



February 12, 2021

To: President Joseph R. Biden and the Biden Administration
From: The Council of Governors
RE: Recommendations and Best Practices for Collaboration with the Council of Governors

This memo contains a summary for President Biden and the Administration on best practices and recommendations for working with the presidentially appointed Council of Governors (Council).

Review Council of Governors Foundational Documents

The [Council of Governors](#) was established by [Section 1822](#) of the National Defense Authorization Act of 2008 and implemented by [Presidential Executive Order 13528](#) in 2010. It consists of 10 Governors from both parties appointed by the President to focus on matters of national security, homeland defense, synchronization and integration of state and federal military activities in the United States, cybersecurity, disaster response and recovery, as well as matters of mutual interest pertaining to the National Guard and civil support activities.

The Council of Governors is designed to allow for the exchange of information and discussion [via a formal Charter](#) in advance of any formal request, submission or implementation of federal proposals relating to changing laws, regulations or policies affecting the National Guard or military operations in support of state and domestic authorities.

The Council of Governors encourages the Biden Administration to utilize the *State-Federal Consultative Process for Programming and Budgetary Proposals Affecting the National Guard (Consultative Budget Agreement)*. Both the Council and the Administration can better work to utilize this agreement in implementing process improvements in communications, transparency and understanding between Governors and the Department of Defense.

Ensuring Continuity on Appointments to the Council

The Council encourages the expeditious appointment of Governors to the Council of Governors. The Council is a key forum for Governors and key federal officials to address matters pertaining to the National Guard, homeland defense and defense support to civil authorities. The Council also encourages the consideration of appointing existing members to ensure continuity of issues and procedures as the Administration learns to work with Governors and future Councils.

Working with State Partners

The Council calls on the Biden Administration to recognize first and foremost that Governors, states and territories are not only key stakeholders but leading partners in the crafting of policy and regulations. This requires the federal government to ensure routine, collaborative and transparent

communication throughout the policy-making process. As the Administration looks to work with new appointees, this relationship must continue.

Intergovernmental Relationships: The Council encourages the Biden Administration to prioritize intergovernmental relationships and state experience across the federal government for key officials responsible for liaising with states and territories. The Council believes that prioritizing individuals who have significant experience working with state and local governments can bring to the federal government the unique perspective necessary to promote and develop policies that have significant implications for states and territories.

Executive Director: Per the Executive Order and the Council Charter, the Secretary of Defense is charged with selecting an executive director to help coordinate the work of the Council. Since the [original designation](#) occurred in 2010, the Department has made several changes to its organization. Therefore, the Council recommends the Secretary undertake a more regular review of the executive director designation to ensure it fits the times and priorities identified by Council members. For instance, the Department has recently re-established the Office of Intergovernmental Affairs, which could help support the Council's efforts.

National Governors Association: And finally, at the start of this Council's term, [we noted](#) to the Trump Administration the importance of continued engagement of the National Governors Association (NGA) in all substantive Council discussions. NGA was instrumental in the creation of the Council, is a valuable resource to all Governors, and has a long-term partnership with Council members that can serve as a force multiplier. NGA has been critical in maintaining continuity as well as historical records of all Council work since 2010, and that should continue.

Enduring Issues

The Council provided the Trump Administration with a [memo highlighting the Council's accomplishments over its 2019-21 term](#). Below are several issues that remain open action items for consideration by future Councils:

Cybersecurity: The Council identified several concerns over the complexity of authorities related to cybersecurity, specifically in dealing with critical infrastructure and the resources available to a state during a cyber event. Due to novel coronavirus (COVID-19), work was slowed but the items below were identified by the Council for continued work:

- The departments of Homeland Security and Defense are currently working to define roles and responsibilities at the federal level related to cybersecurity response efforts. The departments committed to providing the Council a detailed summary of defined authorities once internal interagency work is completed.
- The federal partners have requested that Council states work to develop a list of gaps and challenges that require federal assistance or support.
- The Department of Homeland Security/Cybersecurity Infrastructure Security Agency will provide an overview of the whole-of-government cyber response plan in the case of a catastrophic cyber event and detail the use of the Economy Act in such an event and the possibility of a cyber "Stafford Act" to support state, territorial, tribal and local response.

Disaster Response and Mitigation: The Council on numerous occasions over the years has noted to the Department of Defense that the *State-Federal Consultative Process for Programming and Budgetary Proposals Affecting the National Guard* is designed to ensure effective collaboration, consultation and communication on strategies, plans, programming and budgetary processes affecting the National Guard. Unfortunately, the Department of Defense did not consult with the Council nor states on two specific policy documents which will have significant impact on homeland, disaster and civil support missions, particularly in the cases of employment of Immediate Response Authority where timely approval would be required and the National Guard's ability to provide non-reimbursable assistance to any non-DoD entity through training missions with incidental operational benefit, i.e., during disaster response.

- [Improvements to Department of Defense's Response to Future Catastrophic Disasters](#),
- [Reimbursable Activities in Support of Other Entities](#)

National Guard Full-Time Support: The Council has been working to better understand the requirements and budget formulation processes within the Department of Defense. The Council is striving to improve state input into budgetary decision-making using the Council's consultative process. The Council [wrote a letter](#) to the directors of the Air and Army National Guard relaying the Council's views on the appropriate percentage of full-time support for the National Guard. The Council maintains that adequate full-time support is critical to the Army National Guard for the readiness, retention and health and welfare of the force. The nation and its states have a vested interest in making sure that enough full-time support is funded to ensure optimal readiness, effectiveness of investments in training, and the ability to adequately care for our service members in alignment with the chief of staff of the Army's people-first priority.

Reserve Component Duty Status Reform: The Council worked with the Department of Defense on its reserve component duty status reform (DSR) proposal since last year. We appreciate the department's willingness to work with the Council, modifying the proposal to ensure that gubernatorial command and control over their respective National Guards is maintained. As the Department of Defense looks to resubmit its DSR proposal to Congress this year, we encourage active engagement and partnership with Governors and adjutants general. Moving forward, federal partners should continue to work with and engage states and adjutants general in the DSR efforts leading up to passage, and, should it pass into law, through the entirety of implementation.

Title 32 Authorization for National Guard Response to COVID-19: Since the start of the novel coronavirus (COVID-19) pandemic, Governors have strongly advocated for the use of Title 32 for National Guard response efforts with the Council [making a formal request](#) in March last year. The co-chairs also recommended against using the National Guard under Title 10 which would limit the ability of Governors to effectively manage their respective responses. Though the Council is pleased to see the continued appropriate use of Title 32 for COVID-19, we have not fully solved the problem of when and how a Governor may request and rapidly receive Title 32 authorization for future needs.

Historical Key Council Activities 2010 - Present

[Since its creation](#), the Council has worked diligently to articulate Governors' and state concerns to the federal government, specifically in relation to the National Guard. Key areas of success include:

- Elevated the chief of the National Guard Bureau to a four-star position and a member of the Joint Chiefs of Staff, with the support of NGA and the National Guard Association;

- Established the [appointment of Dual Status Commanders](#), clarifying who is in command of responding National Guard and federal military forces during domestic emergencies, and reinforced that military forces are to operate in support of the Governor and the state adjutant general;
- Approved a [joint action plan for cybersecurity](#), establishing a framework to guide state-federal discussions in areas such as information sharing, operational coordination and incident response;
- Implemented a [budget consultation agreement](#), ensuring Governors can inform Department of Defense budget proposals affecting the National Guard;
- Successfully opposed plans to cut the Army and Air National Guard, advocating for alternatives that would save costs while maintaining military capabilities;
- Provided alternative recommendations for maintaining Air National Guard force structure and an evaluation of the Air Force's proposal in the Fiscal Year 2014 President's budget;
- Preserved combat capabilities by securing the continued use of Apache helicopters by the Army National Guard;
- Supported the creation of national commissions to study and make recommendations on the future of the [Air](#) and [Army](#) National Guard;
- Established the [State-Federal Catastrophic Disaster Working Group](#) charged with identifying opportunities to improve the response to catastrophic incidents and develop recommendations related to processes, reimbursements, pay, benefits and protections for National Guard members and the use of Title 32, U.S. Code;
- Articulated [formal views](#) to the Department of Defense on the appropriate full-time support needs for the National Guard;
- Established a cyber [incident situational awareness tool and information-sharing platform and a state roles and responsibilities matrix](#) in cybersecurity; and
- Ensured the Department of Defense's reserve component duty status reform (DSR) proposal to Congress [maintained gubernatorial command and control](#) of the National Guard.

Conclusion

Over the last decade, the Council and our federal partners have made great strides to improve the state-federal partnership. Governors look forward to the future work this critical body will undertake going into the future.

cc:

Secretary of Defense
 Secretary of Homeland Security
 Administrator, Federal Emergency Management Agency
 Director, Cybersecurity and Infrastructure Security Agency
 Assistant Secretary of Defense for Homeland Defense
 Chief, National Guard Bureau
 Commander, United States Northern Command
 Commandant, United States Coast Guard
 Assistant to the President for Intergovernmental Affairs