Congressional Research Service

Federal Grants-In-Aid: An Historical Perspective on Contemporary Issues

Robert Jay Dilger
Senior Specialist in American National Government

February 16, 2010

Congressional Research Service
7-5700
www.crs.gov
R40638

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

The federal government is expected to provide state and local governments more than $645 billion in federal grant-in-aid funding in FY2011, encompassing a wide range of public policy, such as health care, transportation, income security, education, job training, social services, community development, and environmental protection. The central role of federal grants-in-aid in American domestic policy was demonstrated by the prominent role grants-in-aid have in the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5). ARRA provides more than $325 billion for federal grants-in-aid to state and local governments.

Congress has a central role in determining the scope and nature of federal grant-in-aid programs. In its legislative capacity, Congress first determines what it wants to accomplish and then decides whether a grant-in-aid program is the best means to achieve it. Congress then selects which of the six grant mechanisms to use (project categorical grant, formula categorical grant, formula-project categorical grant, open-end reimbursement categorical grant, block grant, or general revenue sharing), and crafts legislation to accomplish its purpose, incorporating the chosen grant instrument. As with all legislation generally, Congress oversees the program's implementation to ensure that the federal administrating agency is held accountable for making certain that congressional expectations concerning program performance are met.

Federalism scholars agree that congressional decisions concerning the scope and nature of federal grant-in-aid programs are influenced by both internal and external factors. Internal factors include congressional party leadership and congressional procedures; the decentralized nature of the committee system; the backgrounds, personalities, and ideological preferences of individual congressmen; and the customs and traditions (norms) that govern congressional behavior. Major external factors include input provided by voter constituencies, organized interest groups, the President, and executive branch officials. Although not directly involved in the legislative process, the Supreme Court, through its rulings on federalism issues, also influences congressional decisions concerning federal grant-in-aid programs.

Overarching all of these factors is the evolving nature of cultural norms and expectations concerning government's role in American society. Over time, the American public has become increasingly accepting of government activism in domestic affairs generally, and of federal government activism in particular. Federalism scholars attribute this increased acceptance of, and sometimes demand for, government action as a reaction to the industrialization and urbanization of American society, technological innovations in communications which have raised awareness of societal problems, and exponential growth in economic interdependencies brought about by an increasingly global economy.

This report provides an historical synopsis of the evolving nature of federal grant-in-aid programs, focusing on the role Congress has played in defining the scope and nature of those programs. It begins with an overview of contemporary federal grant-in-aid programs and then examines their evolution over time, focusing on the internal and external factors that have influenced congressional decisions concerning federal grant-in-aid programs. It concludes with an assessment of the scope and nature of the contemporary federal grants-in-aid system and raises several issues for congressional consideration, including possible ways to augment congressional capacity to provide effective oversight of this system.

Contents

Figures

Tables

Contacts

The Congressional Role

The federal government is expected to provide state and local governments more than $645 billion in federal grant-in-aid funding in FY2011, encompassing a wide range of public policy areas, such as health care, transportation, income security, education, job training, social services, community development, and environmental protection. The central role of federal grants-in-aid in American domestic policy was demonstrated by the prominent role grants-in-aid have in the $862 American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5).[1] ARRA provides more than $325 billion for federal grants-in-aid to state and local governments.[2]

Congress has a central role in determining the scope and nature of federal grant-in-aid programs. In its legislative capacity, Congress first determines what it wants to accomplish and then decides whether a grant-in-aid program is the best means to achieve it. Congress then selects which of the six grant mechanisms to use (project categorical grant, formula categorical grant, formula-project categorical grant, open-end reimbursement categorical grant, block grant, or general revenue sharing), and crafts legislation to accomplish its purpose, incorporating the chosen grant instrument.[3] As with all legislation generally, Congress oversees the program's implementation to ensure that the federal administrating agency is held accountable for making certain that congressional expectations concerning program performance are met.

Federalism scholars agree that congressional decisions concerning the scope and nature of federal grant-in-aid programs are influenced by both internal and external factors. Internal factors include congressional party leadership and congressional procedures; the decentralized nature of the committee system; the backgrounds, personalities, and ideological preferences of individual congressmen (especially those of party leaders and committee and subcommittee chairs and ranking minority members); and the customs and traditions (norms) that govern congressional behavior. Major external factors include input provided by voter constituencies, organized interest groups (especially the National Governors Association, the National League of Cities, U.S. Conference of Mayors, and the National Association of Counties), the President, and executive branch officials.[4] Although not directly involved in the legislative process, the Supreme Court, through its rulings on federalism issues, also influences congressional decisions concerning federal grant-in-aid programs.

Overarching all of these factors is the evolving nature of cultural norms and expectations concerning government's role in American society. Over time, the American public has become increasingly accepting of government activism in domestic affairs generally, and of federal government activism in particular. Federalism scholars attribute this increased acceptance of, and sometimes demand for, government action as a reaction to the industrialization and urbanization of American society; technological innovations in communications, which have raised awareness

[1] U.S. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2010 to 2020* (Washington, DC: GPO, January 2010), p. 95, http://www.cbo.gov/ftpdocs/108xx/doc10871/01-26-Outlook.pdf. Note: ARRA's original cost estimate for FY2009 through FY2019 was $787 billion.

[2] Ibid.; and U.S. Government Accountability Office, *RECOVERY ACT: Status of States' and Localities' Use of Funds and Efforts to Ensure Accountability*, GAO-10-231, December 2009, p. 1, http://www.gao.gov/new.items/d10231.pdf.

[3] U.S. Advisory Commission on Intergovernmental Relations (ACIR), *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), p. 61.

[4] Ibid.

of societal problems; and exponential growth in economic interdependencies brought about by an increasingly global economy.[5]

This report provides an historical synopsis of the evolving nature of federal grant-in-aid programs, focusing on the role Congress has played in defining the scope and nature of those programs. It begins with an overview of contemporary federal grant-in-aid programs and then examines their evolution over time, focusing on the internal and external factors that have influenced congressional decisions concerning federal grant-in-aid programs. It concludes with an assessment of the scope and nature of contemporary federal grants-in-aid and raises several issues for congressional consideration, including possible ways to augment congressional capacity to provide effective oversight of this system.

Contemporary Federal Grant-in-Aid Programs

As indicated in **Table 1**, federal spending on grants-in-aid to state and local governments has increased over the years, and is expected to reach an historic high in FY2010, with some of the increase due to temporary ARRA funding. Federal grant-in-aid funding is expected to fall somewhat over the next several fiscal years as ARRA funds are expended, but to remain at historically high levels.

Table 1. Federal Grant-In-Aid Expenditures, by Function, Selected FY1902-FY2011

(nominal $ in millions)

Fiscal Year	Total	Health	Income Security	Education, Training, Employment and Social Services	Transportation	Community and Regional Development	Other
2011(est.)	645,714	317,594	121,705	84,143	68,168	22,474	31,630
2010(est.)	653,665	294,613	121,818	111,715	72,249	21,221	32,049
2000	285,874	124,843	68,653	36,672	32,222	8,665	14,819
1990	135,325	43,890	36,768	21,780	19,174	4,965	8,748
1980	91,385	15,758	18,495	21,862	13,022	6,486	15,762
1970	24,065	3,849	5,795	6,417	4,599	1,780	1,625
1960	7,019	214	2,635	525	2,999	109	537
1950	2,212	123	1,123	484	429	0	53
1940	967	22	271	238	165	0	271
1930	100	0	1	22	76	0	1
1922	118	0	1	7	92	0	18
1913	12	0	2	3	0	0	7
1902	7	0	1	1	0	0	5

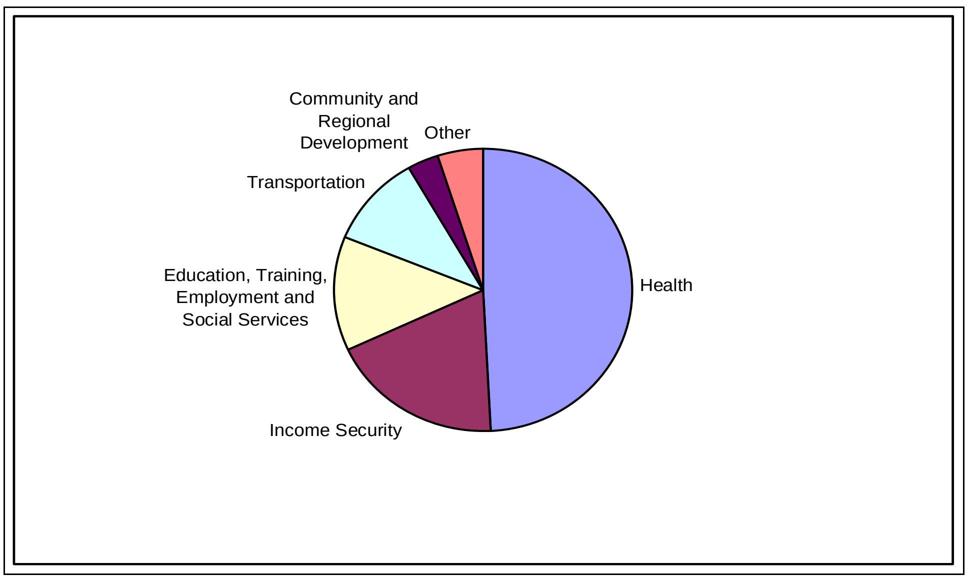
Sources: U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Historical Tables* (Washington, DC: GPO, 2010), pp. 252-257, http://www.whitehouse.gov/omb/budget/fy2011/assets/hist.pdf; and U.S. Department of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970, Part 2* (Washington, DC: GPO, 1975), pp. 1123, 1125, http://www2.census.gov/prod2/statcomp/documents/CT1970p2-12.pdf.

[5] Samuel H. Beer, "The Modernization of American Federalism," in *Toward '76 – The Federal Polity*, special issue of *Publius: The Journal of Federalism*, vol. 3, no 2 (Fall 1973), pp. 49-95; and David B. Walker, *The Rebirth of Federalism*, 2nd Edition (NY: Chatham House Publishers, 2000), pp. 19-35.

ARRA is expected to provide $236 billion in tax cuts and $626 billion in spending from FY2009 through FY2019, including about $325 billion for federal grant-in-aid programs for state and local governments.[6] ARRA provides additional funding for a wide range of federal grant-in-aid programs, such as Medicaid ($93 billion, primarily for a temporary increase in the Federal Medical Assistance Percentages reimbursement rate), a new State Fiscal Stabilization Fund ($53.6 billion), Build America Bonds ($30 billion), Highways and Bridges ($27.5 billion), Title 1-A, elementary and secondary education for the disadvantaged, ($13 billion), Individuals with Disabilities Education Act ($12.2 billion), Public Transit ($8.4 billion), Intercity Passenger Rail Capital, Congestion, and Corridor Development grants ($8 billion), Temporary Assistance for Needy Families ($5 billion), and Weatherization Assistance Grants ($5 billion).

As indicated in **Table 1** and **Figure 1**, almost half of all federal grant-in-aid funding is for health care (an estimated $317.5 billion in FY2011, or 49.2% of total federal grant-in-aid funding), followed by income security ($121.7 billion, or 18.8%), education, training, employment and social services ($84.1 billion, or 13.0%), transportation ($68.1 billion, or 10.6%), and community and regional development ($22.4 billion, or 3.5%).

Figure 1. Federal Grant-In-Aid Expenditures, By Function, FY2011 Estimate



Source: U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Historical Tables* (Washington, D.C.: GPO, 2010), pp. 252-257, http://www.whitehouse.gov/omb/budget/fy2011/assets/hist.pdf.

Medicaid, with $296.7 billion in expected outlays in FY2011, has, by far, the largest budget of any federal grant-in-aid program. Seven other programs are expected to have outlays in excess of $10 billion in FY2011: Federal-Aid Highways ($40.1 billion), Accelerating Achievement and Ensuring Equity (Education for the Disadvantaged—$20.9 billion), Tenant Based Rental Assistance—Section 8 vouchers ($19.1 billion), Child Nutrition ($19.0 billion), Temporary

[6] U.S. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2010 to 2020* (Washington, DC: GPO, January 2010), p. 95, http://www.cbo.gov/ftpdocs/108xx/doc10871/01-26-Outlook.pdf.

Assistance for Needy Families ($17.6 billion), Special Education ($17.7 billion), and the State Children's Health Insurance Program ($10.3 billion).[7]

Table 2 provides data on grant-in-aid expenditures in nominal and constant (inflation-adjusted) dollars, as a percentage of federal outlays and as a percentage of gross domestic product for selected years since 1960. It also indicates the percentage of grant-in-aid expenditures that are payments for individuals, as opposed to payments for capital improvements and government operations.

Table 2. Federal Grant-In-Aid Expenditures, Percentage of Expenditures for Individuals, Constant Dollars, and as a Percentage of Federal Outlays and Gross Domestic Product, Selected Fiscal Years, 1960-2011

Fiscal Year	Nominal $ (in millions)	% Expenditures for Individuals	Constant $ (FY2005)	% of Federal Outlays	% of GDP
2011 (est.)	645,714	64.9%	557,000	16.8%	4.2%
2010 (est.)	653,665	60.4%	572,300	17.6%	4.5%
2005	428,018	64.0%	428,000	17.3%	3.5%
2000	285,874	63.9%	326,800	16.0%	2.9%
1995	224,991	64.2%	283,600	14.8%	3.1%
1990	135,325	57.1%	198,100	10.8%	2.4%
1985	105,852	47.3%	189,600	11.2%	2.6%
1980	91,385	35.6%	227,100	15.5%	3.4%
1975	49,791	33.6%	186,900	15.0%	3.2%
1970	24,065	36.2%	123,700	12.3%	2.4%
1965	10,910	34.1%	65,900	9.2%	1.6%
1960	7,019	35.3%	45,300	7.6%	1.4%

Source: U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Historical Tables* (Washington, D.C.: GPO, 2010), pp. 249, 250.

As indicated in **Table 2**, total federal grant-in-aid expenditures has increased since 1960, whether measured in nominal dollars, constant dollars, as a percentage of federal outlays, or as a percentage of gross domestic product. However, the pace of expenditure increases for federal grant-in-aid programs has varied over the years. Federal grant-in-aid expenditures increased, in

[7] U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Analytical Perspectives* (Washington, DC: GPO, 2009), pp. 257, 259, 261, 262, http://www.whitehouse.gov/omb/budget/fy2011/assets/spec.pdf. For further analysis see CRS Report RL32950, *Medicaid: The Federal Medical Assistance Percentage (FMAP)*, by Chris L. Peterson, CRS Report R40053, *Surface Transportation Program Reauthorization Issues for the 111th Congress*, coordinated by John W. Fischer, CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner, CRS Report RL34002, *Section 8 Housing Choice Voucher Program: Issues and Reform Proposals*, by Maggie McCarty, CRS Report R40397, *Child Nutrition and WIC Programs: A Brief Overview*, by Joe Richardson, CRS Report R40946, *The Temporary Assistance for Needy Families Block Grant: An Introduction*, by Gene Falk, CRS Report R40055, *The Individuals with Disabilities Education Act: Final Part B Regulations*, by Nancy Lee Jones and Ann Lordeman, and CRS Report R40444, *State Children's Health Insurance Program (CHIP): A Brief Overview*, by Elicia J. Herz, Chris L. Peterson, and Evelyne P. Baumrucker.

nominal dollars, 187.3% during the 1960s, 246.4% during the 1970s, 33.4% during the 1980s, 98.0% during the 1990s, and 98.6% during the first decade of the 2000s.[8]

Expenditure growth for federal grant-in-aid programs has, in most years, exceeded inflation. However, as indicated in **Table 2**, grant-in-aid expenditures, expressed in constant (FY2005) dollars, did not keep pace with inflation during the early 1980s.

Federalism scholars have noted that since the 1980s, the focus of federal grant-in-aid programs has shifted from providing assistance to places (e.g., to build public highways, support public education, criminal justice systems, economic development endeavors and government administration) to people (e.g., providing health care benefits, social welfare income, housing assistance, and social services).[9] Much of this shift is attributed to Medicaid, which has experienced relatively large expenditure growth over the past several decades. As shown in **Table 2**, payments for individuals accounted for about one-third of federal grant-in-aid expenditures during the 1960s and 1970s, compared to more than 60% since the mid-1990s.

In the past, the now-defunct U.S. Advisory Commission on Intergovernmental Relations (ACIR) and the U.S. Office of Management and Budget (OMB) used information contained in the Catalog of Federal Domestic Assistance (CFDA) to determine the number of federal grant-in-aid programs. The CFDA "is a government-wide compendium of Federal programs, projects, services, and activities that provide assistance or benefits to the American public."[10] It lists 15 categories of federal grants: formula grants (including formula categorical grants, formula-project categorical grants, and block grants); project grants; direct payments for specified uses to individuals and private firms; direct payments with unrestricted use to beneficiaries who meet federal eligibility requirements; direct loans; guaranteed/insured loans; insurance; sale, exchange, or donation of property and goods; use of property, facilities and equipment; provision of specialized services; advisory services and counseling; dissemination of technical information; training; investigation of complaints; and federal employment. It lists all authorized federal grant programs, including grants that have not received an appropriation. Because the CFDA focuses on the needs of applicants, if a program uses a separate application or other delivery mechanism, the CFDA considers it a separate program. This complicates efforts to count federal grant-in-aid programs. For example, the CFDA lists four entries for the State Fiscal Stabilization Fund.

ACIR published counts of funded federal grant-in-aid programs for FYs 1975, 1978, 1981, 1984, 1987, 1989, 1991, 1993 and 1995.[11] OMB provided counts of funded grants-in-aid programs for

[8] U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2010: Historical Tables* (Washington, DC: GPO, 2009), pp. 239, 240, http://www.gpoaccess.gov/USbudget/fy10/pdf/hist.pdf. Note: The percentages were derived by dividing the difference between expenditures for the ninth year of the decade and the first year of the decade by expenditures for the first year of the decade.

[9] John Kincaid, "Developments in Federal-State Relations, 1992-93," *The Book of the States, 1994-95* (Lexington, KY: The Council of State Governments, 1994), pp. 576-586; and John Kincaid, "Trends in Federalism, Continuity, Change and Polarization," *The Book of the States, 2004* (Lexington, KY: The Council of State Governments, 2004), pp. 21-27.

[10] U.S. General Services Administration, *The Catalog of Federal Domestic Assistance* (Washington, DC: GPO, 2009), p. I.

[11] ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1975*, A-52a (Washington, DC: GPO, 1977); ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1978*, A-72 (Washington, DC: GPO, 1979); ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1981*, M-133CAT (Washington, DC: GPO, 1982); ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1984*, M-139 (Washington, DC: GPO, 1984); ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments:* (continued...)

FYs 1980-2003.[12] Because they used a different methodology to determine which grant programs to include in their count, their results differed. OMB consistently identified fewer grants than ACIR. For example, in 1995, OMB identified 608 funded federal grant-in-aid programs compared to ACIR's count of 633.[13] No authoritative count of funded federal grant-in-aid programs is known to have been issued in recent years.

ACIR included in its counts all direct cash grants to state or local governmental units, other public bodies established under state or local law, or their designee; payments for grants-in-kind, such as purchases of commodities distributed to state or local governmental institutions; payments to nongovernmental entities when such payments result in cash or in-kind services or products that are passed on to state or local governments; payments to state and local governments for research and development that is an integral part of their provision of services; and payments to regional commissions and organizations that are redistributed at the state or local level to provide public services.[14]

OMB counted only those federal grants for traditional governmental operations, as defined in OMB Circular A-11. The definition covered only grants that "support State or local programs of government operations or provision of services to the public."[15] It excluded federal grants that went directly to individuals, fellowships, most grants to nongovernmental entities, and technical research grants.

A search of the CFDA indicated that state governments, local governments, U.S. territories, and/or federally recognized tribal governments are eligible to apply for 1,132 federal grant-in-aid programs (defined as authorized project grants, formula grants, direct payments for specified uses, and direct payments for unrestricted uses).[16] Of these programs, 93 are not currently funded

(...continued)

Grants Funded FY 1987, M-153 (Washington, DC: GPO, 1987); ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1989*, M-167 (Washington, DC: GPO, 1989); ACIR, *Characteristics of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1991*, M-182 (Washington, DC: GPO, 1992); ACIR, *Characteristics of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1993*, M-188 (Washington, DC: GPO, 1994); and ACIR, *Characteristics of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1995*, M-195 (Washington, DC: GPO, 1995).

[12] U.S. Office of Management and Budget (OMB), "The Number of Federal Grant Programs to State and Local Governments: 1980-2003," Washington, DC: OMB, February 18, 2004. Note: the Government Accountability Office provided a count for FY 1990, see U.S. General Accounting Office, *Federal Aid: Programs Available to State and Local Governments*, HRD 91-93FS, May 1991, http://archive.gao.gov/d20t9/143936.pdf.

[13] U.S. Office of Management and Budget (OMB), "The Number of Federal Grant Programs to State and Local Governments: 1980-2003," Washington, DC: OMB, February 18, 2004.

[14] ACIR excluded grants directly to profit-making institutions, individuals, and nonprofit institutions (unless such payments result in cash or in-kind services or products that are passed on to state or local governments); payments for research and development not directly related to the provision of services to the general public; payments for services rendered; grants to cover administrative expenses for regional bodies; loans and loan guarantees; and shared revenues. See, ACIR, *Characteristics of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1995* (Washington, DC: GPO, 1995), pp. 26-28, http://www.library.unt.edu/gpo/acir/Reports/information/M-195.pdf.

[15] U.S. Office of Management and Budget (OMB), "The Number of Federal Grant Programs to State and Local Governments: 1980-2003," Washington, DC: OMB, February 18, 2004, p. 7.

[16]The number of federal grants-in-aid programs was determined by first examining all entries in the CFDA's print version and then cross-checking the findings against a search using the frequently updated CFDA's on-line search engine. Because the CFDA's on-line search engine includes subparts of programs, the following search terms were used to minimize this problem: assistance types (formula grants, project grants, direct payments for specified uses, and direct payments for unrestricted uses) by beneficiary eligibility (state governments, local governments, U.S. territories, (continued...)

and 86 are research, fellowship, or exchange programs that are available to both public and private institutions of higher education and are not targeted solely at either public institutions of higher education or other public agencies. Removing them from the list leaves 953 funded federal grants-in-aid programs. Because there is no current consensus on the methodology used to count federal grants-in-aid programs, the 953 count of federal grant-in-aid programs listed in **Table 3** for 2009 that was compiled from the CFDA should be viewed as illustrative, as opposed to definitive, of the current number of federal grant-in-aid programs for state and local governments.

Table 3. Federal Grants-In-Aid, By Type, Selected Years, 1902-2009

Year	# of Grants	Categorical	Block	General Revenue Sharing[a]
2009	953	928	25[b]	0
1998	664	640	24	0
1991	557	543	14	0
1980	539	534	4	1
1968	387	385	2	0
1960	132	132	0	0
1952	71	71	0	0
1940	34	34	0	0
1930	15	15	0	0
1920	11	11	0	0
1902	4	4	0	0

Source: CRS computation, U.S. General Services Administration, *The Catalog of Federal Domestic Assistance* (Washington, D.C.: GPO, 2008), https://www.cfda.gov/downloads/CFDA_2008.pdf; David B. Walker, *The Rebirth of* Federalism, 2nd Edition (NY: Chatham House Publishers, 2000), pp. 6,7; U.S. Advisory Commission on Intergovernmental Relations (ACIR), *Characteristics of Federal Grant-In-Aid Programs to State and Local Governments : Grants Funded FY 1995* (Washington, D.C.: GPO, 1995), p. 3, and ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, D.C.: GPO, 1978), p. 28.

a. General revenue sharing distributed funds to states from 1972-1981 and to localities from 1972-1986.

b. For further analysis, see CRS Report R40486, *Block Grants: Perspectives and Controversies*, by Robert Jay Dilger and Eugene Boyd.

As the data in the table suggest, the number of grant-in-aid programs to state and local governments increased slowly from 1902 to 1930. Then, partly in reaction to the Great Depression, Congress increased the number of grant-in-aid programs available to state and local governments over the next three decades, roughly doubling the number of grants each decade. During the 1960s, Congress increased the number of federal grants-in-aid exponentially, primarily in response to national social movements concerning poverty and civil rights. Congress continued to increase the number of federal grant-in-aid programs during the 1970s, but at a somewhat slower pace as it addressed budgetary constraints presented by "guns versus butter" issues associated with the Vietnam conflict. The rate of increase slowed further during the 1980s, as Congress addressed budgetary constraints presented by demographic changes in American

(...continued)

and/or federally recognized tribal governments).

society that led to escalating costs for several federal entitlement programs, especially for Social Security, Medicare and Medicaid, and to efforts to merge categorical grant programs in several functional areas into block grants. As the data in **Table 3** suggest, Congress continued to increase the number of federal grant-in-aid programs available to state and local governments during the 1990s, and has continued to do so in recent years.

Land Grants and "Dual Federalism": 1776-1860

The relative influence of internal versus external factors on congressional decisions affecting federal grant-in-aid programs has varied, both over time and in each specific policy area. Prior to the Civil War, external factors, especially cultural norms and expectations concerning government's role in American society, restricted congressional options concerning enactment of federal grant-in-aid programs for state and local governments.

During this time period, America was primarily a rural nation of farmers. Travel conditions were, compared to today's standards, primitive. Many Americans rarely left their home state, and many others never set foot in another state. Government as we know it today, with regulations and spending programs affecting many aspects of American life, did not exist. Although ratification of the Articles of Confederation and Perpetual Union on March 1, 1781 formally established the United States of America, personal allegiance was still directed more toward the individual's home state than to the nation. It was an era of what federalism scholars have called "dual federalism," where states were expected to be the primary instrument of governance in domestic affairs.[17]

However, even before the Constitution's ratification, the federal government found ways to provide state and local governments assistance to encourage them to pursue national policy objectives. For example, under the Articles of Confederation and Perpetual Union, Congress did not have the power to lay and collect taxes and relied heavily on state donations to fund the government. This lack of revenue, and expenses related to national defense, limited congressional spending options in domestic affairs. The Congress of the Confederation addressed that issue by adopting the Land Ordinance of 1785. The Ordinance generated revenue for the government by authorizing the sale of land acquired from Great Britain at the conclusion of the American Revolutionary War. The Ordinance also required every new township incorporated in those lands, called the Ohio Country, to be subdivided into 36 lots (or sections), each one mile square. Lots 8, 11, 26 and 29 were reserved for the United States.[18] The new townships were required to use Lot

[17] Harry N. Scheiber, *The Condition of American Federalism: An Historian's View*, a study submitted by the Subcommittee on Intergovernmental Relations to the Committee on Government Operations, U.S. Senate, 89th Cong., 2nd sess., October 15, 1966; and Harry N. Scheiber, "Federalism and Legal Process: Historical and Contemporary Analyses of the American System," *Law & Civil Society Review*, vol. 14, no. 3 (Spring 1980), pp. 669-683. Note: There were aspect of cooperative federalism during this time period as well. For example, state officials administered federal elections, state governments housed some federal prisoners, and state courts tried some federal court cases, see Daniel J. Elazar, *The American Partnership: Federal-State Cooperation in the Nineteenth Century United States* (Chicago, IL: University of Chicago Press, 1962).

[18] *Journals of the Continental Congress, 1774-1789*, Volume XXVIII, May 20, 1785, p. 378, http://lcweb2.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(jc0281)). Note: Proceeds from the sale of the four lots set aside for the United States were intended to fund promised military officer pensions and claims for back pay for military service during the Revolutionary War. Soldiers were also eligible for grants of land as compensation for these purposes, see pp. 379-380.

16 "for the maintenance of public schools, within the said township."[19] Some schools are still located in lot 16 of their respective townships, although many of the school lots were sold to raise money for public education. These land grants for public education were reauthorized by Congress in the Northwest Ordinance of 1787.[20] Congress subsequently adopted similar legislation for all states admitted to the union from 1802 to 1910, with exceptions for Texas, which retained all of its public land, and Maine and West Virginia which were formed from other states. From 1802 to 1848, one lot in each township was to be used for education, from 1848 to 1890 two lots, and from 1894 to 1910, with one exception, four lots.[21]

When the Framers met in Philadelphia in 1787 to rework the Articles of Confederation and Perpetual Union, the national economy was in recession, state governments were saddled with large debts left over from the Revolutionary War, the continental dollar was unstable and destined to be a national joke ("not worth a continental"), the navy could not protect international shipping, and the army proved unable to protect its own arsenal during Shay's rebellion in 1786. To address these issues, Congress was provided 17 specific powers in Article 1, Section 8 of the U.S. Constitution, ratified in 1789, including the power to coin money, establish post offices, regulate copyright laws, declare war, regulate the armed forces, borrow money, and, importantly, lay and collect taxes.

The power to lay and collect taxes provided Congress the means to expand the federal government's role in domestic affairs. Moreover, the Supreme Court issued several rulings under Chief Justice John Marshall concerning congressional authority to regulate interstate commerce that effectively cleared the way for congressional activism in domestic policy.[22] However, the prevailing view in Congress at this time was that any power not explicitly provided to Congress in the Constitution was excluded purposively, suggesting that in the absence of specific, supporting constitutional language the exercise of governmental police powers (the regulation of private interests for the protection of public safety, health and morals; the prevention of fraud and oppression; and the promotion of the general welfare) was either meant to be a state or local government responsibility, or outside the scope of governmental authority altogether.

Nevertheless, during the 1800s there were congressional efforts, primarily from representatives from western states, to adopt legislation to provide federal cash assistance for various types of internal improvement projects to encourage western migration and promote interstate commerce. Most of these efforts failed, primarily due to sectional divisions within the Congress which, at that time, made it difficult to build coalitions large enough to adopt programs that targeted most

[19] Ibid., p. 378.

[20] Note: The Northwest Ordinance of 1787 ended state claims to the Ohio Country, established a territorial government for the region, included civil rights provisions that served as a precursor for the Bill of Rights, mandated that new states could be formed out of the territory once an area in the region reached a population of 60,000, and prohibited slavery in the region.

[21] Matthias Nordberg Orfield, "Federal Land Grants to the States With Special Reference to Minnesota," *Bulletin of the University of Minnesota*, Minneapolis, MN, March 1915, p. 42.

[22] For example, in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), the Marshall Court established the doctrine of implied national powers, ruling that while federal powers were limited to those enumerated in the Constitution, the necessary and proper clause found in Article 1, Section 8, enlarged, rather than narrowed, congressional authority to act: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." For further analysis, see CRS Report RL30315, *Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power*, by Kenneth R. Thomas.

of its assistance to western states; opposition from Members of Congress who viewed reducing the national debt from the American Revolutionary War as a higher priority; and opposition from Members who viewed the provision of cash assistance for internal improvements, other than for post roads which were specifically mentioned in the Constitution as a federal responsibility, a violation of states' rights, as articulated in the Tenth Amendment's language: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[23]

Given prevailing views concerning the limited nature of the federal government's role in domestic affairs, instead of authorizing direct cash assistance to states for internal improvements, Congress typically authorized federal land grants to states. For example, in 1823 Ohio received a federal land grant of 60,000 acres along the Maumee Road to raise revenue to improve that road. In 1827, Ohio received another federal land grant of 31,596 acres to raise revenue for the Columbus and Sandusky Turnpike.[24]

In 1841, nine states (Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan), and, with three exceptions, all subsequent newly admitted states were designated land grant states and guaranteed at least 500,000 acres of federal land to be auctioned to support transportation projects, including roads, railroads, bridges, canals and improvement of water courses, that expedited the transportation of the United States mail and military personnel and munitions.[25] By 1900, over 3.2 million acres of federal land was donated to these states to support wagon road construction. Congress also authorized the donation of another 4.5 million acres of federal land to Illinois, Indiana, Michigan, Ohio and Wisconsin to raise revenue for canal construction and 2.225 million acres to Alabama, Iowa and Wisconsin to improve river navigation. In addition, states were provided 37.8 million acres for railroad improvements and 64 million acres for flood control.[26] States were provided wide latitude in project selection and federal oversight and administrative regulations were minimal.

Although land grants were prevalent throughout the 1800s, given prevailing views concerning states rights land grants, as well as cash grants, were subject to opposition on constitutional grounds. For example, in 1854, Congress adopted legislation authorizing the donation of 10 million acres of federal land to states to be sold to provide for the indigent insane. President Franklin Pierce vetoed the legislation claiming that:

---

[23] Constitution of the United States, text available on the National Archives website: http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html.

[24] Thomas Aquinas Burke, "Ohio Lands – A Short History," 8th ed. (Columbus, OH: State Auditor's Office, September 1996), http://freepages.history.rootsweb.ancestry.com/~maggie/ohio-lands/ohl5.html#WROTLNDS.

[25] Benjamin Horace Hibbard, *A History of the Public Land Policies* (New York: The Macmillan Company, 1924), pp. 228-233. Note: Maine and West Virginia were not eligible for the guarantee because they were formed out of other states and Texas was ineligible because it was considered a sovereign nation when admitted to the Union. Also, five states, Wisconsin, Alabama, Iowa, Nevada and Oregon, subsequently were permitted to use their proceeds from federal land sales solely for public education.

[26] Matthias Nordberg Orfield, *Federal Land Grants to the States With Special Reference to Minnesota* (Minneapolis, MN: Bulletin of the University of Minnesota, 1915), pp. 77- 111, 115-118; Morton Grodzins, *The American System* (Chicago: Rand McNally, 1966), p. 35; Gary M. Anderson and Dolores T. Martin, "The Public Domain and Nineteenth Century Transfer Policy," *Cato Journal*, vol. 6, no. 3 (Winter 1987): 908-910; John Bell Rae, "Federal Land Grants in Aid of Canals," *The Journal of Economic History*, vol. 4, no. 2 (November 1944): 167, 168; and U.S. Department of Transportation, Federal Highway Administration, *America's Highways, 1776/1976* (Washington, DC: GPO, 1976), 24. Note: 26 states received federal land grants during the 1800s.

> I cannot find any authority in the Constitution making the federal government the great almoner of public charity throughout the United States. To do so would, in my judgment, be contrary to the letter and spirit of the Constitution, and subversive of the whole theory upon which the union of these States is founded. ... I respectfully submit that, in a constitutional point of view, it is wholly immaterial whether the appropriation be in money, or in land.... should this bill become a law, ... the several States instead of bestowing their own means on the social wants of their own people, may themselves ... become humble supplicants for the bounty of the Federal Government, reversing the state's true relation to this Union.[27]

One notable exception to the federal reluctance to provide cash grants to states occurred in 1837. The federal government used proceeds from western land sales to retire the federal debt in 1836. The Deposit Act of 1836 directed that, after reserving $5 million, any money in the federal Treasury on January 1, 1837 shall be distributed to states in proportion to their respective representation in the House and Senate. There were no restrictions placed on how states were to use the funds. About $30 million was distributed to states in three quarterly payments in 1837 before the banking crisis of 1837 led to a recession and payments were stopped. To avoid a promised veto from President Andrew Jackson, the legislation indicated that the funds were a deposit subject to recall, rather than an outright grant of cash.[28]

Overall, domestic policy in the United States prior to the Civil War was dominated by states. As a federalism scholar put it:

> With respect to the classic trinity of sovereign powers – taxation, the police power, and eminent domain – the states enjoyed broad autonomous authority, which they exercised vigorously. Indeed, property law, commercial law, corporation law, and many other aspects of law vital to the economy were left almost exclusively to the states.... Federalism thus provided a receptive structure for expressions of state autonomy and pursuit of state-oriented economic objectives, not only as a matter of constitutional theory and the distribution of formal authority but also as a matter of real power.[29]

The Origins of the Modern Grants-In-Aid System: 1860-1932

The Union's victory in the Civil War marked the beginning of a second evolutionary era in American federalism. It effectively put to an end to the doctrine that the Constitution was a compact among sovereign states, each with the right to nullify an act of Congress that the state deemed unconstitutional, and each with the legal right to secede from the Union.[30] It also signaled the triumph of the northern states' commercialism over the southern states' agrarianism:

---

[27] President Franklin Pierce, "Message from the President of the United States returning a bill entitled "An act making a grant of public lands to the several States for the benefit of indigent insane persons" with a statement of the objections which have required him to withhold from it his approval to the United States Senate," 33rd Cong., 1st sess., Exec. Doc. 56, May 3, 1854.

[28] Henry Franklin Graff, editor, *The Presidents: A Reference History* (New York: Charles Scribner's Sons, 2002), pp. 118, 119; and Joseph A. Pechman, *Federal Tax Policy* (Washington, DC: The Brookings Institution, 1971), p. 290.

[29] Harry N. Scheiber, "State Law and 'Industrial Policy' in American Development, 1790-1987," *California Law Review*, vol. 75, no. 1 (January 1987), p. 419.

[30] David B. Walker, *The Rebirth of Federalism*, 2nd ed. (New York: Chatham House Publishers, 2000), p. 74.

> Unimpeded by the political opposition of the southern slavocracy, the Republican coalition of north and west carried through a program of comprehensive changes that insured the expansion of industry, commerce, and free farming.... Instead of the policies of economic laissez faire that the slavocracy had demanded ... the Republicans substituted the doctrine that the federal government would provide assistance for business, industry, and farming; the protective tariff, homestead, land subsidies for agricultural colleges, transcontinental railroads and other internal improvements, national banks. When the defeated south came back into the Union, it had to accept the comprehensive alternation in government policy and economic institutions that historian Charles A. Beard was later to name the Second American Revolution.[31]

Following the war, three constitutional amendments - the Thirteenth adopted in 1865, the Fourteenth adopted in 1868, and the Fifteenth Amendment adopted in 1870 - abolished slavery, prohibited states from denying due process or equal protection to any of their citizens, and banned racial restrictions on voting, respectfully. In addition, Congress enacted the Reconstruction Acts of 1867 and 1868, which imposed military government on the formally secessionist states and required universal manhood suffrage.[32] Despite this active federal presence in domestic policy in the South following the Civil War, the concept of dual federalism and deference to states in domestic affairs remained a part of American culture. For example, several Supreme Court rulings during this time period limited congressional efforts to override state laws on civil rights, in effect leaving civil and voting rights matters to states until the 1950s and 1960s.[33] The Supreme Court also limited congressional efforts to regulate interstate commerce by limiting the Interstate Commerce Commission's authority.[34]

Reflecting prevailing views concerning dual federalism, and limited federal fiscal resources, the first annual cash grant to states, other than for the support of the National Guard, was not adopted until 1887. The Hatch Act of 1887 provided each state an annual cash grant of $15,000 to establish agricultural experiment stations. It marked the beginning of the modern grants-in-aid system. In 1888, an annual grant of $25,000 was appropriated for the care of disabled veterans in state hospitals. States were provided $100 per disabled veteran.[35] In 1890, funding was provided to subsidize resident instruction in the land grant colleges made possible by the Morrill Act of 1862, which provided each existing and future state with 60,000 acres of federal land, plus an additional 30,000 acres for each of its congressional representatives, to be sold for the endowment, support, and maintenance of at least one college where the leading subject was agriculture and the mechanic arts.[36]

---

[31] Robert A. Dahl, *Pluralist Democracy in the United States: Conflict and Consent* (Chicago: Rand McNally, 1967), pp. 318-319.

[32] 15 Stat. 2 ff; 15 Stat. 14 ff; and 15 Stat. 41.

[33] David B. Walker, *The Rebirth of Federalism*, 2nd ed. (New York: Chatham House Publishers, 2000), p. 75. The most famous civil rights case during this time period was *Plessy v. Furguson* 163 U.S. 537 (1896) which upheld the constitutionality of state-imposed racial segregation.

[34] Cynthia Cates Colella, "The United States Supreme Court and Intergovernmental Relations," in *American Intergovernmental Relations Today: Perspectives and Controversies*, ed. Robert Jay Dilger (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1986), p. 43. Note: In *Interstate Commerce Commission v. Brimson* 154 U.S. 447 (1894), the Court curtailed the ICC's hearing capacity and in *Interstate Commerce Commission v. Cincinnati, New Orleans and Texas Pacific Railway Company*, 167 U.S. 479 (1897) it ruled against the ICC's authority to fix rates.

[35] Morton Grodzins, *The American System* (Chicago: Rand McNally, 1966), pp. 35, 37.

[36] Ibid., p. 34.

In 1902, there were four annual grants-in-aid programs in operation (funding for the National Guard, agricultural experiment stations, the care of disabled veterans, and resident instruction in the land grant colleges), accounting for about $7 million or about 1% of federal expenditures. State and local government expenditures at that time were slightly over $1 billion, evidence of the relatively limited nature of federal involvement in domestic policy at that time.

An important difference between land grants and grants-in-aid had emerged, even at this early date. Because grants-in-aid were funded from the federal treasury, many in Congress felt that they had an obligation to ensure that the funds were spent by states in an appropriate manner. As a result, Congress began to attach an increasing number of administrative requirements to these grant programs. For example, in 1889, states were required to match federal funding for the care of disabled veterans or lose it. The Morrill Act of 1890 authorized the Secretary of the Interior to withhold payments, pending an appeal to Congress, from states that failed to meet conditions specified in the act. In 1895, expenditures authorized by the Hatch Act for agricultural experiment stations were conditioned by annual audits. In 1911, funding authorized by the Weeks Act to support state efforts to prevent forest fires were conditioned by advance approval of state plans for the funds' use, annual audits and inspections, and a state matching requirement.[37]

The Sixteenth Amendment's ratification in 1913 provided Congress the authority to lay and collect taxes on income. Although the federal income tax initially generated only modest amounts, it provided Congress an opportunity to shift from land grants to grants-in-aid to encourage state and local governments to provide additional attention to policy areas Congress considered of nation interest. Between 1913 and 1923, Congress adopted new grant-in-aid programs for highway construction, vocational education, public health, and maternity care. Federal spending on grants-in-aid increased from $12 million in 1913 to $118 million in 1922.

In 1923, Massachusetts brought suit against the Secretary of Treasury, Andrew Mellon, claiming that the maternal care grants authorized by the Sheppard-Towner Act of 1921 were unconstitutional infringements on states' rights. The Supreme Court dismissed the case on the grounds that it lacked jurisdiction. Nonetheless, Justice George Sutherland, writing on behalf of the unanimous Court, indicated that, in his view, this form of congressional spending was not unconstitutional because grants-in-aid were optional and, as such, were not coercive instruments.[38] As a result, although few new grant-in-aid programs were adopted during the remainder of the 1920s, grants-in-aid were now accepted as a legal means for Congress to encourage state and local governments to pursue national goals.

The New Deal and The Rise of "Cooperative Federalism": 1932-1960

Political scientists contend that about once in every generation partisan affiliations realign across the nation, typically taking a few years to materialize but often becoming apparent during a "critical" presidential election. Critical elections typically result in relatively dramatic and lasting

[37] ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), pp. 15, 16.

[38] Cynthia Cates Colella, "The United States Supreme Court and Intergovernmental Relations," in *American Intergovernmental Relations Today: Perspectives and Controversies*, ed. Robert Jay Dilger (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1986), p. 47.

changes in the partisan composition within Congress and state governments. They also usually signal the coming to power of a new partisan coalition that dominates congressional decision-making for a relatively long period of time. For example, the election of 1896 ended the political stalemate between the Democratic and Republican parties and solidified the Republican Party's position as the majority party for the next 36 years. The election of 1932 signaled a new period of Democratic Party dominance, particularly in the "Solid South," that lasted until the 1970s when partisan attachments began to weaken, southern states became increasing Republican, and the two major political party became increasingly competitive, each seemingly on the verge of achieving majority party status at various times, but unable to retain that status permanently.[39]

The 1932-1960 time period also saw the emergence of the "congressional conservative coalition," the unofficial title given to the shifting political alliances of southern, conservative Democrats and Republican congressmen. The conservative coalition became an increasingly important counter-balance to large Democratic majorities in both houses of Congress. Members of the conservative coalition generally advocated balanced budgets and states rights, especially in civil rights legislation. They used congressional procedures, such as the filibuster or threat of a filibuster, to win concessions from the Democratic majority, and, in some instances, to prevent legislation they opposed from becoming law. They also benefitted from the congressional seniority system, which, during this time period, allocated committee chairmanships according to seniority. Because many of the congressional districts in the "solid south" were non-competitive seats, southern representatives held a disproportionate number of committee chairmanships in the House, further strengthening the conservative coalition's influence on congressional policymaking.

The conservative coalition prevented civil rights legislation from being enacted during this time period, but it could not prevent Democratic majorities in the House and Senate from expanding the federal government's presence in domestic policy. However, throughout this time period, the conservative coalition actively sought concessions to ensure that any new federal programs, including any new federal grant-in-aid programs, respected state rights. As a result, the grant-in-aid programs adopted during this time period tended to be in policy areas where state and local governments were already active, such as in education, health care, and highway construction, or where additional federal assistance was welcomed, such as job creation. Also, federal administrative conditions attached to grant-in-aid programs during this era focused on the prevention of corruption and fraudulent expenditures as opposed to encouraging states to move in new policy directions. As a result, federalism scholars have labeled this time period as an era of "cooperative federalism," where intergovernmental tensions were relatively minor and state and local governments were provided flexibility in project selection.

Faced with unprecedented national unemployment and economic hardship, President Franklin Delano Roosevelt advocated during his presidency a dramatic expansion of the federal government's role in domestic affairs, including an expansion of grants-in-aid as a means to help states combat poverty and create jobs. Congress approved 16 new, continuing grant-in-aid

[39] Valdimer Orlando Key, "A Theory of Critical Elections," *The Journal of Politics*, vol. 17, no. 1 (February 1955), pp. 3-18; Walter Dean Burnham, *Critical Elections and the Mainsprings of American Politics* (New York: W.W. Norton & Company, 1970); and David R. Mayhew, *Electoral Realignments: A Critique of an American Genre* (New Haven: Yale University Press, 2002).

programs during the years 1933-1938, and increased funding for continuing federal grant-in-aid programs from $214 million in 1932 to $790 million in 1938.[40]

Congress also enacted several temporary, emergency relief grant-in-aid programs that distributed federal funds to states according to the state's fiscal capacity. Congress devised mathematical formulas, based on a variety of economic and business measures, to allocate funding to each state, resulting in the share of relief funds varying among states based on the formula's assessment of need. At their peak, in 1935, emergency relief measures provided states nearly $1.9 billion to create jobs and provide emergency assistance for the unemployed. The emergency relief programs were terminated during the 1940s, but they established a precedent for extensive federal involvement with state and local governments in areas of national concern and for the use of mathematical formulas for distributing federal assistance.[41]

The Social Security Act of 1935 (SSA) was, arguably, the most significant legislative enactment of the New Deal period. It established a federal presence in social welfare policy. New grant-in-aid programs were established for old age assistance, aid to the blind, aid to dependent children, unemployment compensation, maternal and child health, crippled children, and child welfare. Also, federal oversight of grant-in-aid spending was enhanced as auditing requirements were now required in almost all grant programs. Also, in 1939, state employees administering SSA programs were required to be selected by merit system procedures, a major advancement for the development of professional state and local government administration and a signal of the declining influence of state and local party bosses in American society. In 1940, the Hatch Act restricted the political activities of state and local government employees paid with federal funds.[42]

Legally, New Deal legislation was based on an expanded interpretation of congressional authority to spend through grant-in-aid programs to promote the nation's welfare under Article 1, Section 8, clause 1 of the Constitution, often referred to as the congressional "spending power." Federal expenditures through grant-in-aid programs during the New Deal were made in several functional areas, including some, such as social welfare, that were traditionally viewed as state responsibilities. Opponents of an expanded role for the federal government in domestic policy argued that New Deal grant programs precluded state action in these traditionally state functional areas and, as such, violated the Constitution's Tenth Amendment. Advocates of an expansion of federal involvement in domestic affairs argued that the power of Congress to spend is more extensive than, rather than concurrent with, enumerated or even implied law-making powers. This disagreement led to a number of Supreme Court cases, a full discussion of which is beyond the scope of this report. The Supreme Court rejected the New Deal's expansion of federal authority in eight of the first ten cases that it decided. Then, after President Roosevelt's failed legislative proposal to "pack the Court" in 1937, the Supreme Court upheld the constitutionality of several New Deal laws, including the Social Security Act.[43] As one federalism scholar noted:

[40] ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), pp. 18, 19.

[41] Ibid., p. 18.

[42] Ibid., p. 20.

[43] David B. Walker, *The Rebirth of Federalism*, 2nd ed. (New York: Chatham House Publishers, 2000), p. 91. Note: President Roosevelt proposed that he be given the authority to appoint another judge for each one who had served ten years or more and had not retired within six months of their 70th birthday. A maximum of 50 such appointments were to be permitted, and the Supreme Court's size was to be increased to 15.

> A new era of judicial construction had been launched. The commerce power was given broad interpretation in cases upholding the Labor Relations Act. The older distinction between direct and indirect effects of commercial activity was abandoned and the more realistic "stream-of-commerce" concept adopted. The scope of Federal taxing power was also broadened expansively. In sanctioning the Social Security Act, the unemployment excise tax on employers was upheld as a legitimate use of the tax power, and the grants to the states were viewed as examples of Federal-state collaboration, not Federal coercion. The act's old-age and benefit provisions were deemed to be proper because "Congress may spend money in aid of general welfare." When combined, these decisions obviously amounted to last rites for judicial dual federalism.[44]

Although the Supreme Court was no longer viewed as a major obstacle for the expansion of grant-in-aid programs, external factors led to a reduction in federal assistance from 1939 to 1946 as Congress focused on defense-related issues during World War II. For example, federal grant-in-aid funding averaged $947 million from 1939 through 1946, less than half of the New Deal's peak. Following the War, the number of federal grant-in-aid programs began to increase at an accelerated pace, from 29 in 1945, to 71 in 1952, and to 132 in 1960.[45] Federal funding for grants-in-aid also accelerated, from $917 million in 1945, to $2.3 billion in 1952, and to $7 billion in 1960. A new development was increased funding for urban areas, such as grants for airport construction (1946), urban renewal (1949), and urban planning (1954). The most significant grant-in-aid program enacted during the 1950s was the $25 billion, 13-year Federal-Aid Highway Act of 1956, which authorized the construction of the then-41,000 mile National System of Interstate and Defense Highways, with a 1972 target completion date. For the next thirty-five years, federal surface transportation policy focused on the completion of the interstate system.[46]

The Great Society and The Rise of "Coercive Federalism": 1960-1980

The 1960s was a turbulent decade, marked by both political and social upheaval of historic proportions. Three leading public figures were assassinated, President John F. Kennedy in 1963, civil rights leader the Reverend Martin Luther King, Jr. in 1968, and President Kennedy's brother, presidential candidate and Senator Robert Kennedy in 1968. The civil rights movement, led by the Reverend King, was often met with violent resistance, with bombings of black churches, murders of civil rights workers, and televised police beatings of civil rights demonstrators. One of the defining moments of the civil rights movement was the march on Washington D.C. in August 1963, where the Reverend King made his famous "I Have A Dream" speech. Congress responded to the social turmoil by adopting the Civil Rights Act of 1964, which superseded state civil rights laws by prohibiting discrimination based on race, color, religion or national origin; the Voting Rights Act of 1965 which superseded state election laws by outlawing literacy tests, poll taxes and other means to discourage minority voting; and the Civil Rights Act of 1968 which

---

[44] Ibid., p. 92.

[45] ACIR, *Categorical Grants: Their Role and Design,* A-52 (Washington, DC: GPO, 1978), pp. 22-24.

[46] For further analysis, see CRS Report R40431, *Federalism Issues in Surface Transportation Policy: Past and Present*, by Robert Jay Dilger; and CRS Report R40053, *Surface Transportation Program Reauthorization Issues for the 111th Congress*, coordinated by John W. Fischer.

superseded state civil rights laws by prohibiting discrimination in the sale, rental and financing of housing. Nonetheless, race riots took place in several urban areas in 1965 and in 1967.[47]

During the latter half of the decade, the civil rights movement was joined by what has been called the hippie movement, where young people rebelled against the conservative norms of the time and disassociated themselves from mainstream liberalism and materialism. This “counterculture” movement began in the United States and sparked a social revolution throughout much of the western world. It began as a reaction against the conservatism and social conformity of the 1950s, and the U.S. government’s military intervention in Vietnam. These groups questioned authority and government, demanded more freedom and rights for women, gays, and minorities, and greater awareness of the need to protect the environment and address poverty.

The social movements and social unrest that sweep across the nation during the 1960s had a strong impact on Congress. Reflecting the growing public demand for congressional action to address civil rights, poverty, and the environment, in 1961 the House approved, 217-212, a proposal by Speaker Sam Rayburn to enlarge the House Rules Committee from 12 to 15 members. Prior to the change, the House Rules Committee was divided, 6 to 6, along ideological lines. Because a majority vote is necessary for the issuance of a legislative rule, the House Rules Committee served as an institutional barrier to the passage of legislation that the committee’s more conservative members believed infringed on states rights, including civil rights legislation.[48]

The enlargement of the House Rules Committee in 1961 signaled the weakening of the conservative coalition’s influence within Congress and enabled the large Democratic majorities elected during the early 1960s in the House and Senate to adopt a succession of civil rights laws, highlighted by the previously mentioned Civil Rights Act of 1964. It also enabled Congress to increase dramatically, both in terms of numbers and funding, federal grants-in-aid to state and local governments designed to protect the environment and address poverty, both directly through public assistance and job training programs and indirectly through education, housing, nutrition, and health care programs.

These legislative efforts were both supported and encouraged by President Lyndon Baines Johnson. For example, during his commencement address at the University of Michigan on May 22, 1964, President Johnson announced that he would establish working groups to prepare a series of White House conferences and meetings to develop legislative proposals to revitalize urban America, address environmental problems, and improve educational opportunities “to begin to set our course toward the Great Society” which “demands an end to poverty and racial injustice, to which we are totally committed.”[49] The term “The Great Society” came to symbolize legislative efforts during the 1960s to address poverty and racial injustice.

In concert with President Johnson’s Great Society initiatives, Congress increased dramatically the number of federal grant-in-aid programs during the 1960s, from 132 in 1960 to 387 in 1968. In 1965 alone, 109 grant-in-aid programs were adopted, including Medicaid, which now has, by far,

---

[47] David B. Walker, *The Rebirth of Federalism: Slouching Toward Washington* (Chatham, NJ: Chatham House Publishers, Inc., 1995), p. 125; and Theodore H. White, *America In Search of Itself* (New York: Harper & Row, Publishers, 1982), p. 108.

[48] David W. Rohde, “Committee Reform in the House of Representatives and the Subcommittee Bill of Rights,” *Annals of the American Academy of Political and Social Science*, vol. 411, no. 1 (January 1974): 40, 41.

[49] President Lyndon Baines Johnson, “Remarks at the University of Michigan, May 22, 1964,” Lyndon Baines Johnson Library and Museum, Austin, TX, http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/640522.asp.

the largest budget of any grant-in-aid program. Funding for grants-in-aid also increased, from $7 billion in 1960 to $20 billion in 1969. Functionally, grant-in-aid funding for health care increased from $214 million in 1960 to $3.8 billion in 1970, for income security from $2.6 billion to $5.7 billion, for education, training, employment and social services from $525 million to $6.4 billion, for transportation from $3 billion to $4.6 billion, and for community and regional development from $109 million to $1.7 billion.[50]

For the most part, these legislative efforts were not opposed by state and local government officials and their affiliated public interest groups (e.g., National Governors Association, National League of Cities, U.S. Conference of Mayors, National Association of Counties, etc.), primarily because federal grant-in-aid programs are voluntary and, in many instances, provided funding for activities that had broad public support. However, the new grants had a number of innovative features that distinguished them from their predecessors. Previously, most federal grant-in-aid programs supplemented existing state efforts and, generally, did not intrude on state and local government prerogatives. Most of the grants created during the 1960s, on the other hand, were designed purposively by Congress to encourage state and local governments to move into new policy areas, or to expand efforts in areas identified by Congress as national priorities, especially in environmental protection and water treatment, education, public assistance, and urban renewal.[51]

There also was an increased emphasis on narrowly focused project, categorical grants to ensure that state and local governments were addressing national needs. In addition, most of the new grants had relatively low, or no, matching requirements, to encourage state and local government participation. There were also new incentive grants to encourage states to move into new policy areas, and a diversification of eligible grant recipients, including individuals, non-profit organizations, and specialized public institutions, such as universities. There was also a greater emphasis on grants to urban areas. For example, federal grant outlays targeted to metropolitan areas more than tripled during the 1960s, and grew to include about 70% of total federal grant funding, up from about 55% at the beginning of the decade. There was also a greater emphasis on mandated planning requirements.[52]

Although most of the grants adopted during the 1960s were narrowly focused project, categorical grants, the first two block grants were enacted during this time period. The Partnership for Public Health Act of 1966 created a block grant for comprehensive health care services (now the Preventive Health and Health Services Block Grant). It replaced nine formula categorical grants.[53] Two years later, Congress created the second block grant, the Law Enforcement Assistance Administration's Grants for Law Enforcement program (sometimes referred to as the

---

[50] U.S. Department of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970, Part 2* (Washington, DC: GPO, 1975), pp. 1123, 1125, http://www2.census.gov/prod2/statcomp/documents/CT1970p2-12.pdf.

[51] ACIR, *An Agenda for American Federalism: Restoring Confidence and Competence,* A-86 (Washington, DC: GPO, 1981), pp. 1-3; and James Sundquist, *Making Federalism Work* (Washington, DC: The Brookings Institution, 1969), p. 3.

[52] ACIR, *Fiscal Balance in the American Federal System, Volume 1: Basic Structure of Fiscal Federalism,* A-31 (Washington, DC: GPO, 1967), pp. 150-184.

[53] David B. Walker, *The Rebirth of Federalism: Slouching Toward Washington* (Chatham, NJ: Chatham House Publishers, Inc., 1995), pp. 70-71; and Kenneth T. Palmer, "The Evolution of Grant Policies," in *The Changing Politics of Federal Grants*, eds. Lawrence D. Brown, James W. Fossett and Kenneth T. Palmer (Washington, DC: The Brookings Institution Press, 1984), pp. 18-20.

"Crime Control" or "Safe Streets" block grant) in the Omnibus Crime Control and Safe Streets Act of 1968.[54] Unlike the health care services block grant, it was created *de novo*, and did not consolidate any existing categorical grants.[55]

The rapid expansion of grants-in-aid during the 1960s led to a growing concern that the intergovernmental grant-in-aid system had become dysfunctional and in need of reform. For example, ACIR argued that along with the expansion of the grant system came "a rising chorus of complaints from state and local government officials" concerning the inflexibility of fiscal and administrative requirements attached to the grants.[56] It suggested that state and local government officials were subjected to an information gap because they found it difficult to keep up with the host of new federal grant-in-aid programs and administrative requirements. It also cited the need for improved coordination among programs, noting that many state and local government officials were reporting administrative difficulties dealing with federal agencies and those agencies' regional offices:

> Between 1962 and 1965 four new systems of regional offices were established as a consequence of grants-in-aid legislation. Adding these bodies to the separate, already existing regional structures brought the total number of regional systems to 12. Regional boundaries and field office locations varied widely. Kentucky, to cite the most extreme case, had to deal with federal agencies in ten different cities. This confusion imposed burdens on the recipients of grants and also made the task of coordinating operations by federal agencies in pursuit of national objectives more difficult.[57]

During the 1970s, President Richard Nixon and his successor, President Gerald R. Ford, argued that the intergovernmental grant-in-aid system was dysfunctional and advocated the sorting out of governmental responsibilities, with the federal government taking the lead in some functional areas and states in others. They also advocated a shift from narrowly focused categorical grants, especially project categorical grants, toward block grants and revenue sharing. They argued that block grants and general revenue sharing provided state and local governments additional flexibility in project selection and promoted program efficiency by reducing administrative costs. They, and others, believed that state and local governments should be provided additional flexibility in project selection and relief from federal administrative requirements because:

- greater reliance on state and local governments promotes a sense of state and local community responsibility and self-reliance;
- state and local government officials are closer to the people than federal administrators and, as a result, are better positioned to discern and adapt public programs to state and local needs and conditions;
- state and local governments encourage participation and civic responsibility by allowing more people to become involved in public questions;

[54] Carl W. Stenberg, "Block Grants and Devolution: A Future Tool?" in *Intergovernmental Management for the 21st Century*, eds. Timothy J. Conlan and Paul L. Posner (Washington, DC: Brookings Institution Press, 2008), p. 266.

[55] ACIR, *The Future of Federalism in the 1980s*, M-126 (Washington, DC: GPO, July 1980), p. 51.

[56] ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), p. 29.

[57] Ibid., and ACIR, *Fiscal Balance in the American Federal System, Vol. 1*, A-31 (Washington, DC: GPO, 1967), pp. 181-184.

- active state and local governments encourage experimentation and innovation in public policy design and implementation;
- active state and local governments reduce administrative work load on the federal government which creates program efficiencies; and
- active state and local governments reduce the political turmoil that sometimes results from single policies that govern the entire nation.[58]

Opponents of a shift from categorical grants to block grants and revenue sharing presented several arguments, including

- because funding comes from the federal treasury, Congress has both the right and the obligation to determine how that money is spent;
- many state and local governments lack the fiscal resources to provide levels of government services necessary to provide the poor and disadvantaged a minimum standard of living and equal access to governmental services, such as education and health care, that are essential to economic success. Therefore, Congress must act to ensure uniform levels of essential governmental services throughout the nation;
- state and local governments that have the fiscal resources to provide levels of government services necessary to provide the poor and disadvantaged a minimum standard of living and equal access to governmental services essential to economic success are often unable to do so because they compete with other state and local governments for business and taxpaying residents. As a result, state and local governments tend to focus available resources on programs designed to attract business investment and taxpaying residents to their communities and states rather than on programs assisting the poor and disadvantaged. Therefore, Congress must act to ensure uniform levels of essential governmental services throughout the nation;
- Congress has both the right and the obligation to ensure through the carrot of grant-in-aid programs and the stick of federal requirements that certain national goals, such as civil rights, equal employment opportunities, protection for the environment, and care for the poor and aged, are met because it is difficult to achieve change when reform-minded citizens must deal with 50 state governments and more than 79,000 local governments; and
- there are some governmental services that have either costs or benefits that spill over onto other localities or states. Water and air pollution controls, for example, benefit not only the local community that pays for the air or water pollution controls, but all of the communities that are located downwind or downstream from that community. Because state and local taxpayers are generally reluctant to pay for programs whose benefits go to others, state and local governments often underfund programs with significant spillover effects. Therefore, Congress must act to ensure that these programs are funded at logical levels.[59]

---

[58] Thomas R. Dye, *Understanding Public Policy*, 6th ed. (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1987), p. 301.

[59] ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), pp. 50-58; Claude E. Barfield, *Rethinking Federalism: Block Grants and Federal, State, and Local Responsibilities* (Washington, DC: (continued...)

Opponents also asserted that the arguments presented by advocates for a shift in emphasis to block grants and revenue sharing were actually a "smoke screen" masking their true intent which, allegedly, was to shift federal resources to their core constituencies. As mentioned previously, most grant-in-aid funding during the 1960s and 1970s was targeted to metropolitan areas, which, at that time, were considered Democratic Party strongholds. Many observers believed that shifting from project categorical grants to block grants or general revenue sharing would result in less money for metropolitan areas and more money for suburban and rural areas, areas that were more likely to be populated by Republicans than Democrats. This shift would occur because project categorical grants are awarded on a competitive basis by federal administrators while block grant and revenue sharing funding is allocated according to pre-determined formula, often with minimum funding guarantees for each state and with a portion of the funding determined by either population and/or per capita income. Because block grant and revenue sharing funding tends to be more geographically dispersed than project categorical grants congressional debates over which grant mechanism was best had partisan overtones that often transcended discussions over which grant mechanism would improve grant performance.

Some federalism scholars have also suggested that Congress tends to prefer categorical grants over block grants and revenue sharing because Members take pride in the authorship of sponsored programs. They argue that categorical grants provide more opportunities for sponsorship, and more opportunities for receiving political credit for that sponsorship, than block grants or revenue sharing. In their view, constituents are more interested in a Members' ability to serve in a material way than in their competence in broad policymaking or in "the rightness of positions on issues of principle, form or structure."[60] As a result, they argue that Members are more likely to be recognized for sponsoring or supporting specific, narrowly focused categorical grants than by championing a more general block grant or revenue sharing approach. For example, they assert that Members are more likely to receive recognition and political credit from constituents for sponsoring and supporting legislation to prevent lead-based paint poisoning among children than for legislation covering the broad area of preventative health services.[61]

Presidents Nixon and Ford's efforts to gain congressional approval for a shift in emphasis from categorical grants to block grants and revenue sharing were only partially successful. For example, in his 1971 State of the Union speech, President Nixon announced a plan to consolidate 129 federal grant programs in six functional areas, 33 in education, 26 in transportation, 12 in urban community development, 17 in manpower training, 39 in rural community development, and 2 in law enforcement into what he called six "special revenue sharing" programs. Unlike the categorical grants they would replace, the proposed special revenue sharing programs had no state matching requirements, relatively few auditing or oversight requirements, and the funds were distributed automatically by formula without prior federal approval of plans for their use.[62]

(...continued)

American Enterprise Institute for Public Policy Research, 1981), pp. 4-8; and Thomas R. Dye, *Understanding Public Policy*, 6th ed. (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1987), p. 300.

[60] Roger H. Davidson, "Representation and Congressional Committees," *The Annals of the American Academy of Political and Social Science*, vol. 411, no. 1 (January 1974), p. 50.

[61] ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), p. 65; and David Mayhew, "Congressional Elections: The Case of the Vanishing Marginals," *Polity*, vol. VI, no. 3 (Spring 1974), pp. 295-317.

[62] Claude E. Barfield, *Rethinking Federalism: Block Grants and Federal, State, and Local Responsibilities* (Washington, DC: American Enterprise Institute for Public Policy Research, 1981), p. 3.

The education, transportation, rural community development, and law enforcement proposals failed to gain congressional approval, primarily because they generated opposition from interest groups affiliated with the programs who worried that the programs' future funding would be compromised.[63] However, three block grants, the first signed by President Nixon and the remaining two signed by President Ford, were approved.

The Comprehensive Employment and Training Assistance Block Grant program, created by the Comprehensive Employment and Training Act of 1973, merged 17 existing manpower training categorical grant programs. The Community Development Block Grant program (CDBG), created by the Housing and Community Development Act of 1974, consolidated six existing community and economic development categorical grant programs.[64] Title XX social services, later renamed the Social Services Block Grant program, was created *de novo* and, therefore, did not consolidate any existing categorical grant programs. It was authorized by the 1974 amendments of the Social Security Act which was signed into law on January 4, 1975.[65] Also, in 1972, general revenue sharing was approved by Congress. General revenue sharing distributed funds to states from 1972-1981 and to localities from 1972-1986.

Nevertheless, Congress retained an emphasis on the use of categorical grants. On December 31, 1980, there were 534 categorical grant programs, 4 block grant programs and 1 general revenue sharing program. Of the categorical grant programs, 361 were project categorical grants, 42 were project, formula categorical grants, 111 were formula categorical grants, and 20 were open-ended reimbursement categorical grants.[66] Overall, categorical grants accounted for 79.3% of the $91.3 billion in federal grant-in-aid funding that year, block grants accounted for 11.3% and general revenue sharing 9.4%.[67]

Efforts to sort out governmental responsibilities were also met with resistance in Congress. For example, President Nixon's six special revenue sharing proposals would have provided state and local governments the leading role in decision-making in those six functional areas. Also, his proposed Family Assistance Plan would have replaced several public assistance categorical grant programs with a national public assistance system covering all low-income families with children. Although his Family Assistance Plan was not adopted, Congress did nationalize several adult-age public assistance grant-in-aid programs in 1972, including old-age assistance, aid to the blind, and aid to the permanently and totally disabled.[68]

[63] Timothy Conlan, *From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform* (Washington, DC: The Brookings Institution, 1998), p. 62.

[64] Note: Most sources indicate that CDBG merged 7 categorical grant programs. However, one of the categorical grant programs initially designated for consolidation, the Section 312 Housing Rehabilitation Loan program, was retained as a separate program. See ACIR, *Block Grants: A Comparative Analysis*, A-60 (Washington, DC: GPO, 1977), p. 7.

[65] Carl W. Stenberg, "Block Grants and Devolution: A Future Tool?" in *Intergovernmental Management for the 21st Century*, eds. Timothy J. Conlan and Paul L. Posner (Washington, DC: Brookings Institution Press, 2008), p. 266; ACIR, *In Respect to Realities: A Report on Federalism in 1975*, M-103 (Washington, DC: GPO, April 1976), pp. 16-20; and ACIR, *Block Grants: A Comparative Analysis*, A-60 (Washington, DC: GPO, 1977), pp. 15-40. Note: Title XX initially had all of the characteristics of a block grant and ACIR counted it as a block grant since its inception, but it was not formally called a block grant program until 1981.

[66] ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1981*, M-133 (Washington, DC: GPO, 1982), pp. 1-3.

[67] U.S. Office of Management and Budget, *Special Analyses: Budget of the United States Government, FY 1984* (Washington, DC: GPO, 1983), p. H-20.

[68] David B. Walker, *The Rebirth of Federalism*, 2nd ed. (New York: Chatham House Publishers, 2000), p. 127.

Another Related Development: Federal Mandates

Another related, new development during the 1960s and 1970s was the imposition by Congress of numerous federal mandates on state and local government officials. The concept of mandates covers a broad range of policy actions with centralizing effects on the intergovernmental system, including statutory direct-order mandates, both total and partial statutory preemption of state and local government law, federal tax policies affecting state and local tax bases, and regulatory action taken by federal courts and agencies. Many federalism scholars also consider program specific and crosscutting grant-in-aid conditions mandates, even though the grants themselves are voluntary.[69]

Crosscutting requirements are, perhaps, the most widely recognized mandate. They are a condition of federal assistance that applies across-the-board to all, or most, federal grants to advance a national social or economic goal. Title VI of the Civil Rights Act of 1964 was the first post-World War II statute to use a crosscutting requirement. It specifies that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving Federal financial assistance.[70]

In 1980, the U.S. Office of Management and Budget counted 59 crosscutting requirements intended to further national social or economic goals in a variety of functional areas, including education and the environment.[71]

Some of the statutory direct-order mandates adopted during this era included the Equal Employment Opportunity Act of 1972, which extended the prohibitions against discrimination in employment contained in the Civil Rights Act of 1964 to state and local government employment; the Fair Labor Standards Act Amendments of 1974, which extended the prohibitions against age discrimination in the Age Discrimination in Employment Act of 1967 to state and local government employment; and the Public Utilities Regulatory Policy Act of 1978, which established federal requirements concerning the pricing of electricity and natural gas.[72]

ACIR suggested that the expansion of federal intergovernmental regulatory activity during the 1960s and 1970s fundamentally changed the nature of intergovernmental relations in the United States:

> During the 1960s and 1970s, state and local governments for the first time were brought under extensive federal regulatory controls.... Over this period, national controls have been adopted affecting public functions and services ranging from automobile inspection, animal preservation and college athletics to waste treatment and waste disposal. In field after field the power to set standards and determine methods of compliance has shifted from the states and localities to Washington.[73]

---

[69] Paul L. Posner, "Mandates: The Politics of Coercive Federalism," in *Intergovernmental Management for the 21st Century*, eds. Timothy J. Conlan and Paul L. Posner (Washington, DC: Brookings Institution Press, 2008), p. 287.

[70] 42 U.S.C. 2000d cited in ACIR, *Regulatory Federalism: Policy, Process, Impact, and Reform* (Washington, DC: GPO, 1984), p. 71.

[71] ACIR, *Regulatory Federalism: Policy, Process, Impact, and Reform* (Washington, DC: GPO, 1984), p. 71.

[72] Ibid., p. 88.

[73] Ibid., p. 246.

The continued emphasis on categorical grants, the increased emphasis on provisions encouraging states to move in new policy directions, and, especially, the increased imposition of federal mandates on state and local governments during the 1960s and 1970s led some federalism scholars to label the 1960s and 1970s as the beginnings of a shift toward "coercive federalism."[74] Cooperative features were still present, but congressional deference to state and local government prerogatives seen in previous eras was no longer in force. Instead of focusing primarily on the "carrot" of federal assistance to encourage state and local governments to pursue polices that aligned with national goals, Congress increasingly relied on the "stick" of federal mandates.

Congress Asserts Its Authority: The Devolution Revolution That Wasn't, 1980-2000

By the end of the 1970s, the social turmoil that marked the previous two decades had receded. America and the western world experienced a revival of conservative politics, the advancement of free market solutions to improve government efficiency and solve social problems, and a renewed emphasis on materialism and the possession of consumer goods.[75] Yet, at the same time, social change continued to affect American lifestyles, as women became fixtures in the workplace, the gay rights movement become more active, environmental concerns intensified, and rock concerts featuring the leading rock bands and performers of the era were televised to millions of viewers across the nation and the world to raise money for various social causes, such as famine relief, support for family farms, and AIDs prevention and treatment.

The seemingly contradictory societal trends of self-promotion and altruism that swept across American society during the 1980s and 1990s was reflected in responses to national public opinion polls concerning politics and government. These polls evidenced a growing public hostility toward government intrusion and government performance, especially the federal government's performance, despite growing support for specific programs and regulations that represented the polar opposite of these attitudes.[76] Perhaps reflecting these seemingly contradictory trends, during this era the public tended to elect a President of one political party and a Congress of another. Moreover, nationally, the two-party political system became more competitive as the once solid Democratic South turned increasing Republican. The Republican Party's resurgence was evidenced by its winning the presidency from 1981-1993, and its achieving majority status in the Senate from 1981-1987, and in both Houses of Congress from 1995-2001.

---

[74] John Kincaid, "From Cooperative to Coercive Federalism," *The Annals of the American Academy of Political and Social Science*, vol. 509, no. 1 (1990), pp. 139-152. Note: the term coercive is often used in legal arguments to suggest that provisions of law related to federal grants-in-aid do not have constitutional standing. Federalism scholars use the term to describe, as Kincaid explained it (p. 139), the shift in emphasis "from fiscal tools to stimulate intergovernmental policy cooperation" to an increased reliance on "regulatory tools to ensure the supremacy of federal policy."

[75] David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005); and Milton Friedman, *Free to Choose* (New York: Harcourt Brace Jovanovich, 1980).

[76] Richard L. Cole and John Kincaid, "Public Opinion and American Federalism: Perspectives on Taxes, Spending, and Trust: An ACIR Update," *Publius: The Journal of Federalism*, vol. 30, no. 1 (Winter 2000), pp. 197, 198; William G. Jacoby, "Issue Framing and Public Opinion on Government Spending," *American Journal of Political Science*, vol. 44, no. 4 (October 2000), pp. 752-758; and David B. Walker, *The Rebirth of Federalism*, 2nd ed. (New York: Chatham House Publishers, 2000), p. 341.

President Ronald Reagan's election in 1980, coupled with the Republican Party's resurgence, especially its winning majority party status in the Senate that year, signaled for some the potential for a "devolution revolution" in American federalism, where unfunded federal mandates would be rescinded, "burdensome" administrative grant-in-aid conditions removed, and the cooperative features of grant-in-aid programs enhanced. This belief was based on President Reagan's commitment to reducing the federal budget deficit. Because he was convinced that it was necessary to increase defense spending, President Reagan concluded that the only way to reduce the federal budget deficit was to increase revenue by encouraging economic growth through tax reduction and regulatory relief, and limiting the growth of federal domestic expenditures. As a former Governor, he trusted state and local governments' ability to provide essential government services. As a result, he advocated a sorting out of governmental responsibilities that would reduce the federal government's role in domestic affairs, increase the emphasis on block grants to provide state and local government officials greater flexibility in determining how the program's funds are spent, and impose fiscal restraint on all federal grant-in-aid programs.[77]

For example, on February 18, 1981, President Reagan addressed a joint session of Congress and proposed the consolidation of 84 existing categorical grants into 6 new block grants and requested significant funding reductions for a number of income maintenance categorical grants, including housing (rental) assistance, food stamps, Medicaid, and job training. Congress subsequently approved the Omnibus Budget Reconciliation Act of 1981, which consolidated 75 categorical grants and two earlier block grants into the following nine new block grants:

- Elementary and Secondary Education (37 categorical grants),
- Alcohol, Drug Abuse, and Mental Health Services (10 categorical grants),
- Maternal and Child Health Services (9 categorical grants),
- Preventive Health and Human Services Block Grant (merged 6 categorical grants with the Health Incentive Grants for Comprehensive Health Services Block Grant),
- Primary Care (2 categorical grants),
- Community Services (7 categorical grants),
- Social Services (one categorical grant and the Social Services for Low Income and Public Assistance Recipients Block Grant),
- Low-Income Home Energy Assistance (1 categorical grant), and
- revised the Community Development Block Grant program (adding an existing discretionary grant and 3 categorical grants).[78]

Overall, funding for the categorical grants bundled into these block grants was reduced 12%, about $1 billion, from their combined funding level the previous year.[79] President Reagan argued

[77] Timothy J. Conlan and David B. Walker, "Reagan's New Federalism: Design, Debate and Discord," *Intergovernmental Perspective*, vol. 8, no. 4 (Winter 1983), pp. 6-15, 18-22.

[78] David B. Walker, Albert J. Richter, and Cynthia Colella, "The First Ten Months: Grant-In-Aid, Regulatory, and Other Changes," *Intergovernmental Perspective*, vol. 8, no. 1 (Winter 1982), pp. 5-11.

[79] U.S. General Accounting Office, *Block Grants: Characteristics, Experience and Lessons Learned*, GAO/HEHS-95-74, February 9, 1995, p. 2, http://www.gao.gov/archive/1995/he95074.pdf. Note: funding changes ranged from a $159 million, or 30%, reduction in the Community Services Block Grant to a $94 million, or 10%, increase in funding for the (continued...)

that the funding reductions would not result in the loss of services for recipients because the reductions would be offset by administrative efficiencies.

Some observers were convinced that the adoption of the Omnibus Budget Reconciliation Act of 1981 was proof of the coming devolution revolution. An unprecedented nine new block grants had been created during President Reagan's first year in office, the total number of grant-in-aid programs was reduced from 539 in 1981 to 441 in 1982, and total spending on grants-in-aid fell for the first time since World War II, from $94.8 billion in FY1981 to $$88.2 billion in FY1982.[80] However, in retrospect, federalism scholars now consider the 1981 block grants as more "historical accidents than carefully conceived restructurings of categorical programs" because they were contained in a lengthy bill that was adopted under special parliamentary rules requiring a straight up or down vote without the possibility of amendment, the bill was designed to reduce the budget deficit not to reform federalism relationships, and the bill was not considered and approved by authorizing committees of jurisdiction.[81] Nonetheless, largely due to the Omnibus Budget and Reconciliation Act of 1981, in FY1984 there were 12 block grants in operation (compared to 392 categorical grants), accounting for about 15% of total grants-in-aid funding.[82]

During the remainder of his presidency, President Ronald Reagan submitted 26 block grant proposals to Congress, with only one, the Federal Transit Capital and Operating Assistance Block Grant, added in 1982. In addition, Congress approved the Job Training Partnership Act of 1982 which created a new block grant for job training to replace the block grant contained in the Comprehensive Employment and Training Act of 1973.[83]

Federalism scholars generally agree that President Reagan had unprecedented success in achieving congressional approval for block grants in 1981. However, they also note that most of President Reagan's subsequent block grant proposals failed to gain congressional approval, primarily because they were opposed by organizations who feared that, if enacted, the block grants would result in less funding for the affected programs. For example, in 1982, President Reagan proposed, but could not get congressional approval for, a $20 billion "swap" in which the federal government would return to states full responsibility for funding Aid to Families With Dependent Children (AFDC) (now Temporary Assistance for Needy Families) and food stamps in exchange for federal assumption of state contributions for Medicaid. As part of the deal, he also proposed a temporary $28 billion trust fund or "super revenue sharing program" to replace 43 other federal grant programs, including 19 social, health, and nutrition services programs, 11 transportation programs, 6 community development and facilities programs, 5 education and training programs, Low Income Home Energy Assistance, and general revenue sharing. The trust fund, and federal taxes supporting it, would begin phasing out after four years leaving states the

(...continued)

Community Development Block Grant program.

[80] ACIR, *Significant Features of Fiscal Federalism: 1985, 86 Edition* (Washington, DC: GPO, 1986), p. 19.

[81] Carl W. Stenberg, "Block Grants and Devolution: A Future Tool?" in *Intergovernmental Management for the 21st Century*, eds. Timothy J. Conlan and Paul L. Posner (Washington, DC: Brookings Institution Press, 2008), p. 267; and Timothy Conlan, *From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform* (Washington, DC: The Brookings Institution, 1998), pp. 110-121.

[82] ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY1984*, M-139 (Washington, DC: GPO, 1984), pp. 1-3.

[83] Ibid., p. 3; Timothy Conlan, *From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform* (Washington, DC: The Brookings Institution, 1998), p. 142; and CRS Report 87-845, *Block Grants: Inventory and Funding History,* Sandra S. Osbourn, November 21, 1986, available by request.

option of replacing federal tax support with their own funds to continue the programs or allowing the programs to expire.[84]

Both the swap proposal and the proposed devolution of 43 federal grants failed to gain congressional approval, primarily because they were opposed by organizations and Members who feared that, if enacted, the proposals would result in less funding for the affected programs. For example, the National Governors Association supported the federal take over of Medicaid, but objected to assuming the costs for AFDC and food stamps. The economy was weakening at that time and governors worried that they would not have the fiscal capacity necessary to support the programs without continued federal assistance.[85]

Evidence of a coming devolution revolution proved elusive as the upward trend in funding for grant-in-aid programs resumed in 1983, although at a somewhat lower rate of increase than during the previous two decades. As shown in **Table 1**, federal grant-in-aid funding increased from $91 billion in FY1980 to $135 billion in FY1990 and $285.8 billion in FY2000. Medicaid accounted for much of that revenue growth, increasing from $13.9 billion in FY1980 to $41.1 billion in FY1990 and $117.9 billion in FY2000.[86]

Functionally, as shown in **Table 1**, federal grant-in-aid funding for health care increased from $15.7 billion in FY1980 to $124.8 billion in FY2000. Also, grant-in-aid funding increased for income security from $18.4 billion in FY1980 to $68.6 billion in FY2000; for education, training, employment and social services from $21.8 billion to $36.6 billion; for transportation from $13 billion to $32.2 billion; and for community and regional development from $6.4 billion to $8.6 billion.

The number of grant-in-aid programs did fall at the beginning of this era, from 539 in 1980 to an era low of 405 in 1984, but then resumed their upward trend. As indicated in **Table 3**, there were 539 grant-in-aid programs in 1980, 557 in 1991, and 664 in 1998. Moreover, the number of intergovernmental mandates continued to increase throughout the era. ACIR, for example, identified 36 significant federal mandates affecting state and local governments in 1980. In 1990, it identified 63.[87] ACIR concluded that "despite efforts to constrain the growth of intergovernmental regulation, the 1980s remained an era of regulatory expansion rather then contraction."[88] It offered the following explanation for the increased number of federal mandates during the 1980s:

> The causes of this continued regulatory growth are complex and varied. Many regulations address important and well documented problems from pollution to health care to civil

[84] Timothy J. Conlan and David B. Walker, "Reagan's New Federalism: Design, Debate and Discord," *Intergovernmental Perspective*, vol. 8, no. 4 (Winter 1983), p. 9. Note: The cost of the proposed trust fund was later estimated at $34.4 billion.

[85] Ibid., pp. 6-15, 18-22; and Timothy Conlan, *New Federalism: Intergovernmental Reform From Nixon to Reagan* (Washington, DC: The Brookings Institution, 1988), pp. 182-198.

[86] U.S. Office of Management and Budget, *Historical Tables: Budget of the United States Government, Fiscal Year 2009* (Washington, DC: GPO, 2008), pp. 262, 268, 276.

[87] ACIR, *Regulatory Federalism: Policy, Process, Impact, and Reform* (Washington, DC: GPO, 1984), pp. 246-249; and Timothy J. Conlan and David R. Beam, "Federal Mandates: The Record of Reform and Future Prospects," *Intergovernmental Perspective*, vol. 18, no. 4 (Fall 1992), p. 7.

[88] Timothy J. Conlan and David R. Beam, "Federal Mandates: The Record of Reform and Future Prospects," *Intergovernmental Perspective*, vol. 18, no. 4 (Fall 1992), p. 8.

> rights. The goals associated with these programs are popular not only with the general public but with state and local government officials as well. But, whereas the Congress in the past might have responded to emerging needs with a new federal aid program, the scarcity of federal funds during a decade of historic deficits has made the alternative of federal mandates look increasingly attractive to federal policymakers.[89]

Some observers believed that the anticipated devolution revolution might be realized following the 1994 congressional elections which resulted in the Republican Party gaining majority status in both the House and Senate. As evidence of the potential for a devolution revolution they pointed to the Unfunded Mandate Reform Act of 1995 (UMRA). Its intent was to limit the federal government's ability to impose costs on state and local governments or on the private sector through unfunded mandates. Providing relief from unfunded mandates was one of the stated goals of the Republican Party's 1994 Contract With America.[90]

Under UMRA, congressional committees have the initial responsibility to identify certain federal mandates in measures under consideration. If the measure contains a federal mandate, the authorizing committee must provide the measure to the Congressional Budget Office (CBO). It reports back to the committee an estimate of the mandate's costs. The office must prepare full quantitative estimates for each reported measure with mandate costs over pre-determined thresholds in any of the first five fiscal years the legislation would be in effect. CBO's cost estimates include the direct costs of the federal mandates contained in the measure, or in any necessary implementing regulations; and the amount of new or existing federal funding the legislation authorizes to pay these costs. The thresholds triggering a full CBO cost estimate are adjusted annually for inflation. They were originally $50 million for intergovernmental mandates and $100 million for private sector mandates. The thresholds in 2010 are $70 million for intergovernmental mandates and $141 million for private sector mandates. CBO must prepare brief statements of cost estimates for those mandates that have estimated costs below these thresholds.[91]

Members can raise a point of order if the measure containing the mandate lacks a CBO cost estimate, either because the Committee failed to publish the CBO's cost estimate in its report or in the *Congressional Record*, or CBO determined that no reasonable estimate of the mandate's cost was feasible. Members can also raise a point of order if the measure has an intergovernmental cost estimate that exceeds the annually adjusted cost threshold in any of the first 5 fiscal years the mandate would be in effect.

UMRA's impact on unfunded mandates has been relatively limited. For example, GAO found that from 1996 to March 2004, 13 points of order were raised in the House and none in the Senate and only one point of order, on a 1996 minimum wage bill, was sustained.[92] In addition, UMRA

---

[89] Ibid., p. 11.

[90] Richard P. Nathan, "The 'Devolution Revolution' An Overview," *Rockefeller Institute Bulletin* (Albany, NY: The Nelson A. Rockefeller Institute of Government, 1996), pp. 5-13; John Kincaid, "The Devolution Tortoise and the Centralization Hare," *New England Economic Review* (May/June 1998), pp. 36-38; and Chung-Lae Cho and Deil S. Wright, "The Devolution Revolution in Intergovernmental Relations in the 1990s: Changes in Cooperative and Coercive State–National Relations as Perceived by State Administrators," *Journal of Public Administration Research and Theory*, vol. 14, no. 4 (2004), pp. 447-467.

[91] For further analysis, see CRS Report R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues*, by Robert Jay Dilger and Richard S. Beth.

[92] U.S. Government Accountability Office, *Unfunded Mandates: Analysis of Reform Act Coverage*, GAO-04-637 (Washington, DC: GPO, 2004), p. 7.

covers only certain types of unfunded federal mandates. As one federalism scholar recently argued:

> UMRA primarily covers only statutory direct orders, excluding most grant conditions and preemptions whose fiscal effects fall below the threshold. Statutory direct orders dealing with constitutional rights, prohibition of discrimination, national security, and Social Security are among those excluded from coverage. Moreover, analytic and procedure requirements do not apply to appropriations bills, floor amendments or conference reports – those tools of "unorthodox lawmaking" that have become increasingly prevalent in the Congress.[93]

Moreover, another federalism scholar noted that the overall record of the 104th Congress, expected by some to decentralize and devolve federalism relationships, was more status quo than devolutionary:

> Shifting back to the overall record of the 104th Congress, it is appropriate here to note the various proposed devolutionary bills that were defeated. Chief among these was the proposed Medicaid block grant with a $163 billion cut in funding over five years. Both a public housing blocking proposal and the big regulatory reform measure that would have seriously limited the Federal government's power to issue rules affecting health, safety, and the environment were scuttled. Extension of the Clean Water Act, enactment of a consolidation of eighty-odd manpower training programs, and passage of a revised Endangered Species Act, which eliminated the Federal authority to restrict threatening activities, were all successfully resisted. A rollback of affirmative action, a conservative shift in the Superfund's program and rules, and the proposed Product Liability Legal Reform Act of 1996 were also scuttled. Of the nine here, two died because of Senate rejection; three, because of a presidential veto or the threat of one; two others failed because neither chamber dared take either one up; and the last two died because of a deadlocked Conference Committee and a lack of time to consider a Conference Report.[94]

The devolution revolution never fully materialized during this era, despite growing public hostility toward the federal government. The emphasis on categorical grants and the issuance of federal mandates, continued. Yet, some decentralization of decision-making authority did take place during the era. For example, in 1980, there were four block grants in operation. In 2000, there were 24 block grants, including the Surface Transportation Program (1991) and the Temporary Assistance for Needy Families (TANF) program (1996). Funded at $16.7 billion annually, TANF rivaled the Surface Transportation Program during this era for the largest budget of all the block grants. In addition, Congress authorized state waivers for Medicaid starting in 1981, and for child welfare assistance programs starting in 1994.[95]

The seemingly contradictory trends of centralization and decentralization that took place in federal grant-in-aid programs during the 1980s and 1990s perhaps reflected the contradictory societal trends that swept across America at the time. As mentioned previously, national public opinion polls indicated that the public was increasingly dissatisfied with the performance of

---

[93] Paul Posner, "The Politics of Coercive Federalism in the Bush Era," *Publius: The Journal of Federalism*, vol. 37, no. 3 (Summer 2007), p. 403.

[94] David B. Walker, *The Rebirth of Federalism*, 2nd ed. (New York: Chatham House Publishers, 2000), p. 165.

[95] For additional analysis see CRS Report RS22448, *Medicaid's Home and Community-Based Services State Plan Option: Section 6086 of the Deficit Reduction Act*, by Cliff Binder; CRS Report RL32277, *How Medicaid Works - Program Basics*, by Elicia J. Herz et al.; and CRS Report RL31082, *Child Welfare Financing: Issues and Options*, by Karen Spar and Christine M. Devere.

government, especially the federal government's performance, and expressed a growing hostility toward government (and Congress) as a whole. It could be argued that these views suggest that the public wanted Congress to devolve federal grant-in-aid programs to state and local governments or, at least, provide them greater flexibility in determining how grant-in-aid funding should be spent. Yet, at the same time, the public also expressed relatively strong support for individual federal government programs (and individual members of Congress).[96] It could be argued that these views suggest that the public wanted Congress to maintain federal government control over these programs, and expressed approval of their individual congressman for doing so.

Another possible explanation for the continued focus on categorical grants and the imposition of federal mandates during this era is that federalism issues tend to be a second order priority for many federal policymakers. For example, it could be argued that President Ronald Reagan's commitment to strengthening federalism through program decentralization and devolution was unrivaled in the modern era. Yet, in an analysis of the Reagan Administration's federalism policies, a leading federalism scholar concluded that "devolutionary policies consistent with the president's definition of federalism reform ... consistently lost out in the Reagan Administration when they ... conflicted with the sometimes competing goals of reducing the federal deficit, deregulating the private sector, and advancing the conservative social agenda."[97] For example, this scholar noted that President Reagan opposed the expansion of General Revenue Sharing, advocated the elimination of the deductibility of state and local taxes, supported the preemption of state laws regulating double-trailer trucks and establishing minimum drinking ages, overrode state objections to increased off-shore oil drilling and increased use of nuclear power, and supported efforts to require states to establish workfare programs for public assistance recipients and suing localities which sought to retain aggressive affirmative action hiring policies.[98]

Grants-in-Aid in the 21st Century

Every nation has experienced defining moments that affect the collective social conscious of nearly every person in that nation. These events tend to occur about once a generation, and often have a significant and lasting affect on political life. In the United States, the bombing of Pearl Harbor on December 7, 1941 - "a date which will live in infamy"- the assassination of President John F. Kennedy on November 22, 1963, and the terrorist attacks on the World Trade Center in New York City and the Pentagon in Washington, D.C. on September 11, 2001 were such moments. Nearly every adult in the nation alive at the time of these events, and many children as well, can recall where they were and what they were doing when they heard the news of these events.

It may be too soon to fully recognize the impact of 9/11 on American politics. However, for grants-in-aid, and American federalism, the short-term impact was clear: the centralization of

[96] Richard F. Fenno, "If, as Ralph Nader Says, Congress Is "The Broken Branch," How Come We Love Our Congressmen So Much?" in *Congress in Change: Evolution and Reform*, Norman J. Ornstein, ed. (New York: Praeger Publishers, 1975), pp. 277-287.

[97] Timothy J. Conlan, "Federalism and Competing Values in the Reagan Administration," *Publius: The Journal of Federalism*, vol. 16, no. 1 (Winter 1986), p. 30.

[98] Ibid.

governmental authority and an expansion of grants-in-aid programs and funding in homeland security and related emergency management areas.

Prior to September 11, 2001, the federal government had three categorical grants-in-aid programs pertinent to homeland security: the State Domestic Preparedness program administered by the Department of Justice, the Emergency Management Performance Grant program administered by the Federal Emergency Management Agency, and the Metropolitan Medical Response System administered by the Department of Health and Human Services. There are now 17 federal grant programs administered by the Grant Programs Directorate within the Federal Emergency Management Agency in the Department of Homeland Security, including 14 categorical grant programs and the following three block grant programs: State Homeland Security Grants, formerly called the State Domestic Preparedness Program, (created in 2003), Urban Area Security Initiative Grants (created in 2003), and the Regional Catastrophic Preparedness Grant (created in 2008).[99] Moreover, national guidelines for emergency preparedness, governing such areas as equipment, training, and exercises and planning assisted with federal funds were issued by the Department of Homeland Security identifying target capabilities for 36 areas of emergency planning and response by state and local governments. Also, national mass transit and driver's license security standards were imposed. The National Governors Association and the National Conference of State Legislatures estimated in 2006 that the new driver's license security standards adopted in 2005 would cost states about $11 billion over five years to implement.[100]

Some observers thought that both the number of grants-in-aid and funding for grants-in-aid might fall during President George W. Bush's presidency, given the budgetary pressures created by the war on terror and his commitment to reducing the federal budget deficit, and the Republican Party's winning majority status in the House of Representatives from 2001-2007 and in the Senate for portions of 2001 and 2002, and from 2003-2007. Yet, funding for federal grant-in-aid programs increased during his presidency, from $285.8 billion in FY2000 to $461.3 billion in FY2008. Since then, federal grant-in-aid funding has accelerated and is now expected to reach $645.7 billion in FY2011. Medicaid has accounted for much of the expenditure growth, increasing from $117.9 billion in FY2000 to $201.4 billion in FY2008, and an estimated $296.7 billion in FY2011, but funding has increased in other areas as well.[101] As shown in **Table 1**, grant-in-aid funding for health care is expected to increase from $124.8 billion in FY2000 to an estimated $317.5 billion in FY2011. Grant-in-aid funding for income security is expected to increase from $68.6 billion in FY2000 to an estimated $121.7 billion in FY2011; for education, training, employment, and social services, from $36.6 billion to $84.1 billion; for transportation, from $32.2 billion to $68.1 billion; and for community and regional development, from $8.6 billion to $22.4 billion.

---

[99] For further analysis, see CRS Report R40246, *Department of Homeland Security Assistance to States and Localities: A Summary and Issues for the 111th Congress*, by Shawn Reese; and CRS Report RL33770, *Department of Homeland Security Grants to State and Local Governments: FY2003 to FY2006*, by Steven Maguire and Shawn Reese.

[100] Paul Posner, "The Politics of Coercive Federalism in the Bush Era," *Publius: The Journal of Federalism*, vol. 37, no. 3 (Summer 2007), pp. 397, 398; National Governors Association, "Policy Position on Secure State Driver's Licenses and Identification Cards," EC-02 (Washington, DC: National Governors Association, 2009), http://www.nga.org/portal/site/nga/menuitem.8358ec82f5b198d18a278110501010a0/?vgnextoid=2bdf2f9655321110VgnVCM1000001a01010aRCRD.

[101] U.S. Office of Management and Budget, *Historical Tables: Budget of the United States Government, Fiscal Year 2010* (Washington, DC: GPO, 2009), pp. 239, 282, 291.

As indicated in **Table 3**, the number of grant-in-aid programs also increased during the first decade of the 2000s, from 664 in 1998 to 953 in 2009. In addition, the emphasis on categorical grants was retained, as 928 of the 953 grants-in-aid in 2009 are categorical grants, and 25 are block grants.

Also, despite UMRA, unfunded federal mandates continued to be issued in several functional areas. For example, during the 109th Congress legislation was adopted that required states to collect data on sex offenders and to prepare a statewide sex offender registry database; imposed federal standards requiring state and local governments using federal foster care funding to visit foster care children monthly; and required states to hold special elections when continuity of government is jeopardized by a national emergency, necessitating some states to amend their state constitutions. Congress also preempted state and local government authority by prohibiting the use of federal grant funds for projects where eminent domain is used to support private uses; prohibited state and local government lawsuits against manufacturers or sellers of firearms; and regulating the citing of certain transmission lines and the citing and operation of onshore liquefied natural gas facilities, energy efficiency and safety of nuclear facilities, and the reliability of electric services.[102]

Grant conditions, historically the predominant means used to impose federal control over state and local government actions, continued to be used to promote national goals. For example, many observers consider the adoption of the No Child Left Behind Act of 2001, signed into law on January 8, 2002, to be President George W. Bush's signature federalism achievement. Although the act allows states to define the standards used for testing, it imposed federal testing, teaching, and accountability standards on states and school districts that, overall, significantly increased federal influence on public elementary and secondary education throughout the nation.[103] In addition, the Help America Vote Act of 2002 instituted "sweeping new federal standards, along with new funding, that regulated significant features of state and local election processes."[104]

Although President Obama has not issued a formal federalism plan, his Administration, and the Democratic majorities in the House and Senate, have initially continued to use federal grants-in-aid as a means to achieve national goals. For example, as mentioned previously, ARRA is expected to provide $236 billion in tax cuts and $626 billion in spending over FYs 2009-2019, including about $325 billion for federal grant-in-aid programs for state and local governments. ARRA provides additional funding for a wide range of federal grant-in-aid programs, such as Medicaid ($93 billion, primarily for a temporary increase in the Federal Medical Assistance Percentages reimbursement rate), a new, State Fiscal Stabilization Fund ($53.6 billion), Build America Bonds ($30 billion), Highways and Bridges ($27.5 billion), Title 1-A, elementary and secondary education for the disadvantaged, ($13 billion), Individuals with Disabilities Education Act ($12.2 billion), Public Transit ($8.4 billion), Intercity Passenger Rail Capital, Congestion, and Corridor Development grants ($8 billion), Temporary Assistance for Needy Families ($5 billion), and Weatherization Assistance Grants ($5 billion).[105]

---

[102] Paul Posner, "The Politics of Coercive Federalism in the Bush Era," *Publius: The Journal of Federalism*, vol. 37, no. 3 (Summer 2007), p. 399.

[103] Ibid., pp. 292, 293. For further analysis see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner.

[104] Paul Posner, "The Politics of Coercive Federalism in the Bush Era," *Publius: The Journal of Federalism*, vol. 37, no. 3 (Summer 2007), p. 395.

[105] For further analysis, see CRS Report R40223, *American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-*
(continued...)

Congressional Issues

As the data in **Table 1**, **Table 2**, and **Table 3** attest, federal grant-in-aid expenditures, in both nominal and constant dollars, and the number of intergovernmental grants have continued to increase since the mid-1980s. Given its increased size and cost, providing effective congressional oversight of the intergovernmental grant-in-aid system is a daunting task. Given the decentralized nature of the congressional committee system, Congress is well-positioned to provide effective oversight of individual federal grant-in-aid programs. However, it could be argued that the decentralized nature of the congressional committee system is not optimally conducive to providing effective oversight of the interactive effects of multiple federal grant-in-aid programs, or of the potential interactive effects of federal grant-in-aid spending programs and federal tax policy.

In the past, the independent, bipartisan ACIR, which operated from 1959-1996, provided Congress and others a series of authoritative reports on the status and operation of intergovernmental grants-in-aid programs, both as individual programs and as a collective system. GAO has published several reports over the years on federal grant-in-aid programs that have helped to fill the informational and analytic void left by ACIR's demise.[106] However, it could be argued that Congress may wish to examine whether a reconstituted ACIR, perhaps one that focuses on the structure and operation of the intergovernmental system as a whole, might prove useful as an additional source of information and analysis as it conducts oversight of the intergovernmental federal grant-in-aid system. For example, such an organization could provide an accepted methodology for counting grants-in-aid programs, and provide Congress periodic assessments of the intergovernmental grant-in-aid system's performance.

Another potential congressional issue of interest is that neither the House nor the Senate currently has in place a committee or subcommittee that is dedicated solely to the oversight of intergovernmental issues. In the past, both the House and the Senate have had in place a subcommittee dedicated to the oversight of intergovernmental issues, typically focusing on the structure and operation of federal grant-in-aid programs and federal mandates. Congress may wish to consider whether the recent growth in the number of intergovernmental grant-in-aid programs and the increased funding for federal grants warrants the formation of either a

(...continued)

5): Title V, Medicaid Provisions, coordinated by Cliff Binder; CRS Report R40151, *Funding for Education in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)*, by Rebecca R. Skinner, David P. Smole, and Ann Lordeman; CRS Report R40214, *Transportation and Transportation Security Related Provisions of House and Senate Stimulus Legislation (H.R. 1)*, by John W. Fischer et al.; CRS Report R40211, *Human Services Provisions of the American Recovery and Reinvestment Act*, by Gene Falk et al.; CRS Report R40216, *Water Infrastructure Funding in the American Recovery and Reinvestment Act of 2009*, by Claudia Copeland et al.; CRS Report R40182, *Funding for Workforce Development in the American Recovery and Reinvestment Act (ARRA) of 2009*, by David H. Bradley and Ann Lordeman; CRS Report R40412, *Energy Provisions in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)*, coordinated by Fred Sissine; and CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant Program: Legislative and Funding History*, by Nathan James.

[106] ACIR's funding was withdrawn following the release for public comment and a hearing on a draft ACIR report on federal mandates. ACIR was required by UMRA to conduct the study, and to make recommendations for mitigating the effect mandates have on state and local governments. The draft report recommended the elimination of a number of federal mandates which had strong support in Congress. ACIR's commission members killed the report in a party-line vote. Many observers concluded that the draft report led to ACIR's losing its funding. See, John Kincaid, "Review of 'The Politics of Unfunded Mandates: Whither Federalism?' by Paul L. Posner," *The Academy of Political Science*, vol. 114, no. 2 (Summer 1999), pp. 322-323.

committee or a subcommittee whose primary focus is the examination of intergovernmental issues.

Concluding Remarks

Although ARRA's funding is temporary, President Obama's recommended use of grant-in-aid programs to create jobs and promote national economic growth, and Congress's approval of that strategy, suggests that Congress may continue the upward trend in grant funding and grant numbers that has been experienced over the past several decades. President Obama's FY2011 budget, for example, anticipates that federal outlays for grant-in-aid programs will fall from $653.6 billion in FY2010 to $645.7 billion in FY2011 and $583.2 billion in FY2012, primarily due to the depletion of temporary ARRA funding, and then increase to $585.8 billion in FY2013 and $613.7 billion in FY2014. All of these estimated budget outlays for federal grant-in-aid programs are higher than the $461 billion in actual outlays for federal grant-in-aid programs in FY2008 and $537 billion in FY2009.

In retrospect, with the exception of the early 1980s, grant funding, the number of grants, and the issuance of federal mandates, have increased under both Democratic and Republican Congresses and Presidents. Historically, there have been notable differences between the two parties' approaches toward federalism. Although both parties have generally opposed unfunded federal mandates, the Republican Party has done so more aggressively, as evidenced by its 1994 Contract With America and sponsorship of UMRA. The Republican Party has also advocated the devolution of certain grant-in-aid programs to state and local governments while the Democratic Party has generally opposed devolution. The Republican Party has also been more aggressive in its support of the decentralization of grants-in-aid decision-making to state and local governments through the consolidation of categorical grants into block grants, support for revenue sharing, and advocacy of administrative relief from various grant conditions. But, overall, the historical record suggests that for Members of both political parities, regardless of their personal ideological preferences, federalism principles often lose out when in conflict with other policy goals, such as reducing the federal budget deficit, promoting social values or environmental protection, and guaranteeing equal treatment and opportunity for the disadvantaged. As long at this continues to be the case, and the public continues to express support for specific government programs, even though they oppose "big" government as a whole, there is little evidence to suggest that the general historical trends of increasing numbers of grant-in-aid programs, increasing funding for grant-in-aid programs, an emphasis on categorical grants, and continued enactment of federal mandates, both funded and unfunded, is likely to change.

Author Contact Information

Robert Jay Dilger
Senior Specialist in American National Government
rdilger@crs.loc.gov, 7-3110

Acknowledgments

This report includes information drawn from CRS Report RL30705, *Federal Grants to State and Local Governments: A Brief History*, by Natalie Keegan. Her report is available by request from the author.