

December 28, 2005

Charles Goodman
Director, Systems Planning
Federal Transit Administration
400 7th Street SW
Washington, DC 20590

Dear Mr. Goodman,

The National Association of Regional Councils (NARC) would like to thank you and your colleagues for meeting with us on December 21st concerning Federalism impacts of proposed highway and transit rulemaking. This letter is a follow-up to that meeting which outlines NARC's position on the Federalism issue and expands on specific topics touched upon last week.

NARC agrees that it satisfies the "Express Authority" requirements in Section 1 of Executive Order 13132 (Federalism) that grants comment and consult privileges to national organizations of local elected officials (Paragraph D) and political subdivisions created by states (Paragraph B). Also, NARC affirms—in accordance with Section 2(B) of the Order—that it is in the national interest to establish clear, comprehensive, consistent, and concise rules that delineate clear lines of programmatic, funding, and policy authority with relation to the National Surface Transportation Program. Since new burdens are being placed on state and local governments, NARC requests consultation privileges in the rulemaking process, per Section 6(2) of the Order.

NARC believes that a comprehensive burden analysis is needed for every duty slated to be turned over to states and MPOs, as required by the Order. New burdens come in the form of increased need for funding, staff time, and administrative capacity. Comprehensive burden analyses will provide MPOs and states the information they need to comment on proposed rules.

NARC has identified five important issues impacting Federalism. While there are other issues with Federalism implications in SAFETEA-LU, these five issues have surfaced early on in discussions on rulemaking.

New Freedom Program and Coordinated Human Services Transportation Plans- SAFETEA-LU section 5317, along with sections 5302, 5303, 5310, 5311, 5314, and 5316 require MPOs to draft Coordinated Human Services Transportation Plans. Without these plans, important funding for disabled and transportation-disadvantaged programs such as New Freedom will be withheld by the Federal Government. In order to streamline the planning and implementation process, clear rules are needed to define the relationship between states and MPOs. At present, there appears to be a disconnect between the MPOs, who draft the plan, and states, who implement it.

Highway Safety Improvement Program- SAFETEA-LU sections 1101 and 1401 establish a new system for planning and administration of safety programs. Among the Federalism issues is the

new requirement for states to draft Strategic Highway Safety Plans (SHSPs). NARC believes that clear rules are needed to define the relationship between the Federal government, MPOs, and states in the safety planning process. A feature tenet of Federalism is placing duties in the hands of the level of government closest to the people. As agencies comprised of local governments—the unit of government closest to the people—MPOs should be afforded maximum input into the planning and implementation process. At present, MPOs are afforded “consultation” privileges, which NARC believes should be strengthened into an ongoing input process by the forthcoming FHWA rules. Further, project selection for SHSPs should come from MPO-developed Transportation Improvement Plans (TIPs), which utilize a proven method of prioritization and project vetting.

National Environmental Protection Act- Under SAFETEA-LU Section 6005, environmental regulatory duties formerly assigned to the USDOT by the National Environmental Protection Act are allowed to be turned over to five selected states as a pilot program. States must apply to USDOT and an agreement must be drafted. Rules for this provision should expressly state the responsibilities—if any—that MPOs will play in the environmental regulation process. Further, rules for this provision should also ensure that current standards established in NEPA are maintained in each state that assumes regulatory control.

“4(f)” De Minimis Permitting- Sections 6007 and 6009 of SAFETEA-LU allow for a streamlined permitting process for transportation projects on protected, public, or historic land. The US Secretary of Transportation and the appropriate chief state administrator must agree that a project will not have any impact on the environmental or historic qualities of the land it is to be built on. For states, gathering this information will result in additional burdens in terms of staff time and expense. Forthcoming rules should state who is responsible for data collection and engineering studies for each project. NARC believes that 4(f) evaluation and permitting should remain the sole responsibility of state government agencies.

Planning Regulations and Environmental Review- Section 6001 (h), (i) of SAFETEA-LU requires that MPO-developed Long Range Transportation Plans (LRTPs) and Transportation Improvement Plans (TIPs) have a section covering environmental mitigation activities, including a discussion on appropriate sites for planned projects. These plans are required to be drafted in consultation with Federal, State, and Local agencies. These environmental mitigation requirements represent a new burden on MPOs. A full assessment of burdens and costs of these provisions should be undertaken.

NARC and its members hope that you will give every consideration to our comments on Federalism implications in the FHWA and FTA rulemaking process. We have other concerns that extend beyond issues relating to Federalism. At the appropriate time, we will bring those issues to your attention. We look forward to working with FHWA and FTA throughout the guidance and rulemaking process.

Sincerely,

Robert Sokolowski
Executive Director
National Association of Regional Councils