
April 5, 2022

The Honorable Dina Titus
Chairman
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Daniel Webster
Ranking Member
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives
2164 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Titus and Ranking Member Webster:

In reference to the Subcommittee's April 5, 2022 hearing, FEMA Priorities for 2022 and the 2022-2026 Strategic Plan, attached please find the following Western Governors' Association (WGA) Policy Resolutions:

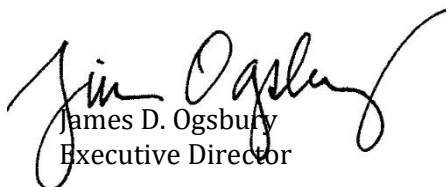
- 2021-06, Disaster Preparedness and Response;
- 2021-02, Utilizing State Data in Federal Decision Making; and
- 2021-01, Strengthening the State-Federal Relationship.

These policy resolutions communicate Governors' perspectives on pre- and post-disaster challenges in the West, the importance of utilizing state data and expertise into federal analysis and decision-making processes, and the Governors' vision for a more effective and functional relationship between states and federal departments and agencies.

I request that you include this document in the permanent record of the hearing, as it articulates Western Governors' policy positions and recommendations on these important issues.

Please contact me if you have any questions or require further information. In the meantime, with warm regards and best wishes, I am

Respectfully,



James D. Ogsbury
Executive Director

Attachments



Policy Resolution 2021-06

Disaster Preparedness and Response

A. BACKGROUND

1. Major disasters, emergencies and extreme weather events are devastating to the people, property, economy, and natural environment of the communities in which they occur. The outcomes of disasters and emergencies can often be far-reaching, with effects on the national economy, infrastructure, and the import and export of commodities.
2. In the United States, disasters and emergencies and their economic and public costs have increased significantly in recent years. Federal disaster declarations (including emergency declarations, major disaster declarations, and fire management assistance grants) have surged since they were first utilized in 1953. From 1953 to 1989, the average number of annual federal disaster declarations was 27.8. That number escalated to an annual average of 108.7 from 1990 to 2016. The year 2020 saw a record 308 disaster declarations by the federal government. Of these declarations, 230 were for emergencies or major disasters, surpassing the previous record of 128 dating back to 2011.
3. The federal government plays a critical role in disaster and emergency response and long-term recovery efforts. Accompanying the greater number of disasters has been an increasing level of federal disaster aid. From 1980 to 2009, the number of federally declared disasters which resulted in costs exceeding \$1 billion averaged approximately 4.5, annually. That number has surged. From 2016 to 2020, the numbers rose with an average 16.2 disasters exceeding \$1 billion in costs each year. In 2020, there were a record-setting 22 disasters that exceeded \$1 billion in costs.
4. Proactive emergency management efforts, such as hazard mitigation and risk reduction activities, have an incredible return on investment. Research has shown that actions taken before a disaster to reduce hazards save, on average, six dollars in future response and recovery costs for every dollar spent on hazard mitigation. At a time when state budgets are struggling to keep up with more frequent and costly disasters, investing in hazard mitigation could have a profoundly positive effect on state and local budgets.
5. Certain types of disasters pose unique threats to western states and have occurred with greater frequency in recent decades. These include floods, droughts, tornadoes, mudslides, earthquakes, hurricanes, and, particularly, wildfires. Wildfires consumed approximately three million acres nationwide in 1960. In three of the past six years, over ten million acres have burned annually. 2020 saw 10.1 million acres affected by wildfire, of which nearly ninety-five percent were in western states. Federal agencies' wildfire suppression costs have increased from less than \$240 million in 1985 to over \$2.2 billion in 2020. Experts project that wildfires will continue to worsen, in terms of acreage burned and in economic effects.
6. Disasters and emergencies have disproportionate effects on different populations and communities. Race and ethnicity, language, education and economic barriers, and immigration status can negatively affect the outcomes of those experiencing an emergency

or disaster. These factors have effects beyond the initial response and extend to recovery, risk reduction, and preparedness program accessibility and equity.

7. The National Response Framework and National Disaster Recovery Framework describe how the federal government, states, territories, localities, tribes, and other public and private sector institutions should respond to and recover from disasters and emergencies. Local emergency agencies – police, firefighters, and medical teams – are to be the first responders in a disaster or emergency. State, territorial, local, and tribal governments have the lead roles in disaster response and recovery. Federal agencies can become involved in disaster and emergency response when resource capacity or effective emergency management is beyond the capabilities of a state, territory or tribe. These federal efforts are primarily directed through the Department of Homeland Security's Federal Emergency Management Agency (FEMA).
8. Governors have a key role in managing emergency response. Governors typically are the state or territorial elected official responsible for making a state disaster declaration and directing disaster response in their jurisdiction. Governors are also responsible for deploying their state National Guard in emergency situations. Governors hold the sole authority to request federal assistance when a disaster overwhelms state and local capabilities, and are responsible for negotiating and implementing interstate mutual aid agreements.
9. Disaster and emergency response and long-term recovery create a significant financial burden. When authorized by FEMA, the Public Assistance, Individual Assistance, and Hazard Mitigation programs provide federal funding which can alleviate this strain. Affected homeowners may seek Individual Assistance; state and local governments may seek Public Assistance to reimburse for costs incurred from debris removal, emergency protective measures during the response, and permanent repair of damaged public infrastructure; and Hazard Mitigation funds can help communities rebuild and become more resilient against future disasters. Other federal agencies, such as the Small Business Administration, Department of Agriculture (USDA), Department of Housing and Urban Development (HUD), and Federal Highway Administration also have programs designed to assist in disaster and emergency recovery efforts. For example, the USDA Natural Resource Conservation Service (NRCS) Emergency Watershed Protection Program is designed to protect people and properties from flooding that often follows wildfire events.
10. In recent years, some petitions for long-term federal recovery aid have been denied. This has been most apparent in petitions for Individual Assistance to counties affected by disasters and emergencies, but has also occurred in connection with state requests for Public Assistance. A denial of federal aid compounds problems for affected communities struggling to recover from the devastation of a disaster or emergency and slows recovery efforts in many western states.
11. While most disasters affect a specific local area, the COVID-19 public health emergency was national in scope. The COVID-19 pandemic has highlighted the need for close coordination between federal, state, territorial, local and tribal governments in emergency management. The pandemic continues to cause significant disruption across the world, requiring ongoing attention from Governors and emergency management and public health officials, affecting the lives of all Americans, and complicating the flow of goods and services across international borders.

B. GOVERNORS' POLICY STATEMENT

1. Governors need maximum flexibility to respond to disaster and emergency circumstances that may evolve quickly over the course of a disaster through the initiation of recovery. Therefore, we should expeditiously remove any barriers limiting a Governor and their executive branch agencies' ability to save taxpayer money and expedite response and recovery efforts while safeguarding lives, property and the environment. Western Governors recognize that planning processes and disaster and emergency protocols are important aspects of emergency management, but that Governors also need significant freedom to adapt those plans to changing circumstances during the evolution of a disaster or emergency.
2. Federal, state, territorial and tribal efforts to prepare for, mitigate against, respond to, and recover from emergencies and disasters must ensure programs and response efforts are inclusive, equitable, and accessible and representative and reflective of the affected communities. Concepts of inclusivity, diversity, equity and accessibility must be included from initial development of programs, policies and procedures to reduce risk in our communities and address post-disaster survivor needs.
3. Western Governors recognize that community resilience is key to ameliorating the effect of many disasters and emergencies. Hazard mitigation and risk reduction are the most cost-effective ways to protect lives, property, infrastructure and the environment from the effects of natural and human-caused hazards. Effective risk reduction strategy development and implementation leverage broad stakeholder input across multiple disciplines, sectors and levels of government. Infrastructure planning should include consideration of risk reduction measures for known hazards as well as address the dynamic hazard profile created by a changing climate. We must plan for tomorrow, not yesterday.
4. Western Governors encourage Congress and federal agencies to reassess the structure of disaster mitigation grant programs, which can be too restrictive or narrowly tailored to address community needs. Additionally, establishing consistent administration standards for different federal grant programs, including the Hazard Mitigation Grant Program, the State Homeland Security Program, and the Building Resilient Infrastructure and Communities and Emergency Management Performance Grant programs, would streamline application processes and eliminate confusion at the local level.
5. Federal agencies conducting disaster recovery and assistance, as well as the programs which they administer, should receive adequate and consistent funding and allow Governors and their designated executive branch agencies to have critical input on where those funds are needed most. The lack of speed, certainty and consistency in appropriation of federal disaster funding, such as HUD Community Development Block Grant – Disaster Recovery (CDBG-DR) funds, are a hinderance to coordinated recovery efforts and effective utilization of public funds. For example, there is no current appropriation (or public consideration) of funding for the 2020 California wildfires, which occurred more than seven months ago. Additionally, the inconsistent incorporation of HUD mitigation resources (CDBG-MIT) is an obstacle to effective coordination of mitigation efforts across program areas.

6. Many rural western communities have less concentrated populations than eastern states, making it difficult for western states and territories to qualify for Individual Assistance and Public Assistance declarations. Additionally, certain criteria, such as considering Total Taxable Revenue of the entire state when evaluating whether to provide a major declaration for a localized event, makes it virtually impossible for large states to receive a declaration. Federal processes used to evaluate the need for access to disaster aid programs should be reconsidered. Federal agencies should reexamine the standards used to determine the provision of Individual Assistance to homeowners and the access to federal aid needed for recovery from disasters and emergencies that affect western states and territories. The historically underfunded USDA NRCS Emergency Watershed Protection Program should be revisited and strengthened.
7. Western Governors recognize that as the first responders to a disaster or emergency, states, territories, local governments, and tribes have better information about local conditions and needs in the response and immediate recovery phases of a disaster or emergency. FEMA and other applicable federal agencies should work directly with individual states and territories, through Governors or their designees, to jointly identify disaster risks and methods by which such risks may be addressed. In collaboration with Governors or their designees, federal agencies should reassess the administrative mechanisms to establish the most effective means to determine the necessity and provision of federal disaster assistance.
8. Federal agencies should provide state, territorial, local, and tribal government officials with accessible and clear information on available federal resources and programs and the most effective utilization of those resources in disaster recovery. WGA has worked with federal partners to improve interagency coordination on post-wildfire restoration work, including a roadmap of assistance available to communities affected by wildfire and identification of “navigators” to help communities prioritize post-wildfire restoration needs. Western Governors urge the federal government to prioritize the funding of these important efforts, as they should have a positive effect on maximizing the value of restoration work and, more importantly, addressing the needs of communities affected by wildfire.
9. Western Governors recognize that while aid may be provided following a disaster, the event itself could be avoided or minimized if resources were directed to pre-disaster mitigation efforts. Rebuilding is too-often provided in a delayed fashion or conducted without safeguards necessary to prevent future disaster-related damages. This compounds the vulnerability of western communities and resources in the face of disasters. Federal legislation should reconsider the important role of pre-disaster mitigation that reduces the risk and minimizes the effects of disasters and emergencies. When possible, pre-disaster mitigation should be incentivized at the state and local levels. Additionally, some western and midwestern states are at risk of catastrophic earthquake. Mitigation assistance beyond that currently administered by FEMA is needed. Finally, mitigation funds tied to Fire Management Assistance Grant (FMAG) declarations assist fire-ravaged communities. The FMAG and Hazard Mitigation Grant Program (HMGP) Post Fire Grant programs should be continued.
10. Western Governors encourage the Administration to consider actions to increase communication between and cohesion of federal agencies in disaster and emergency response. The Executive Branch should consider placing FEMA in the lead role to coordinate communication between and cohesion of federal agencies in disaster and

emergency response. Strengthening federal emergency management processes to promote single, comprehensive points of contact would streamline state-federal coordination and help ensure states and territories can allocate resources where they are most needed. Western Governors support the consideration of a national emergency management strategy to provide consistent lines of communication between federal, state, territorial, local and tribal governments.

11. Federal agencies should seek to eliminate duplicative administrative processes to streamline post-disaster assistance. Multiple agencies requiring overlapping or duplicative reviews for post-disaster assistance adds time and cost to recovery efforts.
12. Western Governors recognize the need for clear, consistent, truthful and timely communication about the scope and scale of disasters and emergencies, both between all levels of governments and between governments and their constituents. Clearly articulating what is known, and what is not known, about a disaster or emergency is critical to developing and executing an effective response from governments, promoting public confidence in those response actions, and empowering citizens to make informed decisions about their safety and welfare.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in June 2024. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.



Policy Resolution 2021-02

Utilizing State Data in Federal Decision Making

A. **BACKGROUND**

1. State and federal agencies increasingly rely on quantitative and qualitative data to inform evidence-based policymaking, improve service delivery, more effectively manage resources, improve regulatory enforcement, and more accurately measure program performance and effectiveness.
2. States serve a critical function as a primary sources and stewards of economic, social, geospatial, scientific, technical, and other datasets that support a wide array of federal agencies and programs. State agencies often have the best available science, expertise, and other institutional data resources for purposes of federal decision-making processes.
3. States are both sovereignties and the primary administrators of numerous federal administrative and regulatory programs under a system of cooperative federalism, which distinguishes them from other non-federal sources of data.
4. State agencies also rely on timely access to current and accurate federal datasets to inform their own decision-making processes, develop more effective policy, improve service delivery and public communication, and to administer federally-delegated administrative programs.
5. In addition to federal laws and regulations, state agencies operate under their own privacy and data stewardship laws, regulations, and policies that protect personal and confidential information from public disclosure or other inappropriate use or disclosure. These protections help establish public trust that ultimately improves government effectiveness.
6. Public access to datasets that serve as the basis for federal agency actions promotes transparency and accountability in the decision-making process. Nevertheless, blanket requirements to make publicly available all data considered by federal agencies – particularly if this data consists of raw data provided by states – may infringe upon states' statutory imperatives to protect personally identifiable and otherwise sensitive information. It may also infringe upon fundamental privacy and data stewardship principles like purpose specification and data minimization. Even where there is no state legal barrier to disclosure of raw data, state agencies may maintain significant reservations about the public release of raw data.
7. The 2019 Federal Data Strategy directs federal agencies to “[e]ffectively, routinely, transparently, and appropriately use data in policy, planning, and operations to guide decision-making [and] share the data and analyses behind those decisions.” Additionally, agencies are directed to “[f]acilitate data sharing between state, local, and tribal governments and the Federal Government, where relevant and appropriate and with

proper protections, particularly for programs that are federally funded and locally administered, to enable richer analyses for more informed decision-making.”

8. Improvements in intergovernmental data sharing, stewardship, integration, protection, and utilization will require robust federal investments in a modern data infrastructure, technology, and training.

B. GOVERNORS' POLICY STATEMENT

1. State data serves a critical role in the successful implementation of a variety of federal programs and in federal agencies' fulfillment of their statutory missions and directives.
2. Subject to state laws and other requirements for data protection and transparency, federal agencies should be required to incorporate state and local data and expertise into their analysis and decision-making processes. This data should include geospatial, scientific, technical, economic, social, and other information relevant to issues the agency is trying to address.
3. Congress and the Executive Branch should look to states and state agencies as partners – rather than ordinary stakeholders – in the collection, stewardship, analysis, and use of data to inform federal decision-making processes. Federal agencies should recognize the existence and limitations of state privacy and data stewardship laws, regulations, and policies and work with states to develop strategies that encourage effective state-federal data sharing while appropriately protecting data according to state law.
4. State data – particularly non-aggregated raw data – is subject to differing levels of protection under various state laws, regulations, and policies. Western Governors encourage Congress and federal agencies to recognize the limitations on complete transparency of state data in federal decision making and to work with states to identify ways in which protected data can inform federal decision-making processes without conflicting with applicable state laws, regulations, or policies.
5. Federal agencies should consult with states – on a government-to-government basis – in the development and implementation of policies, programs, and strategies to more effectively and consistently incorporate state data into federal decision making, including implementation of applicable federal statutes and programs, as well as the Federal Data Strategy and development of annual Federal Data Strategy Action Plans.
6. Federal agencies should also consult with states to ensure that state and local partners have access to timely and reliable federal datasets for purposes of informing state and local decision-making processes.
7. Congress and the Executive Branch should support, and work with state toward, the modernization of our nation's data infrastructure and intergovernmental data-sharing and analysis capabilities. Data infrastructure should be based on best practices for data stewardship and must properly protect personal and confidential information in accordance with state and federal law. Federal agencies should consult with states to develop guidelines for intergovernmental data-sharing agreements and other protocols that include commitments to fundamental privacy and data stewardship principles like purpose specification and data minimization.

8. Federal agencies should work with state and local partners to develop uniform data standards, where appropriate, to maximize data quality and facilitate intergovernmental data use, access, sharing, and interoperability.
9. Western Governors support congressional efforts to broaden statutory exemptions under the Freedom of Information Act to protect personally identifiable and sensitive state-shared data from disclosure.
10. Western Governors urge the Executive Branch to develop uniform privacy and data stewardship policies based on best practices and uniform interpretations of federal privacy and data stewardship laws, regulations, policies, and other directives applicable to data received from states, as well as other non-federal sources.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2023. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.



Policy Resolution 2021-01

Strengthening the State-Federal Relationship

A. **BACKGROUND**

1. Western Governors are proud of their unique role in governing and serving the citizens of this great nation. As the chief elected officials of sovereign states, they bear enormous responsibility and have tremendous opportunity. Moreover, the faithful discharge of their obligations is central to the success of the Great American Experiment.
2. It was the states that confederated to form a more perfect union by creating a national government with specific responsibilities for common interests. In this union, the states retained their sovereignty and much of their authority.¹
3. Under the American version of federalism, the powers of the federal government are narrow, enumerated and defined. The powers of the states, on the other hand, are vast and indefinite and encompass all powers of governance not specifically bestowed to the federal government by the U.S. Constitution. This principle is memorialized in the Tenth Amendment, which states: “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.”
4. This reservation of power to the states respects the differences between regions and peoples, recognizes a right to self-determination at a local level, and provides for flexible, tailored solutions to policy challenges. It also requires the federal government to engage with states – our nation’s dynamic laboratories of democracy – on a government-to-government basis befitting their co-sovereign status.
5. In addition to states’ reserved sovereign authorities, Congress has recognized state authority in federal statute by: (1) directing the federal government to defer to state authority, including such authority over land and water use, education, domestic relations, criminal law, property law, local government, taxation, and fish and wildlife; and (2) delegating federal authority to states, including the regulation of water quality, air quality, and solid and hazardous waste.
6. [Executive Order 13132](#), Federalism, reinforces these constitutional, statutory, and judicial principles and directs federal agencies to have an accountable process to ensure meaningful and timely input from state officials in developing policies with federalism implications.
7. The relationship between state and federal authority is complex and multi-dimensional. There are various contexts in which these authorities manifest and intersect:

¹ The U.S. Supreme Court has confirmed that, “[d]ual sovereignty is a defining feature of our Nation’s constitutional blueprint” and “States entered the Union with their sovereignty intact.” *See, e.g., Sossamon v. Texas*, 563 U.S. 277, 283 (2011).

- a) **State Primacy** – All powers not specifically delegated to the federal government in the Constitution. In the absence of Constitutional delegation of authority to the federal government, state authority should be presumed sovereign. *Examples: groundwater, wildlife management (outside of the Endangered Species Act), natural resources management, electric transmission siting.*
 - b) **Shared State-Federal Authority** – Fact patterns in which federal authority and state primacy intersect. *Examples: wild horses and burros on federal lands, interstate water compacts.*
 - c) **Federal Authority Delegated to States** – Federal authority that Congress has delegated to states by statute. Many such statutes require federal agencies to set federal standards (and ensure those standards are met) but authorize states to implement those standards. *Examples: water and air quality, solid and hazardous waste.*
 - d) **Federal Statutory or Other Obligations to States** – Where the federal government has a statutory, historical, or moral obligation to states. *Examples: Payments in Lieu of Taxes; Secure Rural Schools Act; shared mineral royalties; agreements to clean up radioactive waste that was generated by federal nuclear weapons production.*
 - e) **Exclusive Federal Authority** – Powers enumerated in the Constitution as exclusive powers of the federal government. In areas of exclusive federal authority, state law can be preempted if Congress clearly and unambiguously articulates an intent to occupy a given field or to the extent it conflicts with state law. *Examples: national defense, production of money.*
8. In contravention of the Founders’ design, the balance of power has shifted toward the federal government and away from the states. Increasingly prescriptive regulations tie the hands of states and local governments, dampen innovation, and impair on-the-ground problem-solving. Failures of the federal government to consult with states reflect insufficient appreciation for local knowledge, preferences, and competencies. In many cases, these federal actions encroach on state legal prerogatives, neglect state expertise, and/or infringe on state authority.
 9. The federal government often requires states to execute policy initiatives without providing the funding necessary for their implementation. State governments cannot function as full partners if the federal government requires them to devote their limited resources to compliance with unfunded federal mandates.
 10. State authority and autonomy is also eroded when prescribed federal policies become effectively mandatory through the contingency of federal funding streams that states depend on to deliver critical services.
 11. Too often, federal agencies: solicit input from states after a decision is already made or a public process is started; ask states to provide feedback on a proposed action without providing details or documents regarding what the agency is proposing; or do not respond to state input or incorporate feedback from states into their decisions. This does not afford states with the respect and communication required by law, and states currently have no

recourse for an agency's failure to consult except for litigation on the merits of a federal decision.

12. Congress and Executive Order 13132 currently require federal agencies to document the effects of their actions on states in certain circumstances. In practice, federal agencies rarely prepare these prescribed federalism assessments or statements. Even when federal agencies prepare such documents, they are not ordinarily informed by input from affected states. In addition, these documentation requirements only apply at the end of the rulemaking process and cannot substitute for early and meaningful consultation with states.
13. Federal agencies have suggested to states that there are legal or other barriers to state consultation, such as: federal agency policies restricting ex parte communications; concerns about the applicability of Federal Advisory Committee Act (FACA) procedures to meetings between state and federal officials; and issues with sharing information that would otherwise be exempt from disclosure under the Freedom of Information Act (FOIA).
14. Federal agencies do not adequately incorporate state data and expertise into their decisions. This can result in duplication, inefficiency, and federal decisions that do not reflect on-the-ground conditions. Consideration and incorporation of state, tribal, and local data and analysis will result in federal actions that are better-informed, more effectively coordinated among all levels of government, and tailored to the communities they affect.
15. Many of these issues stem from a profound misunderstanding throughout the federal government regarding the role and legal status of states. Over the past several years, Western Governors have worked to improve the federal government's understanding of state sovereignty, authority, and state-federal consultation; meaningful structural change, however, has yet to occur.

B. GOVERNORS' POLICY STATEMENT

1. A good faith partnership between states and the federal government will result in more efficient, economic, effective, and durable policy, benefiting the Governors' and the federal government's shared constituents and resulting in a nation that is stronger, more resilient, and more united.
2. Improving state-federal communication and coordination is a goal that transcends party lines, and it is among the Governors' highest priorities. The Governors urge Congress and the Executive Branch to make fundamental changes to realign and improve the state-federal paradigm.

State Sovereignty and Authority

3. States are co-sovereigns with the federal government pursuant to the Tenth Amendment of the U.S. Constitution and other federal law. Congress and federal agencies must recognize state sovereignty and must not conflate states with other entities or units of government. States should not be treated as stakeholders or members of the public.
4. State authority is presumed sovereign in the absence of Constitutional delegation of authority to the federal government.

- a) Federal legislative and regulatory actions should be limited to issues of national significance or scope, pursuant to federal constitutional authority. Preemption of state laws should be limited to instances of necessity.
 - b) Where Congress preempts state law (acting pursuant to federal constitutional authority), federal law should accommodate state laws, regulations, and policies before its enactment and permit states that have developed alternate standards to continue to enforce and adhere to them.
 - c) Federal agencies should construe federal law to preempt state law only when a statute contains an express preemption provision or there is some other compelling evidence that Congress intended to preempt state law.
5. Congress and federal agencies should respect the authority of states to determine the allocation of state administrative and financial responsibilities in accordance with state constitutions and statutes. It should further:
- a) Ensure that federal government monitoring is outcome-oriented;
 - b) Minimize federal reporting requirements; and
 - c) Refrain from dictating state or local government organization.
6. When a state is meeting the requirements of a delegated program, the role of a federal agency should be limited to the provision of funding, technical assistance and research support. States should have the maximum discretion to develop implementation and enforcement approaches within their jurisdiction without federal intervention. Federal agencies should recognize and credit states' proactive actions.
7. Congress and federal agencies should avoid imposing unfunded federal mandates on states. In addition:
- a) Federal assistance funds, including funds that will be passed through to local governments, should flow through states according to state laws and procedures;
 - b) States should have the flexibility to transfer a limited amount of funds from one grant program to another and to coordinate the administration of related grants;
 - c) Federal funds should provide maximum state flexibility without specific set-asides; and
 - d) Governors should have the authority to require coordination among state executive branch agencies, or between levels or units of government, as a condition of the allocation or pass-through of funds.
8. Congress and the Executive Branch should create or re-establish entities to discuss and act on federalism issues, such as the Speaker's Task Force on Intergovernmental Affairs, the U.S. Advisory Committee on Intergovernmental Relations, the Subcommittee on Intergovernmental Affairs, or a federalism office within the White House. These entities should have the ability and resources to make recommendations to improve the state-

federal relationship and include states in their membership or actively involve states in their discussions.

State-Federal Consultation

9. Federal agencies must engage in consultation with states on a government-to-government basis in accordance with states' legal status. Congress should clarify and promote the need for state-federal consultation.
10. Improving state-federal consultation will result in more effective, efficient, and long-lasting federal policy for the following reasons:
 - a) Governors have specialized knowledge of their states' environments, resources, laws, cultures, and economies that is essential to informed federal decision-making;
 - b) Federal agencies can reduce duplication through the use and incorporation of state expertise, data and documentation;
 - c) Authentic communication and information exchange will help federal agencies determine whether an issue is best addressed at the federal level; and
 - d) Through meaningful dialogues with affected states, federal agencies can also avoid unintended consequences and address or resolve state concerns.
11. Each Executive department and agency should have a clear and accountable process to provide each state – through its Governor or their designees – with early, meaningful, substantive, and ongoing consultation in the development of federal policies that affect states. The extent of the consultation process should be determined by engaging with affected states. At a minimum, this process must involve:
 - a) Conducting consultation through federal representatives who can speak or act on behalf of an agency;
 - b) Inviting states to provide input outside of a public process and before proposals are finalized;
 - c) Enabling states to engage with federal agencies on an ongoing basis to seek refinements to proposed federal actions prior to finalization;
 - d) Providing robust information and documents (including non-final, non-public, draft, and supporting documents) about potential federal actions, including proposed rules, to Governors or their designees;
 - e) Addressing or resolving, where possible, state issues, concerns, or other input unless precluded by law;
 - f) Documenting how state concerns were resolved or why they were unable to be resolved in final decisions; and

- g) Making reasonable efforts to achieve consistency and avoid conflicts between federal and state objectives, plans, policies, and programs.
12. Governors affirm their reciprocal role in advancing a clear, predictable, timely, and accountable consultation process. Governors or their designees must continue to provide clear expectations for the appropriate scope and scale of consultation and must work with federal agencies to make consultation processes as efficient as practicable. As chief executives, Governors must also ensure the views of the state are clearly and consistently conveyed throughout the consultation process by prioritizing significant issues and resolving competing viewpoints across state government.
13. In many cases, federal agencies are required – whether by statute, executive order, regulation, policy, or other mandate – to consult, cooperate, and coordinate with states before taking action. However, due to states’ unique legal status, the need for federal-state engagement is not limited to express directives and should extend to any federal actions that may have direct effects on states, on the relationship between the federal government and states, or on the distribution of power or responsibilities among the various levels of government. Federal agencies should consult with states regarding what types of agency actions typically affect states and the extent of consultation required for these types of actions.
- a) These actions include the implementation of federal statutes and the development, prioritization, and implementation of agency policies, rules, programs, reviews (e.g., Governor’s Consistency Reviews), plans (e.g., resource management plans), budget proposals and processes, strategic planning efforts (e.g., reorganization), and federal litigation or adjudication that affects states.
 - b) When a federal agency proposes to enter into any agreement or settlement that affects states, the agency should provide all affected Governors or their designees with notice of the proposal and consult with, and seek the concurrence of, Governors or their designees who respond to the notice.
14. Congress and the Executive Branch should require federal agencies to promulgate regulations in consultation with Governors, setting forth their procedures to ensure meaningful, substantive consultation with states on federal actions that affect states. This direction should also clarify that, for rulemakings affecting states:
- a) An agency’s satisfaction of rulemaking requirements under the Administrative Procedure Act (including the solicitation of public comments) does not satisfy an agency’s obligation to consult with states; and
 - b) Consultation should occur before publication of a notice of proposed rulemaking or before an advanced notice of proposed rulemaking is submitted to the Office of Management and Budget (OMB).
15. Congress and the Executive Branch should consider the following additional accountability measures:

- a) Requiring the designation of a federalism official with the responsibility for implementing state-federal consultation and publish this official's name, title, and contact information on the agency's website;
 - b) Requiring OMB to regularly submit a report to Congress and Governors on state-federal consultation and implementation of agency consultation rules;
 - c) Requiring federal agencies to provide a summary of their efforts to consult with states, including a discussion of state input and how that input was considered or addressed, in any proposed and final rules;
 - d) Creating a process where Governors can notify OMB of an agency's failure to consult or comply with their consultation procedures; and
 - e) Providing an opportunity for Governors or their designees to seek judicial review of an agency's failure to consult.
16. Congress and the Executive Branch could make federalism reviews more effective by:
- a) Working with Governors to develop specific criteria and consultation processes for initiating and performing these reviews.
 - b) Providing Governors with an opportunity to comment on federalism assessments before any covered federal action is submitted to OMB for approval.
17. Congress and federal agencies should take the following actions to clarify that *ex parte* policies, FACA, and FOIA are not barriers to consultation:
- a) Federal agencies should (and Congress should require them to) clearly identify and provide rationale for any perceived barriers to consultation;
 - b) Federal agencies should clarify that consultation with state officials does not qualify as *ex parte* communications and that *ex parte* communications are not prohibited at any point during an informal rulemaking process;
 - c) Congress should clarify that meetings held exclusively between federal personnel and state elected officials or their designees acting in their official capacities or in areas of shared responsibilities or administration (and not for the purpose of obtaining collective advice) do not qualify as requiring compliance with FACA procedures; and
 - d) Congress should clarify that FOIA's exemptions apply to federal records shared or exchanged with states (as if those records were shared, exchanged, or created solely within the federal government) and create a statutory exemption to FOIA disclosure for state records in instances where publication of state records provided to federal agencies would violate existing state law.

State Data and Expertise

18. Federal agencies should utilize state data, expertise, and science in the development of federal actions that affect states.
19. Congress and the Executive Branch should, subject to existing state requirements for data protection and transparency, require agencies to incorporate state and local data and expertise into their decisions. This data should include scientific, technical, economic, social, and other information on the issue the agency is trying to address.
20. States merit greater representation on all relevant committees and panels advising federal agencies on scientific, technological, social, and economic issues that inform federal regulatory processes.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2023. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.