

Report for Congress

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First Responder Initiative: Policy Issues and Options

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Summary

In its FY2004 request, the Bush Administration proposed a new block grant program called the “First Responder Initiative” to help state and local first responders prepare for possible terrorist attacks. Under the proposal, the Office for Domestic Preparedness (ODP), within the Department of Homeland Security, would administer the \$3.5 billion program. The program’s primary purpose would be to improve the ability of first responders (police, firefighters, and emergency medical personnel) to respond to terrorist attacks involving weapons of mass destruction. The program would fund a range of activities in the areas of planning, training, exercises, and equipment.

The 107th Congress considered a number of bills similar to the Administration proposal. In October 2002, the Senate Environment and Public Works Committee reported S. 2664, the First Responder Terrorism Preparedness Act of 2002. The bill contained several features proposed by the Administration, including a 25% matching requirement, a wide range of eligible activities, and a requirement that states distribute 75% of funds to sub-state regions. It also contained some provisions not specified in the Administration proposal, such as establishing standards for training and equipment and prohibiting the use of funds for overtime expenses.

There are a limited number of terrorism preparedness block grant proposals in the 108th Congress. The Homeland Security Block Grant (S. 87/H.R. 1007) proposes roughly \$3.5 billion to be distributed on a formula basis. S. 87, however, has a wider range of eligible activities, such as infrastructure security and overtime expenses, and would distribute the majority of funds directly to localities. S. 466 proposes \$5 billion to fund grants for equipment, training, facilities, and overtime expenses.

While the need for federal assistance for first responders seems to be widely acknowledged, the proposals raise a number of issues, including the following:

- How will the implementation of the Department of Homeland Security affect the proposal?
- Would a new program replace existing assistance programs?
- Should funds be distributed to states or localities?
- Should the use of funds be limited to standardized activities and equipment?
- Should infrastructure security and overtime costs be eligible activities?
- How will the funds be accounted for?

This report will be updated as the 108th Congress takes action on proposals to create or modify terrorism preparedness grant programs.

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First Responder Initiative: Policy Issues and Options

Introduction

Since the terrorist attacks of September 2001, Congress has given considerable attention to the role of first responders in the nation's homeland security efforts. First responders may be generally defined as local (and sometimes state) firefighters, emergency medical technicians, and law enforcement officers.¹ In creating the Department of Homeland Security (P.L. 107-296), Congress stipulated that the new department would be responsible for assisting states and localities with their homeland security efforts.² In February 2003, The Bush Administration proposed the First Responder Initiative, a new grant program meant to help first responders prepare for terrorism, particularly for weapons of mass destruction. Congress, however, did not authorize or fund the new program in FY2003 appropriations, but, rather, increased funding to existing programs. At the time of this writing, a limited number of proposals affecting assistance programs have been introduced in the 108th Congress.

Overview of Existing Preparedness Programs

State and local governments generally obtain federal assistance for terrorism preparedness from three main sources.³ All of these programs are located in the new Department of Homeland Security (DHS).

Office for Domestic Preparedness. The Office for Domestic Preparedness (ODP) was transferred from the Justice Department to the Border and Transportation Security directorate of the DHS on March 1, 2003. ODP awards equipment grants, administers training programs, and provides technical assistance, among other activities.⁴ Authorization comes from at least four different statutes instructing

¹ Although some analysts consider public health officials to be "first responders," this report will not address the public health sector. Proposals for the First Responder Initiative do not address public health preparedness, and there are separate funding mechanisms for public health preparedness in the Department of Health and Human Services.

² For more information on the Department of Homeland Security, see CRS Report RL31490, *Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

³ This section only discusses those programs that fund terrorism preparedness improvements. It does not discuss general assistance programs that may fund general public safety improvements.

⁴ The ODP web site is [<http://www.ojp.usdoj.gov/odp/>]. At the time of this writing, the web (continued...)

federal agencies to assist states and localities with terrorism preparedness.⁵ The Homeland Security Act (P.L. 107-296) enhanced the ODP's duties by making it responsible for, among other things, "... directing and supervising terrorism preparedness grant programs of the federal government"⁶ The office distributes grants for equipment, training, and exercises. It also funds federal training centers and research and development activities. Congress provided \$1 billion for ODP in FY2003.

Assistance to Firefighters Program. This program, also known as the FIRE grants program, awards grants directly to local fire departments, rather than awarding funds to states for "pass through" grants.⁷ Grants can be used for a wide variety of purposes, including firefighter safety programs, training, equipment, and facility improvements. It is administered by the U.S. Fire Administration, which is now located in the Emergency Preparedness and Response Directorate of DHS. Congress and the President enacted the program in October 2000 with an authorized funding level of \$100 million in FY2001 and \$300 million in FY2002⁸. Following the terrorist attacks of Sept. 2001, however, Congress raised the authorized amount to \$900 million for FY2003 and FY2004.⁹ In the FY2003 consolidated appropriations bill, Congress provided \$750 million.

Emergency Management Planning and Assistance Account. Authorization for the programs in the Emergency Management Preparedness and Assistance account (EMPA) come from Title VI of the Stafford Act.¹⁰ The statute does not specify an authorized funding amount for any program in the account. The largest grant program in EMPA is the Emergency Management Performance Grants (EMPG), which fund state-level emergency planning. Grants are also awarded for emergency operations centers, interoperable communications equipment, urban search and rescue teams, and community emergency response teams (CERTs). Congress appropriated \$295 million for EMPA in FY2003.

Administration Proposal

In its FY2004 budget, the Bush Administration requested \$3.558 billion in funding for the First Responder Initiative, which would be distributed by the Office for Domestic Preparedness (ODP) in the Department of Homeland Security. Grants would go to states and localities for emergency planning, equipment, training, and

⁴ (...continued)

site had not been updated to reflect ODP's new duties and transition to DHS.

⁵ See P.L. 104-132, sections 819, 821, 822; P.L. 104-201, sections 1412, 1415; P.L. 107-56, sections 1005, 1014; P.L. 107-296, sec. 430.

⁶ P.L. 107-296, sec. 430(c).

⁷ The program web site is: [<http://www.usfa.fema.gov/dhtml/inside-usfa/grants.cfm>]. Also see CRS Report RS21302, *Assistance to Firefighters Program*, by Len Kruger.

⁸ 15 U.S.C. 2229, sec. 33.

⁹ P.L. 107-107, sec. 1061.

¹⁰ 42 U.S.C. 5195-5196.

exercises. While the program is specifically intended to help responders better prepare for terrorist attacks involving weapons of mass destruction (WMD), the Administration has contended that the program will lead to overall system-wide improvements in emergency management.¹¹ The Administration first proposed the program in February 2002, as part of its FY2003 budget request.¹²

Amount of Funding. In FY2003, Congress funded terrorism preparedness for first responders through at least three existing programs that correspond to the First Responder Initiative proposal—the Office for Domestic Preparedness (ODP), Assistance to Firefighters program (FIRE grants), and FEMA’s Emergency Management Planning and Assistance account (EMPA). For FY2003, Congress and the President appropriated roughly \$2.045 billion for these programs. Of this amount, \$1 billion will go to the ODP, \$750 million to the Assistance to Firefighters program, and \$295 million to the EMPA account.¹³ In FY2002, Congress appropriated roughly \$1.237 billion in assistance for these corresponding programs, most of which came in the emergency supplemental appropriations (P.L. 107-117, and P.L. 107-206).

The FY2004 Administration proposal for \$3.558 billion in funding for the First Responder Initiative would arguably present a major change in the structure of assistance to states and localities for terrorism preparedness. Out of the \$3.558 billion in the FY2004 proposal, \$500 million would be allocated to the Assistance to Firefighters program, and another \$500 million used for grants to state and local law enforcement. The request would also allow ODP to use up to \$181 million for Citizen Corps initiatives.¹⁴ The DHS Budget-in-Brief states that remaining funds will support state and local planning, training, equipment purchases, and exercises.¹⁵ (The Administration has also proposed consolidating existing programs into the Initiative. This issue is discussed below.)

Eligible Activities. The DHS Budget-in-Brief for FY2004 states that grants would fund four basic activities: emergency planning, equipment, training, and exercises.¹⁶ This matches the activities proposed by the Administration’s original proposal in February 2002. Although the proposed program would allow recipients

¹¹ White House Office of Homeland Security, press release, Jan. 24, 2002, available at the OHS web site, [<http://www.whitehouse.gov/homeland>], visited May 3, 2002.

¹² U.S. Office of Management and Budget, *Budget for Fiscal Year 2003, Appendix* (Washington: GPO, Feb. 2002), pp. 646, 936.

¹³ Since enactment of the FY2003 appropriations, at least one bill has been introduced calling for further appropriations for preparedness grants during FY2003—H.R. 764, the First Responders Expedited Assistance Act of 2003. For more information on FY2003 funding, see CRS Report RS21400, *FY2003 Appropriations for First Responders: Fact Sheet*, by Ben Canada and Shawn Reese.

¹⁴ For more information on Citizen Corps, see [<http://www.citizencorps.gov>].

¹⁵ U.S. Department of Homeland Security, *FY2004 Budget-in-Brief* (Washington: GPO, Feb. 2003), p. 9. Available at: [http://www.dhs.gov/interweb/assetlibrary/FY_2004_BUDGET_IN_BRIEF.pdf], visited March 14, 2003.

¹⁶ *Ibid.*

discretion in their activities, the Administration has suggested that roughly one-third of the funds would be used for interoperable communications infrastructure.¹⁷

Method of Distribution. As proposed by the Administration in February 2002, the administering agency would distribute funds to states using a population-based formula. The states would have discretion in using 25% of the funds, but would have to redistribute the remaining 75% to sub-state jurisdictions. States would, however, have flexibility to assist not only individual cities, towns, and counties, but also metropolitan areas and regional organizations.¹⁸ At the time of this writing, it is uncertain whether the Administration will seek the same method of distribution. The FY2004 request did, however, stipulate that all recipients should provide a matching amount not less than 25%.¹⁹

Legislation in the 107th Congress

S. 2664. The structure of S. 2664, which the Senate Environment and Public Works Committee reported on Oct. 1, 2002, paralleled that of the Administration proposal in February 2002. Provisions found in both S. 2664 and the Administration proposal included the following:

- \$3.5 billion in funding, distributed on a formula basis;
- wide range of eligible activities;
- 25% matching requirement for recipients;
- states must distribute 75% of funds to sub-state regions.

S. 2664, however, contained some provisions that the Administration did not propose (or not explicitly address). For example, the bill gave the administering agency discretion to distribute funds using not only the variable of population, but also such variables as location of vital infrastructure and proximity to nuclear power plants, chemical stockpiles, and other potential terrorist targets. The Administration made no similar proposal. Also, S. 2664 prohibited the use of funds for overtime expenses. The Administration has had no clearly stated position on this issue, but Secretary of Homeland Security Tom Ridge indicated in June 2002 that the Administration might consider allowing recipients to use a portion of grant funds for security activities and law enforcement overtime.²⁰

¹⁷ An interoperable communications system allows responders from multiple jurisdictions to communicate with one another. For more information, see CRS Report RL31375, *Meeting Public Safety Spectrum Needs*, by Linda K. Moore.

¹⁸ U.S. Federal Emergency Management Agency, Office of National Preparedness, "The First Responder Initiative," press release, Feb. 2002.

¹⁹ U.S. Office of Management and Budget, *Budget for Fiscal Year 2004, Appendix* (Washington: GPO, Feb. 2003), pp. 456-457.

²⁰ David S. Broder, "Mayors Seek Clear Security Plan," *Washington Post*, June 18, 2002, p. A10. Also see U.S. Conference of Mayors, "Letter to Hon. Dennis Hastert and Richard Gephardt," July 10, 2002.

S. 2664 specified reporting requirements that states must satisfy. Within three years after enactment, states would have to participate in a response exercise to “measure the progress of the State in enhancing the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction.”²¹ States also had to submit annual reports on the use of grant funds.

Furthermore, S. 2664 instructed the FEMA Director to coordinate the new block grant program with existing assistance programs that have related goals. The FEMA Director would coordinate activities with the U.S. Fire Administration, which administers the Assistance to Firefighters grant program, and the Department of Justice, which administers the Community Oriented Policing Services grant program.²²

S. 2038/H.R. 4059. These bills proposed a Homeland Security Block Grant to be administered by FEMA. The bills have been reintroduced in the 108th Congress as S. 87/H.R. 1007. (For an overview, see “Legislation in the 108th Congress”)

S. 2077. This bill proposed a block grant funded at \$4 billion. As in the Administration proposal, funds would be allocated to states on a formula basis, and states would distribute 75% of funds to local governments. Eligible activities included improving infrastructure security, developing interoperable communications systems, and training and equipping first responders. States would have to submit an application for funds, including a basic plan for improving terrorism preparedness.²³ The bill did not propose a matching requirement.

Legislation in the 108th Congress²⁴

S. 87/ H.R. 1007. These bills propose a Homeland Security Block Grant to be administered by the DHS. The bills, which were introduced in the 107th Congress as S. 2038/H.R. 4059, propose \$3.5 billion in funding, of which \$3 billion would be distributed to states and localities for homeland security improvements. Seventy percent of the \$3 billion would be distributed to cities and urban counties, and the remaining 30% would go to states for use in non-metropolitan areas. Eligible activities would include purchasing equipment, developing emergency response plans, improving infrastructure and transportation security, and covering overtime expenses of law enforcement and other first responder units. Under the bills, the remaining \$500 million would be distributed to states and regional organizations for emergency planning, developing training facilities, and improving interoperable

²¹ S. 2664, sec. 630(h). (107th Cong.)

²² S. 2664, sec. 630(i). (107th Cong.)

²³ S. 2077, sec. 4, sec. 5, and sec. 6. (107th Cong.)

²⁴ This section only discusses legislation that proposes programs similar to that proposed by the Administration. Other first responder assistance programs have been introduced in the 108th Congress, however, that propose categorical programs, rather than block grants. For example, see H.R. 1118/S. 544, H.Res. 78, and S.Res. 34.

communications systems. Recipients would have to provide a 10% match with non-federal funds.²⁵

S. 87/H.R. 1007 would require states and localities to submit a plan that would include homeland security objectives and projected use of funds. Furthermore, grant recipients would be responsible for submitting annual performance reports.²⁶

S. 466. This bill proposes a First Responders Partnership Grant Program. It would authorize \$5 billion to state and local governments. The program would have components for different types of communities, including Indian tribes, rural states, metropolitan cities and urban counties. All recipients would face a matching requirement of at least 10%. Funds could be used to “fund overtime expenses, equipment, training, and facilities to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.”²⁷ The bill authorizes the Secretary of Homeland Security to administer the program, but does not specify an agency within DHS.

Issues and Analysis

As the 108th Congress considers creating and modifying grant programs for first responders, it is likely to debate a number of issues. The following section describes issues that may arise specifically in the context of funding first responder improvements.²⁸

How Will Implementation of the DHS Affect the Proposal?²⁹ One issue that arises is how the implementation of the Department of Homeland Security (DHS) will affect the proposed First Responder Initiative. The Bush Administration, in its initial DHS proposal, would have placed responsibility for all first responder assistance programs in the Emergency Preparedness and Response Directorate (EPR) of the DHS, which has FEMA as its cornerstone. The Homeland Security Act did not specifically address the First Responder Initiative, or any other proposed assistance programs. It did, however, instruct the Office for Domestic Preparedness (in the Border and Transportation Security Directorate) to direct and supervise terrorism preparedness grant programs.³⁰ The legislation also directs FEMA to transfer to the

²⁵ S. 87, sections 6, 7, and 8. (108th Cong.)

²⁶ S. 87, sec. 5. (108th Cong.)

²⁷ S. 466, sec. 3(b)(2). (108th Cong.)

²⁸ For a discussion of more general issues that may arise during the legislative design of a grant program, please see CRS Report RL30778, *Federal Grants to State and Local Governments: Concepts for Legislative Design and Oversight*, by Ben Canada.

²⁹ Potential impacts of the Department of Homeland Security on state and local preparedness are discussed in CRS Report RL31490, *Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

³⁰ P.L. 107-296, sec. 430(c)(3).

ODP all terrorism-related functions of its Office of National Preparedness.³¹ Thus, if the First Responder Initiative is approved, ODP may be an appropriate office to administer the program.

There are arguments, however, for both EPR and ODP administration of the program. Proponents of EPR contend that: (1) the program is consistent with the directorate's mission to help states and localities better prepare for *all* disasters; (2) EPR, with FEMA as its cornerstone, has considerable experience in providing funding, training, and technical assistance to first responders; and (3) it would be consistent with the Administration's goal of creating a "one stop shop" for preparedness assistance.³² Authorizing any agency other than ODP to administer the program would require changes to the Homeland Security Act and would likely raise questions about the ODP's role in the new department.

Some observers argue that the new EPR does not have sufficient experience working with law enforcement agencies and offering training in law enforcement contexts. Proponents of the ODP counter that it has the necessary expertise to assist first responders in preparing for terrorist attacks, which may involve procedures not typically used in natural disasters, such as evidence recognition and crime scene preservation. Like EPR, ODP also has experience providing funding, training, and other assistance to first responders.

Would a New Program Replace Existing Assistance Programs?

Although details have not been published, Administration officials have previously stated that some existing programs should be integrated into the First Responder Initiative. The existing programs in ODP, for example, would likely serve as the foundation for the new program.³³ In its FY2004 request, the Administration has also proposed transferring the Assistance to Firefighters program from the U.S. Fire Administration to ODP. Funding for the Firefighters program would make up \$500 million of the proposed \$3.558 billion for ODP. The Administration's proposal for the EMPA account is uncertain, as the FY2004 budget request does not address this account.

³¹ P.L. 107-296, sec. 430(c)(8). Since May 2001, when President Bush proposed the ONP, the Administration has stated that the office would coordinate all federal programs addressing preparedness for attacks with weapons of mass destruction (WMD). The President's directive for the ONP was based on concerns about duplications, gaps, and inconsistencies in federal preparedness programs. In the FY2002 emergency supplemental appropriation, Congress provided FEMA \$15 million for establishment of the ONP. For more information, see U.S. Federal Emergency Management Agency, *FEMA Report to Committee on Appropriations on the Structure of the Office of National Preparedness* (Washington: Feb. 15, 2002), pp. 2, 8.

³² For more information on FEMA's authority and the Office of National Preparedness, see CRS Report RL31670, *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, by Keith Bea.

³³ U.S. Federal Emergency Management Agency, Joe Allbaugh, former Director, statement before Senate Committee on Environment and Public Works, *First Responder Initiative*, hearing, 107th Cong., 1st sess., March 12, 2002.

Some emergency managers have expressed concern that new federal policies may allocate disproportionate resources to terrorism preparedness, leaving states and localities less prepared for catastrophic natural disasters, such as floods and hurricanes.³⁴ The Assistance to Firefighters program and several programs in the EMPA account, for example, were created to help fire and rescue departments with general improvements, not specifically with terrorism preparedness.³⁵ Such a consolidation could arguably transfer federal resources away from the traditional all-hazards approach, since the mission of ODP, and the purpose of the First Responder Initiative, is to prepare responders for terrorist attacks, not natural disasters (although there is overlap in skills and resources).³⁶

The Administration's proposals to integrate existing programs into the First Responder Initiative has encountered criticism from some observers. Following the initial proposal in February 2002, the International Association of Fire Chiefs and other nongovernmental organizations encouraged Congress and the Administration to enact the First Responder Initiative, but also to preserve the Assistance to Firefighters program as a separate grant program to help states and localities maintain an all-hazards approach to emergency management.³⁷

Department of Justice Programs. The Administration's FY2004 request would also eliminate or reduce funding to a number of existing general assistance programs that help states and localities with public safety activities (see Table 1).³⁸ Recipients *may* use these funds for terrorism preparedness activities. The Administration would, however, create a new block grant program for public safety, call the Justice Assistance Grant Program, and would allocate \$500 million from the First Responder Initiative for law enforcement assistance.³⁹ Following the signing of the FY2003 omnibus appropriations act (P.L. 108-7), the President expressed his

³⁴ Eric Tolbert, President, National Emergency Management Association (NEMA), Remarks before the Virginia Emergency Management Association, March 15, 2002.

³⁵ For more information on the Assistance to Firefighters program, see CRS Report RS21302, *Assistance to Firefighters Program*, by Len Kruger.

³⁶ The "all-hazards" approach is further discussed in CRS Report RL31490, *Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada; and CRS Report RL31670, *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, by Keith Bea.

³⁷ Statement of Chief Stephen D. Halford, Nashville, Tennessee, U.S. Congress, House Committee on Government Reform, Subcommittee on Government Efficiency, Financial Management, and International Relations, *How Effectively are Federal, State and Local Governments Working Together to Prepare for a Biological, Chemical or Nuclear Attack?*, hearings, 107th Cong., 2nd sess., March 1, 2002.

³⁸ For more information on this issue, see CRS Report RL31309, *Appropriations for FY2003: Commerce, Justice, and State, the Judiciary, and Related Agencies*, coordinated by Susan Epstein; and, CRS Report 97-196 GOV, *The Community Oriented Policing Services (COPS) Program: An Overview*, by David Teasley and JoAnne O'Bryant.

³⁹ U.S. Office of Management and Budget, *Budget for Fiscal Year 2004, Appendix* (Washington: GPO, Feb. 2003), pp. 640-645.

desire for Congress to transfer funding for general public safety programs to “higher-priority” terrorism preparedness programs. Specifically, he stated,

Most troublesome, [the bill falls] short of my request for State and local law enforcement and emergency personnel, and in particular underfunds terrorism preparedness for first responders. [The bill funds] existing State and local grant programs, which are not directly related to higher-priority terrorism preparedness and prevention efforts. This is unsatisfactory, and my Administration will use every appropriate tool available to ensure that these funds are directed to the highest priority homeland security needs.⁴⁰

Some observers agree with the Administration’s approach. A report from the Heritage Foundation, for example, recommended that Congress transfer funding for the Community Oriented Policy Services (COPS) and other programs to the ODP in order to create a new, single flexible assistance program.⁴¹ Other observers disagree, however, including the National Association of Police Organizations, which argued,

The Administration’s proposed budget once again calls for drastic reductions in the COPS program and the merging of LLEBG and Byrne grant moneys into a small grant fund. In their place, the Administration has not funded adequate alternatives that could meet the abilities of these threatened programs.⁴²

Table 1. Funding for Selected General Public Safety Programs
(All amounts in millions)

Program	Department	FY2002 Appropriation^A	FY2003 Appropriation	FY2004 Request
Community Oriented Policing Services (COPS)	Justice	1,005	929	164
Byrne Memorial Formula Grant	Justice	595	651	0
Local Law Enforcement Block Grant	Justice	400	400	0

Source: P.L. 107-77, P.L. 108-7, and U.S. Office of Management and Budget, *Fiscal Year 2004 Budget of the U.S. Government, Appendix*, pp. 641-644.

^A FY2002 Appropriation amount includes the emergency supplemental appropriations (P.L. 107-117 and P.L. 107-206).

⁴⁰ U.S. President (Bush), “Statement by the President,” Feb. 20, 2003. Available at: [<http://www.whitehouse.gov/news/releases/2003/02/20030220-9.html>], visited March 14, 2003.

⁴¹ Michael Scardaville, “Emphasize How, Now How Much, in Domestic Preparedness Spending,” Heritage Foundation, Backgrounder No. 1628, Feb. 27, 2003. Available at: [<http://www.heritage.org/Research/HomelandDefense/bg1628.cfm>], visited March 14, 2003.

⁴² National Association of Police Organizations, “Legislative Update,” available at: [<http://www.napo.org/legislative-update/legislativeupdate.htm>], visited March 14, 2003.

Policy Alternatives. Congress could continue funding the Assistance to Firefighters program and other general assistance programs to help states and localities with general preparedness and public safety improvements. This approach was endorsed in S. 2664, as reported during the 107th Congress. The accompanying report stated that the First Responder Initiative would be “separate and distinct” from the Assistance to Firefighters Program and the COPS program. The Senate Environment and Public Works Committee also observed that both programs, along with other assistance programs, “... are important components of a coordinated effort to provide supplemental assistance to States and local communities.”⁴³

In light of the increasing federal budget deficit, however, Congress might be concerned about additional federal spending in the area of emergency management and modify programs and funding accordingly. If the First Responder Initiative were funded at the proposed amount of \$3.5 billion *and* existing programs with related functions were funded at current levels, this would present a significant increase in assistance to states and localities for emergency management activities.

Should States or Localities Receive Funds? Several organizations representing state and local governments and first responder groups have generally approved of the Administration’s and Congress’s proposals to increase funding to states and localities. On the other hand, such organizations representing local governments as the U.S. Conference of Mayors (USCM) and the National Association of Counties have expressed concern that the First Responder Initiative would give states substantial decision-making authority and offer local governments little discretion in the use of funds. A USCM survey, for example, showed that 87% of city mayors believed that the channeling of federal funds through states would ultimately “hamper” city preparedness efforts.⁴⁴ S. 87, as introduced in the 108th Congress, would award the majority of funds directly to local governments.⁴⁵

Organizations representing states, however, contend that state coordination of federal assistance is crucial to improving preparedness. One state emergency manager, representing the National Emergency Management Association, testified that, “[a]ll efforts to increase emergency management capacity building must be coordinated through the states to ensure harmonization with the state emergency operations plan, ensure equitable distribution of resources, and to synthesize resources [for mutual aid agreements]...”⁴⁶ The Gilmore Commission, in its fourth annual report to Congress, also agreed with this approach, concluding that states must

⁴³ S.Rept. 107-295, p. 6.

⁴⁴ U.S. Conference of Mayors, “Homeland Security: Mayors on the Frontline,” June 2000, available at: [http://www.usmayors.org/70thAnnualMeeting/madison_061302.asp], visited June 19, 2002.

⁴⁵ S. 87, sec. 7. (108th Cong.)

⁴⁶ Statement of Woodbury Fogg, on behalf of the National Emergency Management Association, U.S. Congress, Senate Committee on Public Works and Environment, *First Responder Initiative*, hearings, 107th Cong., 2nd sess., Mar. 12, 2002.

have discretion over the use of grant funds to ensure that “resources are allocated on the basis of assessed needs.”⁴⁷

In the 107th Congress, the Senate Environment and Public Works Committee seemingly agreed with the state-level approach. Its report on S. 2664 stated:

There is a need to provide funds to both State and local first responders in a coordinated, strategic, and prompt manner. To ensure a coordinated effort at the State level, the Act designates that all funds will be awarded to the Governors of the States, who may retain up to 25 percent of the funds they receive for State-level first responder needs ... To ensure that the majority of these funds go to the local first responders as soon as possible, States must coordinate with local governments and local entities, and directly provide them with at least 75 percent of the funds received by the State within 45 days.⁴⁸

Should Congress determine that greater local discretion over the use of funds is desirable, it might instruct the administering agency to distribute a portion of funds directly to localities, as has been proposed in S. 87. On the other hand, Congress might find that states require discretion in the use of funds to effectively coordinate state-wide preparedness efforts. Thus, it could enact the Administration’s proposal to distribute funds through the states.

Should the Use of Funds Be Limited to Standardized Activities and Equipment? Congress sometimes requires grant recipients to satisfy specified conditions in order to receive federal funds.⁴⁹ Placing certain requirements on first responder grants could lead to state and local adoption of minimum standards for equipment, response plans, mutual aid agreements, training, and other elements of preparedness. Some analysts suggest that attaching requirements to preparedness grants may be necessary to ensure that all states and localities adhere to such standards, and thus achieve a minimum level of preparedness:

The intergovernmental system has long been built on a clear bargain: the federal government provides benefits (whether money or flexibility) in exchange for state and local governments’ achievement of prescribed standards. In federal homeland security grants to state and local governments, therefore, the critical issue is not so much whether the federal government can—and should—define such standards. It is what those standards ought to be—and how much flexibility state and local governments ought to be allowed in meeting them.⁵⁰

⁴⁷ Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (Gilmore Commission), *Fourth Annual Report to the President and Congress* (Washington: RAND, Dec. 15, 2002), pp. 34-35. Available at: [<http://www.rand.org/nsrd/terrpanel/index.html>], visited March 14, 2003.

⁴⁸ S.Rept. 107-295, p. 5.

⁴⁹ For more information on options for federal requirements, see CRS Report RL31680, *Homeland Security: Standards for State and Localities*, by Ben Canada.

⁵⁰ Donald F. Kettl, “Promoting State and Local Government Performance for Homeland Security,” The Century Foundation Homeland Security Project (New York, June 2002), p. 10. Available at: [<http://www.homelandsec.org/WGfederal/index.htm>], visited Aug. 9, 2002.

Some requirements, such as requiring states and localities to participate in mutual aid compacts, would arguably lead to more efficient use of emergency management resources. Mutual aid compacts can allow governmental units to pool resources and overcome legal and financial obstacles that might interfere with emergency responses across multi-jurisdictional boundaries. Other requirements, such as requiring recipients to purchase standardized types of interoperable communications equipment, for example, could enable states and localities to communicate with one another during emergencies.

While the Administration has yet to make specific recommendations, in April 2002, FEMA requested comments on a range of possible requirements, including:

- state participation in the Emergency Management Assistance Compact;⁵¹
- local government participation in a regional mutual aid compact;
- national standards for training, exercises, equipment, and interoperable communications infrastructure;
- creation of a Citizen Corps volunteer organization.⁵²

S. 2664 (as reported in the 107th Congress) would arguably have required recipients to satisfy a number of requirements. The bill allowed a wide range of eligible activities, but required recipients to purchase interoperable equipment, develop training programs consistent with FEMA standards, and develop response plans consistent with federal and state strategies.⁵³

On the other hand, requirements could force states and localities to adopt policies that they believe do not enhance their preparedness. They could also limit the ability of recipients to adapt federal assistance to their unique needs. Stringent requirements might deter some states and localities from accepting federal assistance, since requirements could prove costly, even with additional federal resources. This consequence might be more likely in jurisdictions that perceive themselves at low risk of a terrorist attack. But, considering the nationwide salience of the issue of terrorism preparedness and the fact that many states are experiencing significant budget difficulties, states and localities may readily accept federal assistance and any accompanying conditions.

Should Infrastructure Security and Overtime Expenses Be Eligible Activities? Some state and local officials may wish to use first responder grants to help secure public infrastructure facilities, such as water treatment plants, electricity plants, and transportation hubs.⁵⁴ They may also wish to use the funds to compensate

⁵¹ For more information on this interstate compact, please see CRS Report RS21227, *Emergency Management Assistance Compact (EMAC): An Overview*, by Ben Canada.

⁵² U.S. Federal Emergency Management Agency, "First Responder Initiative Grant Process," *Federal Register*, vol. 67, no. 73, April 9, 2002, p. 18621.

⁵³ S. 2664, sec. 630(c). (107th Cong.)

⁵⁴ Existing infrastructure security programs are described in CRS Report RL31465, (continued...)

for overtime pay for public safety officers. The U.S. Conference of Mayors, for example, recommended that “at least a portion of the funding be authorized for overtime assistance under the first responders initiative so that our local police and fire personnel can be fully integrated into the national homeland defense effort.”⁵⁵

The Administration proposal does not mention infrastructure security or overtime expenses as eligible activities. In a meeting June 2002 meeting with the U.S. Conference of Mayors, Secretary of Homeland Security Tom Ridge indicated that the Administration may consider allowing recipients to use a portion of grant funds for security activities and law enforcement overtime.⁵⁶ S. 87 (as introduced in the 108th Congress) would allow recipients to use funds for infrastructure security and overtime expenses. In the 107th Congress, S. 2664 did not list infrastructure security as an activity and explicitly prohibited using funds for overtime expenses.⁵⁷

Authorizing infrastructure security and overtime as eligible activities could, arguably, change the focus of the grant program. Were states and localities to allocate funds to security and overtime, fewer funds would be available for enhancing the capabilities of first responders to respond to weapons of mass destruction (WMD) attacks, which is the Administration’s stated goal for the program.⁵⁸ Were Congress to agree with the Administration’s goal, it might prohibit the use of funds for infrastructure security and overtime, or limit the percentage of funds that can be used for that purpose, since those activities arguably do not enhance response capabilities. On the other hand, Congress might find that states and localities need assistance with security improvements and thus authorize funding for such activities.

How Should the Funds Be Accounted For? The Administration has emphasized in press releases and testimony that it hopes to minimize administrative requirements in the proposed program. Following the Administration’s FY2003 budget request, former FEMA Director Joe Allbaugh testified that FEMA would “[e]stablish a consolidated, simple, and quick method for disbursing Federal assistance to States and localities.”⁵⁹ The Administration, however, has not released specific details about the administrative and regulatory requirements that it would support for this program. State and local officials have emphasized that speedy

⁵⁴ (...continued)

Protecting Critical Infrastructure from Terrorist Attack: A Catalog of Selected Federal Assistance Programs, coordinated by John Moteff.

⁵⁵ U.S. Conference of Mayors, Letter to Hon. J. Dennis Hastert and Hon. Richard A. Gephardt, “First Responders Initiative and America’s Cities,” July 10, 2002.

⁵⁶ David S. Broder, “Mayors Seek Clear Security Plan,” *Washington Post*, June 18, 2002, p. A10. Also see U.S. Conference of Mayors, “Letter to Hon. Dennis Hastert and Hon. Richard Gephardt,” July 10, 2002.

⁵⁷ S. 2664, sec. 630(c)(2). (107th Cong.)

⁵⁸ U.S. Federal Emergency Management Agency, Office of National Preparedness, “The First Responder Initiative,” press release, Feb. 2002.

⁵⁹ See Statement of Joe M. Allbaugh, Director, Federal Emergency Management Agency, U.S. Congress, Senate Committee on Environment and Public Works, *First Responder Initiative*, hearings, 107th Cong., 2nd sess., March 12, 2002.

distribution of funds should be a priority in all preparedness assistance programs.⁶⁰

A balancing consideration is whether a speedy method of distribution with minimal administrative requirements would inhibit Congress's ability to oversee the program's efficiency and effectiveness. A number of observers have stressed the need for accountability in any new block grant program. The Gilmore Commission, for example, emphasized that,

Program evaluations must be more than just an audit trail of dollars and must be part of an integrated metrics system ... [W]ithout a comprehensive approach to measuring how well we are doing with the resources being applied any point in time, there will be very little prospect for answering the question, "How well prepared *are we*?"⁶¹

Were Congress to enact the program, it could require the administering agency to develop application and reporting requirements that would facilitate program evaluation. On the other hand, Congress might decide that urgent state and local needs outweigh the needs of oversight and could instruct the administering agency to distribute funds as expeditiously as possible.

S. 87 (as introduced in the 108th Congress) calls for applicants to submit a statement of activities, including preparedness objectives and projected use of funds, before receiving grant funds. Recipients must also submit annual performance reports to the DHS.⁶² In the 107th Congress, S. 2664 arguably included accountability provisions. The bill required states to report annually on the use of funds. Furthermore, it required each state to report to Congress within three years on the outcome of an exercise designed to evaluate the state's response to a weapons of mass destruction incident.⁶³

Conclusion

Should Congress take further action on the proposed First Responder Initiative, or a similar proposal, it will address a number of attributes common to all grant programs, including range of eligible activities, matching requirements, and program accountability. Congress would also address issues specifically related to homeland security, such as determining which federal agency can best assist states and localities with preparedness efforts and determining if certain requirements would lead to preparedness improvements.

⁶⁰ U.S. Conference of Mayors, "One Year Later, Cities are Safer but Still Await Financial Assistance from Washington," press release, Sept. 9, 2002.

⁶¹ Gilmore Commission, *Fourth Annual Report*, p. 37.

⁶² S. 87, sec. 5. (108th Cong.)

⁶³ S. 2664, sec. 630(h). (107th Cong.)

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