt (D–MO). In his written testimony for the October 6, 1993 Human Resources and Intergovernmental Relations Subcommittee hearing entitled "Can State and Local Governments Afford to Implement Health Care and Welfare Reform?" Congressman Gephardt said:

> This nexus of short- and long-term budgetary problems in some of our central cities presents a serious dilemma for our country. Lawmakers at all levels of government must work together to develop targeted economic development policies that will reverse this systemic trend that plagues these urban areas. Eliminating duplicative and cumbersome administrative and regulatory requirements is essential to this effort. We must be able to coordinate and direct government assistance. To that end, *I support the Local Flexibility Act sponsored by Government Operations Committee Chairman Conyers and Ranking Member Clinger,* which would give local governments and private, not-for-profit organizations the flexibility to propose integrated plans for more efficient and effective use of federal assistance. (Emphasis added.)

A Government Operations Committee news release of October 12, 1993 quoted Chairman Conyers as saying:

> Noting that each Federal grant program now has its own requirements, Conyers, who is Chairman of the Committee on Government Operations, said, "*Each of these Federal programs makes sense when viewed from Washington in isolation. But testimony from local not-for-profit groups and public officials demonstrates that at the local level the requirements of these multiple Federal programs cause confusion, waste, and inefficiency*." (Emphasis added.)

The same October 12, 1993 news release quoted Congressman Edolphus Towns (D–NY), then-Chairman of the Subcommittee on Human Resources and Intergovernmental Relations, as saying:

> Towns said, "At the Subcommittee's first hearing this Congress on the crisis in urban America, not-for-profit or-

ganizations testified that *burdensome Federal regulations are the biggest barrier to providing services to poor residents. H.R. 2856 is an important first step toward addressing this critical problem.*" (Emphasis added.)

In the Senate, similar legislation, S. 88, the Local Empowerment and Flexibility Act, was introduced by Senator Mark Hatfield (R–OR) in the 104th Congress. In the 103rd Congress, Senator Hatfield offered the bill as an amendment to H.R. 820, the National Competitiveness Act of 1993. The amendment passed the Senate by voice vote; however, the National Competitiveness Act was not enacted.

Waiver authority: A comparison

The Local Empowerment and Flexibility Act of 1996 retains and adds to the same statutory and regulatory waiver authority that was included in the Local Flexibility Act of 1993. The Local Empowerment and Flexibility Act of 1996 adds additional language to prohibit the waiver of constitutional rights, civil rights and nondiscrimination provisions. Language to prohibit waivers that would diminish national standards in certain sensitive areas such as labor and environmental protections was also added.

The following charts compare the waiver authority included in H.R. 2086 with the waiver authority granted under H.R. 2856, the Local Flexibility Act of 1993.

Comparison of Waiver Language in the Local Flexibility Acts of the 103rd Congress v. the 104th Congress

(Protections added by the 104th Congress in bold)

WHAT CAN BE WAIVED

103rd Congress H.R. 2856, the Local Flexibility Act of 1993	104th Congress H.R. 2086, the Local Empowerment and Flexibility Act of 1996
Section 6 (b) Waiver of requirements - (1) In general. - Notwithstanding any other law and subject to paragraphs (2) and (3), the Interagency Review Council may waive any requirement applicable under Federal law to the administration of, or provision of benefits under, any covered Federal assistance program included in an approved integrated assistance plan, if that waiver is - (A) reasonably necessary for the implementation of the plan; and (B) approved by a majority of members of the Interagency Review Council.	Section 8 (d) Waiver of federal requirements - (1) In general. - Subject to paragraphs (2), (3), (4), and (5), the Board may waive any requirement applicable under Federal statute or regulation to the administration of, or provision of benefits under, any covered Federal assistance program included in an approved flexibility or coordination plan of an eligible applicant if that waiver is reasonably necessary for the implementation of the plan. **(2) Effective period of waiver. -** **A waiver under this subsection shall terminate on the earlier of -** **(A) the expiration of a period that shall be specified by the Board in making the waiver, and that may not exceed the 5-year period beginning on the effective date of the waiver; or** **(B) any date on which the flexibility or coordination plan for which the waiver is granted ceases to be effective.**

FINDINGS REQUIRED BEFORE A WAIVER CAN BE GRANTED

103rd Congress
H.R. 2856, the Local Flexibility Act of 1993 - Conyers' bill

Section 6 (b)(2) Finding required. -
The Interagency Review Council may not waive a requirement under this subsection unless the Council finds that waiver of the requirement will not result in a reduction in services or benefits for any individual or family that is eligible for benefits under a covered Federal assistance program.

104th Congress
H.R. 2086, the Local Empowerment and Flexibility Act of 1996 - Shays' bill

Section 8 (c) Approval of Plans. -
(1) In general. - The Board may approve a flexibility or coordination plan for which an application is submitted by an eligible applicant under this Act, or any part of such a plan, if the Board determines that-

(A) the plan or part will improve the effectiveness and efficiency of providing benefits under covered Federal financial assistance programs included in the plan or part by reducing administrative inflexibility, duplication, and unnecessary expenditures;

(B) the plan or part does not result in a qualitative reduction in services or benefits provided to individuals and families that receive benefits under covered Federal financial assistance programs under the plan or part;

(C) the eligible applicant has adequately considered, and the plan or part appropriately addresses, any effect that administration of each covered Federal financial assistance program under the plan or part will have on administration of the other covered Federal financial assistance programs under the plan or part;

(D) the eligible applicant has or is developing data bases, planning, and evaluation processes for determining whether implementing the plan or part includes the specific goals, measurable performance criteria, comprehensive evaluation system, and other matters required under section 7(c)(5);

(E) the plan or part will more effectively achieve the general goals of each covered

Federal financial assistance program under the plan or part at the State, local and tribal level and will better meet the needs of State, local and tribal citizens;

(F) implementation of the plan or part will adequately achieve the purposes of this Act and of each covered Federal financial assistance program under the plan or part;

(G) the plan or part and the application for approval of the plan comply with the requirements of this Act;

(H) the eligible applicant has -

(i) waived the requirements of its own laws and regulations the waiver of which is necessary for implementation of the plan or part; and

(ii) obtained commitments for any additional necessary waivers from other State, local, or tribal governments;

(I) Federal funds made available under the plan or part will not supplant non-Federal funds for existing services and activities that promote the goals of the plan or part; and

(J) none of the Federal or non-Federal funds used under the plan or part will be used -

(i) to pay the non-Federal share of activities under programs that are not covered Federal financial assistance programs under the plan or part; or

(ii) to meet maintenance of effort requirements of such an activity.

WAIVERS THAT MAY NOT BE GIVEN

103rd Congress
H.R. 2856, the Local Flexibility Act of 1993 - Conyers' bill

Section 6 (3) Limitations. -
The Interagency Review Council may not under this subsection waive any requirement -
(A) that is established by statute or regulation under -
(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);
(iii) title IX of the Education Amendments of 1972 (86 Stat. 373 et seq.);
(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); or
(v) the Americans With Disabilities Act of 1990; or
(B) for payment of a non-Federal share of funding of an activity under a covered Federal assistance program.

104th Congress
H.R. 2086, the Local Empowerment and Flexibility Act of 1996 - Shays' bill

Section 8(d)(3) Requirements that may not be waived. - The Board may not waive under this subsection -
(A) any requirement that enforces any constitutional right;
(B) any requirement under -
(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);
(iii) title IX of the Education Amendments of 1972 (86 Stat. 373 et seq.);
(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);
(vi) the Fair Housing Act (42 U.S.C. 3601 et seq.); or
(vii) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); or
(C) any requirement that enforces any other civil right or nondiscrimination provision, including any right under -
(i) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);
(ii) the Equal Pay Act of 1963 (29 U.S.C. 206(d)); or
(iii) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.).

ADDITIONAL WAIVER PROTECTION LANGUAGE

103rd Congress H.R. 2856, the Local Flexibility Act of 1993 - Conyers' bill	104th Congress H.R. 2086, the Local Empowerment and Flexibility Act of 1996 - Shays' bill
NO ADDITIONAL PROTECTIONS	**Section 8 (d)(4) Waivers that may not be granted. - The Board may not waive under this subsection a requirement if -** **(A) the waiver would -** **(i) diminish national labor relations or labor standards;** **(ii) diminish national environmental standards;** **(iii) diminish educational equality or opportunity;** **(iv) create a threat to public health or safety;** **(v) diminish financial management requirements or impair the Federal Government's position regarding loans or loan guarantees;** **(vi) diminish occupational health or safety;** **(vii) diminish banking or financial service standards; or** **(viii) impair pensions; or** **(B) the waiver pertains to taxation.** IN ADDITION TO MEETING THE ABOVE TEST, A LABOR, ENVIRONMENTAL, EDUCATIONAL OR PUBLIC HEALTH WAIVER MUST ALSO BE REPLACED BY AN EQUAL OR STRONGER REQUIREMENT. **Sec. 8 (d)(5) Waivers for which alternative measures required. -** **(A) In general. - The Board may not waive under this subsection any requirement described in subparagraph (B) unless the approved flexibility and coordination plan for which the waiver is made contains, and the eligible applicant for the plan commits**

to undertake, alternative measures to replace the requirement to be waived.

(B) Requirements described. - Subparagraph (A) refers to the following requirements:

(i) Any requirement in any law or regulation that establishes or enforces labor relations or labor standards.

(ii) Any requirement in any law or regulation that establishes or enforces environmental standards.

(iii) Any requirement in any law or regulation that establishes or enforces educational equality or opportunity.

(iv) Any requirement in any law or regulation that protects public health or safety.

(C) Finding by the Board. - The Board may not waive any requirement described in subparagraph (B) unless the Board determines that the alternative measures contained in the plan with respect to the waiver will maintain or advance national goals, standards, or protections as effectively as the waived requirement.

Administration support for flexibility

As pointed out by one witness, the Local Empowerment and Flexibility Act of 1996 is consistent with the rhetoric of President Clinton and his Administration. The first recommendation of Vice President Al Gore's National Performance Review report on "Strengthening the Partnership in Intergovernmental Service Delivery" is to, "Create flexibility and encourage innovation by designing a bottom-up solution to the problem of grant proliferation and its accompanying red tape."[11]

Vice President Gore's report describes the current system and the problems it creates.

> In the past 12 years, the trend toward federal categorical grantmaking has escalated dramatically—to more than 600 federal grant programs that will spend an estimated $226.1 billion in fiscal year 1994. Some grants are distributed on a formula basis; many others on a competitive or discretionary basis; and still others as entitlements depending upon the enrollment of eligible participants.
>
> Federal grantmaking is not an end in itself. Funds are intended to promote federal policy objectives and contribute to the resolution of real problems affecting real people. Yet, State and local governments, and the clients and customers of the programs these federal funds support, face a maze of different and sometimes contradictory rules, regulations, administrative procedures, and program standards and requirements across this myriad of grants.
>
> The current system of federal grantmaking fragments the ability of government at all levels to address people's needs in an integrated manner. By establishing discrete and often incompatible eligibility standards, and administrative rules and requirements, the proliferation of categorical grants has made government at all levels less effective. Block grants, intended to overcome some of the limitations of categorical programs, are not immune from red tape and unintended consequences. These problems have contributed to the frustration of individuals and families that depend on federal assistance, and have added to taxpayer and customer cynicism about government's ability to manage.[12]

Vice President Gore's report also provides examples of fragmentation.

> One by one, block and categorical grants and their accompanying rules and regulations may make sense; but in combination they often defeat the very purpose for which they were established and undermine, rather than enhance, the ability of service providers and managers to be truly accountable for outcomes.

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[11] Strengthening the Partnership in Intergovernmental Service Delivery, Accompanying Report of the National Performance Review; Office of the Vice President, Washington, D.C. (September 1993); p. 9.

[12] Id., p. 7.

> For example, the Job Opportunity and Basic Skills (JOBS) program is funded through the U.S. Department of Health and Human Services (HHS) and is administered at the local level by social services departments. The JOBS goal is to help citizens become self-sufficient (get jobs) by providing education, work experience, job search training, and job placement.
>
> The Job Training Partnership Act (JTPA) is funded through the Department of Labor and is administered at the local level by community groups known as Private Industry Councils. The goal of this program is to help citizens become self-sufficient by providing training that leads directly to employment.
>
> Although these programs are intended to be compatible, they are seldom used together because: 1) they have different accounting requirements, 2) they have different evaluation procedures, 3) they have different eligibility requirements, and 4) funds from the two programs cannot be pooled. A person wishing to take advantage of both programs, therefore, must go to two sites and be qualified under each program's guidelines. They must attempt to arrange the training they need under the programs and coordinate them. On an administrative level, the programs require separate staff, separate offices, and other supporting costs. Consolidation of the programs would benefit the customer, the community, and the Federal Government.[13]

Vice President Gore's report gives a second example of how grant fragmentation reduces program outcomes.

> Or take, for example, a recent situation where local officials were working to restore a severely blighted but historic area of a city. Federal Community Development Block Grant funds were being used in conjunction with local public and private resources to create new and rehabilitated affordable housing for residents of the area. The city wanted to combine these housing and community redevelopment activities with federal job training funds to hire and train unemployed persons in the construction activity. However, this was not possible because of the conflicting regulations of the separate federal programs.[14]

For a solution to grant fragmentation to succeed it must "create flexibility" and be "bottom-up" as described by Vice President Gore's report.

> For decades, top-down proposals to solve the problems of federal grant management and administration have been offered. Most have failed, or failed to be completely effective, because of a combination of special interest politics, lack of effective interdepartmental planning and decision-making at the federal level, and competing and sometimes conflicting needs and priorities among and between other levels of government. The National Performance Review

[13] Id., p. 8.
[14] Id., pp. 8–9.

> believes that the approach to the problem should be turned, quite literally, upside down.
>
> Instead of concentrating federal efforts on revamping all 600 grants, reconciling the thousands of rules and regulations, and anticipating every possible instance when flexibility and latitude might enhance actual program outcomes at the state or local level, the responsibility of identifying the obstacles and designing the best solutions should be given to the States and localities themselves.
>
> Let the grant consolidation solutions come from the bottom-up, in response to actual barriers and obstacles in the field. Create a partnership that offers administrative and regulatory relief when and where it really matters, and let the learning that process could generate gradually build a body of knowledge about how the overall system can or should be reformed.[15]

The Local Empowerment and Flexibility Act gives the responsibility of identifying the obstacles and designing the best solutions to the States and localities, and lets grant consolidation solutions come from the bottom-up.

Why does H.R. 2086 allow waivers of statutory program requirements?

In the testimony of Judy A. England-Joseph, Director, Housing and Community Development Issues, Resources, Community, and Economic Development Division of the General Accounting Office, she stated that almost 60 percent of the more than 1,000 waiver requests submitted by the Empowerment Zone and Enterprise Community applicants were statutory in nature. Because the EZ/EC authorizing legislation does not permit agencies to waive statutory requirements, these requests were denied. The Local Empowerment and Flexibility Act would correct this barrier to grant integration and consolidation by permitting the Community Empowerment Board to waive both regulatory and statutory program requirements, when such waiver would be in accordance with the provisions of the Act.

At the September 20, 1995 hearing Howard Glaser, Deputy Assistant Secretary for Operations, Office of Community Planning and Development, Department of Housing and Urban Development, testified that of the 271 requests for waivers made by the 12 largest federal Empowerment Zone and Enterprise Communities, 115 were beyond the statutory authority of the agencies responsible for program administration.

One of those requests came from Louisville, Kentucky and typifies the kind of requirements that could be waived under the Local Empowerment and Flexibility Act. Louisville requested that the word "weekly" be waived as it relates to Davis-Bacon reporting requirements for a federally funded construction project. (The law, which was written before computers were invented, requires weekly certification that prevailing wages have been paid.)

Funding for the project was coming from both the Community Development Block Grant (CDBG) and the HOME programs and

[15] Id., p. 9.

involved a contractor with sophisticated management and financial systems. Louisville asked for a waiver of the weekly reporting requirement in favor of a requirement that the builder certify at the beginning and end of construction that the prevailing wages will be and have been paid. This would have ensured the prevailing wage was paid but would have reduced administrative costs.

In a December 6, 1995 letter to Louisville Mayor Jerry E. Abramson, HUD Assistant Secretary for Community Planning and Development Andrew Cuomo informed the mayor his request for a waiver was denied because the Department did not have authority to waive statutory requirements.

Under the Local Empowerment and Flexibility Act, the City of Louisville would be able to request the waiver, and if it were granted, use the money saved to improve or expand the project. Rather than spend money to comply with a requirement that predates computers, the same labor protection could be ensured while advancing the goals of the programs funding the project.

H.R. 2086 authorizes the waiver of statutory requirements, such as the one in the Louisville example, but only when reasonably necessary for implementation of a plan which improves the effectiveness of the programs included in the plan. Waivers can only be granted by the 19 member Community Empowerment Board and only after the Board finds that a waiver meets certain tests as defined by the legislation.

Further, a waiver can be granted only if it is submitted by an eligible applicant and is part of an approved plan that combines two or more federal grant programs the applicant is eligible to receive. This prevents non-Federal governments and non-profits which are not submitting flexibility plans from receiving waivers simply because they do not like a particular regulatory or statutory program requirement. Waivers may only be granted if they are an integral part of a flexibility plan.

Findings by the Community Empowerment Board

For a plan to be approved, it must describe the organizations participating in the plan, the individuals that will be served by the plan, the goals of the plan, a description of how the plan will meet those goals, and a description of the system that will evaluate the success of the plan based on those specific performance goals.

In addition, section 7 requires that to approve a plan, the Board must find that:

> (1) the plan will improve the effectiveness and efficiency of providing benefits under programs included in the plan by reducing administrative inflexibility, duplication, and unnecessary expenditures;
>
> (2) the plan will not result in a qualitative reduction in services or benefits provided to individuals and families that receive benefits under programs included in the plan;
>
> (3) the plan will appropriately address any effect the administration of programs included in the plan will have on programs not included in the plan;
>
> (4) the applicant has data bases, planning and evaluation process for determining whether the plan is meeting its objectives;

(5) the plan will more effectively achieve the general goals of each program included;

(6) implementation of the plan will achieve the purposes of each program included;

(7) the plan complies with the requirements of this legislation;

(8) the applicant has waived or has received commitments to waive any state or local requirements necessary to implement the plan;

(9) Federal funds under the plan will not supplant non-Federal funds; and

(10) no Federal funds under the plan will be used to pay the non-Federal share or meet maintenance of effort requirements of programs included.

Changes made in subcommittee and full committee

In the Chairman's amendment in the nature of a substitute offered at the Subcommittee mark-up on March 14, 1996, a number of changes were made to the legislation to reflect the comments and concerns raised by witnesses at the three hearings.

At the second hearing, John Koskinen, Deputy Director for Management, Office of Management and Budget testified that the Administration wanted to support the Local Empowerment and Flexibility Act if agreement could be reached on certain issues. On September 21, the Subcommittee received a letter from Vice President Al Gore reinforcing Mr. Koskinen's testimony regarding Administration support if certain issues were addressed.

a. Time for considering applications

Vice President Al Gore wrote the Subcommittee Chairman a September 21, 1995 letter restating the Administration's concerns with the Local Empowerment and Flexibility Act. The first issue was, "Improving ways to review applications for waivers, such as establishing an appropriate time frame for reviewing waivers (the 45 day review period does not provide sufficient time to ensure that strategic plans are of a high quality), and ensuring the legislation does not make the process so complex and difficult to administer that it unnecessarily delays community efforts."

The Subcommittee lengthened the time frame for reviewing applications from 45 days to 120 days. In addition to the 120 days, a 60 day extension could be granted if a waiver was needed, more information was needed, or the applicant requested additional time to strengthen its application.

b. Performance measures

The second issue of concern to the Administration was making clear that approval will be granted only to those strategic plans that contain specific goals and measurable performance criteria.

H.R. 2086 as introduced already contained significant requirements for performance measures. Section 7 requires that flexibility plans include "general goals and measurable performance criteria, and a description of how the plan is expected to attain those goals and criteria; a description of how performance shall be measured;

and a system for the comprehensive evaluation of the impact of the plan on the community and program costs * * * ."

At the third hearing Congressman Hoyer recommended additional accountability language. The Subcommittee substitute reflects Congressman Hoyer's suggestion in the form of additional language that requires contents of plans include a system for the comprehensive evaluation of the impact of the plan on the community. In addition, plans must include 1) a list of the goals to improve the community and the lives of the citizens, 2) a list of goals identified by the State, if any, 3) a description of how the plan will attain the goals, measure performance, collect and maintain data, identify specific subgroups within the geographic area covered, and measure the impact on those subgroups

c. States as eligible applicants

The Administration's third recommendation was to make States as well as local governments eligible for waivers and expand the State's involvement in the review of proposed waivers.

The Subcommittee expanded the definition of eligible applicants to include States. The Committee amendment in the nature of a substitute provides an opportunity for the majority and minority leader of the state legislative body, and the chief school officer for the State, to comment on proposed flexibility plans. The Governor of each State already has this opportunity under H.R. 2086 as introduced.

d. Additional exemptions

The fourth concern of the Administration was providing additional exclusions for certain areas, such as tax policy, worker safety, environmental protection, financial management, and public health. This concern was echoed by Mr. Lehner of the Natural Resources Defense Council (NRDC) and Mr. Baker of the Service Employees International Union.

The Committee does not believe the broad exemptions requested by the Administration are necessary or consistent with the bill's goal of flexibility with accountability.

Under section 8(d)(1) the waiver of a requirement can only be approved "if that waiver is reasonably necessary for implementation of the plan." It is the intent of the legislation that a waiver cannot be granted unless the applicant and the Board find the waiver necessary in order for the plan to achieve its performance goals.

The subcommittee and full committee added additional protections. Section 8(d)(4)(A) states that the Board may not waive any requirement if, in the Boards' judgement, the waiver would "(I) diminish national labor relations or labor standards; (ii) diminish national environmental standards; (iii) diminish educational equality or opportunity; (iv) create a threat to public health or safety; (v) diminish financial management requirements or impair the Federal Government's position regarding loans or loan guarantees; (vi) diminish occupational health or safety; (vii) diminish banking or financial service standards; or (viii) impair pensions." Furthermore, section 8(5)(B)(ii) provides that the Board may not waive "any procedural, administrative, or reporting requirement in any statute or regulation that establishes or enforces environmental standards"

unless alternative measures are undertaken to replace the requirement being waived.

If a waiver request met this "non-diminish test" the Board would also have to determine that alternative measures would maintain or advance national goals, standards or protections as effectively as waived requirements for any requirements found in any law or regulations that: establishes or enforces labor relations or labor protections, establishes or enforces environmental standards or protections, establishes or enforces educational equality or opportunity, or that protects public health and safety.

The Committee believes that this language is more than adequate to permit program flexibility while protecting important national standards. An extensive list of exempted statutes, as proposed by the Administration, will unnecessarily narrow the scope of the bill and prevent the waiver of even basic administrative or procedural regulatory and statutory requirements.

Further, the Committee expects that the Board will consult with a wide array of interested parties in making the determinations required under this section.

e. The CEB vs. agency heads: Who should have authority to approve waivers?

The Administration's fifth issue was providing appropriate authority for Federal agency heads to approve waiver requests and sufficient support for the interagency mechanism to respond efficiently to the local strategic plans and waiver requests.

As Vice President Gore's National Performance Review report noted, a lack of effective interdepartmental planning and decision making at the federal level contributed to the failure of past attempts to solve the problems of federal grant management. The Committee finds that to enhance interdepartmental planning and decision making, the Community Empowerment Board should approve flexibility plans and accompanying waiver requests. The Board may not approve a plan unless a memorandum of understanding is entered into by the applicants, the Board and the Federal agencies administering the programs included in the plan.

It is important to note that each agency head with programs covered by this bill have a seat on the Community Empowerment Board; therefore, by design the Board will act with the input of affected agency heads.

f. Replacing Flexibility Council with the Community Empowerment Board

The Administration recommended replacing the Flexibility Council with the Community Empowerment Board, removing the Assistants to the President for Domestic and Economic Policy as members of the Board; and maintaining the President's discretion in selecting the Board members.

The Subcommittee substitute replaced the Flexibility Council with the Community Empowerment Board and removes the Assistants to the President for Domestic and Economic Policy as members of the Board. However, a "Flexibility Council" may be established by the Board to approve flexibility plans which do not request waivers.

g. Prioritizing applicants

The Administration's seventh issue of concern was narrowing the criteria of those who can apply or providing some priority consideration to communities of greater need or distress so that the agencies can process requests in reasonable time frames.

In the Subcommittee substitute, the Board will review at least 50 plans a year. The Board must give priority consideration to plans that are submitted from communities that applied for designation as an Empowerment Zone or Enterprise Community, that seek to coordinate programs from at least three different subject areas, or that do not contain waiver requests. After reviewing the first 50 plans received, the Board may develop additional criteria to govern which additional plans it reviews.

Development and submission of a flexibility or coordination plan requires time, resources and commitments beyond those of normal applications. The legislation reflects that fact and provides priority funding to offset the additional investments made by applicants submitting flexibility or coordination plans. All applicants are eligible for priority funding, whether they are a private, nonprofit organization, a local government, or a State.

"Qualified consortia"

At the third hearing Congressman Steny Hoyer (D-MD) argued for a greater emphasis on cross- program coordination. Congressman Hoyer suggested the bill allow for the creation of consortia of program providers in a community. Consortia members could include state government, local government, and not-for-profit organizations which provide services to children and families. Each consortium must include providers in at least three of the program areas of Elementary and Secondary Education, Head Start, child care, job training, housing, WIC, maternal and child health, and Family Support and Preservation. The consortium would then develop a flexibility plan and waiver request which coordinate their services to children and families.

The Subcommittee substitute included qualified consortia as eligible applicants, as suggested by Congressman Hoyer. The substitute also requires that plans submitted by qualified consortia be given priority consideration by the Board.

Additional powers of the Community Empowerment Board

Congressman Hoyer also told the Subcommittee that he thought the Local Empowerment and Flexibility Act placed the burden of fixing federally-created problems on localities and States, and that the Federal Government should be responsible for fixing the problems created by grant fragmentation.

As suggested by Congressman Hoyer, the Subcommittee substitute added language in Section 4 giving the Community Empowerment Board the responsibility to oversee agency efforts to eliminate unnecessary regulations, simplify requirements, and make waiver requests unnecessary.

This language does not, and is not intended, to give the Board any additional authority to waive federal, state, local or other requirements which it may not otherwise waive. It simply establishes the Board's role as facilitator of agency efforts.

In addition, the Committee added language in section 8 which states: "Nothing in this Act shall be construed to grant the Board or any eligible applicant authority to waive or otherwise preempt (A) any State, local or tribal law or regulation, or (B) any State plan for the use of Federal financial assistance." This provision clarifies that the Board may only waive federal requirements.

Public participation

Mr. Lehner testified that important procedural requirements that now exist, particularly those relating to public input, need not and should not be waived. Section 8(d)(7) increases opportunity for public input and access to information by requiring that notice of all waivers of federal, state and local laws and regulations that are requested be published in a local newspaper as part of the notice for the public hearing. Section 7(b)(4) requires that all applications include "public comments on the proposed plan, including the transcript of at least 1 public hearing and comments of the appropriate community advisory committee designated or established under section 10 for the plan." Section 10 requires the establishment or use of existing community advisory committees for development and implementation of a plan. Section 10(c)(1)(D) requires that "the general public" be part of the membership of a community advisory committee.

The Committee intends that the primary purpose of a community advisory committee, or similar entity, is to ensure that the general public, and especially low-income people receiving benefits under federal grant programs, is integrally involved in developing a flexibility or coordination plan.

III. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The Local Empowerment and Flexibility Act of 1996.

Section 2. Findings

The Congress finds that federal categorical financial assistance programs are used to address our nation's problems. However, some inflexible program requirements impede the effective delivery of services. State, local, and tribal governments and private, nonprofit organizations are dealing with increasingly complex problems that require the delivery of services in many different ways. The nation's communities are all very diverse, and national needs often require different solutions in different communities. Recipients of financial assistance programs have innovative planning and public involvement strategies for providing services which, if give sufficient flexibility to integrate federal financial assistance from multiple programs, could maximize the effectiveness and efficiency of federal financial assistance.

It is more important than ever to: promote more effective and efficient delivery of government services; respond flexibly to national needs; reduce the barriers between programs; coordinate the delivery of programs; and, allow innovation in creating solutions to address national policy goals in ways that recognize the diversity of our nation's communities.

Section 3. Purposes

The purposes of this Act are to: ensure the more efficient use of federal, state, local and tribal resources through program flexibility and coordination; place emphasis in federal programs on achieving policy goals; and, remove Federal impediments to local service delivery. In addition, the purposes are to enable state, local and tribal governments and private, nonprofit organizations to adapt programs of Federal financial assistance to the particular circumstances of their community by: integrating appropriate federal financial assistance programs into flexibility or coordination plans; simplifying procedures across federal programs; authorizing federal officials to waive some program requirements when necessary to enhance delivery of services; and, encouraging cooperative partnerships to address critical needs and problems.

Section 4. Definitions

A "flexibility or coordination plan" is a comprehensive plan to combine two or more federal financial assistance programs to address the service needs of a community. An "eligible federal financial assistance program" is a domestic assistance program to carry out activities consistent with national policy goals, and does not include entitlements such as Social Security or Aid to Families with Dependent Children. The "Board" is the Community Empowerment Board or a Flexibility Council. The Board of a Flexibility Council has the authority to review plans and may waive regulatory or statutory requirements to make the plan possible. "Eligible applicants" are states, local, or tribal governments, qualified organizations or qualified consortia that are eligible to receive financial assistance under one or more eligible Federal financial assistance programs. A "qualified consortium" is one composed of any combination of qualified organizations, state agencies or local agencies that receive federally appropriated funds and includes not less than three organizations providing services in not less than three of the following areas: education, Head Start, child care, family support and preservation, maternal and child health, job training, housing, nutrition, juvenile justice, drug abuse prevention and treatment, and community and economic development.

Section 5. Provision of federal financial assistance in accordance with approved flexibility or coordination plan

Upon approval of a flexibility or coordination plan, federal financial assistance that is included in the approved plan shall be paid and administered in the manner specified in the plan.

Section 6. Establishment of a community empowerment board

This section establishes the Community Empowerment Board (Board) as the Secretaries of: HUD; HHS; Agriculture; Transportation; Education; Commerce; Labor; Treasury; Interior; Energy; Veterans Affairs; and, Defense; in addition to: the Attorney General; the Director of FEMA; the Administrator of the EPA; the Director of National Drug Control Policy; the Administrator of the SBA; the Director of the OMB; and, the Administrator of General Services. The President will appoint a Chair of the Board.

For plans that contain no waiver requests or less significant waiver requests, the Chair may name 5, 7 or 9 of the most affected agency heads to a Flexibility Council to review and consider the plan.

The Board is responsible for: reviewing plans for approval or disapproval; establishing interagency technical assistance teams; and, reviewing and better coordinating regulations dealing with: education, head start; child care; family support and preservation; maternal and child health; job training; housing; nutrition; juvenile justice; drug abuse prevention and treatment; and, community and economic development. The Board must also assist federal agencies in creating: a uniform application to apply for assistance from different programs; a release form to share appropriate information across programs; and, a single system to apply for multiple programs. In addition, the Board must evaluate current performance standards and evaluation criteria for federal financial assistance programs and recommend improvements.

The Board must issue guidelines to implement the Act within 180 days of approval.

Section 7. Application for approval of a flexibility or coordination plan

Applications are submitted to the Board. Applications must include: comments by the governor and leaders of the state legislative body; the applicant's responses to those comments; written commitments of state action and support, including waivers of state regulations, if the state has agreed to any; public comments on the plan, including the transcript of at least one public hearing; a list of any federal regulatory or statutory requirements the applicant believes should be waived and a justification for the waiver; and other information the Board and the applicant determine is necessary.

The contents of the plan must include: a brief description; the geographic area to which it applies; the agencies and organizations collaborating to provide services and benefits; the individuals that will receive services and benefits; the general goals and measurable performance criteria; a description of how the plan is expected to attain those goals; and, a system for the evaluation of the plan's impact. The system to evaluate the plan must include a list of goals to improve the community and a list of goals identified by the state, if any. In addition, the application must describe how the plan will: attain the goals; measure performance; collect and maintain data; and, identify specific subgroups within the community and measurement of the impact of the plan on these subgroups.

Applications must also include a description of sources of all nonfederal funds required to carry out covered federal financial assistance programs included in the plan, and the estimated duration of any additional planning time necessary between approval and implementation of the plan's waivers.

At least 60 days prior to submitting the plan to the Board, applications must be submitted to the state government and local governments that are directly affected by the plan. Within 60 days, the governor, leaders of the state legislative body, chief state school officer, and chief executive officer of a local government that receives

an application must: prepare comments; make commitments to waive requirements under any state or local laws or regulations, if any; describe and make commitments to provide financial or technical support; and submit the comments and commitments to the applicant. In the event one of these entities fails to act within 60 days or disagrees with all or part of the plan, the applicant may submit the plan to the Board with any additional changes needed. An application for approval under this Act shall be considered by each affected agency as an application for assistance under each covered federal financial assistance program, and shall be given priority consideration for funding under that program.

Section 8. Review and approval of flexibility or coordination plans and waiver requests

The Board shall review at least the first 50 plans each year. Priority consideration will be given to plans that; are reviewable by a Flexibility Council, are submitted by a community that applied for EZ/EC status; or that coordinate Federal financial assistance programs from at least three of the following areas: education; Head Start; child care; family support and preservation; maternal and child health; job training; housing; nutrition; juvenile justice; drug abuse prevention and treatment; or, community and economic development. After reviewing the first 50 plans, the Board may develop its own criteria to determine which subsequent plans will be reviewed.

The Board must notify the applicant upon acceptance of an application for review. Within 120 days, by a majority, the Board must approve or disapprove of all or part of the plan. The review period may be extended an additional 60 days if: the Board determines the waiver of one or more Federal statutory or regulatory requirements is necessary; additional information or clarification is necessary; or, the applicant requests additional time to strengthen its application. The Board must notify the applicant within 15 days of its decision regarding the plan. Notification of disapproval must include a written justification for the disapproval.

A Board may approve a plan if: the plan improves effectiveness and efficiency of providing benefits; the plan does not result in a qualitative reduction in services; the applicant has considered and the plan addresses any effect the administration of each covered Federal financial assistance program will have on other covered Federal financial assistance programs; evaluation processes are or have been developed; the plan more effectively achieves Federal government goals; implementation of the plan or part of the plan will achieve the purposes each of Federal financial assistance program under the plan; waivers or commitments to waive any needed state, local or tribal statutory or regulatory requirements are included; federal funds do not supplant non-federal funds; and, maintenance of effort requirements are met.

The Board may not approve a plan or part of a plan if it would result in an increase in obligations or outlays of discretionary appropriations or direct spending under covered federal financial assistance programs.

The Board may waive statutory or regulatory requirements of a federal financial assistance program included in an approved plan,

if that waiver is necessary for implementation of the plan. The Board may waive statutory or regulatory procedural, administrative, or reporting requirements that are generally applicable to the federal financial assistance program, if that waiver is necessary for implementation of the plan.

The Board must specify the period during which a plan is approved, which in no case shall be greater than 5 years.

The Board may not waive any requirement that enforces any constitutional right or any requirement under: title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990; the Fair Housing Act; or, the Individuals with Disabilities Education Act.

The Board may not waive any requirement that enforces any other civil right or nondiscrimination provision, including any right under: title VII of the Civil Rights Act of 1964; the Equal Pay Act of 1963; or, the Age Discrimination in Employment Act of 1967.

The Board may not approve any waiver, that would: diminish national labor relations or labor standards; diminish national environmental standards; diminish educational equality or opportunity; create a threat to public health or safety; diminish financial management requirements or impair the federal government's position regarding loans or loan guarantees; diminish occupational health or safety; diminish banking or financial service standards; pertain to taxation; or, impair pensions.

In addition, the Board shall not approve a waiver of any procedural, administrative, or reporting requirement applicable to the administration of a covered federal grant program that: establishes or enforces labor relations or labor standards; establishes or enforces environmental standards; establishes or enforces educational equality or opportunity; protects public health or safety, unless the Board finds that a plan contains an alternative measure(s) that will maintain or advance national goals, standards, or protections as effectively as those being waived.

Nothing in this act shall be construed to grant the Board or any eligible applicant authority to waive or otherwise preempt any state, local or tribal law or regulation, or any state plan for the use of federal financial assistance.

Prior to submitting an application to the Board eligible applicants must notify the affected community(s) of all the waivers requested as part of the plan by publishing a notice in a newspaper of general circulation.

A memorandum of understanding shall specify all understandings reached among the Board, federal agencies administering federal financial assistance programs under the plan, and eligible applicants.

A decision by the Board to approve or disapprove a plan will not be effective until the end of the 60 day period beginning on the date the President certifies that the approval or disapproval is in accordance with this act. The President shall make a certification within 15 days after the date of the decision by the Board.

Section 9. Implementation of approved flexibility or coordination plans

Any benefit provided under a covered federal financial assistance program included in an approved plan shall be paid and administered in the manner specified in the plan. Federal agency heads shall seek to provide special assistance to eligible applicants to support implementation of approved plans.

Approved applicants must: periodically evaluate the effect the plan has on individuals and subgroups receiving benefits; communities in which those individuals live; and, the cost of implementing the plan. Within 90 days of the one year anniversary of the approval of a plan the applicant must submit a report on the plan's principal activities and achievements.

The Board may terminate a plan if: it is not achieving the established goals and performance criteria; the goals and criteria are not sound; the approved applicant is unable to meet its commitment; or, there has been fraud or abuse involving Federal funds.

A final report on implementation of the plan shall be submitted to the Board no later than 60 days before the end of the effective period of an approved plan.

Section 10. Community advisory committees

Community Advisory Committees shall advise applicants in the development and implementation of plans, including advice on conducting public hearings, and reviewing any proposed actions that would affect low-income individuals and families.

Community Advisory Committees must consist of persons: with private and voluntary sector leadership experience; local elected officials; representatives of participating qualified organizations; and, the general public. Existing organizations with the required membership may serve as Community Advisory Committees.

Before submitting a plan for final approval or a report on an existing plan, the Community Advisory Committee shall review and comment on the plan or report.

Section 11. Technical and other assistance

The Board may provide or direct the head of a federal agency to provide technical assistance to an eligible applicant in developing information necessary for the design or implementation of a plan, if the eligible applicant provides a description of the plan and a description of the groups or individuals who would benefit. The Board may also request assurances that all members of the community affected will have adequate ability to participate in the proposed flexibility or coordination plan.

Section 12. Reports by the board

Beginning no less than 18 months enactment, the Board shall submit to the President and the Congress an annual report listing the statutory or regulatory requirements that were most frequently waived.

Section 13. Repeal

The Local Empowerment and Flexibility Act is repealed on September 30, 2001.

IV. ROLLCALL VOTES

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
104th CONGRESS
ROLL CALL
April 24, 1996
Offered by Congresswoman Morella

Amendment # 1
Amendments to the Amendment in the Nature of a Substitute
Page 26, line 18, strike "adequately".
Page 29, strike line 17 and all that follows through page 30, line 2, and insert the following:
(d) WAIVERS OF FEDERAL REQUIREMENTS.--

Name	Aye	Nay	Present	Name	Aye	Nay	Present
Mr. Clinger	X			Mrs. Collins -IL		X	
Mr. Gilman	X			Mr. Waxman		X	
Mr. Burton	X			Mr. Lantos		X	
Mr. Hastert	X			Mr. Wise		X	
Mrs. Morella	X			Mr. Owens		X	
Mr. Shays	X			Mr. Towns		X	
Mr. Schiff				Mr. Spratt			
Ms. Ros-Lehtinen	X			Ms. Slaughter		X	
Mr. Zeliff	X			Mr. Kanjorski		X	
Mr. McHugh	X			Mr. Condit			
Mr. Horn	X			Mr. Peterson		X	
Mr. Mica	X			Mr. Sanders		X	
Mr. Blute	X			Mrs. Thurman		X	
Mr. Davis	X			Mrs. Maloney		X	
Mr. McIntosh	X			Mr. Barrett		X	
Mr. Fox				Ms. Collins - MI		X	
Mr. Tate	X			Ms. Norton			
Mr. Chrysler	X			Mr. Moran	X		
Mr. Gutknecht	X			Mr. Green		X	
Mr. Souder	X			Mrs. Meek		X	
Mr. Martini				Mr. Fattah		X	
Mr. Scarborough				Mr. Brewster			
Mr. Shadegg	X			Mr. Holden		X	
Mr. Flanagan	X						
Mr. Bass	X						
Mr. LaTourette	X						
Mr. Sanford	X						
Mr. Ehrlich	X						

Totals: 25 Ayes 18 Nays Answer Present

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
104th CONGRESS
ROLL CALL
April 24, 1996
Offered by Congressman Towns

Amendment # 2
To the Amendment in the Nature of a Substitute
Page 29, strike line 17 and all that follows through page 30, line 2, and insert the following:
(d) WAIVERS OF FEDERAL REQUIREMENTS.--
(1) WAIVER AUTHORITY.--

Name	Aye	Nay	Present	Name	Aye	Nay	Present
Mr. Clinger	X			Mrs. Collins -IL		X	
Mr. Gilman	X			Mr. Waxman		X	
Mr. Burton	X			Mr. Lantos		X	
Mr. Hastert	X			Mr. Wise			
Mrs. Morella	X			Mr. Owens		X	
Mr. Shays	X			Mr. Towns		X	
Mr. Schiff				Mr. Spratt			
Ms. Ros-Lehtinen	X			Ms. Slaughter		X	
Mr. Zeliff	X			Mr. Kanjorski		X	
Mr. McHugh	X			Mr. Condit			
Mr. Horn	X			Mr. Peterson		X	
Mr. Mica	X			Mr. Sanders		X	
Mr. Blute	X			Mrs. Thurman		X	
Mr. Davis	X			Mrs. Maloney		X	
Mr. McIntosh	X			Mr. Barrett		X	
Mr. Fox	X			Ms. Collins - MI		X	
Mr. Tate	X			Ms. Norton			
Mr. Chrysler	X			Mr. Moran	X		
Mr. Gutknecht	X			Mr. Green		X	
Mr. Souder				Mrs. Meek		X	
Mr. Martini				Mr. Fattah		X	
Mr. Scarborough				Mr. Brewster			
Mr. Shadegg	X			Mr. Holden		X	
Mr. Flanagan	X						
Mr. Bass	X						
Mr. LaTourette	X						
Mr. Sanford	X						
Mr. Ehrlich	X						

Totals: 25 Ayes 17 Nays Answer Present

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
104th CONGRESS
ROLL CALL
April 24, 1996
Offered by Congressman Sanders

Amendment # 3
To the Amendment in the Nature of a Substitute
At the end of section 8(d) (page 34, after line 8), add the following new paragraph:
NOTICE OF REQUESTED WAIVERS. Prior to submitting an application to the Board, eligible applicants shall provide notice of all waivers of federal, state, and local laws and regulations that are requested. Notice shall be provided to the community or communities deemed by the eligible applicant to be affected by the waivers via publication in a newspaper of general circulation. Whenever possible, notice of the requested waivers shall be provided as part of the notice for the public hearing.

PASSED BY VOICE VOTE

Name	Aye	Nay	Present	Name	Aye	Nay	Present
Mr. Clinger				Mrs. Collins -IL			
Mr. Gilman				Mr. Waxman			
Mr. Burton				Mr. Lantos			
Mr. Hastert				Mr. Wise			
Mrs. Morella				Mr. Owens			
Mr. Shays				Mr. Towns			
Mr. Schiff				Mr. Spratt			
Ms. Ros-Lehtinen				Ms. Slaughter			
Mr. Zeliff				Mr. Kanjorski			
Mr. McHugh				Mr. Condit			
Mr. Horn				Mr. Peterson			
Mr. Mica				Mr. Sanders			
Mr. Blute				Mrs. Thurman			
Mr. Davis				Mrs. Maloney			
Mr. McIntosh				Mr. Barrett			
Mr. Fox				Ms. Collins - MI			
Mr. Tate				Ms. Norton			
Mr. Chrysler				Mr. Moran			
Mr. Gutknecht				Mr. Green			
Mr. Souder				Mrs. Meek			
Mr. Martini				Mr. Fattah			
Mr. Scarborough				Mr. Brewster			
Mr. Shadegg				Mr. Holden			
Mr. Flanagan							
Mr. Bass							
Mr. LaTourette							
Mr. Sanford							
Mr. Ehrlich							

Totals: Ayes Nays Answer Present

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
104th CONGRESS
ROLL CALL
April 24, 1996
Offered by: Chairman Clinger

Amendment # 4
Amendment in the Nature of a Substitute to H.R. 2086

PASSED BY VOICE VOTE

Mr. Clinger				Mrs. Collins -IL			
Mr. Gilman				Mr. Waxman			
Mr. Burton				Mr. Lantos			
Mr. Hastert				Mr. Wise			
Mrs. Morella				Mr. Owens			
Mr. Shays				Mr. Towns			
Mr. Schiff				Mr. Spratt			
Ms. Ros-Lehtinen				Ms. Slaughter			
Mr. Zeliff				Mr. Kanjorski			
Mr. McHugh				Mr. Condit			
Mr. Horn				Mr. Peterson			
Mr. Mica				Mr. Sanders			
Mr. Blute				Mrs. Thurman			
Mr. Davis				Mrs. Maloney			
Mr. McIntosh				Mr. Barrett			
Mr. Fox				Ms. Collins - MI			
Mr. Tate				Ms. Norton			
Mr. Chrysler				Mr. Moran			
Mr. Gutknecht				Mr. Green			
Mr. Souder				Mrs. Meek			
Mr. Martini				Mr. Fattah			
Mr. Scarborough				Mr. Brewster			
Mr. Shadegg				Mr. Holden			
Mr. Flanagan							
Mr. Bass							
Mr. LaTourette							
Mr. Sanford							
Mr. Ehrlich							
Totals:		Ayes		Nays		Answer Present	

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
104th CONGRESS
ROLL CALL
April 24, 1996
Offered by: Chairman Clinger

Final Passage of H.R. 2086

Mr. Clinger	X			Mrs. Collins -IL		X	
Mr. Gilman				Mr. Waxman		X	
Mr. Burton	X			Mr. Lantos		X	
Mr. Hastert				Mr. Wise		X	
Mrs. Morella	X			Mr. Owens		X	
Mr. Shays	X			Mr. Towns		X	
Mr. Schiff				Mr. Spratt		X	
Ms. Ros-Lehtinen	X			Ms. Slaughter		X	
Mr. Zeliff	X			Mr. Kanjorski		X	
Mr. McHugh	X			Mr. Condit			
Mr. Horn	X			Mr. Peterson		X	
Mr. Mica				Mr. Sanders		X	
Mr. Blute	X			Mrs. Thurman		X	
Mr. Davis	X			Mrs. Maloney		X	
Mr. McIntosh	X			Mr. Barrett		X	
Mr. Fox	X			Ms. Collins - MI		X	
Mr. Tate	X			Ms. Norton			
Mr. Chrysler	X			Mr. Moran	X		
Mr. Gutknecht				Mr. Green		X	
Mr. Souder				Mrs. Meek		X	
Mr. Martini				Mr. Fattah		X	
Mr. Scarborough				Mr. Brewster			
Mr. Shadegg	X			Mr. Holden		X	
Mr. Flanagan	X						
Mr. Bass	X						
Mr. LaTourette	X						
Mr. Sanford	X						
Mr. Ehrlich	X						

Totals: 21 Ayes 19 Nays Answer Present

V. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 1996.

Hon. WILLIAM F. CLINGER, Jr.,
Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2086, the Local Empowerment and Flexibility Act of 1996, as ordered reported by the House Committee on Government Reform and Oversight on April 24, 1996. We estimate that enacting H.R. 2086 would increase the cost to the Federal Government to review state and local plans for integrating federal and nonfederal programs and funding. Depending on the number and complexity of these plans, the additional cost could be significant; however, we are unable to estimate the extent of the increase. Any increase in federal spending would be subject to the availability of appropriated funds. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

Bill purpose.—H.R. 2086 would statutorily establish the Community Empowerment Board; it would be comprised of the heads of 19 departments and agencies. (The Board has already been created by the President; H.R. 2086 would require its existence by statute, and would broaden its role.) The Board would approve or disapprove state and local plans for integrating and administering certain federal and nonfederal programs that provide funding for education, juvenile justice, health and social services, and community development. In approving a plan, the Board would have the authority to waive the requirements of certain federal statutes and regulations, thus potentially reducing regulatory burdens while enhancing state and local flexibility in administering the consolidated programs. H.R. 2086 would prohibit the Board from waiving requirements that enforce constitutional or civil rights or that would serve to diminish certain national standards, such as those for the environment, education, and workplace safety. Finally, the bill would prohibit the Board from approving any plan that would result in an increase in Federal spending.

Under H.R. 2086, the Board could approve a plan for a period of up to five years. Any decision by the Board to approve or disapprove a plan or to terminate an approved plan would require the certification of the President. The bill and its provisions would terminate on September 30, 2001.

Federal budgetary impact.—The President established the Community Empowerment Board to assist with the implementation of the Empowerment Zone and Enterprise Communities program included in the 1993 Omnibus Budget Reconciliation Act (OBRA). H.R. 2086 would broaden the Board's role and authority to include proposals to integrate programs in areas other than community development and to allow for the waiver of certain statutory requirements.

Because the Board could not approve a plan that would increase federal spending, H.R. 2086 would not affect direct spending. However, by significantly expanding both the Board's authority and the

number of potential petitioners—the Office of Management and Budget estimates that about 19,000 local communities would be eligible—the bill would increase the costs to the federal government of reviewing plans submitted by state and local governments. In the budget submitted for fiscal year 1997, the President requested $1 million for the Board; that amount would provide the funding for a staff of eight full-time employees.

Because CBO cannot predict the number of additional plans that would be submitted for review, or the amount of additional time needed to review requests for waivers from existing statutes, we are unable to estimate the extent that costs would increase under H.R. 2086. Based on the prior experience of the Community Empowerment Board, we expect that for some agencies, such as the Departments of Housing and Urban Development and Health and Human Services, the additional costs could be significant.

H.R. 2086 also could result in some savings in administrative costs to the federal government. Enacting the bill would encourage communities to consolidate their efforts related to multiple federal programs. As a result, having the state or local government primarily responsible for monitoring and administrating the consolidated program could reduce the need for some federal administrative activities. But because we do not know the type or number of plans that would be approved under H.R. 2086, we cannot estimate the extent of such potential savings.

In sum, we expect that costs would increase under H.R. 2086, but at this time, CBO cannot estimate the likely level of the net increase. Funds for any increase would be subject to the availability of appropriated amounts.

Mandates statement.—H.R. 2086 contains no intergovernmental or private sector mandates as defined in Public Law 104–4, and would impose no direct costs on state, local, or tribal governments. The bill would provide these governments with additional flexibility in using and consolidating federal financial assistance. Such flexibility could lead to significant savings in the administration of some federal grant programs.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John R. Righter, for the federal costs, and Theresa Gullo, for the state and local costs.

Sincerely,

JUNE E. O'NEILL, *Director.*

VI. INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the House of Representatives, the Committee estimates that H.R. 2086 will have no significant inflationary impact on prices and costs in the national economy.

VII. COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(l)(3) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1), and clause 3(f), the results and findings from the Committee oversight activities are incorporated in the bill and this report.

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Clause 3 of rule XIII of the Rules of the House of Representatives requires that changes in existing law made by the bill, as reported, be included in the report.

This bill makes no direct amendments to any Act.

IX. CONGRESSIONAL ACCOUNTABILITY ACT: P.L. 104–1; SECTION 102(B)(3)

H.R. 2086 is not applicable to the legislative branch because it does not relate to any terms or conditions of employment or access to public services or accommodations.

X. BUDGET ANALYSIS AND PROJECTIONS

This Act provides for no new authorizations or budget authority or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act are not applicable.

MINORITY VIEWS

Although we oppose passage of the "Local Empowerment and Flexibility Act of 1996", we favor the concept of providing greater flexibility to local governments and not-for-profit organizations in the use of Federal grants. During the 103rd Congress, the Subcommittee on Human Resources and Intergovernmental Relations held hearings on a bipartisan bill similar to H.R. 2086 that was introduced by Chairman Clinger and the former Chairman of the Committee, John Conyers, Jr.

During that same Congress, Members of this Committee were appointed as conferees to a local flexibility provision attached by Senator Hatfield to the National Competitiveness Act. All conferees, both House and Senate, Democrat and Republican, supported the conference agreement on local flexibility. The Administration also supported the conference agreement. However, disagreement on other parts of the Act stalled the bill in conference.

This bipartisan House-Senate flexibility compromise limited waivers only to regulations, and then only to specific grant items such as substance abuse treatment, juvenile justice, and school lunch programs; and specifically prohibited statutory waivers.

By contrast, H.R. 2086, was reported by a partisan vote of 21–19. The bill is opposed by the Administration, and a broad coalition of labor, education, child welfare and environmental organizations. Thus, what started out as a bipartisan issue, has evolved into a partisan Republican bill, which just barely has the support of a majority of Committee Members.

H.R. 2086 would permit the indiscriminate waiver of Federal law. Pursuant to Section 8(d)(4) the "Community Empowerment Board", an Executive branch board established as part of Enterprise Zone legislation, is granted broad authority to waive laws relating to labor relations or labor standards; national environmental standards; educational standards; educational equality; threats to public health or safety; financial management; and occupational health or safety so long as a waiver plan submitted by local governments or community organizations does not "diminish" the requirements in these laws.

In the areas of labor relations or labor standards, Section 8(d)(4) would permit the waiver of such laws as the Fair Labor Standards Act, Davis-Bacon, Family and Medical Leave Act, ERISA and the National Labor Relations Act. In the area of national environmental standards, the bill would permit the waiver of laws like the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, Superfund, the Toxic Substances Control Act and the Endangered Species Act. Regarding health and safety the bill would permit the waiver of the Federal Meat Inspection Act, the Ryan White Act, the Federal Aviation Act, the Child Nutrition Act and the Breast and Cervical Cancer Screening Act. Educational laws like Head Start,

the Elementary and Secondary Education Act and the Goals 2000: Educate America Act could be waived under the bill.

The sponsor of the bill indicated that Section 8(d)(4) would not permit the waiver of these fundamental laws, and stated that the word "diminish" would prevent any weakening of the statutory requirements of these and other laws. However, the bill contains no definition of the bill's concept to "diminish" the requirements of law. Moreover, the Subcommittee on Human Resources and Intergovernmental Relations, which held hearings on H.R. 2086, received no testimony on this issue.

Without any definition or legislative history of "diminishing" Federal requirements, a new "Community Empowerment Board" would be free to apply whatever standard it chooses in determining what constitutes a diminishing requirement under this bill. Without Congressional guidance on this issue, these standards will change dramatically from Administration to Administration.

For example, there are those who argue that the elimination of the minimum wage requirement does not diminish labor standards, and provides more flexibility to our business community. When the reauthorized Clean Water Act exempted 70,000 chemicals from existing pollution control, and allowed waivers for over 20 cities from the current requirement for treatment of sewage before discharging it into the ocean, supporters argued that the requirements of the Act were not diminished. When big cuts were made in funds for safe drinking water, supporters also justified those cuts by arguing that they did not diminish the protections in the Act. If these cuts and changes in labor and environmental law are not viewed as "diminishing" then almost any reduction in statutory protections can be viewed as not "diminishing".

In addition, the bill has a list of laws that cannot be waived. Section 8(d)(3) provides that the "Board" may not waive any Constitutional right or any civil right. The bill's sponsor stated that the "Board" may not waive any laws listed in this section. However, since the waiver of laws related to labor, the environment, education, and health and safety are not in Section 8(d)(3), clearly these laws can be waived. The only questions is when and under what circumstances.

In support of statutory waivers several supporters of the bill argued that since Congress could not possibly know of every circumstance that might come up under a particular statute, waivers were a good way to put flexibility into the law in order to handle unforeseen circumstances, and to avoid a "one size fits all" approach to legislating.

We agree that in some circumstances we may need more flexibility in the process by which the rights guaranteed in our laws are achieved. That is what regulations are for. But that is much different from permitting the Executive branch to waive the rights guaranteed in our laws. Congress should not turn over to agency officials the responsibility for deciding whether to waive Federal law.

Several supports of the bill also implied that the waiver of Federal laws was acceptable since the original "Local Flexibility Act" introduced by the former Democratic Chairman of the Committee, John Conyers, Jr., contained statutory waivers. It is true that the

original Conyers-Clinger bill contained statutory waiver. But after further consideration this concept was discarded.

The bi-partisan agreement reached on the National Competitiveness Act in the last Congress, limiting waiver only to regulations reflected the Democratic position on local flexibility during the 103rd Congress.

Consistent with the bi-partisan agreement reach on the National Competitiveness Act, Rep. Edolphus Towns, Ranking Member of the subcommittee, offered an amendment which would have applied H.R. 2086 only to agency regulations. The Towns amendment stated:

> The Board may not waive under this subsection any requirement established by or required under any Federal statute.

This straightforward amendment, if adopted, would have solved one of the major problems with H.R. 2086. However, the Towns amendment was defeated after Rep. Morella offered an amendment to the Towns amendment which was approved by the Committee.

According to Rep. Morella, her amendment limits any waivers on laws relating to cross-cutting requirements on the environment, labor issues, occupational safety and public health to procedural, administrative or reporting requirements in those laws. However, a careful reading of the amendment makes it clear that the amendment does not in any way limit the waiver of substantive law under H.R. 2086.

We are also deeply concerned that this bill creates confusing levels of government bureaucracy. Section 6(c) of H.R. 2086 gives the "Community Empowerment Board" established under Enterprise Zone legislation, broad new powers to review and approve flexibility plans and to draft regulations. The "Community Empowerment Board" consists of the heads of 19 different agencies. As the Director of the Office of Management and Budget, Alice Rivlin said in an April 17, 1996 letter to subcommittee Chairman Shays opposing H.R. 2086:

> The Subcommittee bill makes the CEB a "superagency." It vests authority in the CEB to approve or revoke waivers and approve or terminate plans, rather than the "affected Federal agencies * * *" In addition, the bill gives the CEB, not the agencies, the lead in setting a wide range of policies. In the spirit of reinvention and smaller government, we are opposed to creating a new bureaucracy to approve the wavier requests.

The proposed board will likely be unworkable. Each agency head will inevitably attempt to protect the power and influence of their agency. At a time when the Clinton Administration is carefully streamlining the Federal government, this new "superagency" takes us in the wrong direction.

We are also concerned that H.R. 2086 creates additional levels of bureaucracy at the local level. Under Section 10 of the bill, an eligible applicant for financial assistance is required to designate an existing organization as a "community advisory committee." The "community advisory committee" is supposed to advise the appli-

cant in the development and implementation of its flexibility or coordination plan.

In the real world what will happen is that different groups are going to fight over who will become the "community advisory committee" in order to influence the direction and operation of the flexibility or coordination plan in an effort to control which organizations get grants. This will lead to even less flexibility.

There are many additional problems with this bill. Two of those problems are also discussed in the Administration's April 17th letter to subcommittee Chairman Shays. According to the Administration H.R. 2086 may encourage financial mismanagement.

> As drafted, H.R. 2086 appears to allow broad fungibility of Federal grant funds and provides insufficient financial management and performance accountability * * * Moreover, the extent of the fungibility of Federal funds implied by the House bill raises significant legal and financial accountability issues for Federal agencies responsible for managing these grant programs.

The other issue raised in the Administration's letter involves the role of State government:

> Under the House bill, local governments might seek to bypass the State and obtain funds directly from the Federal Government. In addition, this provision would substantially increase the complexity of flexibility proposal, and bog down the review process * * * Further, it is not appropriate to by-pass the role of State governments and other partners who must remain involved in intergovernmental service delivery.

SUMMARY

As described above, we favor the need to increase flexibility in regulations regarding Federal grant programs. The Federal government now has over 528 different categorical grant programs. Access to these programs is often confusing and difficult for individuals, families and local governments.

However, in fashioning a responsible bill we should remember that Americans do not wish to see programs that are designed to protect the environment, labor, education and health and safety dismantled in the name of flexibility. Moreover, at a time when the Administration and Congress are streamlining the Federal government we, should also avoid the creation of additional levels of bureaucracy which will only make it more difficult for the American people to understand the operations of the Federal government.

The supporters of this bill should work with all sides to achieve a fair consensus. Unfortunately, this bill has ventured far beyond its original objectives of flexibility, and in the process has lost its broad support.

CARDISS COLLINS.
EDOLPHUS TOWNS.
HENRY A. WAXMAN.
TOM LANTOS.
BOB WISE.

MAJOR R. OWENS.
JOHN SPRATT.
LOUISE SLAUGHTER.
BERNARD SANDERS.
KAREN L. THURMAN.
CAROLYN B. MALONEY.
TOM BARRETT.
BARBARA-ROSE COLLINS.
GENE GREEN.
CARRIE P. MEEK.
CHAKA FATTAH.
TIM HOLDEN.

DISSENTING VIEWS OF REPRESENTATIVE CARRIE P. MEEK

I support the general objective of H.R. 2086. We all know of examples of Federal requirements that impede the effective delivery of services to those who are supposed to benefit from Federal grants. But we must be very careful in how we draft the legislative solution.

The basic approach of H.R. 2086 is to have Congress transfer its authority over legislation to the Executive branch. Under section 8(d) of the reported bill, the Executive branch will be able to waive many statutory requirements passed by Congress if the Executive branch approves a plan submitted by a State, a local government, a tribe, or a local not-for profit organization.

That is giving too much power to the Executive branch.

This point can be illustrated by focusing on the Elementary and Secondary Education Act ("ESEA"). The last Congress completely rewrote the ESEA when it passed the Improving America's Schools Act. There was bipartisan support for that legislation.

That law went about the waiver issue in the correct way. It gave the Secretary of Education waiver authority, but it also said that there were nine statutory requirements in the ESEA that could not be waived by the Secretary.

The current ESEA waiver authority is working well. In the last year the Department of Education has received 241 requests for waivers. It has granted 101, and for 57 it explained to the local schools that a waiver was not needed to do what the local schools wanted to do. The Department did not approve 14 waiver requests, and the other 69 waiver requests are currently being reviewed.

H.R. 2086 will permit a future Executive branch to wavie parts of the ESEA that the 103rd Congress so carefully agreed could not be waived. For example, H.R. 2086—

Permits a future Executive branch to waive the current statutory prohibition on a school district's spending Federal funds for religious worship or instruction;

Permits a future Executive branch to let a particular school district eliminate the current statutory right of parents to be involved in the local decisions on who to use Federal education funds;

Permits a future Executive branch to allow a particular governor to change the current statutory formulas for the allocation of Title I funds within a particular state; and

Permits a future Executive branch to ignore the current statutory prohibition on a local government's replacing local school expenditures with Federal funds.

In conclusion, reasonable people may differ on such key education issues as the use of Federal funds for religious instruction, the rights of parents, the allocation of Title I funds within a State, and whether Federal funds should replace local funds. But H.R.

2086 has the unfortunate effect of overturning the bipartisan judgment of the 103rd Congress that Congress—not the Executive branch—should decide these fundamental issues.

CARRIE P. MEEK.

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