

January 19, 2016

Re: Federal Update

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Dear Mayor:

Here is an update on recent Federal Government developments that could affect local governments.

I. ACA Excise Tax Delayed Until 2020

In addition to ensuring that the federal government will be open for business in FY 2016, the massive \$1.6 trillion spending and tax cut package passed by Congress at the end of last year, included more good news - a two-year delay of the Affordable Care Act's 40 percent excise tax on high cost employer-sponsored health insurance. The tax was scheduled to go into effect in January 2018.

As enacted in the ACA, the tax is to be levied on the value of employer-sponsored plans that exceed a statutory dollar threshold - \$10,200 for individual coverage and \$27,500 for coverage other than self-only. The Congressional Budget Office estimated that the new tax would raise some \$87 billion in revenue over ten years to fund government subsidies to help people pay premiums for health coverage through the ACA.

Support for stopping the tax altogether is gaining momentum. At its annual conference last fall in Nashville, National League of Cities (NLC) members passed a resolution calling for the full repeal of the tax. NLC supports repeal because the tax would impair state and local governments' ability to continue to offer competitive health benefits to their employees and would impose potentially serious negative impacts on state and local government workers, budgets, and taxpayers.

II. Public Pension Federal Reporting Requirements Out For Now

Local governments dodged another mandate originally in the Omnibus bill, but removed before it became law. Provisions in the [Public Employee Pension Transparency Act \(PEPTA\)](#) would force states and localities to meet certain federally established pension reporting requirements in order to maintain their right to issue tax free municipal bonds. Failure to comply with the requirements of the Act would mean that states and localities would have to go to the taxable bond market to raise funds for infrastructure and other legitimate state and local activities. The League and NLC have long-opposed this unwarranted and unjustified intrusion by the federal

government in activities and responsibilities of states and local governments. We are pleased to see that yet another attempt to pass it has failed. For more information on NLC's position on PEPTA, [click here](#).

III. Will Public Sector Collective Bargaining Survive This Supreme Court Term?

We won't know for sure until the end of June when the Supreme Court will most likely issue its opinion in [Friedrichs v. California Teachers Association](#) whether the Court will decide to overrule a nearly 40-year old precedent requiring public sector employees who don't join the union to pay their "fair share" of collective bargaining costs. More than 20 states have enacted statutes authorizing fair share. If the Court doesn't overrule [Abood v. Detroit Board of Education](#) (1977), it may instead rule that public employees may be allowed to opt-in rather than required to opt-out of paying "nonchargeable" political union expenditures.

Click here to view an NLC webinar and learn more about the legal issues in this case and what's at stake for state and local governments if the Supreme Court rules that public-sector "agency shop" arrangements are unconstitutional. For more information about the case, read [this post on Cities Speak](#).

IV. EPA Solicits Comments on Stormwater Regulation Updates

Stemming from a 2003 court decision, the U.S. Environmental Protection Agency (EPA) is seeking comments on updates to its Phase II stormwater regulations regarding the procedures to be used for providing coverage to small municipal separate storm sewer systems (MS4s) under general permits.

The purpose of the [NPDES Stormwater Proposed MS4 General Permit Remand Rule](#) is to fix certain deficiencies that the Ninth Circuit Court of Appeals found in the permitting process for small MS4s covered under general permits, namely the lack of permitting authority review and the lack of public participation in the permitting process. This rulemaking applies to operators of a "regulated small MS4," of which 94 percent are permitted under a state general permit. There are 6380 small MS4s covered by general permits nationwide.

EPA has proposed one option, while also taking comments on two other options. The three options are:

- Option 1 (EPA's proposed approach) – A traditional general permit approach whereby the general permit includes clear, specific and measurable provisions and the permittee is required to submit a Notice of Intent that the requirements will be met.
- Option 2 – A procedural approach whereby the permit authority establishes a mechanism to approve individual MS4 programs.
- Option 3 – A state choice approach whereby the permit authority can choose to follow either option one or two or a hybrid of the two.

Along with the proposed rule, EPA issued a compendium of state and EPA permit provisions, that includes provisions from existing and draft permits that exemplify how Option 1 has been implemented in state and EPA permits.

EPA is accepting comments on the rulemaking through March 21. If your municipality does comment on the proposal, please send us a copy.

V. DOJ Suspends Reimbursement from the Asset Forfeiture Program

Just before Christmas, the Department of Justice surprised police departments across the country with [notice](#) that payouts under the federal “equitable sharing” program were being suspended due to a shortfall in the program’s fund that were caused by a budget rescissions that were larger than usual. The equitable sharing program is a legal tool that empowers federal, state and local law enforcement authorities to seize assets that are suspected to have been derived from, or used to facilitate, criminal activity. Congress initiated the program in the 1980s to fight organized crime and drug gangs by targeting their contraband.

According to officials at the DOJ, the Department is working to identify ways to maintain the program and expects to resume payments in 2016 as additional funds come into the AFF.

In addition to budget shortfalls, Congress is also considering legislation that would limit DOJ’s future ability to transfer property and funding to state and local law enforcement agencies through the program. While NLC has been supportive of program reforms, in a resolution adopted during the annual business meeting in Nashville, NLC voiced opposition any legislation that would limit local law enforcement's ability to participate in the program and calls on Congress to maintain it while also establishing appropriate requirements that safeguard individual rights and remove financial incentives for potential misconduct.

If you have any questions, or any comments that you would like to share, on any of these items, contact Jon Moran at jmoran@njslom.org or 609-695-3481, ext. 121.

Very truly yours,

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