

# Federal Legislative and Legal Update

Thursday, May 15<sup>th</sup> | 10:45 AM

# 2025 NLC-RISC Trustees Conference Federal Advocacy and Legal Update





Eric Hartwell  
General Counsel /  
Chief Legal Officer  
Florida League of Cities

ehartwell@flcities.com  
407.367.3430

# Legal Update: Focus on Employment Practices Liability

- Main Driver: Title VII of the Civil Rights Act of 1964
- Supreme Court Rulings: Something Old, Something New
- And Just a Few Presidential Executive Orders

# Title VII – Main Engine of Unlawful Employment Practices Liability Suits

## Disparate Treatment (intentional)

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge. . .or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of . . . individual's race, color, religion, sex, or national origin;

# Title VII – Main Engine of Unlawful Employment Practices Liability Suits

## Disparate Impact (unintentional)

An unlawful employment practice based on disparate impact is established under this subchapter only if . . . a complaining party demonstrates. . . respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity–



# Supreme Court Cases of Note

- EMD Sales, Inc. v. Carrera, 2025 –Fair Labor Standards Act
- Muldrow v. City of St. Louis, 2024 – Title VII
- Students for Fair Admissions v. Harvard/U.N.C., 2023 \* – Affirmative Action
- Lackey v. Stinnie, 2025 – Attorney's Fees



# Supreme Court Cases of Note

EMD Sales, Inc. v. Carrera, 2025

- **Favorable for Employers**
- Supports employers' application of FLSA overtime exemption, does not raise bar on required evidentiary standard
- FLSA, "preponderance of evidence" standard prevails

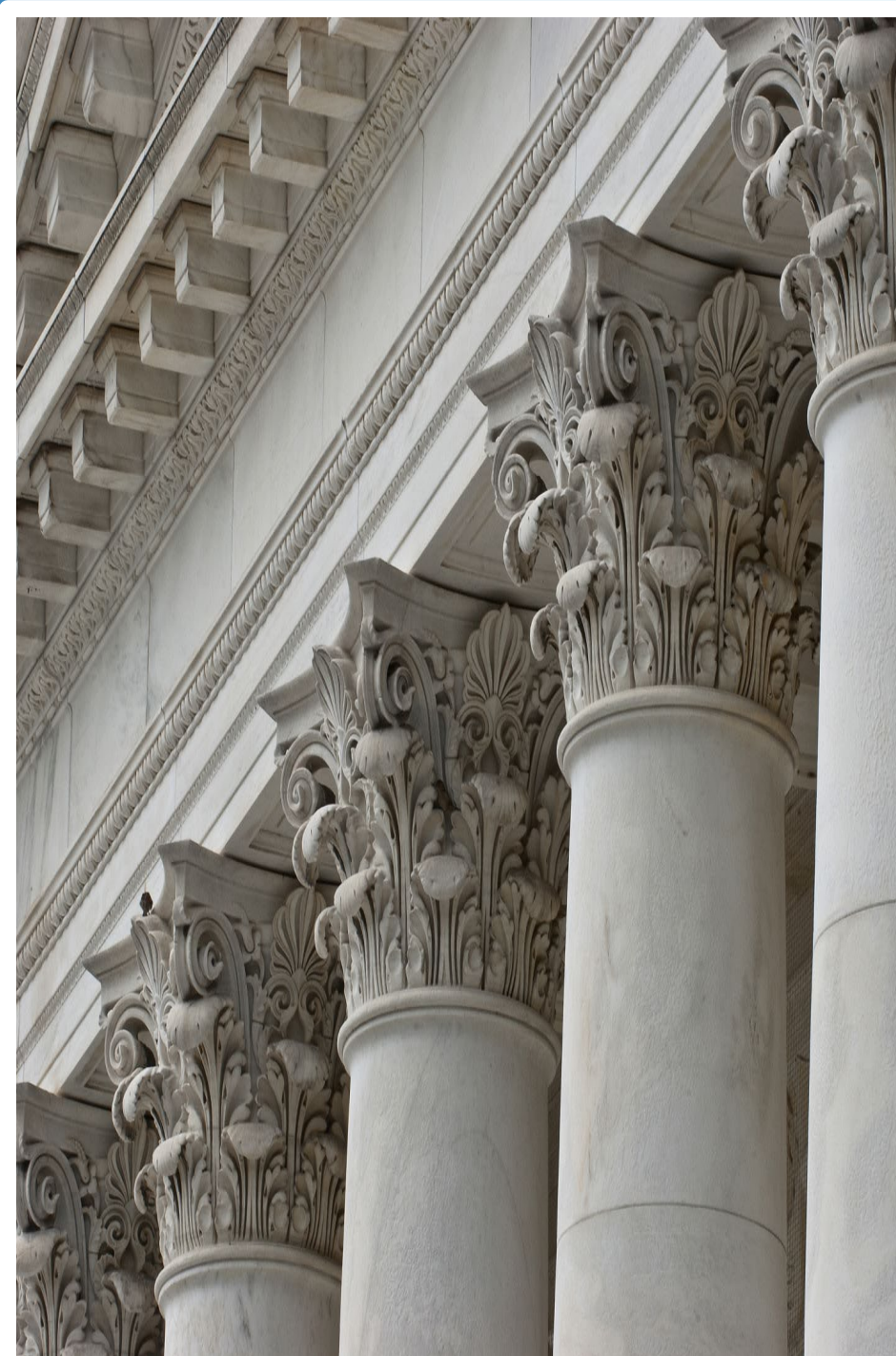




# Supreme Court Cases of Note

## Muldrow v. City of St. Louis, 2024

- **Caution for Employers**
- Title VII's new "some harm" requirement clarifies the fairly low bar for showing adverse/actionable employer decisions
- Employers: apply greater degree of care weighing decisions altering aspects work for employees who voice protest/allege "harm"





# Supreme Court Cases of Note

Students for Fair Admissions v. Harvard /UNC., 2023

- **Clarifying and Instructive for Employers**
- Case is a retreat from prior education-context cases in which “Diversity,” subject to certain factors, was treated as a “Compelling Interest.”
- Race as a factor in admissions decisions cannot withstand **strict scrutiny review** under Equal Protection clause and Title VI of Civil Rights Act (recipients of federal funding)

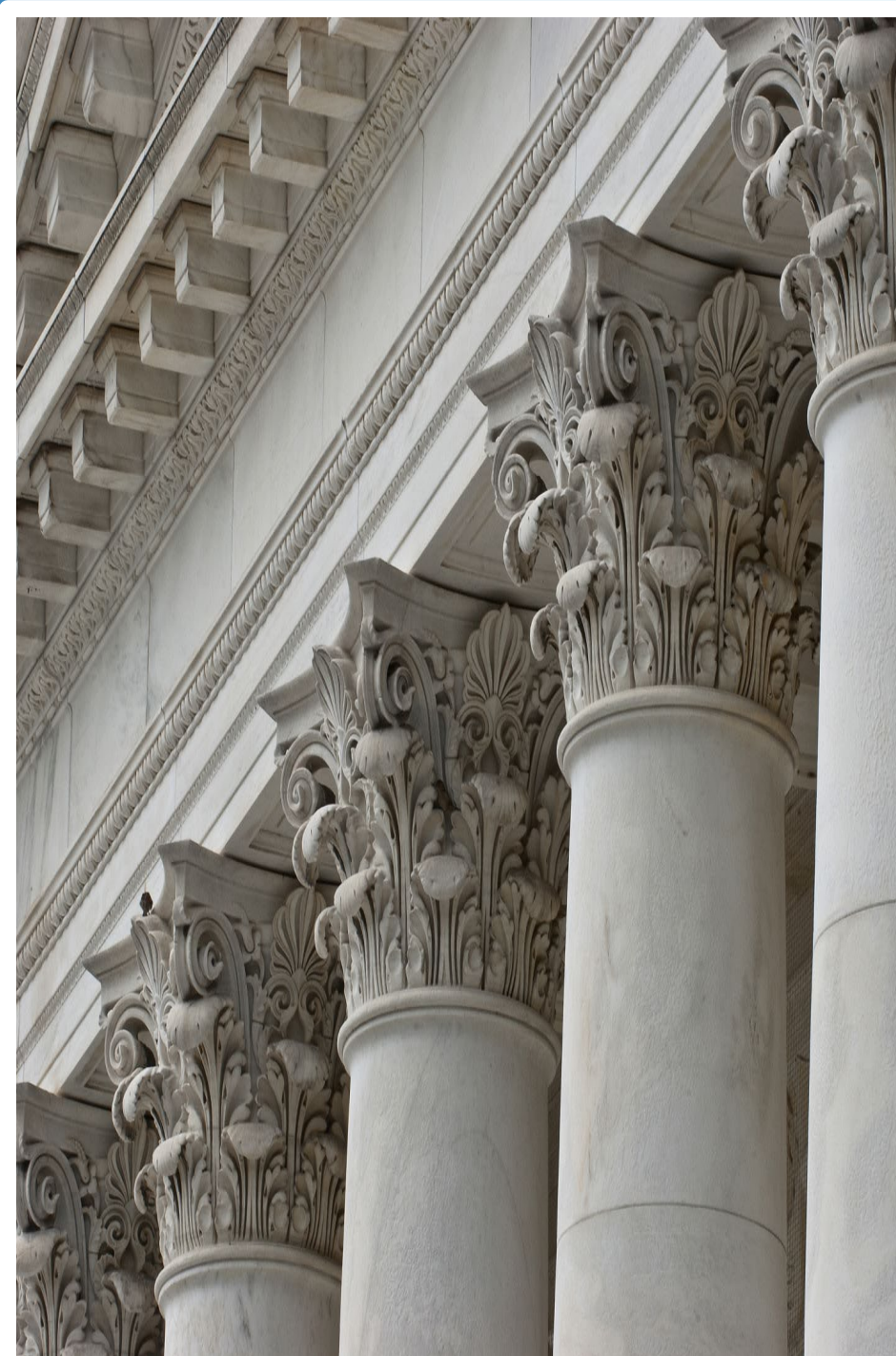




# Supreme Court Cases of Note

## Lackey v. Stinnie, 2025

- **Helpful to Governments Generally**
- Raises bar required for attorney fee awards
- A “prevailing party” fee award in civil rights cases will require winning more than temporary relief (e.g. preliminary injunctions); instead, requires judicial action that both changes legal position of the parties through “enduring relief”



## Executive Orders from the President

- EO 14173 January 21, 2025 – Ending DEI
- EO 14281 April 23, 2025 – Ending Disparate Impact Liability





## Executive Orders from the President

### EO 14173 January 21, 2025-DEI

- E.O. 14173, January 21, 2025 – Ending **Illegal Discrimination** and Restoring Merit-Based Opportunity
- Central aim described as formal elimination of “**illegal discrimination**” through DEI programs and practices, but does not define “illegal discrimination” DEI
- Rescinds EO 11246 (1965), the basis for federal contractors’ affirmative action programs

## Executive Orders from the President

### EO 14173 January 21, 2025-DEI

- Instructs heads of all federal agencies to include in every federal contract or grant:
  - A **term requiring** the contractual counterparty or grant **recipient to agree** that **its compliance** in all respects with all applicable Federal anti-discrimination laws **is material to the government's payment decisions** for purposes of section 3729(b)(4) of title 31, United States Code; and
  - A **term requiring** such counterparty or recipient to **certify** that it **does not operate any programs promoting DEI** that violate any applicable Federal anti-discrimination laws.

## Executive Orders from the President

### EO 14173 January 21, 2025-DEI

- Instructs Secretary of Education and Attorney General to develop guidance that tracks *Harvard* decision by July (only for state/local **educational facilities** receiving federal funding, but signals expanding impact of *Harvard* ruling)
- For EPL interests, this EO seemed to spawn the March 19, 2025, “guidance document” from EEOC’s Acting Chair– “*What You Should Know About DEI-Related Discrimination At Work.*” Could it portend a rise in “reverse discrimination” among majority claimants?

## Executive Orders from the President EO 14173 January 21, 2025 - DEI

Concerning for cities as Employers/Recipients of federal funds:

- Trigger for uptick in “reverse discrimination” complaints?
- Trigger for Equal Protection Claims, Title VI Claims, False Claims Act prosecution based on lack of clarity on required DEI “certifications”?
- For now, cities may walk the safest path by scrutinizing programs, practices or activities as if a Title VII claimant were alleging denial of a term or privilege under a given policy or program – avoid race, choose character, economics
- How would *Harvard* decision impact Title VI-funded efforts – avoid race. . .
- Watch courts of appeals for interpretive rulings, administrative guidance



## Executive Orders from the President

### EO 14281 April 23, 2025 - Disparate Impact

- **E.O. 14281, April 23, 2025 – Restoring Equality of Opportunity and Meritocracy**
- Central aim described as **elimination of the use of “Disparate Impact Liability” in all contexts to the maximum degree possible** to avoid violating US law
- **Favorable for Employers** – Disparate impact claims already difficult to prove; EO directs EEOC to de-prioritize disparate impact enforcement activities
- Eliminating “Disparate Impact liability” to the max **would require an act of Congress, removing the Disparate Impact provisions codified by the Civil Rights Act of 1991.**

# Thank You



Eric Hartwell  
General Counsel /  
Chief Legal Officer  
Florida League of Cities

[ehartwell@flcities.com](mailto:ehartwell@flcities.com)  
407.367.3430



A CENTURY OF STRENGTHENING CITIES

# Federal-Local Partnership in the New Washington Landscape

Yucel Ors

Legislative Director for Public Safety

[ors@NLC.org](mailto:ors@NLC.org)

# Back to Basics

## NLC's Federal Agenda

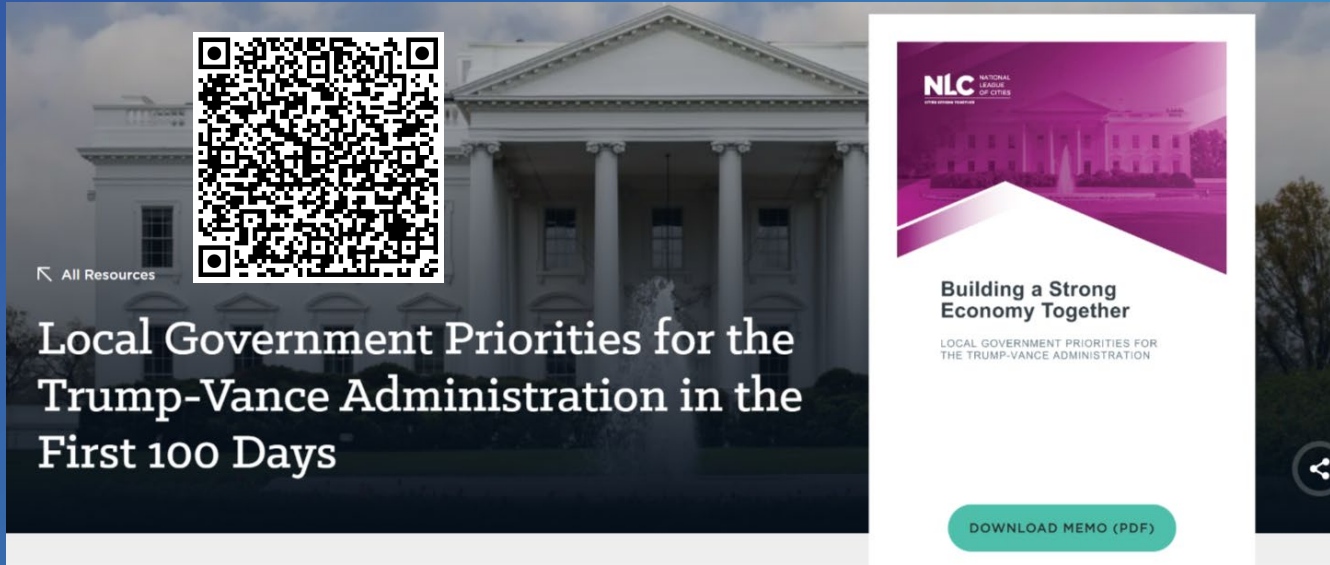
### **CORE PRINCIPLES**

- Strengthen Local-Federal Partnerships
- Avoid Unfunded Mandates
- Safeguard Local Authority

### **PRIORITIES**

- Streamline Federal Programs for All Communities
- Increase the Nation's Housing Supply Promote
- Promote Public Safety
- Solidify Infrastructure Investment
- Close the Digital Divide Build Community Resilience
- Reduce Legal and Financial Burdens on Local Governments





Ideas for City Advocacy and Local Government Action



New Administration's Agenda and Strategy



Sources of Uncertainty at the Federal Level



Budget Reconciliation, Tax Bill, and Appropriations



Putting it All Together: What's at Stake for Local Government



# Executive Actions Immediate Impacts on Local Government

- Funds initially frozen to review all existing federal programs for alignment with Trump/Vance Agenda
- Includes grants and loans, technical assistance, and other resources for local governments
- Funds Under White House Scrutiny include:
  - Programs advancing policies prohibited by executive order
  - Programs without a base of supporters with political capital
  - Programs with broad spending flexibility

# Administration Strategy

## Separation of Powers

- Executive Branch seeking to expand presidential authority in ways that call into question Legislative Branch authority over program authorizations and public spending, otherwise known as Congress's "Power of the Purse."
- Executive Branch combative with lower court rulings, despite consistent messaging indicating it will comply with court rulings and orders from Supreme Court.
- So long as disagreement persists over the separation of powers, federal grantees including local governments, and other beneficiaries, will continue to experience uncertainty about their ability to access federal grant funds.
- State and local governments in particular may be challenged on policies that are traditionally under the purview of state authority and local



# Administration Strategy

## Reductions in Force



- An executive order and subsequent guidance from the OMB and the OPM called for the “maximum elimination” of federal agency functions not required by law
- Ex: 86% target staff cut for HUD Community Planning and Development
- CPD administers local government grants including CDBG, HOME, Homeless Assistance, Disaster Recovery, Congressional Earmarks

# Congress Top Priority

## Reconciliation directives within the Fiscal Year 2025 Budget Resolution and the extension of the Tax Cuts and Jobs Act of 2017.

### **Offset considerations (House seeking \$1.5 trillion in spending cuts)**

- Protect the federal tax exemption for municipal and private activity bonds. (\$364 Billion)
- Avoid interruptions to funds authorized under the Inflation Reduction Act and federal funding already awarded to local governments by multiple federal agencies.
- Proposed changes to Medicaid financing and eligibility requirements.
- Possible interruptions in federal food aid cannot be replaced with the support of local government revenues alone.

### **Tax expenditure considerations**

- The downstream impacts of any decline in the credit rating of the federal government.
- Enhance the availability of public subsidies, production credits, and other incentives for housing supply.
- Provide additional flexibility and clarity to support water conservation and lead pipe replacement projects.
- Increase the State and Local Tax (SALT) deduction cap.
- Reinstate Advanced Refunding of municipal bonds.



**FEDERAL GOVERNMENT  
PUSHING MORE  
RESPONSIBILITIES**



**TO LOCAL  
GOVERNMENTS**

What's at Stake for Cities

Local  
governments  
absorb more risk



**ELIMINATION  
OF**

**FEMA**



What's at Stake for Cities

Threatens  
preparedness  
and recovery



# CUTS TO FEDERAL GRANT PROGRAMS

What's at Stake for Cities

Less funding for  
essential local  
services



# STRICTER ELIGIBILITY



What's at Stake for Cities

More residents  
left without  
support



# LIMITS ON



# LOCAL AUTHORITY

What's at Stake for Cities

Reduced policy  
flexibility at the  
city level



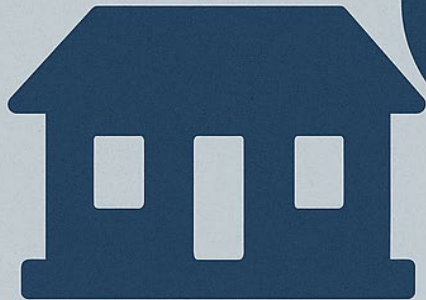
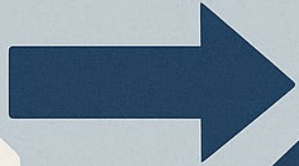
What's at Stake for Cities

DOJ Byrne JAG  
tied to federal  
priorities





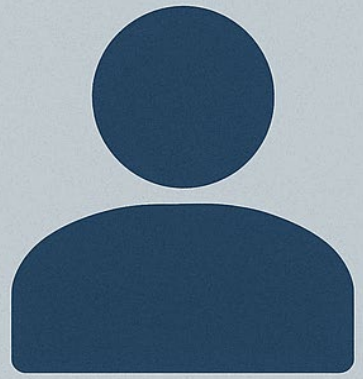
# **PENALTIES ON LOCAL GOVERNMENTS**



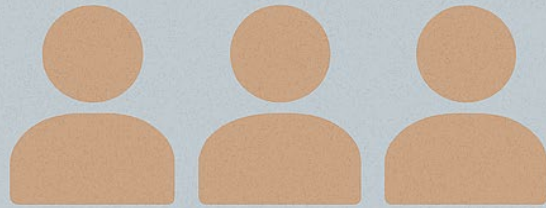
What's at Stake for Cities

Sanctuary city  
restrictions, DEI,  
others





**FEDERAL  
STAFF  
SHORTAGES**

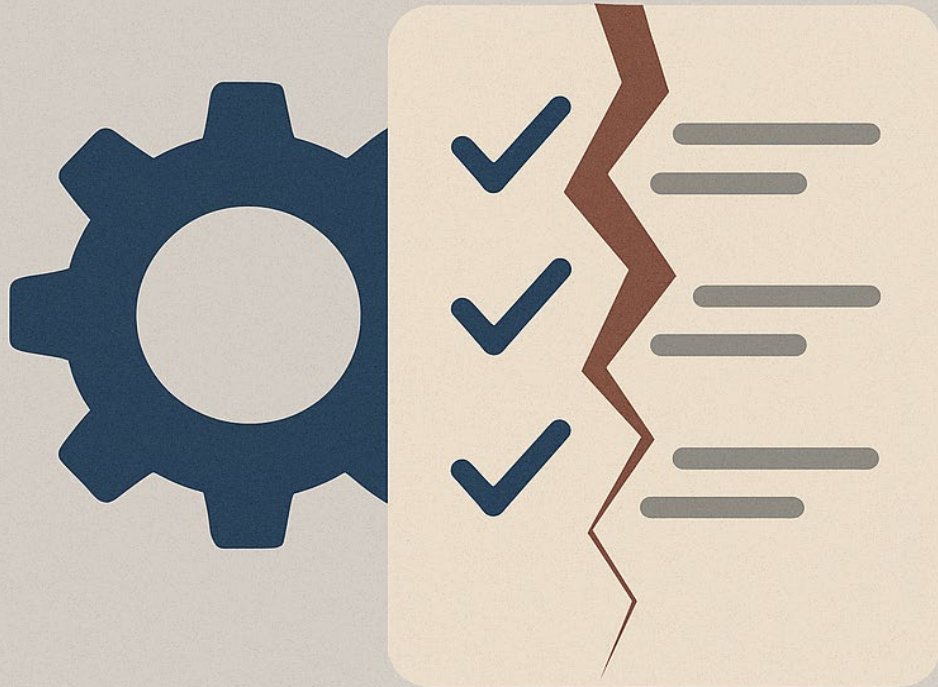


**FEDERAL  
OFFICES  
CLOSING**

What's at Stake for Cities

Less access to  
experts, liaisons

# **BROKEN SYSTEM FOR COMPLYING WITH FEDERAL REQUIREMENTS**



What's at Stake for Cities

Limited help with  
reporting, audits



# FEDERAL GOVERNMENT CLAWING BACK FUNDING



**FROM LOCAL GOVERNMENTS**

What's at Stake for Cities

Grants at risk of  
recoupment





What's at Stake for Cities

Bonds & CDFIs  
may be  
restricted

<https://www.nlc.org/initiative/build-by-bonds/>



# FEMA Restructuring and the Local Government Considerations

- FEMA under White House review
- BRIC and EMPG face cuts or consolidation
- Pre-disaster planning at risk
- Local resilience capacity impact
- Shift toward reactive federal aid
- Impact of Disaster Risk and Insurance
  - Higher exposure for local pools
  - Greater financial burden on cities
  - Insurance market instability
  - Delays in FEMA guidance and support
  - Threats to NFIP and compliance access

# Department of Justice Grant Cancellations



*DOJ cancels grants  
for gun-violence and  
addiction prevention,  
victim advocacy*

# PFAS Action Overview



- EPA Actions
  - [National Primary Drinking Water Regulation for PFAS](#) – final
  - [Hazardous Substance Designation under CERCLA](#) – final
  - [Effluent limitation guidelines for wastewater discharges](#) – forthcoming
  - [Biosolids/sewage sludge risk assessment](#) – comments due in Aug.
  - Other actions under TSCA and RCRA
- What's at Stake for Local Governments
  - Costs for compliance – new technologies, treatment, infrastructure
  - Legal liability – possible third party lawsuits and future liability
  - Municipal operations – drinking water, wastewater, stormwater utilities; landfills; airports; firefighting
- Water System PFAS Liability Act (H.R. 1267) – [contact your members of Congress](#)

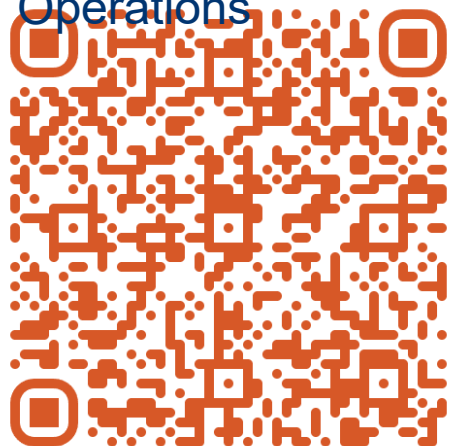


## Resources and Actions for Local Governments on the Impact of Executive Actions



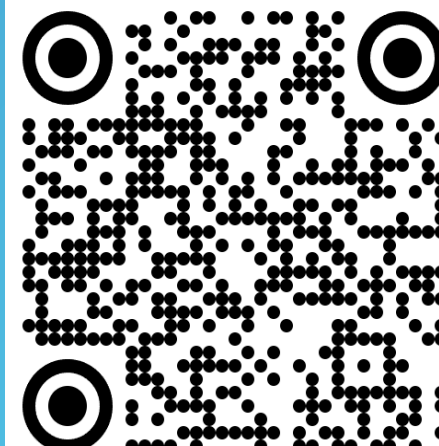
**Resource Page:**  
Presidential Actions  
Impact to Local  
Governments

**Member Webinar:**  
Impacts of  
Immigration  
Executive Orders  
on Local  
Government  
Operations



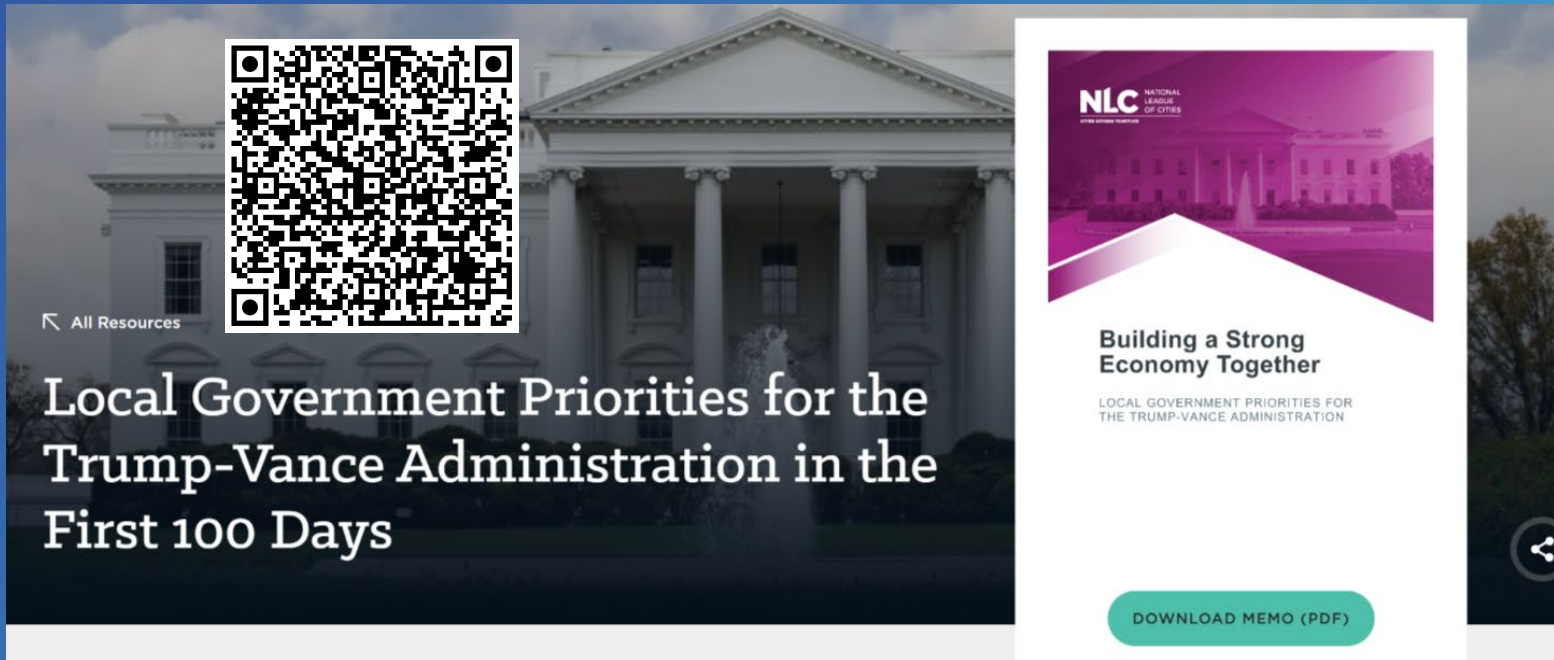
**Municipalities  
Field Survey**  
Impacts of  
Federal Funding  
Delays and  
Losses on City  
Fiscal Conditions

**Call to Action:**  
Send a letter to  
your Congressional  
delegation  
sharing the impact  
of federal programs  
that have been  
disrupted within  
your communities



**Information  
Sharing:** Complete  
NLC's Federal  
Grants Exchange  
Form to help us  
track agency  
communications on  
guidance for federal  
programs





All Resources

## Local Government Priorities for the Trump-Vance Administration in the First 100 Days



### Building a Strong Economy Together

LOCAL GOVERNMENT PRIORITIES FOR THE TRUMP-VANCE ADMINISTRATION

DOWNLOAD MEMO (PDF)



Rewrite and Resubmit Grant Applications and Reports to Improve Alignment with Administration Priorities



Involve you Congressional Delegation in Major Steps in the Grant Process



- [Presidential Actions Summary: Impacts to Local Government](#)
- **Action Alert:** [Update Congress on the Impact of Executive Actions on Your Community's Ability to Access Federal Fund Awards](#)
- [NLC Federal Grants Accessibility Exchange](#)
- [From the Event: Impacts of Immigration Executive Orders](#)
- [Built By Bonds Campaign](#)
- [Federal Budget Tracker](#)
- [FAQs: Meeting the ARPA SLFRF Reporting Deadline](#)
- [Unlocking Funding: A Guide to Community Project Requests](#)

» **Thank You** «