

Denver Regional Council of Governments Policy Statement on Federal Legislative Issues for 2007

Introduction

This paper outlines the key federal policy issues of interest and significance to the Denver Regional Council of Governments (DRCOG) and its local government members. It identifies policy positions intended to inform the Colorado congressional delegation, Congress, federal and state executive branch officials and others as they develop and implement national policy on these issues. These policy statements guide DRCOG's federal legislative positions and actions during the coming year.

DRCOG is a membership organization of more than 50 cities, towns and counties in the nine-county metropolitan region. Under federal law, it serves as the Area Agency on Aging for eight counties, the region's water quality planning and management agency, and the Metropolitan Planning Organization (MPO) for regional transportation planning, which includes a requirement to coordinate transportation planning with air quality goals. Under state statute, DRCOG, as the regional planning commission, prepares and adopts a regional plan for the metro area and has responsibility for oversight of regional transit projects and toll road projects in the region.

DRCOG also provides a forum for addressing regional issues and coordinating local activities. It acts as an advocate for regional problem solving and has adopted a legislative principle statement that asserts, in part, "the organization assumes the responsibility for identifying and promoting regional interests in its various fields of planning and management to state and federal legislative and administrative bodies." It is within this context that the following policy positions are adopted and advocated.

OLDER ADULTS

Older Americans Act. The Denver Regional Council of Governments (DRCOG) has been the designated Area Agency on Aging (AAA) for the metro area under the auspices of the federal Older Americans Act since 1973. In this capacity, DRCOG is responsible for planning and advocating for the needs of the region's older residents, as well as for providing a broad array of services and programs.

Congress reauthorized the Older Americans Act (OAA) in 2006. The reauthorization included new programs requiring states and local governments to address challenges brought by the aging of the Baby Boom generation. Unfortunately, the reauthorization did not include any additional funding, other than a small increase for the National Family Caregiver Program. The reauthorization also includes provisions encouraging better federal, state and local coordination of services provided to persons in both in-home and

community-based settings but did not specify how these provisions would be implemented.

Accordingly, DRCOG adopts the following principles for implementation of the new legislation.

- **Encourage Meaningful Coordination with Other Systems and Programs.** The Administration on Aging should adopt rules and regulations incorporating the following specific concerns:
 - **Require states, AAAs, Medicaid long-term care agencies, and other relevant entities to carry out coordinated regional and statewide planning of services and programs for seniors.**
 - **Coordinate all federal programs and planning processes that serve older citizens, such as Older Americans Act, Medicaid, SAFETEA-LU and Section 202 housing programs.**
 - **Remove barriers to the coordination of elderly and disabled transportation services by providing the flexibility to allow trips for elderly and non-elderly disabled persons and for meal, medical and personal services to be served by the same provider using a combination of U.S. Department of Health and Human Services and U.S. Department of Transportation funding.**
 - **Avoid shifting the cost burden from cash-strapped programs, such as Medicaid, to the Older Americans Act programs simply to bail out those programs.**
- **Maximize Flexibility in Use of Older Americans Act Funds.** The majority of federal funding provided to state and local entities under the federal Older Americans Act is specifically earmarked to particular services. This leaves very little room for regional discretion in program design. While all of the OAA-funded services, such as meals and transportation, are critically important, the Area Agencies on Aging, local governments and service providers are in the best position to assess the specific needs in the local areas. Increased flexibility in the use of program funds would allow area agencies on aging to better meet the needs of older adults.
 - **Simplify rules and regulations to allow better coordination of senior services thus enabling AAAs and service providers to more efficiently and effectively use federal funds to address local priorities. This could include the consolidation of certain funding categories to improve administration of the affected programs. For example, the Title 3 C-1 congregate meal and Title 3 C-2 home-delivered meal programs could be merged.**

- **Create flexibility in state- and federally-specified allotments of Older Americans Act funds allowing Area Agencies on Aging to utilize regional priorities to determine funding distributions at the local level, consistent with the goals of the Act.**
- **Set required local match at 10% and required state match at 5% across all programs of the Older Americans Act.** Currently, required local and state funding match percentages vary widely. For example, state/local match for the National Family Caregiver Support Program is 25%, while the Nutrition and Supportive Services Programs require a 15% state/local match. In some cases, states can completely opt out of providing a state match as with the National Family Caregiver Support Program.
- **Fund Aging-Related Planning for Local Communities.** Since the reauthorization established new requirements for senior-friendly community planning but did not include funds for this new mandate, Congress should appropriate funds for state, regional, and local collaboration, planning, community capacity-building, and technical assistance. This should include funds for conducting analyses of the strengths and needs of seniors in a given area.
- **Increase Federal Funding for Older Americans Act Programs.** The funding provided through the Older Americans Act has proven critical in maintaining a quality standard of living for many of the nation's senior citizens. However, the growth in demand for services has, and will continue to, considerably outpace funding and service availability. The National Association of Area Agencies on Aging estimates that purchasing power in the OAA programs diminished by 40% between 1980 and 2000. This long-term gap in funding translates to greater numbers of older adults and family caregivers with unmet needs and increasing pressures on state and local agencies, service providers and families. Meanwhile, waiting lists for Older Americans Act-funded services such as meals on wheels, rides to medical appointments, and in-home care have burgeoned throughout the country. Compounding these problems, financial pressures on other programs that provide services to seniors, such as Medicaid, have led to reductions in the services provided by those programs, and a related increase in demands on Older Americans Act programs. **Congress needs to fund the Older Americans Act adequately now and into the future – in preparation for the aging of the baby boomers.**
- **Significant annual increases in the overall funding for the Older Americans Act Programs are necessary to catch up with the lag in historical funding.**

- **Future authorized appropriations are needed at levels adequate to fund identified needs but at least commensurate with the rates of growth in inflation and the economically needy older population.**
- **Priority for funding should be given to those Older Americans Act programs and services that emphasize assisting clients to live in their homes as long and as independently as possible.**
- **Increases in the funding for family caregiver support services (including training, respite care, counseling, and information and assistance) and the continued distribution of these monies through AAAs, is important to address the growing needs of families who provide extensive care to their loved ones.**
- **Protecting the role of the ombudsman program and increases in funding for ombudsman programs are necessary to improve the ability to respond to complaints and safeguard residents' rights.**

Long-Term Care Facility Quality of Care. The quality of care received by residents of long-term care facilities is an ongoing concern to the residents, their families, local governments and resident advocates. DRCOG believes the following issues require particular attention by Congress and federal agencies.

- Federal regulations designed to ensure the quality of care in long-term care facilities are not fully enforced, largely due to inadequate staffing levels in the state enforcement agencies. There also are several actions that could be added to the regulations to improve enforcement. These include increased inspections and penalties on long-term care facilities failing to comply with regulations. **DRCOG supports such improved enforcement of long-term care regulations and an increase in funding for enforcement actions, which are the responsibility of state health departments.**
- Most complaints investigated by DRCOG ombudsmen are traceable to staffing issues in the long-term care facilities. The inability to maintain adequate staffing is a critical concern that negatively impacts long-term care facility quality of service. **DRCOG supports federal legislation, policies and programs to improve the quality of service in long-term care facilities, including setting minimum staffing levels and providing financial and technical assistance for the recruitment, training and retention of long-term care facility employees.**

Health and Home Care Services. There are numerous other health and home care issues not covered under the Older Americans Act. In general, the policies below address concerns regarding consumer protection, access to treatment, and access to services that increase independence. DRCOG believes it is appropriate for federal legislation, regulations and policies to promote access to

health care coverage and the integration of long-term care into a continuum of medical and non-medical services, including health promotion and disease prevention.

- *Noninstitutional Care.* Home and community-based services are critical components in the continuum of care for the elderly and disabled and are more cost efficient than services in institutions, particularly with regard to rural areas and for minority populations. Adequate reimbursements to providers are necessary to offset the costs of providing these important services. **DRCOG supports increased funding of home and community-based care programs and higher Medicare and Medicaid reimbursements.**
- *Prescription Medication.* Older adults typically require more medication than younger people. Even with the adoption of a prescription drug benefit under Medicare, the high cost of prescription medication will continue to be a financial hardship for many older adults. **DRCOG supports revisions to the Medicare Part D prescription drug benefit to simplify the application process and coverages offered, as well as address the gaps in coverage to provide a more comprehensive prescription medication benefit for all beneficiaries. DRCOG also encourages the federal government to provide additional funding directly to Area Agencies on Aging to provide public education to citizens about the changes in the Medicare program.**
- *Patients' Rights.* Enforceable federal protections, in areas including access to care, quality assurance, patient information, grievances and appeals, doctor-patient relationship, and physician treatment decisions, are necessary to ensure that quality health care and other services are available to all. **DRCOG supports legislation to protect consumers in managed care plans and other health coverage.**

Housing. The ability to afford to live in a residence independently is a concern of older adults, especially those on fixed incomes. As the Denver metro area has grown and developed, the shortage of affordable housing has become an even more important concern. **DRCOG supports increased federal assistance for the housing needs of low- and moderate-income adults, including home modification programs and funding of programs to assist seniors, persons with disabilities and others at-risk to remain in their homes.**

TRANSPORTATION

Implementation of SAFETEA-LU. Reauthorization of TEA-21 was completed in 2005. The focus is now on implementing of the new legislation, as there are new programs and revisions to existing programs that require federal clarification.

- **DRCOG supports limiting federal guidance and rulemaking but urges consultation with all partners and affected agencies in any federal rulemaking and development of federal guidance that may occur.**
- **In instances where guidance or rulemaking is necessary, DRCOG supports the recognition and promotion of “best practices” in implementing the act.**

Highway Funding. Even with the passage of SAFETEA-LU, there still are issues of concern regarding the need for stable and predictable sources of funding, as well as increased levels of funding. **DRCOG supports the following:**

- **Completion of the study to identify ways to keep the Highway Trust Fund solvent.**
- **Consideration of new funding sources and enhancement of existing funding sources.**
- **Expanded investment in research and development for alternative fuels and more efficient automobiles, including incentives for these programs and products.**
- **Ensuring that earmarks are provided on top of the state program formula funds.**

Transit Funding. Transit is an essential part of the metropolitan transportation system. Implementation of the Denver region’s transit system is a high priority of DRCOG. As demonstrated by the passage of FasTracks, the metro area is firmly united in its commitment to system-wide build-out of transit. All of the corridors identified in the regional transportation plan are critical components of the Denver region’s plan for a regional transit system. DRCOG also recognizes the importance of making transit-supportive improvements to these corridors along with the transit improvements. With the metro area having made a significant commitment of local resources for the regional transit system, **DRCOG urges Congress to take the following actions in support of transit in the Denver region:**

- **Continue the federal investment for transit and multimodal projects in the Denver region.**
- **Provide dedicated sources of revenue and increased funding for bus rapid transit and rail new starts programs (including a return to the 80/20 federal/local match, to help build the corridors in the regional plan).**

- **Ensure completion of the federal funding commitment to T-REX and federal funding for the FasTracks corridors.**
- **Provide a level playing field for transit and highways such that transit project funding requests are no more onerous or competitive than highway project funding requests.**
- **Designate the “Rocky Mountain Corridor” from Cheyenne, Wyoming through Colorado to Albuquerque, New Mexico and the I-70 corridor from DIA to Dotsero as a High Speed Rail Corridor, thus identifying the corridor as having potential for high speed rail activity and enabling the corridor to receive federal funds that might become available for highway/rail grade crossing safety improvements.**

Air Quality Conformity. The air quality conformity process is a success in the Denver region. It has directly improved air quality by leading to improved management practices and thereby significantly reduced PM10 (particulate matter) and ozone emissions. It has increased support for multimodal planning and for integrated land use and transportation planning. It has also increased interagency coordination between the air quality and transportation planning agencies. **DRCOG supports continued funding of Congestion, Mitigation and Air Quality (CMAQ) funding. CMAQ funding is critical to the region’s ability to meet the requirements of the National Ambient Air Quality Standards (NAAQS). DRCOG supports maximum flexibility so that comparatively minor changes to the planned or programmed highway and transit network do not require a full conformity analysis at taxpayer expense.**

Transportation Demand Management (TDM). TDM programs such as carpooling and teleworking have an established track record of reducing traffic congestion and improving air quality. DRCOG views TDM principles and practices as increasingly important elements of the region’s long-range transportation planning strategy. **DRCOG supports TDM programs that minimize the barriers to the use of alternatives to the single-occupant vehicle and encourages changes to normal work patterns to avoid peak traffic conditions. DRCOG also supports efforts to provide incentives to employers, schools, rideshare agencies, and individuals to encourage alternative transportation use.**

Air Transportation. General aviation and commercial airports in metropolitan areas are faced with complex issues as they work to provide quality service for their customers. At the same time they must be mindful of noise and land use impacts to ensure that they operate as good neighbors to nearby communities. Existing laws and regulations make it difficult for such airports to accomplish these equally important but often-conflicting goals. **Changes to existing laws and regulations that would enable airports to limit certain aviation activities**

are necessary, provided that these activities are offered elsewhere in the regional aviation system. For example, an airport ought to be allowed to deny scheduled passenger service to avoid causing noise problems for surrounding communities, as long as adequate scheduled passenger service is provided elsewhere in the region. It is inefficient and expensive for every airport in a region to be required to provide every possible air service if the regional system as a whole provides an adequate level of all services.

ENVIRONMENT

Clean Water Act. Local governments in the Denver region are faced with increasingly complex water quality challenges in an environment unique to the arid West but without the resources and flexibility to respond to them appropriately. While reauthorization of the Clean Water Act could provide local governments and regional water quality planning agencies the additional planning, financing and regulatory tools needed to address our growing water quality challenges, it appears the scheduled reauthorization is not likely in the near future. In the meantime, there are a number of issues Congress can address.

- *Watershed Approach.* As a coordinating framework to plan and implement measures to address water quality problems, the watershed approach has gained attention nationwide as a cost-effective approach to protecting and restoring water resources and ecosystems. **DRCOG supports a watershed-based resource management approach tying together control of point sources, nonpoint sources, and storm water through the involvement of watershed stakeholders. In connection with this, DRCOG supports the implementation of total maximum daily loads.**
- *Regional Planning.* The Clean Water Act recognizes the importance of planning to address the challenges associated with both point and nonpoint source pollution. The regional planning provided for in the act is even more critical, given the growing emphasis on watershed approaches. Congress should maintain and strengthen the regional planning process as the key component of the watershed approach. **The planning funds provided under section 604(b) need be increased to assist responsible parties in meeting the expanding responsibilities that accompany implementation of a watershed planning and management approach.**
- *Regulation of Nonpoint Sources.* To the extent that the Clean Water Act has been successful in reducing point source pollution, nonpoint source pollution (such as urban and agricultural runoff) remains one of the most significant challenges for improving water quality. **National, state and regional nonpoint source programs must be integrated with other environmental and natural resource management programs. It is important for**

Congress to support targeted, voluntary approaches, such as the nonpoint source program in the DRCOG region.

- *Wetlands.* The loss of wetlands and natural habitat and the lack of adequate resources to mitigate these losses are key future water quality issues. **In keeping with a watershed management approach, a greater recognition of the key role of wetlands management is called for. It is appropriate for the act to account for the effects of wetlands regulations on local governments and property owners but not to provide for classification of wetlands according to economic value, nor mandate compensation to property owners for loss of such value related to wetlands regulations beyond what is provided under current law. In addition, DRCOG encourages increased funding for the acquisition of significant wetlands.**
- *Infrastructure Funding.* Colorado and the nation are at a critical juncture regarding water and wastewater infrastructure. There are significant needs for new treatment plants and upgrades to existing plants. Local governments already shoulder a significant portion of water and wastewater capital investment. **Increased funding for infrastructure investment as well as the provision of greater flexibility of these funds will allow states and local governments to determine the best use according to local prioritization of needs**
- *Good Samaritan Protection.* Abandoned and inactive mines present a serious risk to the quality of nearby water supplies. Lack of adequate funding for reclamation and the potential liability for “good Samaritans” are serious obstacles that have prevented cleanup of many of these sites. **DRCOG supports federal funding for reclamation activities. DRCOG also supports legislation encouraging federal, state, tribal and local governments, as well as mining companies and nonprofit groups that have no prior ownership or responsibility for an abandoned mine, to clean up an abandoned or inactive mining site by granting them liability protections under several environmental statutes, including the Clean Water Act.**
- *Arid Area Standards.* Federal goals, statutes and programs often do not adequately account for the unique conditions and needs of the arid West. **To address this gap, it is appropriate for the Environmental Protection Agency to develop criteria for ephemeral and effluent-dominated streams and waterways.**

Superfund. DRCOG is concerned that a number of Superfund issues have become serious problems in recent years while the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) has been

awaiting reauthorization. DRCOG urges Congress to address the following issues individually or as part of a comprehensive reauthorization.

- *Liability.* The current liability rule holds a party is liable even if that party complied with applicable environmental laws at the time of disposal. Lengthy clean-up delays have occurred in our region and elsewhere while parties litigate over responsibility. **DRCOG supports revision of the liability rule to limit liability when a party has complied with applicable environmental laws at the time of disposal to further the goal of timely and cost-effective clean up of Superfund sites. DRCOG also supports federal funding for clean up activities. DRCOG further supports legislation and regulations encouraging parties that have had no prior ownership or responsibility for a site to clean up the site by granting them liability protections under several environmental statutes, including the Superfund law.**
- *Community Participation.* Local governments often face significant community and neighborhood concerns regarding contaminated sites. Public involvement in the assessment, planning and cleanup for such sites is an important aspect of efforts to bring these sites to a safe condition. **Provisions that assist local governments in establishing and funding formal mechanisms for citizens to participate in the clean-up and land-use decision-making process are appropriate and necessary.**
- *Funding for Cleanup.* DRCOG is concerned that the federal government not reduce its commitment to assist with cleanup and redevelopment of these sites. DRCOG is particularly concerned about the ongoing federal commitment for conversion of Rocky Flats and the Rocky Mountain Arsenal to wildlife preserves. Both sites required major cleanup resulting from activities undertaken while they were under federal control. **DRCOG urges continued federal support for the conversion of Rocky Flats and the Rocky Mountain Arsenal to wildlife preserves. DRCOG supports the creation of new mechanisms to fund cleanup to the extent they are sufficient to make significant progress toward the Act's goals. Allocation of cleanup costs among responsible parties should be according to the proportion of contamination caused by each.**
- *Health Risk Criteria.* The safety and health of populations exposed to pollution associated with superfund sites is a primary concern related to potential redevelopment. Health risk-based criteria are necessary to guide these efforts. These criteria must reflect the intended reuse of a site and the risks to special populations, including children, the elderly and those already disproportionately exposed to pollution. **Risk-based standards specific to Superfund clean up are needed to promote redevelopment of contaminated sites while protecting human health and the environment.**

Brownfields. Redevelopment of brownfields is important for economic development and environmental and public health and safety in many areas within the Denver region. This is a specific issue related to CERCLA that is of particular significance and should be pursued separately, if inaction on the Superfund reauthorization continues. There are approximately 250 brownfields, former industrial and commercial sites, in both urban and rural areas throughout the nine-county Denver region. The redevelopment of brownfields is consistent with DRCOG's Metro Vision plan for the Denver metropolitan region. Metro Vision supports infill and redevelopment within the region. **DRCOG supports federal actions, including increased funding, to encourage the redevelopment of brownfields.**

In 2002, the Small Business Liability Relief and Brownfields Revitalization Act was enacted into law. This legislation could benefit from an amendment to encourage further brownfield redevelopment and provide much needed assistance to this region's efforts to meet the important goals of infill and redevelopment. **DRCOG urges Congress to prioritize funding for projects that go beyond remediation and redevelopment of individual sites to focus on broader planning and economic development efforts, such as projects that incorporate brownfield remediation and redevelopment into larger infill development efforts.**

Land Use. Although the use of land is primarily a matter for local determination and regional coordination, DRCOG recognizes that the federal government can play a supportive role in encouraging local and regional efforts. **DRCOG urges Congress to take the following steps to support local and regional planning.**

- DRCOG supports legislation that provides federal assistance to states to update land use planning legislation to promote improved quality of life, regionalism and sustainable economic development.
- DRCOG respects private property rights within a legal context that protects local land use authority and emphasizes that governmental actions often add value to private property. While acknowledging that there are concerns over a potential for inappropriate uses of that authority, DRCOG believes the recent U.S. Supreme Court decisions defining constitutional restrictions on local government regulation of private property and the use of eminent domain are adequate to protect both public and private rights. When these restrictions are coupled with established precedents of the Colorado Supreme Court, protections accorded to landowners are reasonable, appropriate and balanced. Therefore, DRCOG opposes further restrictions on the ability of governmental entities to regulate private property for the benefit of the public and opposes takings and eminent domain legislation that goes beyond the

existing rulings of the U.S. Supreme Court and the Colorado Supreme Court as an attempt to unconstitutionally restrict local land use authority.

- Federal agencies and elected officials must respect local and regional plans and land use authority. This includes ensuring that funding decisions and the siting of federal and other facilities are consistent with those plans and respect local and regional land use authority. Federal agencies and elected officials also must ensure maximum local and regional participation in those decisions.
- The federal government must protect open space, including natural habitats, by fully funding the land conservation, preservation and infrastructure improvement trust fund programs and providing new incentives for land conservation.
- It is appropriate for Congress to provide funding and regulatory support and other incentives to support local and regional efforts to increase the supply of affordable housing.
- It is beneficial for the federal government to make investments in local and regional data and information programs that support local and regional planning. Such investments could help support projects, such as DRCOG's Metro Vision Resource Center, that provide improved information, tools and services for local and regional planning and decision-making. DRCOG supports funding for programs that promote the integration of public and commercial geospatial data for use by local, regional and state agencies.

INTERGOVERNMENTAL RELATIONS

Intergovernmental Cooperation. All levels of government — federal, state, local and regional — play an important role in providing critical services and implementing programs for the benefit of their residents. Legislative bodies and executive agencies at the federal and state levels should respect the roles and responsibilities of local governments and regional entities. **DRCOG supports cooperation between federal, state, local and regional entities in developing and implementing new programs and improved approaches to service provision.**

Federal/Regional Relations. The region is the nexus of local, state and federal issues and economic activities. DRCOG convenes parties of interest on intergovernmental issues, providing the necessary forum for their resolution, and facilitating a negotiated outcome. **DRCOG urges Congress, when new legislation is proposed and existing legislation is reauthorized, to identify and use regional agencies as critical partners in the implementation of such legislation, including the planning for and delivery of services.**

Regional Service Delivery. The federal government plays an important role in setting standards and priorities for the funding of public services and programs administered at the state, regional and local levels. When making such funding and programmatic decisions, it is essential to consider the most appropriate level of government for delivery of such public services.

State administration of federal programs can be problematic for local governments, as state agencies tend to be more removed from clients and less responsive to their needs. On the other hand, individual local governments may lack the resources to achieve the desired efficiencies and cost-effectiveness. Further, some programs, such as transportation, air quality and water quality, that address issues crossing local political boundaries, are most appropriately and effectively addressed at the regional level. Regional programs also often benefit from economies of scale. The collaborative partnerships of regional approaches can provide more cost-effective services and programs for users and clients. **DRCOG urges Congress to use existing regional service delivery systems.**

Principles for Implementation. New programs or changes to existing programs must at least maintain the existing level of services and provide adequate administrative funds for implementation. Otherwise, there is a shift in responsibility without adequate funds for the services to be provided or programs administered. As such, it is important to treat the continuity of service delivery as a key principle guiding any actions to create new programs or revise existing programs. **A consultative process among the federal, state, local, and regional agencies must be in place before any changes are made to services currently being delivered at local or regional levels.**