

## Federal Revenue Sharing

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## FEDERAL REVENUE SHARING\*

By H. RUTHERFORD TURNBULL, III\*\*

*Few recent proposals concerning Government finance have captured the public support of so many prominent leaders of different philosophic bent and party affiliation as has the revenue-sharing idea.<sup>1</sup>*

Over the past several years national interest in federal revenue sharing has increased remarkably. During the past four years alone, more than a hundred bills have been introduced in Congress. As of late summer, 1969, at least forty-seven bills already had been introduced in the First Session of the Ninety-first Congress. Among them are the Nixon Administration's proposal and a bill introduced by Senators Goodell and Muskie designed to implement the earlier report and recommendations of the prestigious Advisory Commission on Intergovernmental Relations (ACIR). Moreover, the report of the President's Commission on Urban Problems (the Douglas Commission) strongly advocates that Congress enact revenue-sharing legislation, and its proposal has been embodied in another significant bill recently introduced.

This article will attempt to explain revenue sharing, illustrate how it might work with respect to the states, using Maryland as an example, and call attention to some noteworthy legislative trends and proposals, focusing particularly on problems of "pass-through" to local governmental units.

### I. THE HELLER-PECHMAN PLAN

Federal revenue sharing was proposed originally in 1964 by Walter W. Heller, then chairman of the President's Council of Economic Advisors,<sup>2</sup> and subsequently by Joseph A. Pechman, then chairman of a task force appointed by President Johnson.<sup>3</sup> It was conceived as a

\* This article supplements a detailed analysis of federal revenue sharing and the unsuccessful efforts of Maryland to achieve intrastate revenue sharing, entitled *FEDERAL REVENUE SHARING: A MARYLAND CASE STUDY*, published by The Institute of Government of The University of North Carolina at Chapel Hill (1969).

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1. REPORT OF THE NATIONAL COMM'N ON URBAN PROBLEMS, TO THE CONGRESS AND TO THE PRESIDENT OF THE UNITED STATES, BUILDING THE AMERICAN CITY, H.R. DOC. NO. 91-34, 91st Cong., 1st Sess. 376 (1969).

2. W. HELLER, *NEW DIMENSIONS OF POLITICAL ECONOMY* 117, 144 (1967) [hereinafter cited as HELLER, *NEW DIMENSIONS*]. See also HELLER, *A SYMPATHETIC REAPPRAISAL OF REVENUE SHARING, REVENUE SHARING AND THE CITY* 3 (1968) [hereinafter cited HELLER, *SYMPATHETIC REAPPRAISAL*].

3. PECHMAN, *FINANCING STATE AND LOCAL GOVERNMENTS, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM*, 90th Cong., 1st Sess. 763 (1967) [hereinafter cited as PECHMAN, *FINANCING STATE AND LOCAL GOVERNMENTS*]. See J. PECHMAN, *FEDERAL TAX POLICY* 207 (1966). See also PECHMAN, *MONEY FOR THE STATES, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM*, 90th Cong., 1st Sess. 786 (1967) [hereinafter cited as PECHMAN, *MONEY FOR THE STATES*].

method of overcoming "fiscal drag" caused by an anticipated federal fiscal surplus in the absence of full employment.<sup>4</sup> As such, it was seen as an alternative to reducing federal income tax rates.<sup>5</sup> Considering recent proposals to reduce such taxes and the possible reduction in the Vietnam conflict, these early considerations are again relevant. More recently, federal revenue sharing has been advanced as a method of assisting financially hard-pressed state and local governments.

Under the Heller plan, the federal government would distribute a "specified portion of the federal individual income tax to the states each year on a per capita basis, with next to no strings attached. The distribution would be over and above existing and future conditional grants."<sup>6</sup> The impact of the plan is best seen in terms of a "share in the nation's economic growth"<sup>7</sup> and therefore capable of being financed out of the growth without cutting back present federal spending for other purposes.

Heller conceded that "the competing claims of federal tax cuts and expenditure increases" probably would require that distribution initially begin at one-half of one percent or possibly one percent and build up to two percent of the base. He asserted that in 1966 two percent of net taxable income of individuals would have yielded \$5.6 billion for sharing, in 1967 it would have yielded \$6.0 billion, and that each one percent of this base would have yielded \$3.0 billion a year and would have cost the federal government about five percent of its individual income tax revenues.<sup>8</sup> In spite of four recessions in the post World War II period, grants under this plan would have increased annually since 1949 except for a decline of one-tenth of one percent in 1958. The individual income tax base (net taxable income of individuals) has grown from \$65 billion in 1946 to an estimated \$300 billion in 1967 and from thirty-one percent of GNP in 1946 to an estimated thirty-eight percent in 1967. Heller assumed a six percent annual growth in the money GNP and a growth of the income tax by twenty percent faster than GNP. Pechman suggested that the base could be either total federal revenues, total income tax collections, or the individual income tax base.<sup>9</sup> The noted economist George F. Break has written concerning the base:

If unconditional federal grants are initiated, they should be responsive to economic growth and to rising price levels, since state-local fiscal deficiencies are likely to increase with both. One way of doing this, and of helping states to plan by enabling them to forecast their future grant receipts with reasonable accuracy,

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4. WORSNOP, FEDERAL-STATE REVENUE SHARING, 111 CONG. REC. A4780 (daily ed. Aug. 25, 1965).

5. See HELLER, SYMPATHETIC REAPPRAISAL, *supra* note 2, 13-14, 22; HELLER, NEW DIMENSIONS, *supra* note 2, 117, 125-39, 152; PECHMAN, FINANCING STATE AND LOCAL GOVERNMENTS, *supra* note 3, 768. See also Colman, *Revenue Sharing: Problems and Prospects*, 1 URBAN LAW. 34, 43 (1969).

6. HELLER, NEW DIMENSIONS, *supra* note 3, 145; HELLER, SYMPATHETIC REAPPRAISAL, *supra* note 2, 6.

7. HELLER, NEW DIMENSIONS, *supra* note 2, 149.

8. *Id.*

9. PECHMAN, FINANCING STATE AND LOCAL GOVERNMENTS, *supra* note 3, 771.

would be to distribute each year  $x\%$  of the federal individual income tax base, that is,  $x\%$  of the total taxable income reported on federal individual tax returns. Between 1955 and 1963, while its statutory definition remained unchanged, the base grew by 64%, compared to an increase of only 47% in GNP. If this relationship continues to hold and GNP grows at 5% per annum, taxable income should rise from nearly \$245 billion in 1965 to \$340 billion in 1970. Grants that were proportional to the individual income tax base, then, would have a significant built-in growth component. Some automatic fall-offs during recessions could be expected, but for short economic declines the loss of grant funds is not likely to be great, and in more severe recessions Congress could, if it wished, provide supplementary allocations.<sup>10</sup>

Under Heller's plan, the distribution would not be contingent on federal surpluses and would not be cut back or withheld if there were a deficit in the federal budget. Funds would be payable — at whatever percentage Congress provided — “through thick and thin.”<sup>11</sup> The funds would be placed in trust and distributed periodically, indicating that the states would receive the money as a matter of right, free from the annual appropriation process.

One of the most significant elements of revenue sharing as proposed by Heller and Pechman is that “next to no strings” would be attached to the use of the money by the states. Although this policy may in part reflect the growing dissatisfaction with federal controls imposed on categorical grants to the states, Heller has argued more positively that there should be few limitations on the use of the funds in order to enlarge “the states’ area of fiscal discretion”<sup>12</sup> and in order not to impose obstacles to building up the “vitality, efficiency, and fiscal independence of state-local governments.”<sup>13</sup> Pechman has maintained that there should be at least one restriction on the use of the funds — recipients’ compliance with all applicable local, state and federal laws, particularly the Civil Rights Acts.<sup>14</sup> He has also suggested that states might be required to file with the federal agency supervising the distribution detailed statements as to how the funds would be used, thus revealing whether the funds would be used toward the solution of “national” problems within the recipient state.<sup>15</sup> He has maintained that Congress might specify the “general areas” it regards

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10. G. BREAK, *INTERGOVERNMENTAL FISCAL RELATION IN THE UNITED STATES* 156 (1967).

11. HELLER, *SYMPATHETIC REAPPRAISAL*, *supra* note 2, 10. See also HELLER, *NEW DIMENSIONS*, *supra* note 2, 150. The problem is that Congress could reduce the percentage in thin times. This raises the possibility that the percentage would be negotiated yearly (not that Heller or Pechman have suggested this course). Congress would be able to revise the percentage as it saw fit, assuming political feasibility. But political feasibility cannot be assumed; it is not a simple matter to cut off aid once it has begun, although it may be easier to reduce its quantity.

12. HELLER, *NEW DIMENSIONS*, *supra* note 2, 147.

13. HELLER, *SYMPATHETIC REAPPRAISAL*, *supra* note 2, 5.

14. J. PECHMAN, *FEDERAL TAX POLICY* 229 (1966).

15. PECHMAN, *FINANCING STATE AND LOCAL GOVERNMENTS*, *supra* note 3, 773; PECHMAN, *MONEY FOR THE STATES*, *supra* note 3, 790.

as "most urgent, including the need for making funds available for local government services."<sup>16</sup> Finally, Pechman has contended that the governors, before incorporating the federal distribution in the state budgets, might be required to "consult with" local officials and representatives of citizen organizations to insure that the use of the funds represents a broad spectrum of opinion.<sup>17</sup>

Heller has taken the position that distribution of the federal dividend should be essentially on a per capita basis, while recognizing that some supplemental equalization might be desired:

Per capita sharing would transfer some funds from states with high income — and therefore high per capita income tax liabilities — to low-income, low-tax states. If the modest equalization implicit in per capita sharing were deemed too limited, a percentage — say 10 to 20 percent — could be set aside for supplements to states with low per capita income, or a high incidence of poverty, dependency, or urbanization.<sup>18</sup>

Pechman, too, has contended that distribution on a per capita basis is advisable, because population is

the simplest and most appropriate measure of the relationship between need and capacity. On the one hand, population is a reasonably good indicator of general need for public services. On the other hand, a per capita allocation would make some allowances for varying capacity; since the residents of high-income states pay more Federal taxes per capita than do residents of low-income States, distribution on a per capita basis would redistribute resources from high to low-income States.<sup>19</sup>

Pechman has indicated that greater equalization can be achieved by using a small part of the federal funds (ten percent) for only the poorest one-third of the states. Poor states could be identified in terms of the ratio of a state's population to national population, adjusted to take into account relative per capita personal income<sup>20</sup> and relative capacity<sup>21</sup> or effort to tax.<sup>22</sup> This last factor of tax effort might induce the poorer states not to succumb to the temptation to use the federal funds to decrease their revenue efforts. Heller has suggested more generally that the states "whose tax efforts are below par or who cut their taxes in response to the federal subsidy would be penalized by reduction in their allotments. States making a high fiscal effort or intensifying that effort would be rewarded with larger allotments."<sup>23</sup>

16. PECHMAN, FINANCING STATE AND LOCAL GOVERNMENTS, *supra* note 3, 773.

17. PECHMAN, MONEY FOR THE STATES, *supra* note 3, 790.

18. HELLER, NEW DIMENSIONS, *supra* note 2, 146-47, 154-55.

19. PECHMAN, FINANCING STATE AND LOCAL GOVERNMENTS, *supra* note 3, 771.

20. *Id.* at 771-72.

21. J. PECHMAN, FEDERAL TAX POLICY 229 (1966).

22. *Id.*

23. HELLER, NEW DIMENSIONS, *supra* note 2, 156. See also HELLER, SYMPATHETIC REAPPRAISAL, *supra* note 2, 8.

Modification of the basic Heller-Pechman plan was inevitable when Congress became interested in revenue sharing. In an attempt to consider the many proposals in a brief and comprehensive manner, the discussion which follows will focus on the following areas: (1) bills providing for interstate equalization; (2) bills not providing for equalization; (3) problems of passing shared revenue through to local government units, including proposed pass-through provisions; and (4) the recent Nixon proposals on revenue sharing.

## II. BILLS PROVIDING FOR INTERSTATE EQUALIZATION

According to the Heller and Pechman proposals, it is a legitimate, albeit subsidiary, function of revenue sharing to compensate in part for disparities in state fiscal capacities.<sup>24</sup> As noted above, both of them have pointed out that per capita distribution would produce "modest" equalization. However, both suggested that a portion of the shared fund might be allocated among certain poorer states to effect additional equalization.<sup>25</sup> In general the term "equalization" is used in this article to refer to this latter supplemental equalization. Not surprisingly, the bills calling for such equalization also call for primary distribution essentially on a population basis rather than a totally unequalized "state of origin" basis.

Fairly typical of such legislation is that proposed in the Ninety-first Congress by Senator Hollings.<sup>26</sup> Under his bill three ratios govern the allocations: ratio of state-national population, of revenue effort, and of per capita income. The first two ratios are used to allocate eighty percent of the funds to all states. The third is used for equalization purposes to allocate twenty percent of the funds to the poorer states. These concepts are quite common.<sup>27</sup> On the one hand, the sharing by *all* of the states would be on the basis of their respective population ratios and their respective "revenue-effort" ratios (relative to average national revenue effort), where revenue effort is defined as the ratio of all state and local taxes collected within a state to the total adjusted gross income of state residents. On the other hand, the sharing by the poor states would be on the basis of their relative (to each other) populations and per capita individual incomes of residents. The poor states are defined under the Hollings bill as all of those states whose residents have per capita annual incomes below that of residents of all states. The two-part allocation of the total

24. PECHMAN, FINANCING STATE AND LOCAL GOVERNMENTS, *supra* note 3, 768.

25. HELLER, NEW DIMENSIONS, *supra* note 2, 146-47; HELLER, SYMPATHETIC REAPPRAISAL, *supra* note 2, 25-26; PECHMAN, MONEY FOR THE STATES, *supra* note 3, 787.

26. S. 911, 91st Cong., 1st Sess. (1969).

27. As to bills introduced in the 89th Congress, see MCBREEN, FEDERAL TAX SHARING: HISTORICAL DEVELOPMENT AND ARGUMENTS FOR AND AGAINST RECENT PROPOSALS, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 715, 730 (1967); as to bills introduced in the 90th Congress, see MCBREEN, FEDERAL TAX SHARING PROPOSALS INTRODUCED DURING THE 90TH CONGRESS: ANALYSIS AND SUMMARY, LIBRARY OF CONGRESS LEGISLATIVE RESEARCH SERVICE (1967). See also H. TURNBULL, FEDERAL REVENUE SHARING: A MARYLAND CASE STUDY, *passim* (1969). As to bills introduced in the 91st Cong., 1st Sess. (1969), see S. 2, and H.R. 103, 189, 663, 1138, 1188, 1375, 2498, 6216, 6999, 7048, 7503, 7610, 7866, 9973 and 10099.

fund thus accomplishes an "equalization" among all the states by singling out the poor states for preferential treatment.<sup>28</sup> Under Senator Hollings' bill, the revenue impact for Maryland, based on a distribution of \$1.846 billion, is determined as follows:<sup>29</sup>

1. State and Local Revenue from Own Sources, Fiscal year 1966.....	\$ 1,264 million
2. Adjusted Gross Income, Calendar year 1965	\$ 9,473 million
3. Revenue Effort Ratio (Item 1 divided by Item 2) .....	13.3%
4. Relative State Effort Ratio (Item 3 divided by 16.3%, representing the national average state revenue effort ratio).....	81.6%
5. Total Resident Population, July 1, 1967.....	3,682 thousands
6. State Population as a Per Cent of National Population .....	1.86%
7. Allotment of 80% of Fund (\$1,477,000,000)	\$22,164 thousands
8. Per Capita Personal Income of Residents, Calendar year 1967.....	\$ 3,434
9. Per Capita Income Deficiency Factor (\$3137, representing the national average per capita income, Calendar year 1967, divided by Item 8).....	(none)
10. Weighted Population of Income Deficient States (Item 5 multiplied by Item 9).....	(not applicable)
11. State Percentage of Weighted Population Total .....	(not applicable)
12. Allotment of 20% of Fund (\$369,000,000, representing 20% of total fund, multiplied by Item 11).....	(none)
13. Total Allotment (Item 7 plus Item 12).....	\$22,164 thousands

28. A feature of the Hollings bill which reappears in all equalization bills is an allocation of a portion of the total funds to "poor" states. In most bills, the states which will benefit by an equalization payment generally are identified in terms of either (1) a ratio involving per capita income and population or (2) their rank among all the states, measured by this ratio. The first criterion sometimes is expressed as a ratio of population of a particular state to all states ranking among the thirteen or seventeen lowest nationally in per capita income. The seventeen lowest ranking states constitute one-third of all the states and District of Columbia, which explains this criterion. The criterion of "below national average," embodied in the Hollings bill, seems fairer since it includes all of the below average states, but it also dissipates the equalization funds in terms of absolute dollars allotted by raising from 33½% to 50% the portion of states to be benefited by equalization. See S. 2619, 89th Cong., 1st Sess. (1965) and H.R. 16784, 89th Cong., 2d Sess. (1966), which draw the line at the lowest fifteen states while the others in the 89th Congress draw it at the lowest thirteen. In the 90th Cong., 1st Sess. (1967), bills which draw the line at the lowest seventeen are H.R. 5450, 5507, 4070, 4080, 7176 and 8424. H.R. 525 and 667, 90th Cong., 1st Sess. (1967) draw it at the lowest thirteen. The remaining equalization bills draw it below the national average per capita individual income, S. 779, S. 482, S. 2172 and H.R. 4252, 90th Cong., 1st Sess. (1967). In the 91st Cong., 1st Sess. (1969), H.R. 6216 draws the line at the lowest thirteen; others draw it at the lowest seventeen, such as H.R. 103, 663, 1138, 1188, 1375, 2498, 6999, 7048, 7503, 7584, 7610 and 9973. Still others use the criteria of below national average per capita individual income, such as S. 911 and H.R. 189, 7866 and 10099, 91st Cong., 1st Sess. (1969).

29. 115 CONG. REC. 1226 (daily ed., Feb. 4, 1969).

Since per capita individual income of Maryland residents was above the national average, no supplementary allotment would have been awarded. If the Hollings bill were to have reduced the equalization portion of the total funds from, say, twenty to fifteen percent, it would have been more advantageous to states such as Maryland, as there would be more money allotted to the non-equalization portion. The converse, of course, would be true as to states which would benefit from equalization.

There has been a trend during the Eighty-ninth, Ninetieth and Ninety-first Congresses to tie less of the total revenue-sharing funds to an equalization bonus. In the Eighty-ninth Congress, all equalization bills except one require eighty percent of the total funds to be allotted according to the population-revenue-effort ratios; only in the Shriver bill (H.R. 16784) is the percentage changed to ninety percent from eighty percent. In the Ninetieth Congress, most of the equalization bills require ninety percent of the funds to be so allotted;<sup>30</sup> some require eighty-five percent to be so allotted;<sup>31</sup> and some require eighty percent to be so allotted.<sup>32</sup> In the Ninety-first Congress, at least nineteen bills provide for equalization (as distinguished from at least ten which do not), and of these, the majority provide for ninety percent — ten percent equalization.<sup>33</sup> As will be discussed later, many bills are totally non-equalizing state of origin proposals, while many, like the Nixon proposal, are based on relative population with no supplemental equalization. Perhaps the trend evidenced in the equalization bills is an attempt at political compromise. It may be that legislators believe that the "poor" states already are receiving sufficient equalization payments through other federal grants, that the votes of representatives from the more populous<sup>34</sup> and possibly "wealthier" states are needed for enactment of a revenue-sharing bill, or that there is political mileage to be gained from jumping on the revenue-sharing bandwagon without much thought as to the specific provisions.

Another feature of the Hollings bill found in many other legislative proposals<sup>35</sup> is its use of a "revenue-effort ratio" as part of the formula for allocation among the states. This is the ratio which the total revenue derived by each state from all its tax resources (includ-

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30. H.R. 4070, 4080, 4107, 4252, 5450, 5599, 6040, 7176 and 8424, 90th Cong., 1st Sess. (1967).

31. S. 482 and companion bills S. 2172 and H.R. 5507, 90th Cong., 1st Sess. (1967) do not employ a revenue effort ratio but allocate on the basis of eighty-five-fifteen percent. *See also* H.R. 1375, 91st Cong., 1st Sess. (1969).

32. S. 779 and H.R. 525 and 667, 90th Cong., 1st Sess. (1967).

33. Of the bills providing for equalization, as of July 1, 1969, twelve provide for ninety-ten percent allocation, S. 50, H.R. 103, 663, 1138, 2498, 1188, 6999, 7048, 7503, 7584, 7610 and 9973; three provide for eighty-five-fifteen percent equalization, S. 2, H.R. 1375 and 10099; and four provide for eighty-twenty percent equalization, S. 911, H.R. 189, 6216 and 7866.

34. Some bills introduced in the 91st Congress provide some equalization of a different sort by allocating on the basis of urban populations, taking into account a factor of population density. *See* text accompanying notes 51-53 *infra*.

35. *See* note 27 *supra*.



ing revenue derived by its political subdivisions) bears to the adjusted gross income of its residents.<sup>36</sup> On a national basis, it is the ratio which the sum of tax revenues derived by all states from their own resources bears to the total adjusted gross income of individuals residing in all states. In most bills, this ratio applies only to the basic grant available to all states, not to the equalizing portion. An examination of the effect of every proposed bill and of every non-congressional study of revenue sharing which employs a revenue-effort ratio reveals that Maryland is below the national average.<sup>37</sup> The effect of this is to penalize Maryland by reducing the basic grant. For states which have above-average revenue-effort ratios, there is a bonus. Ironically, although the "poor" states benefit from the equalizing allotment, many of them experience a dilution of their total grant by virtue of the fact that their revenue-effort ratios are below the national average, thus causing a reduction in the amount of the non-equalizing portion of the total grant. Of course, the smaller the gap between a state's revenue-effort ratio and the national average, the less the non-equalizing portion of a total grant is reduced and the greater the total grant.

There are several criticisms of interstate equalization proposals. At the outset, it is contended that equalization tends to increase the existing large gap between what the richer states contribute and receive and what the poorer states contribute and receive.<sup>38</sup> The thrust of this argument seems to be that the wealthier states already contribute too much to the poorer ones through federal grants-in-aid with equalization formulas.

The Committee for Economic Development (CED) has argued that some of the major poverty pockets exist in large urban centers in the relatively rich states; equalization would cause these states to "lose" fiscal resources and thereby reduce their own capacity to deal with those problems. "This effect raises a serious question as to whether the problems of poverty are best attacked by helping poor

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36. It makes a substantial difference in some cases how a proposed bill defines revenue-effort ratio. For example, S. 2172 and S. 779, 90th Cong., 1st Sess. (1967) begin with the same concepts but reach substantially different results with respect to the computing of revenue-effort ratios. Each provide that the basic grant (in the case of S. 2172, eighty percent of the appropriated funds, and in the case of S. 779, eighty-five percent) shall be determined by multiplying the ratio of the state's population to total national population by the percentage which the revenue-effort ratio of the state bears to the national revenue-effort ratio. However, revenue-effort ratio is differently defined. S. 779 defines it in terms of "total adjusted gross income of individuals" as reported on tax returns required by Chapter I, Internal Revenue Code of 1954, but S. 2172 defines it as "total income," which means income subject to the tax imposed by Chapter I, Internal Revenue Code of 1954. S. 779 defines "national revenue-effort" ratio as the ratio which the sum of the revenues derived by all states from their own resources bears to the total adjusted gross income of individuals residing in all the states. S. 2172, however, defines "average national revenue-effort ratio" as a "fraction the numerator of which is the sum of all revenue-effort ratios of all States and the denominator of which is 51." The difference in definition produces remarkably diverse results.

37. THE TAX FOUNDATION, *FEDERAL REVENUE SHARING WITH THE STATES* (1967) 14-16; ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS (ACIR), *1 FISCAL BALANCE* 319-22 (1967).

38. WORSNOP, *FEDERAL-STATE REVENUE SHARING*, 111 CONG. REC. A4780 (daily ed. Aug. 25, 1965).

persons or poor states."<sup>39</sup> This in turn raises the question of what is the real purpose of revenue sharing — is it to help persons or states? CED also questions whether, in light of the unconditional nature of revenue-sharing grants, redistribution of income from richer to poorer states would result in the redistribution of income from richer to poorer persons.<sup>40</sup>

The question of the goals of revenue sharing becomes even more difficult in light of bills requiring pass-through to local governmental units and bills allocating funds to specific purposes. Thus it seems that revenue sharing can be cast in whatever mold a person wants. It can be a tool to help poor persons, poor states or poor cities. Ironically, this ambivalence may be the key to the political acceptability of the entire concept. Revenue sharing may be all things to all men, and only minor political accommodation may be necessary to secure federal revenue-sharing legislation.

Senator Muskie, a co-sponsor of significant revenue-sharing legislation in the Ninety-first Congress,<sup>41</sup> once objected to revenue sharing not only on the ground that equalization formulas in revenue-sharing proposals are inadequate to close the gap between richer and poorer states,<sup>42</sup> but also on the ground that revenue sharing contains a lesser degree of equalization than federal categorical grants-in-aid and therefore tends to discriminate even more against poor states.

Attacks on revenue sharing on the grounds that equalization is either unfair or inadequate imply rejection of the stated purpose in the Heller-Pechman proposals that revenue sharing is aimed primarily at strengthening state fiscal discretion, not at reducing state fiscal disparities or solving the problems of the poor. As will be discussed more fully below, there are also many proposals to direct funds to subunits of government within the states, rather than simply to the state governments themselves. These pass-through proposals similarly depart from the stated purpose of the original Heller-Pechman proposals. Problems of equalization and pass-through originate principally in the political arena, not in fiscal federalism.

One obvious problem with any revenue-effort ratio in equalization bills is that it may not equalize state fiscal abilities (although this is not a primary purpose of sharing). For example, under some plans states are given a premium for increasing their tax efforts to meet or exceed a national average; under some proposals, this premium

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39. COMMITTEE FOR ECONOMIC DEVELOPMENT (CED), FISCAL TRENDS IN THE FEDERAL SYSTEM, 3 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 1249, 1270.

40. *Id.*

41. See text accompanying note 89 *infra*.

42. 2-B CREATIVE FEDERALISM, *Hearings Before Subcomm. on Intergovernmental Relations of the Comm. on Government Operations, U.S. Senate, 90th Cong., 1st Sess. (1967)* [hereinafter cited as CREATIVE FEDERALISM] 771 (Remarks of Senator Muskie). The Committee for Economic Development (CED) has argued that if account is taken of the contribution made by the citizens of poor States to Federal personal income tax receipts, the funds gained from the equalizing effects of the various proposals for general assistance grants made to date [1967] would generally be small, amounting to about 4 to 8 percent of the outlays of state and local general expenditures in the poorest 17 States. 3 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 1249, 1270 (1967).

operates in the form of a penalty — if a state's effort does not equal the national average, the state's share is proportionately reduced. In the case of a state which either decides not to make additional tax efforts or is content to remain below average, there is a spill-over effect — states which make the opposite decision will benefit proportionately with each other at the expense of the state which does not increase its tax effort. Furthermore, if a state is one of the "poor" states, it is likely that the decision will be against greater tax effort, all to the benefit of the "wealthier" or other "poor" states which decide to increase their efforts. Thus, by depriving a poorer state of federal funds, the tax-effort proposals would seem to doubly penalize the citizens of a "poor" state which decides to make proportionally smaller efforts.

The revenue-effort ratio also fails to take into consideration the fact that a state may decide that a greater portion of its economy should or has to be managed within the public sphere. In this circumstance, a state with a heavy fiscal commitment to public action *probably* will obtain a higher standing with respect to its revenue-effort ratio than a state which declines to undertake substantial financial responsibilities. Although the tax-effort ratio *may* indicate a greater real tax effort, it also may indicate that what is carried on as a public function in one state is paid for by private funds in another. Garbage collection is one notable area of such interstate diversity. The extent of use of private or parochial schools is probably a financially more significant example.

Finally, as a criterion for federal aid, the revenue-effort index neglects the expenditure pattern of the states. It looks only to how and where revenues are raised, not to how or where they are spent. It can be argued that the expenditure pattern may be a more reliable criterion for such aid than a revenue-raising one, at least if even the minimal equalization in per capita distribution is to be fairly effected. Only in the case of bills providing revenue-sharing funds restricted for use in financing particular government functions has the expenditure pattern been considered, and then only in terms of law-enforcement effort or education effort.<sup>43</sup>

### III. BILLS NOT PROVIDING FOR INTERSTATE EQUALIZATION

Not all of the bills introduced in the Eighty-ninth, Ninetieth and Ninety-first Congresses provided for interstate equalization, in the sense of distribution to all states with a premium to "poor" states.

43. There are certain bills introduced in the 89th, 90th and 91st Congresses which do not conveniently lend themselves to being categorized with the "equalization bills" but which, nevertheless, share common allocation factors of ratios of population, revenue effort and per capita income, and, in some cases, provide for equalization. For example, some bills omit the revenue-effort ratio: see H.R. 12083, 15592, 16205, 16784, 89th Cong., 2d Sess. (1966); H.R. 1180 and 5507, 90th Cong., 1st Sess. (1967); H.R. 6483, 91st Cong., 1st Sess. (1969), which is like H.R. 12083, 89th Cong., 2d Sess. (1966). Many of these bills also fail to equalize by fixing a numerical rank or criteria of per capita income of individuals below the national average. For a further example of this sort of bill, see particularly S. 1236, 90th Cong., 1st Sess. (1967), which introduces a factor of per capita need as its method of equalization.

A substantial number omit equalization provisions entirely but allot revenue-sharing funds on a population basis with consequent modest equalization.<sup>44</sup> Most of the bills allocate funds to the state of origin, simply returning them to the states where they were collected.<sup>45</sup>

Under a population-only criterion, Maryland would have participated in the total grant to the extent of 1.82% as of July 1, 1965, 1.84% as of July 1, 1966, and 1.86% as of July 1, 1967. As a state's relative population increases, its share increases. This may be all well and good for a state which is enjoying a growth in population. It is quite obviously not good for a state suffering from a decline. This unsatisfactory condition could very likely be accompanied by a loss of tax base at a greater rate than loss of population, as, for example, where the emigration of population consists of educated, income-producing residents bound for greater economic or social opportunity in a "boom" state, thus causing the population which remains behind to continue to support existing or new government services on an impaired tax base. The burden on that state's population is increased, and distribution of revenue-sharing funds by population does not compensate for this situation. On the other hand, a state which is receiving a large immigration may not be increasing its tax base simultaneously. This would be the situation in states where there has been an influx of migrants who are unskilled and without jobs to sustain themselves when they arrive. In these circumstances, distribution by population does not compensate.

The population-only allocation factor is subject to the further criticism that it does not allocate the money to the areas of the nation where it is most needed. The gist of this criticism is that the relative redistribution of resources does not go far enough to help the poor states, the poor states are not necessarily the most or least populous, and poverty exists in pockets within all states, whether rich or poor, populous or not.

However, a population-only distribution is preferable to distribution according to origin of tax collections since it allocates funds more on a basis of need, whereas the origin basis returns more to the higher-income, higher-revenue-producing states and correspondingly less to the poorer states.

These arguments address themselves only to the relative advantages of these distribution formulas. Even so, one must ask whether these, or any other revenue-sharing plans, encroach on the original premise that revenue sharing is directed at strengthening state discretionary powers, not at solving poverty problems. To attempt to direct the revenue-sharing funds in a manner which causes them to reach the nation's poverty pockets is to cast revenue-sharing in a different mold. Rather than conceiving of revenue sharing as a buttress to state government's ability to exercise its discretion without specific regard to poverty problems, this notation suggests that revenue sharing funds should be used as armaments in the "war against poverty." It

44. See, e.g., S. 2483, 91st Cong., 1st Sess. (1969). See also PRECHMAN, MONEY FOR THE STATES, *supra* note 3, 787.

45. See notes 54-59 *infra*.

is not the point of this article to criticize this mold, but rather to suggest how closely linked are the concepts of fiscal federalism, state fiscal gaps, revenue sharing, "great society" legislation generally, concern over the "crisis of the cities," and various allocation formulas contained in revenue-sharing bills. It may be fictitious to maintain that the general goal of strengthening state discretionary powers can be isolated from the specific problems posed by poverty. The fact that the Nixon Administration has tied its welfare program to federal revenue sharing is at least evidence of the political truth of this statement.

These overlapping considerations of goals and policies are manifest in allocation formulas in non-equalization (as well as equalization) bills and proposals. For example, one of Senator Tydings' revenue-sharing bills awards a premium to metropolitan areas upon satisfaction of conditions relating to intergovernmental cooperation, not only in consideration of their size and higher costs of providing government services, but also apparently in consideration of the fiscal disparities between them and their relatively wealthier suburbs.<sup>46</sup> A similar approach is found in a bill<sup>47</sup> introduced by Representative Koch of New York City, which provides for distribution to governmental institutions having "unconditional authority" to plan and spend for one or more specified purposes and having jurisdiction over substantially all of a metropolitan area. Also, a special committee of the National League of Cities has recommended that not only should per capita grants vary upwards with increasing sizes of cities in recognition of the demands made on them for greater services at higher costs, but also that other factors should be given weight, such as need, unemployment, population density, immigration and others.<sup>48</sup> Senator Javits has touched on the possibility of incorporating the higher costs of providing services in the "most densely populated urban centers."<sup>49</sup> In addition, a proposal of Representative Reuss requires allocation based in part on degrees of urbanization.<sup>50</sup> Finally, some bills attempt to consider the factor of urban population by allocating funds according to formulas which define population either in terms of "urban population"<sup>51</sup> (to be determined by the federal agency which distributes the funds) or in terms of the number of students en-

46. S. 673, 90th Cong., 1st Sess. (1967). See text accompanying note 95 *infra*.

47. H.R. 11082, 91st Cong., 1st Sess. (1969).

48. TEMPO, FEDERAL REVENUE SHARING WITH LOCAL GOVERNMENTS, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 1027 (1967).

49. FEDERAL EXPENDITURES TO STATES AND REGIONS: A STUDY OF THEIR DISTRIBUTION AND IMPACT, 1 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 257, 267 (1967). (Individual views of Senator Javits). See text accompanying note 97 *infra*. See similar remarks of Governor Nelson A. Rockefeller recommending that formulas used in grant-in-aid programs "recognize the special and unique burdens of densely populated urban areas." 2-A CREATIVE FEDERALISM, *supra* note 44, 544, 557.

50. REUSS, REVENUE SHARING AS A MEANS OF ENCOURAGING STATE AND LOCAL GOVERNMENT REFORM, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 977, 989 (1967). See text accompanying note 94 *infra*.

51. H.R. 12730, 89th Cong., 2d Sess. (1966); H.R. 4479, 90th Cong., 1st Sess. (1967).

rolled in public elementary and secondary schools.<sup>52</sup> The population factor (as defined) is just one part of the formula for allocation in this last group of bills; the other is the product obtained by multiplying the total population of the state by the percentage of the aggregate income of the state's population which was expended for certain purposes (generally limited to law enforcement<sup>53</sup> or public education).

Density of population nevertheless is a relatively unusual allocation factor among non-equalization bills. As noted, by far the greatest number of bills introduced during the Eighty-ninth, Ninetieth and Ninety-first Congresses allocate revenue-sharing funds to the state of origin, simply returning the funds to the state in which they were collected.<sup>54</sup> These non-equalizing bills obviously benefit a high-income state such as Maryland.

Many of the state-of-origin bills limit the use of the funds to specified purposes. For example, in the Eighty-ninth,<sup>55</sup> Ninetieth<sup>56</sup> and Ninety-first<sup>57</sup> Congresses, several bills restrict the use of the funds to educational purposes. Not all state-of-origin bills contain restrictions on use. In the Eighty-ninth Congress, two bills,<sup>58</sup> and in the Ninetieth Congress, four bills<sup>59</sup> do not restrict the use of funds to specified purposes. It would be speculative to infer any meaning from the sharp decrease from one Congress to the other in the number of bills which restrict the use of the funds to education or other specified functions. In addition, some of the state-of-origin bills provide that the Appropriations Committees of the House and Senate are authorized to reduce the aggregate amount of funds which otherwise would be granted to each state for health, education and welfare purposes by an amount which does not exceed the amount each state would

52. See H.R. 746 and 4865, 91st Cong., 1st Sess. (1969); H.R. 15557, 89th Cong., 2d Sess. (1966). See also H.R. 10696, 89th Cong., 2d Sess. (1966); H.R. 308, 90th Cong., 1st Sess. (1967); H.R. 1334, 2055, 3957, 4248, 6015, 90th Cong., 1st Sess. (1967). Cf. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS (ACIR), 2 FISCAL BALANCE IN THE AMERICAN FEDERAL SYSTEM xxiv (1967), in connection with other proposals for reducing educational disparities among jurisdictions within metropolitan areas.

53. See, e.g., Manvel, *Changing Patterns of Local Urban Expenditure, PUBLIC EXPENDITURE DECISIONS IN THE URBAN COMMUNITY* 19, 20-22 (1962). Manvel suggests that local government per capita expenditures should be adjusted to reflect local government costs by (a) calculating per capita amounts by reference to "urban" population only, in cases which are "substantially limited to urban areas," and (b) taking into account the "strong influence of urbanization upon expenditure for police protection, by recalculating on a basis which presumes twice as much local spending per capita for this function in urban areas as in rural areas." *Id.* at 22.

54. H.R. 1562, 89th Cong., 1st Sess. (1965); H.R. 16947, 18052 and 18252, 89th Cong., 2d Sess. (1966); H.R. 453, 784 and 2429, 90th Cong., 1st Sess. (1967); and H.R. 377, 940 and 11272, 91st Cong., 1st Sess. (1969).

55. S. 1011, and H.R. 1078, 1182, 1187, 1527, 1651, 1653, 2192, 2859, 3914, 6181, 6333, 6470, 6651, 10696, 10717, 10932, 11435 and 11441, and H.R.J. Res. 83, 89th Cong., 1st Sess. (1965); S. 3405 and H.R. 12083, 12259, 12323, 13066, 14299, 14926, 15557, 15592, 16205 and 17913, 89th Cong., 2d Sess. (1966).

56. S. 1140 and H.R. 198, 219, 308, 1180, 1343, 1349, 2055, and H.R.J. Res. 90, 90th Cong., 1st Sess. (1967).

57. H.R. 377, 746, 940 and 4865, 91st Cong., 1st Sess. (1969). See Turnbull, *Restricting the Unrestricted Federal Grant — An Analysis of a Revenue Sharing Myth*, 1 URBAN LAW. — (Winter, 1970).

58. H.R. 10828, 89th Cong., 1st Sess. (1965); H.R. 16903, 89th Cong., 2d Sess. (1966).

59. S. 1708 and H.R. 3127, 5113 and 10868, 90th Cong., 1st Sess. (1967).

receive under the revenue-sharing provisions. In light of these provisions which seem to rob Peter to pay Paul, it is appropriate to inquire whether the legislation was introduced in a good faith effort to contribute to fiscal federalism or whether these bills do not simply illustrate congressional band wagoning.

The obvious defect of the state-of-origin bills is their total lack of equalization; the states get back exactly what they contribute, and nothing additional is siphoned off to poorer states. In addition, there are problems in determining the origin and, what is more important, the relationship of origin to burden. For example, an individual may reside within one state's jurisdiction but work within another's. Should his state of residence have a greater claim to his income than his state of employment? Which state has a greater burden to provide services to him? Are the services different in nature and cost? Finally, interstate competition for tax resources persists and gives rise to serious doubts about the fairness or wisdom of the source-of-collection allocation factor.

#### IV. PASS-THROUGH PROBLEMS

One of the most controversial issues of revenue sharing is whether the funds should be distributed solely to the state governments or whether a portion should be "passed through" the state to its local government subdivisions. The matter is controversial in part because (1) revenue sharing is being advanced as a method for helping to solve the "urban crisis" — the unrestricted funds, under some plans, being allotted directly to the cities, (2) a major realignment of the federal system might occur if the state governments are by-passed in favor of direct allocations to the subdivisions, and (3) a satisfactory determination of the formula for pass-through is difficult. Any legislation which specifies the portion of the pass-through may suffer from the criticism that such a provision is inappropriate because of the wide variations among states in the relative sharing of responsibilities for major governmental functions and in practices in state aid to localities. Moreover, although bills which set a minimum percentage for intra-state apportionment can assure a pass-through of at least that percent, the minimum might be taken as a maximum in practice. With or without pass-through provisions, there is no assurance that the states would share funds with their subdivisions in an amount sufficient to enable them to grapple with their problem of metropolitan disparity or to deal significantly with their other fiscal problems.

When Heller first suggested revenue sharing, he dodged the issue of "[w]hether to leave the fiscal claims of the localities to the mercies of the political process and the institutional realities of each state, or to require a pass-through to them."<sup>60</sup> He has advanced various arguments for leaving the widest possible discretion to the states in the expenditure of the funds,<sup>61</sup> including: (1) a requirement that a set percentage or amount should go to local governments "might encum-

60. HELLER, *NEW DIMENSIONS*, *supra* note 2, 147.

61. *Id.* at 159-65.

ber the plan with the rigidities it is designed to avoid;" (2) states "differ greatly in their division of responsibilities and finances between state and local governments;" (3) among the states there are "substantial varieties" in the allocation of functional responsibilities; (4) the states employ differing formulas for intrastate aid and shared taxes; (5) the states already are raising sizable amounts of revenue for local governments; and (6) state reapportionment will enable the financially hardest pressed local governments — the urban areas — to realize a greater share of the state's share. In addition, he has rejected the claim that state and local governments are so inefficient, wasteful and corrupt that they are "unworthy of anything but tightly controlled federal support."<sup>62</sup> Finally, he has taken issue with those who argue that the states would not apply the federal dividend toward the solution of those problems which should receive high national priority.<sup>63</sup>

Nevertheless, Heller concluded in 1967 that "the legitimate — and pressing — claims of local government require explicit recognition in the basic formula of revenue sharing"<sup>64</sup> and that

in light of urgent local needs, especially in urban areas — and observing the tendency of many state legislators to hew to more generous service standards at the state than at the local level — I have been persuaded . . . that setting a minimum percentage pass-through is desirable to recognize the legitimate claims of local government.<sup>65</sup>

Confessing the difficulty of devising a formula, Heller fell back on a simple minimum percentage — fifty percent. "This leaves the form and division of the localities' shares to the States' discretion. This would put pressure on the States to recognize local needs while letting each State adapt the precise form and division of the local share to its particular pattern of local needs."<sup>66</sup> Heller was troubled by the obvious implications of pass-through: "[a] major flow of unconditional federal funds directly to the cities would represent a basic realignment of powers in our federalism and should be recognized as such."<sup>67</sup>

Pechman, too, has had difficulty in specifying that some "uniform percentage of the general grant be reserved for local use in all States" because of (1) the variety among the states in the forms of inter-governmental cooperation within each state and (2) the assumption that states are in a better position to make the allocation in a manner suited to their particular needs.<sup>68</sup> Nevertheless, like Heller, he is inclined to require that federal funds be distributed to the states with an understanding that a major portion of the state's share be allotted to local governments either under fixed percentages or under procedures insur-

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62. *Id.* at 164-67.

63. *Id.* at 163-64.

64. HELLER, *SYMPATHETIC REAPPRAISAL*, *supra* note 2, 7.

65. *Id.* at 33.

66. *Id.* at 34.

67. *Id.* at 35.

68. PECHMAN, *FINANCING STATE AND LOCAL GOVERNMENTS*, *supra* note 3, 763, 772.



ing that local officials will participate in the pass-through decisions.<sup>69</sup> Pechman has recommended a fixed pass-through of at least forty percent and as much as fifty percent.<sup>70</sup>

Thus, to an unexpected degree, revenue sharing is being advanced as a method for helping to solve the fiscal crises of the urban governments — unexpected because revenue sharing was conceived as a buttress for state governments and only incidentally as one for city governments. It apparently was not until representatives of the cities voiced strong opposition to revenue sharing that mandatory pass-through provisions were deemed necessary on political grounds. The infusion of pass-through has transformed revenue sharing from a single-pronged attack on state problems to a double-pronged attack on both state and local (urban) problems. Unfortunately, this transformation has caused considerable confusion concerning the purposes and functions of revenue sharing. This is not to suggest, however, that it has made revenue sharing politically less attractive; quite the contrary is true.

Mandatory pass-through would go far to meet one of the major grounds of opposition to federal revenue sharing, namely that the states will not use the funds where they are most needed.<sup>71</sup> This objection translates into a more specific one when the urban "crisis" is considered. Put bluntly, it is feared that the states simply will not respond to the needs of their urban centers. This opposition is based on significant statistics illustrating (1) the states' traditional neglect of their cities and (2) the higher costs of government services in urban areas in comparison to costs for the same services in suburban or rural areas.<sup>72</sup>

69. J. PECHMAN, *FEDERAL TAX POLICY* 229 (1966).

70. PECHMAN, *MONEY FOR THE STATES*, *supra* note 3, 789.

71. *See, e.g.*, Campbell, *States at Crossroads*, 2 CREATIVE FEDERALISM, *supra* note 42; COMMITTEE FOR ECONOMIC DEVELOPMENT (CED), A FISCAL PROGRAM FOR A BALANCED FEDERALISM, 3 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 1249, 1270 (1967); Committee on Revenue and Taxation, City Council of Los Angeles, A SEARCH FOR CITY REVENUE 29, 39 (1968); JOINT ECONOMIC COMMITTEE, THE FEDERAL GOVERNMENT AND THE STATES, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 685 (1967); MCBREEN, FEDERAL TAX SHARING: HISTORICAL DEVELOPMENT AND ARGUMENTS FOR AND AGAINST RECENT PROPOSALS, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 715, 720 (1967); MUSKIN, INTERGOVERNMENTAL ASPECTS OF LOCAL EXPENDITURE DECISIONS, PUBLIC EXPENDITURE DECISIONS IN THE URBAN COMMUNITY 37, 61 (1962). *See also* 2-A CREATIVE FEDERALISM, *supra* note 42, 649 (statement of Mayor Harold M. Tollefson of Tacoma, Wash., Pres. of Nat'l League of Cities); 2-A CREATIVE FEDERALISM, *supra* note 42, 661 (statement of Mayor John F. Collins of Boston, Mass.); 2-B CREATIVE FEDERALISM, *supra* note 42, 901 (statement of Robert G. Miller, Pres. of Ass'n of Bay Area Gov'ts).

72. *See, e.g.*, BECK, RESPONSIBILITY OF STATE GOVERNMENTS FOR FINANCING PUBLIC SERVICES IN NEW YORK AND OTHER LARGE CITIES, 1 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 379, 390-93 (1967); CAMPBELL, STATES AT CROSSROADS, 2-A CREATIVE FEDERALISM, *supra* note 42, 566, 568-69; ECKER-RACZ, LOCAL GOVERNMENT FISCAL REFORM: THE NATIONAL VIEWPOINT, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 998, 1005 (1967); MCBREEN, FEDERAL TAX SHARING, 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 715, 726 (1967); SACKS, CENTRAL CITY AND FISCAL REALITIES, 2-B CREATIVE FEDERALISM, *supra* note 42, 860. *See also* G. BREAK, INTERGOVERNMENTAL FISCAL RELATIONS 4, 5, 99 (1965), indicating most state-local aid is earmarked for education, highways, and public health; 2 CREATIVE FEDERALISM, *supra* note 42, 711, 719 (testimony of Mayor William F. Walsh of

The Advisory Commission on Intergovernmental Relations (ACIR) recently has documented the fiscal disparities between central cities and their suburban communities, indicating that "many of the largest central cities are in the 'highly disadvantaged' category" and that the disparities are growing.<sup>73</sup> When the fiscal disparities are considered in connection with the cost factor, the pass-through issue takes on even greater significance and complexity. The added significance lies in the political reality that, in the absence of mandatory pass-through provisions, revenue-sharing legislation will encounter strong political opposition from city representatives. The added complexity lies in establishing criteria for any pass-through, that is, as a matter of national policy and political expediency, how to get the money where it is most needed by local governments.

The complexity of allocating pass-through funds can be illustrated by considering the objections to some of the possible standards. Allocation based on local expenditures from local taxes, or local taxes and borrowing, is one possibility. However, the share of urban expenditures financed by state or federal aid varies widely throughout the nation.<sup>74</sup> This suggests that allocation in proportion to expenditures of local funds might be unfair because the urban areas most in need of funds might receive proportionately less funds if they already were receiving a large amount of state or federal aid. Moreover, the allocation would have no necessarily close correlation with relative need. Poorer cities may spend relatively less.

Perhaps a better correlation with need would be obtained by allocation in proportion to existing state (or state and federal) aid to local governments. However, allocation of state funds does not necessarily mean existence of need in terms of the objective of helping urban areas or poverty pockets throughout the nation. Much state aid to local governments supports public services required in both rural and urban areas, not solely urban services.<sup>75</sup> Moreover, those units of local government with the heaviest concentrations of population tend to have to bear a larger share of responsibility for financing governmental services: "Almost without exception, combined state and federal aid is a smaller share of local general expenditures in each of seventeen metropolitan areas than in the rest of the state[s]"<sup>76</sup> within which the metropolitan areas lie.

Finally, in the opinion of one authority on public finance, "State-by-state differences in the allocation of functional responsibility and of

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Syracuse, N.Y., on behalf of U.S. Conference of Mayors), indicating that state educational aid in New York State is based on formulas for distribution which take into account the higher per pupil costs of urban education; Feinberg, *The Implication of Core City Decline for the Fiscal Structure of the Core City*, 17 NAT'L TAX J. 213, 225 (1964).

73. 2 FISCAL BALANCE IN THE AMERICAN FEDERAL SYSTEM 2, 5-7 (1967). Volume 2 is devoted to documenting the disparities and making recommendations for overcoming them.

74. Muskin, *Intergovernmental Aspects of Local Expenditure Decisions*, PUBLIC EXPENDITURE DECISIONS IN THE URBAN COMMUNITY 37, 40-41 (1962).

75. *Id.*

76. *Id.* at 43.

taxation between localities and the State suggest wide variations in grant-in-aid patterns across State lines."<sup>77</sup>

Some of these objections have caused one well-known and respected expert on public finance to conclude that a pass-through provision is undesirable:

It is only in the state as a whole — when one compares one state with another — that responsibility is found for all functions (of government). I would hate to think that we must write off the states as hopeless. I would hate to think that we need to argue that the states can't be trusted. I would far prefer to believe that the state of Maryland will, in the very near future, recognize that without Baltimore, it's nothing; that the State of Michigan will recognize that without Detroit it isn't very much; and so on through the rest of the states.<sup>78</sup>

#### A. *Pass-Through Provisions*

Notwithstanding these objections, the Douglas Commission, the Advisory Commission on Intergovernmental Relations (ACIR), and the Nixon Administration all have proposed that revenue sharing include mandatory pass-through provisions for local governments. S. 50, introduced by Senator Goodell, is the bill which substantially adopts the recommendations of the Douglas Commission.<sup>79</sup> This bill has proved to be a model for pass-through provisions in other legislation introduced in the Ninety-first Congress<sup>80</sup> and articulates a principle concerning mandatory pass-through which appears to have found favor with the ACIR and the Nixon Administration.

The Goodell bill requires a pass-through to cities with population in excess of 50,000 and to urban counties. An urban county is defined as a county having a population over 50,000, at least half of which was classified as urban in the latest United States Census. The pass-through is determined basically by the local tax ratio of the recipient city or urban county; this is the ratio between the revenues from its own local tax sources and the total revenues from all state and local taxes in the state. For each city or urban county with a population over 100,000, the state would be required to distribute an amount not less than the product of the total state payment and twice the local tax ratio. The pass-through share of cities or urban counties with over 50,000 population but less than 100,000 would be a proportionately lesser rate, with a city of 75,000 receiving only the product of the state share multiplied by its local tax ratio rather than *twice* the local tax ratio. The bill thus establishes a mandatory pass-through under which the major urban centers of a state receive a graduated portion of the

77. *Id.* at 41.

78. *Hearings Before The National Comm'n on Urban Problems (Douglas Comm'n)* Vol. 1 at 115 (1968) (testimony of Harvey Brazier).

79. 115 CONG. REC. 298 (daily ed., Jan. 15, 1969). See also 115 CONG. REC. 3004 (daily ed., March 20, 1969).

80. See, e.g., S. 1965 and 2483, and H.R. 7048, 7503, 7584 and 7610, 91st Cong., 1st Sess. (1969).

state's share in the federal revenue-sharing program.<sup>81</sup> Non-major cities and non-urban counties are excluded from mandatory pass-through. However, any part or all of the state share (the amount not specifically designated for the major cities and urban counties) could be distributed to any or all other cities and non-urban counties, at the discretion of the governor and state legislature, subject to possible state constitutional limitations.

It is estimated that these formulas would allocate on a national basis twenty-two percent of all revenue-sharing payments to cities, thirteen percent to urban counties, and the remaining sixty-five percent to state governments. The use of the local tax ratio insures that the populous and fiscally active metropolitan governments are provided for while the less populous and less fiscally active ones do not receive monies which, it is argued, they do not need as much as do the more active governments. Moreover, the formula for pass-through makes the amount depend on the relative shares of the total burden of state and local taxation. It also allocates payments between cities and urban counties which have overlapping boundaries and between cities located wholly within county boundaries. Finally, the graduated scale of payments for counties with populations between 50,000 and 99,999 prevents drastically different treatment for local governments just below and just above the minimum population of 50,000, while assuring that the pass-through funds will be more beneficial to the larger cities and urban counties.

Under the Goodell bill, as under all others, the total national fund to be shared will vary and hopefully increase, depending upon economic conditions and other factors. Based on an assumed \$1 billion national shared fund, distribution to Maryland is illustrated as follows:<sup>82</sup>

Total Allocation (portion of \$1 billion)	\$18.34 millions	
State _____	\$5,870,000	32.1%
Cities—to include cities over 50,000 (Baltimore) _____	\$5,454,000	29.7%
Urban Counties _____	\$7,016,000	38.2%

The Douglas Commission's recommendations, drafted principally by the distinguished urban economist, Allen D. Manvel, were that "a portion of the allocation for individual State areas be paid directly to major municipalities and urban county governments on a basis determined by their respective shares of all State and local tax revenue in the particular State."<sup>83</sup>

81. 115 CONG. REC. 298 (daily ed., Jan. 15, 1969).

82. 115 CONG. REC. 3004 (daily ed., March 20, 1969). In Maryland, the only city with a population in excess of 100,000 is Baltimore, and the only counties with populations in excess of 50,000, of which at least one-half is urban population, are Baltimore, Prince George's, Montgomery and Allegany. COUNTY AND CITY DATA BOOK (1967). As data change, there may be changes in the list of "urban" counties.

83. REPORT OF THE NATIONAL COMM'N ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY, H.R. DOC. NO. 91-34, 91st Cong., 1st Sess. 378-79 (1969).

The Commission stated:

In urging direct formula-based payments to "major cities and urban counties" we have in mind municipalities of 50,000 or more and those county governments above the same minimum size in which at least half the population is "urban." As of 1960, there were 310 such municipal governments, with 63.4 million inhabitants, and 407 such major urban county governments with 103.1 million inhabitants. The net total 1960 population of the prospectively aided major units (without double counting for the majority of major municipalities that are within major urban counties) was 121.7 million, or two-thirds of the Nation's total population.<sup>84</sup>

Part of the Commission's purpose in selecting this criteria was negative — to avoid the administrative difficulties of channelling aid to over 80,000 local government units and to prevent the propping of local governments "that are far too small to represent viable units."<sup>85</sup> The basic goal of the Commission's recommendation was to assist major local governments, based on "the particular state's prevailing pattern of functional responsibilities and financing, as reflected by tax-revenue proportions,"<sup>86</sup> while at the same time giving incentive for change. According to the Commission's estimates, the proposed pass-through system would offer some specific financial incentive towards desirable enlargement and functional consolidation of local governments in urban areas.

The Goodell bill operates on an interstate equalization basis (ninety percent — ten percent), while the Commission proposal does not. Other important differences between the Goodell distribution and the Douglas Commission's distribution are (1) the Goodell bill provides that five percent of the state's payment — exclusive of the amount it is required to pass through to the cities and urban counties — shall be set aside by the state for its executive staff and management costs and (2) the Commission's formula, unlike the Goodell bill, includes a credit factor for state revenue from taxation of individual income. This credit factor is designed to induce states to enact personal income tax laws.<sup>87</sup>

In most of the nation, the Commission concluded,

a major part of all the federally shared revenues would flow to the State governments under this formula. However, a considerable part of the additional resources thus available to the States would be used by them — directly or indirectly — for increased grants to local governments. . . . [I]t is reasonable to expect that the major urban governments for which direct federal revenue sharing is proposed [under other plans] would also participate in such increased State fiscal aid.<sup>88</sup>

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84. *Id.* at 380.

85. *Id.*

86. *Id.*

87. 115 CONG. REC. 300-01 (daily ed., Jan. 15, 1969).

88. *Id.* at 381.

By tying pass-through to population and tax revenue proportions (thus recognizing diverse functional responsibilities and financing arrangements of local governments on a national basis), the Commission has attempted to satisfy the urban interests which demand a pass through.

A relatively substantial modification of these two plans has been adopted in S. 2483, introduced in the Ninety-first Congress by Senators Goodell (a Republican) and Muskie (a Democrat), in a bi-partisan effort to implement recommendations of the Advisory Commission on Intergovernmental Relations (ACIR).<sup>89</sup> Essentially, that bill resorts to two bases for raising the funds, modifies the usual tax effort concept, and proposes an individual federal tax credit for state income taxes paid.

The amount of federal revenue to be shared under the ACIR bill is one-half the sum of: (1) one percent of the federal individual taxable income and (2) twenty-five percent of state personal income tax collections. In using state income tax in the formula and giving a federal tax credit for state income tax, this bill differs from all other revenue-sharing proposals.<sup>90</sup> The reasons for the difference, as set forth by ACIR's executive director, are (1) to encourage the states to use the personal income tax, (2) to foster a public policy which determines the size of the fund, in part, by the "demonstrated willingness of the States collectively to pull up their own income tax socks," and (3) to take advantage of the state income tax collections which are growing at a faster rate than federal tax collections.<sup>91</sup> The incentive for state income taxes is that they increase the amount of federal revenue shared and they relatively reduce the individual tax burden through the tax credit device.

The reduction in federal revenues from the new tax credit is viewed by the bill's proponents essentially as an indirect method of revenue sharing. Assuming the credit stimulates state income tax efforts to a moderate degree, the federal revenue forgone during the second year of operation of the credit may be more than offset by the increasing state income tax receipts.

There are two tax-effort factors in the ACIR bill. The primary factor, like that found in many other bills, divides total state-local tax collections by state personal income. The second factor, which is unique among all bills, gives weight to the most recent annual revenue increase action by adding the factor of state-local effort in the year of distribution as compared with that effort of previous years. This provision helps the states which are most willing to help themselves. It also associates tax and expenditure responsibility.

The ACIR bill has several other notable features: (1) the net profits from operating state-owned liquor stores are included in state-

89. S. 2483, 91st Cong., 1st Sess. (1969); 115 CONG. REC. 7100 (daily ed., June 25, 1969).

90. Using a state tax base in computing the amount of federal funds is found in some other bills. See, e.g., H.R. 17998, 89th Cong., 2d Sess. (1966).

91. INTERGOVERNMENTAL RELATIONS SUBCOMM., COMM. ON GOVERNMENT OPERATIONS, 91st Cong., 1st Sess. at 5 (Sept. 22, 1969) (testimony of William G. Colman, Executive Director, Advisory Comm'n on International Relations on S. 2483).

raised revenues for the purposes of determining state tax efforts; (2) in states having independent school districts, these districts are entitled to a portion of the shared funds after the pass-through provisions have been complied with; (3) the states are permitted to adopt alternative pass-through schemes if the alternatives would result in greater amounts of funds for major cities and urban counties or if the majority of all qualified cities and urban counties agree; and (4) the federal government offers to collect and remit the states' individual income taxes.

The pass-through provisions of the ACIR bill are similar to the Goodell and Douglas Commission formulas except that the ACIR bill does not include the requirement that counties with populations in excess of 50,000 have a fifty percent "urban" population in order to qualify for pass-through funds. Based on an assumed nationally shared fund of three billion dollars (which is less than would be produced under current conditions), the ACIR bill distribution in Maryland is estimated as follows:<sup>92</sup>

Total allocation (portion of \$3 billion)	\$58.32 millions	
State government _____	\$14,685,000	25.18%
Baltimore City _____	\$17,344,000	29.74%
Counties with population in excess of 50,000 _____	\$26,291,000	45.08%

#### B. State Plan Bills for Pass-Through

Essentially, the state plan provisions permit intrastate distribution to be determined by each state in light of its particular needs or characteristics. For example, S. 482 proposed by Senator Javits,<sup>93</sup> requires that the governor of each state, after consulting with officials of local governments, shall develop and submit to the Secretary of the Treasury a plan for sharing anticipated federal funds. The governor's plan shall take into account the population and population density of each local government, the per capita annual income of the residents of the local government, the costs of operating and supplying services in the local government and other relevant factors. The Secretary of the Treasury does not have authority to reject or require amendment of the state plan but may impose sanctions if he finds that the plan has not been followed.

One of the more novel approaches to allocation and equalization, adopted with a view towards the same ends articulated by the Douglas Commission, is found in two bills introduced in the Ninetieth Congress. H.R. 1166, introduced by Representative Reuss,<sup>94</sup> and S. 673, introduced by Senator Tydings,<sup>95</sup> both concentrate on modernizing local governments and improving the fiscal position of urban govern-

92. *Id.* at Appendix I.

93. 90th Cong., 1st Sess. (1967).

94. *Id.*

95. 90th Cong., 1st Sess. (1967). Senator Tydings subsequently has introduced S. 1965 in the 91st Congress, which substantially changes his method but not his goal of aiding metropolitan areas through revenue sharing. This subsequent bill would not require cooperative metropolitan plans.

ments. Like the Douglas Commission and ACIR proposals, both employ familiar allocation factors of population and/or tax effort in fixing the amount to which each state is entitled.

The Reuss bill (H.R. 1166) authorizes block grants totalling \$5.0 billion annually to be appropriated and distributed during each year in a three year period to those states which have received federal approval of "modern government programs."<sup>96</sup> The primary distribution is to be apportioned according to population among those states whose modernization programs have been approved, with no more than twenty percent to be set aside for supplements to states with low per capita income, a high incidence of poverty, dependency, or urbanization, and an "adequate"<sup>97</sup> tax effort, as indicated by the amount of state and local taxes relative to personal income. The bill creates federal regional coordinating committees for a "state modern governments program" and requires the governor of each state to submit for approval to the regional committee having jurisdiction a draft modern government program. It specifies *in detail* the plans and contents of such program, itemizing four matters to which the program must address itself and twenty-three other factors which the program may consider where appropriate. The state plan is to include provisions for passing through at least fifty percent of such grants in an equitable manner to local governments. Unlike the Javits or Tydings bill, the Reuss bill provides machinery for federal review and approval of each state's program, the approval being a prerequisite to the state's participation in a federal block-grant program.

The Tydings bill (S. 673) employs an unusual combination of population, revenue-effort, and urbanization as factors for allotment. The primary allotment to each state is based on the ratio of its population to the population of all states, "except that any State whose revenue-raising efforts (including the efforts of any political subdivisions) relative to its revenue-raising capacity falls short of the average revenue-raising efforts of all States . . . shall receive a correspondingly lesser allotment."<sup>98</sup> A secondary allotment is authorized directly to requesting government authorities of metropolitan areas whose population exceeds 1.5 million people.<sup>99</sup> This allotment would be in proportion to the population of the metropolitan area to the entire population of the state. The federal government would deduct sixty percent of this allotment from that due the state. Therefore the state as a whole would receive a forty percent bonus for its metro-

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96. The bill provides for planning grants to states electing to participate in a program to modernize their governments. The state plans are submitted to a regional coordinating committee which in turn recommends to the President, the Advisory Commission on Intergovernmental Relations and the Congress which programs qualify for the block grants.

97. 113 CONG. REC. A435 (daily ed. Feb. 2, 1967) (Remarks of Representative Reuss); 2 REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM, 90th Cong., 1st Sess. 989 and 1027 (1967); 2-A CREATIVE FEDERALISM, *supra* note 42, 759.

98. S. 673, 90th Cong., 1st Sess. § 3(a) (1967).

99. A metropolitan area is defined as any Standard Metropolitan Statistical Area established by the Bureau of the Budget, subject to modifications adopted by a Commission for Federalism as appropriate to effect the purposes of the bill.



politan areas. To qualify for the direct payment, the officials of a metropolitan area would be required to submit to a Commission for Federalism a comprehensive plan indicating the purposes for which the funds will be expended and the relationship of the purposes to the overall development of the state or metropolitan areas.

The bill provides for sharing approximately one percent of federal individual and corporate income tax revenues for the preceding calendar year. It is estimated for 1966 that, out of a nationally shared fund of \$970 million, Maryland would have received \$20,473,500, including a direct grant to the metropolitan areas of Baltimore City and the Maryland "share" of the direct grant to the District of Columbia. The direct grant to Baltimore City would have been \$8,133,500.<sup>100</sup>

The Javits, Reuss and Tydings bills each have appealing features. The fault in the Javits bill is at the same time its virtue. The fault lies in not specifying any intrastate allocation formula in line with national priorities, while the virtue is encouraging state responsibility. Under the Javits approach, although local officials are required to be consulted in formulating a state plan, there is no assurance that consultation will result in anything different than politics-as-usual. Planning is insured; politicking is, too. Thus, it remains a state obligation to determine which subdivisions get how much and on what basis. There is no certainty that national policies or priorities — such as giving additional aid to urban areas — will be recognized or that a minimum pass-through will be adopted. At the same time, however, heed is paid to the "creative" aspect of intergovernmental fiscal relations, and the permissive attitude of the federal government is underscored.

The Reuss bill requires that a state program for strengthening and modernizing local governments should, if appropriate, take into account methods of "revising the terms of State grants-in-aid and shared taxes so as to encourage modern local governments and to minimize differences in local fiscal capacity."<sup>101</sup> Yet the Reuss bill is the most restrictive and non-permissive of the state-plan bills and cuts so far into the concept of Creative Federalism that its wisdom is indeed open to doubt. It would involve the federal government in the morass and variety of state administration. One surely must have serious questions concerning at least the administrative feasibility of such involvement. Moreover, the bill proceeds without a clear statement of the criteria of an acceptable plan, but merely lists some matters to be considered. Senator Tydings' bill does not condition the metropolitan area bonus on federal acceptance of a metropolitan plan; it is extremely flexible in what constitutes agreement of officials of metropolitan areas to work in concert with each other. The Douglas Commission — ACIR approaches may have struck the proper balance between incursion and flexibility by permitting state variations of pass-through with the consent of affected units of local government, while also requiring a mandatory pass-through in the event an alternative plan of pass-through is not adopted by the state.

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100. 113 CONG. REC. 1599 (1967).

101. H.R. 1166, 90th Cong., 1st Sess. § 2(c) (3) (G) (1967).

All of the state-plan bills assume that a legitimate function of federal revenue sharing is to assist urban areas; this undoubtedly is a legitimate concern of the federal government, but whether that concern should be translated into action in the form of revenue sharing is a conceptual question which must be decided in terms of how seriously one accepts or how broadly one interprets the premise that the states' *own* discretion should be enhanced without federal involvement.

## V. THE NIXON PROPOSAL

Under the Administration's proposal, introduced as S. 2948 by Senator Baker in the Ninety-first Congress, the shared amount is set at  $\frac{1}{6}$  of one percent of taxable individual income, with a provision that the amount shall increase over a period of years to a maximum of one percent of taxable income. Allocation to the states would be on the basis of population and tax-effort ratios, as, for example, under the Hollings bill, the Douglas Commission proposals and the ACIR's recommendations, but without a special equalizing premium for poor states. However, funds are passed through to "general purpose local governments" of the states under a formula which is based on the relative roles of state and local financing in each state. The amount which an individual unit of general purpose local government will receive is based on its share of total local government revenue raised in the states.<sup>102</sup>

This proposal looks to prevailing patterns within each state and thereby avoids having the pass-through set by federal legislation. For example, if the local governmental units are responsible for fifty-two percent of the combined state and local general tax revenues, they are entitled to that percentage of the state's allocation, and each unit is entitled to get its proportionate share. In his congressional message, President Nixon explained: "The provisions make allowance for State-by-State variation and would tend to be neutral with respect to the current relative fiscal importance of State and local governments in each State."<sup>103</sup> A state may modify the pass-through provisions, "working with local governments" in doing so.

The Administration apparently ruled out distribution on the basis of population because of the nationwide variety of governmental units responsible for raising funds within the same geographical area, such as school districts, water and sewer districts, counties, and municipal and city governments. Distribution on the basis of local units' relative wealth was deemed impossible because statistical measurements were not available.<sup>104</sup>

It has been estimated that the Nixon proposal would produce a national shared fund of \$500 million in 1971 and that the allocation to Maryland would be as follows:<sup>105</sup>

102. 115 CONG. REC. 9957 (daily ed., Aug. 13, 1969); 115 CONG. REC. 1110 (daily ed., Sept. 23, 1969).

103. 115 CONG. REC. 1113 (daily ed. Sept. 23, 1969).

104. N.Y. Times, Aug. 17, 1969, § 4, at 1, cols. 1-4.

105. 115 CONG. REC. 1110-11 (daily ed. Sept. 23, 1969).

Total allocation (portion of \$500 million)	\$8,701,500	
State Government.....	\$4,769,196	55%
Local Government.....	\$3,932,304	45%

As previously discussed, one proposal, that of ACIR, could pass through a much larger share to local units. The Nixon plan pass-through of forty-five percent is close to the Heller-Pechman pass-through of fifty percent. Whether the total share to a state would be greater under the ACIR plan than under the Nixon plan would depend on the additional ACIR tax-effort ratio of year to year state tax increases. The ACIR bill would also give more to larger units by not making any distribution to counties with less than 50,000 population and relatively less to those with less than 100,000 population.

A comparison of the relative fiscal impacts of the ACIR bill (S. 2483) and the President's proposal (S. 2948) has been made by John Shannon, Assistant Director of ACIR, in a letter to the author (omitting the Nixon plan share to the least populous counties and based on a total state share of about \$18.4 million under the Nixon plan and \$19.4 million under the ACIR plan) :

MARYLAND'S PORTION OF ALLOCATION OF \$1 BILLION  
SHARED REVENUE

Unit Of Local Government	Unit Share Under		Percent of Total State Share	
	S. 2483 (ACIR)	S. 2948 (Nixon)	S. 2483 (ACIR)	S. 2948 (Nixon)
Baltimore City.....	\$ 5,781,000	\$2,634,000	29.74%	14.55%
<i>Counties with 100,000 or more population</i>				
Anne Arundel.....	766,000	358,000	3.94	1.98
Baltimore .....	2,829,000	1,426,000	14.55	7.88
Montgomery .....	2,588,000	1,151,000	13.31	6.56
Prince George's....	1,892,000	901,000	9.73	4.98
<i>Counties with 50,000- 99,999 population</i>				
Allegany .....	128,000	98,000	0.66	0.54
Carroll .....	8,000	63,000	0.04	0.35
Frederick .....	108,000	103,000	0.51	0.57
Harford .....	129,000	109,000	0.66	0.60
Washington .....	324,000	176,000	1.67	0.97
Totals .....	\$14,545,000	\$7,019,000	74.81%	38.78%

Computations are based on 1960 population figures and therefore allocations for counties with population between 50,000 and 99,999 may increase significantly based on later population data.

The financially hard pressed cities may oppose the Nixon plan either because they oppose all revenue sharing in the hope of getting

more under specific purpose grants, because not enough federal revenue is shared, because they feel that the percentage passed through to the local governments is too small, or because of the formula for allocating pass-through funds. The first two of these possible objections — whether to have any revenue sharing and how large an amount to share — are broad political questions about which more will be said later. As already suggested, the percentage to be passed through under the Nixon plan (about forty-five percent) is rather large compared with most proposals.<sup>106</sup> As to the last point, the pass-through formula itself, Nixon's plan, based on the relative amount of taxes raised, appears to be rather favorable to the cities. Certainly a formula based on relative wealth or on relative populations is less likely to give as much to the cities because the suburbs generally contain wealthier and faster growing populations.

Another possible formula is found in a relatively unnoticed set of bills in the Eighty-ninth, Ninetieth and Ninety-first Congresses. These bills would require pass-through to be shared with each local unit in the same proportion as state aid to that unit bore to total state revenue over a prior period of years.<sup>107</sup> Although this plan has the advantage of avoiding federal direction and seemingly bases distribution on state determined need, it could reinforce those state practices which discriminate against local governments in need of aid. Existing patterns of state aid do not necessarily reflect need. In the case of Maryland, where some state aid is equalized but the effects of equalization are diffused or negated by other programs of state aid,<sup>108</sup> this formula would be neutral.

Allocation based on local taxes in relation to total taxes is assumed to help the hard pressed cities because it has been assumed that, generally speaking, the large cities raise a greater amount of actual tax dollars than the suburbs or small cities. This is partly because great concentrations of tax-paying population are within the large geographical boundaries and tax jurisdictions of the cities, and partly because the cities also tax at higher rates, frequently have a wider tax base (consisting of commercial and industrial taxpayers as well as residential ones) than the suburbs, and exercise more imagination in raising revenues by employing a wider variety of taxes than the suburbs. The economic history of urban areas, however, points to an almost inevitable decline for cities in their tax-paying population (residential, commercial and industrial) and an almost inevitable increase in the costs of providing services to the urban areas. Although amount of taxes raised may be roughly related to need, a tax-effort ratio would seem to more directly compensate for the impact of these historical trends on the ability of the cities to make their way and meet their fiscal crises.

106. The ACIR pass-through formula would allocate almost seventy-five percent to local governments. This reflects the ACIR's bias for strengthening local governments fiscally and redressing metropolitan fiscal disparities.

107. H.R. 16784, 89th Cong., 2d Sess. (1966); H.R. 525, 90th Cong., 1st Sess. (1967); H.R. 6216, 91st Cong., 1st Sess. (1969).

108. H. TURNBULL, FEDERAL REVENUE SHARING 24, 27 (1969).

## VI. RECOMMENDATIONS

Notwithstanding its many problems, revenue sharing is an attractive concept, and the time is ripe for it. The new national priority of Creative Federalism craves recognition and legislative legitimatization. The apparent implication of the attention being given to revenue sharing is that it is a national priority to improve the federal system by strengthening state and local governments. Questions of how the states spend the federal funds are incidental to the need to allow the states to have relatively unrestricted federal funds in the first place.

At a time when government centralization is under attack on many fronts, it is appropriate, indeed it may be mandatory for the continued performance of government services, that decentralization of the federal government be balanced by greater strength for state and local governments. It is gainsay that stronger state and local governments cannot be achieved without fiscal federalism.<sup>109</sup> Those opponents of revenue sharing who argue that the government responsible for raising revenues should be the only one entitled to spend them — *i.e.*, that expenditure and revenue raising should be inexorably associated<sup>110</sup> — overlook the violation of this argument by various largely unrestricted block grants to the states, and persist in standing in the way of the demonstrated needs of intergovernmental relations.<sup>111</sup> The close connection between state revenue gaps and problems of poverty also forcefully argues for revenue sharing; as noted so frequently above, it is fictional to try to isolate state fiscal problems from urban problems and then to isolate this set of problems from the operation of the welfare state, whether or not that state is the federal or a state government.<sup>112</sup>

The assumption that state and local governments are inefficient and largely unresponsive to the demands of the times and their citizens does not deny the possibility that federal-state aid programs are likewise inefficient and largely unresponsive or not properly responsive. There is substantial evidence controverting the assumption concerning state-local inefficiency and unresponsiveness and supporting the allegation against the federal government.<sup>113</sup> In addition, the tradition of referring state and local problems to the federal government for solution has not proven wise in every case, and some would argue that it has indeed been unwise in most cases.

Finally, there are urgent policy reasons for enhancing the role of the states in the federal system and for discarding the traditional approach of relying on the federal government as destructive of the federal system and non-productive in its own right. The evolution of revenue sharing out of inquiries into the nature of contemporary federalism and the desirability of making it a creative form of federalism

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109. INTERGOVERNMENTAL RELATIONS SUBCOMM., COMM. ON GOVERNMENTAL OPERATIONS, 91st Cong., 1st Sess. at 1-2 (Sept. 22, 1969) (Testimony of William G. Colman, Executive Director, Advisory Comm'n on International Relations on S. 2483).

110. *Id.* at 4.

111. *Id.* at 2, 3.

112. *Id.* at 7.

113. *Id.* at 2.

indicates that these preferences and opinions are not without substantial bases in fact and history.

*The Basis for the Revenue.* There seems to be little dispute that the tax base for revenue sharing should be capable of expanding at least as rapidly as the national economy. Thus, because it grows faster than GNP and other sources of federal revenue, individual income should be the base. This base has several other advantages: (1) it is the source of most federal revenues and, therefore, perhaps the easiest to share; (2) its revenue-raising ability usually is accurately predictable; (3) it induces the states to believe that they are sharing in more than just money — that they are, in a sense, getting an equity participation; (4) it results in a partial reversal of the federal-state-local “mismatch” of revenue-raising capabilities; and (5) it has gained the most widespread congressional, presidential and other support. Moreover, if a percent of total state personal income tax collections were made part of the base, as recommended by the ACIR (S. 2483), the states would be given an incentive to enact personal income tax laws, and the overall base for shared funds would be increased.

Having settled on the base, however, does not answer several other problems related to the base. First, there remains open a serious question whether the funds should be paid without respect to federal budgetary surpluses or whether they should be contingent on surplus. Certainly there is no problem in sharing revenue in times of surplus. There may be a problem when a federal deficit is impending. One approach to the problem is to say that deficit financing should not trouble anyone these days; it is almost a sacred tradition. The other side of the argument seems to be that, given a deficit, there is an obligation to hold it down — to prevent it from increasing on account of payments for revenue sharing. Notwithstanding these arguments, there is clearly an acceptance of at least occasional planned deficit financing by the federal government, and revenue sharing can be included in the planned deficit financing. However, there is the additional problem of unplanned decline in federal tax revenues. At these times, there may be a questionable claim by the states to federal money. It might be argued that at those times the responsibilities of the federal government to finance programs other than those of Creative Federalism outweigh state claims to revenue-sharing funds; this argument assumes that there are federal priorities greater than Creative Federalism. Surely there are other federal priorities, but whether any one or several of them can fairly and rationally be distinguished from a priority of fiscal federalism is more a matter of philosophy and ideology of government than of accommodation of the priorities to each other. It would avoid weighing federal priorities to require at least that revenue sharing — as a method of furthering a national priority of Creative Federalism — not suffer any more or less than other federal priorities; it should be absorbed into the conglomerates of federal obligations and, at the very least, should be entitled to a share of federal funds at all times.

The issue now becomes the extent of the share. If appropriations for other federally aided programs have to be reduced at times of federal fiscal restraint, it is arguable that revenue sharing should be treated evenhandedly and likewise bear the brunt of reduced appropriations. A contrary argument based on a high priority value given to revenue sharing can be made. The statutory method for achieving the flexibility and time period necessary to test these arguments is most likely to be that which provides for a step-up or step-down of the percentage of the share, subject in cases of a step-down to a guaranteed minimum percent. Thus, there seems to be merit in bills which begin the share at a certain percentage and increase the percentage annually over a period of years up to a fixed maximum. These bills allow a new concept to be tested and rewarded if found successful; at the same time, they avoid the drastic and possibly politically unfeasible alternative of a total cessation of aid. Finally, they have the merit of putting the burden of shouldering the brunt of bad years — deficit years or years when the economy or responsibilities of the national government have occasional aberrations — on the federal government, not on the states. This may be an advantage if only because the federal government may be better able to absorb the burden than the states; it may be able to carry a load which would weigh too heavily on the less financially strong states. Moreover, in view of the extent of control by the federal government over the national economy — which is, after all, the source from which revenue-sharing funds will emanate — it may be only right to require the federal government to assume this burden, for it, not state governments, has the powers which if judiciously exercised can to a large extent chart the course of the national economy and dictate its shape.

Finally, budgetary planning by states should be taken into consideration. A minimum grant, expressed in terms of a percent of net taxable individual income or absolute dollars, would provide constancy and reliability for state budget directors. At a time when the tendency toward interstate equalization is out of favor, a guaranteed minimum might be not only fair to poor states but politically expedient as well.

*Allocation of Funds.* The allocation problem is by no means susceptible of easy solution. At the outset, it seems possible to reject the state-of-origin bills as (1) failing to achieve significant equalization, (2) replete with problems of relating origin to costs of government and determining origin, and (3) relatively lacking in Congressional support. Moreover, it seems possible to discard notions of reducing federal grants to states for health, education and welfare by the extent the states participate in revenue sharing, for this is counter-productive. Finally, allocation based on existing patterns of federal aid seems to entirely miss the point that revenue sharing is directed at increasing state fiscal discretion, not at supplementing present aid or freezing aid patterns into their present context.

Turning to the formulas least subject to debilitating criticism and most likely to merit congressional support, one is left with a simple per capita (population only) formula, with modifications to take into

account interstate equalization, ratios of effort and ability, and population density.

The population formula overlooks the problems caused by a mobile population; the effects of the immigration of the poor and emigration of the rich or the reverse can not be dealt with by a population-only formula. Nor is it clear that allocation formulas, however devised, could be equal to that problem, which may better be handled through other forms of intergovernmental aid. Certainly it is almost a Herculean task to tailor revenue sharing to the character of a state's population; moreover, because of varieties among states and a policy interest in variety for its own sake, it may be politically unwise and fiscally unproductive.

Although there is modest equalization in a straight population-only formula, it does not seem sufficient; nor can it be said with certainty that the addition of a tax effort factor will increase equalization. On the other hand, the clear trend is to reduce the amount of the supplemental equalization bonus. On balance, it may be fiscally desirable and politically expedient to require supplemental equalization on something close to a ninety-ten percent basis, and this writer is not sure that even that modest equalization is fiscally desirable. The bonus should be shared by no more than the "poorest" one-third of the states. Any greater number of states (such as all which are below the national average in per capita income) is open to criticism that the spreading of the equalization funds is so great as to minimize the fiscal impact the funds will have on the poor states. Any lesser number seems too narrow, at least politically, for few congressional bills would distribute the equalization bonus to less than the poorest one-third of the states.

If a factor of revenue effort and ability is added, the population-only factor is not discarded and its political appeal is enhanced, if the measure of appeal is the number of proposed bills adopting this factor. Moreover, the burden is put on the states themselves to become more self-reliant and to become stronger partners in the federal system, for if a state's revenue effort-ability ratio is lower than the national average, it will be penalized proportionately, while if it is higher, it will be rewarded. The likelihood that the state will reduce its efforts or level of service is met by the effort-ability ratio so that there is more assurance of a greater degree of government services as a result of revenue sharing. In this writer's opinion, the effort-ability ratio should be the prime, and, if possible, sole allocation factor; if that preference runs into too much political opposition, a combination of the effort-ability ratio with the population-only factor is acceptable, with the preference being for a greater amount of funds to be allocated under the effort-ability ratio than on a per capita basis. There seems to be no good reason why this preference should not apply to the basic as well as any equalizing grant, and, for the reasons stated, every reason why it should be applied to the equalizing portion. In fact, interstate equalization provisions may dilute the effects of tax-effort provisions, or vice versa, and the preference of this writer is to avoid interstate equalization altogether.



If population must figure into allocation, the density factor should at least be recognized in pass-through provisions. It would attract political support and already seems to have gathered its own adherents in Congress. Above all, it would tend to cure the fiscal imbalance of metropolitan areas and give recognition to the higher costs of government in urban areas; it might also dilute the fiscal imbalance in some existing intrastate aid programs caused either by rural domination of state legislatures or by the ironic failure of reapportionment to give the cities a greater voice in those legislatures.

In no event should the state's use of federal funds be restricted to functions or programs, however broadly described, and in no event should funds allocated under other federal grant programs be reduced on account of or in proportion to federal revenue-sharing funds. The fiscal counter-productivity of such measures should be glaringly obvious, and the subversion of Creative Federalism by such federal intrusion should be repugnant to anyone who favors a strong federal system.

*Pass-Through.* The pass-through matters are the most vexatious. They are subject to the greatest variety of formulas, ranging all the way from absolute disregard of pass-through to requirements for passing through all the funds, with a variety of intermediate proposals. And there are appealing contradictory considerations.

The call for mandatory pass-through is strongly supported by state political patterns. It is not at all clear whether, even if reapportionment overcomes rural domination of state legislatures, suburban domination will not be equally or more harmful to the cities. The metropolitan fiscal disparities which pass-through should help overcome may be the result of suburban counties' desires to protect themselves as secure, middle and upperclass white enclaves. Although the plight of the cities is partially attributable to other sources, the role of rural and suburban political interests cannot be denied.

But required pass-through impairs the goal of increasing state fiscal discretion. The idea of a state developed plan of pass-through may not help much. A requirement that a governor consult with chief executives of local government does not assure that funds will be distributed to local governments unless a statutory minimum is required or unless the plans are subject to approval by a federal agency. Federal interference based on what is a "proper" pass-through could impair state fiscal discretion as much as a statutory minimum. One appealing alternative is that found in the bill introduced by Senator Tydings in the Ninetieth Congress (S. 673), which gives a financial incentive for intrastate metropolitan cooperation and sharing of funds, thus encouraging metropolitan plans rather than either state or local plans. Moreover, unlike the Reuss bill, it insinuates the federal government into metropolitan or state decision-making process only to the extent of encouraging larger local governmental organization and planning.

Another difficulty is that the setting of minimum pass-through requirements may in effect result in the setting of maximum pass-through requirements, or the minimum may prove too high or too low. In cases where flux in society and variety among states is the

rule of nature, it is futile to strive for permanency and consistency. The politics of consensus, however, may require that minimums be set. A final difficulty is that under any proposed pass-through plan the state government will be able to at least partly offset its effect by giving less aid or smaller increases in aid to cities.

All of the above may leave the impression that pass-through is undesirable as well as impossible to design. But the impression is wrong. Pass-through is mandated because of political necessity and fiscal disparities. To design it is to attempt to accommodate politics and fiscal disparities to the paradox of federal controls over the states. The least incursive federal requirements consistent with correcting those disparities look to plans for distribution of funds which are proposed by the states but in which local authorities have a significant voice, and in which a mandatory minimum is federally established.

The recommendations of the Douglas Commission (S. 50) and the ACIR (S. 2483), that there be a mandatory cut off at 50,000 population, are well suited to attract political support from representatives of the most populous urban areas, to overcome metropolitan fiscal disparities, to avoid cumbersome federal controls, and to require states to deal with only the larger and financially harder-pressed units of local government. Subject to this writer's preference for pass-through being determined solely on a tax-effort basis and for some state-plan methods of setting pass-through, these recommendations are the most acceptable yet advanced.

What is particularly distressing, however, is that pass-through requirements generally have tended to avoid reallocation on the basis of tax-effort ratios. It may be, as some will contend, that sufficient data is not available to identify the local units which should be entitled to a pass-through portion, particularly those governments which have general purpose powers, or to determine their tax-effort ratios. Yet definitions and data can, and should, be developed if intrastate reallocation is to be consistent with interstate allocation based on those ratios.

The accommodation of competing political interests (primarily, the interests of urban areas in being entitled to a share of the federal funds in an amount sufficient to help remedy their fiscal crises) to the undeniable fiscal disparities within the states can best be accomplished without federal intrusion if a state-plan approach is adopted and if a guaranteed minimum pass-through to urban areas is assured. Only in this fashion, it seems, can variety and pluralism be encouraged in the federal system.