Order Code RL31475

First Responder Initiative: Policy Issues and Options

Updated June 4, 2003

Ben Canada
Analyst in American National Government
Government and Finance Division

First Responder Initiative: Policy Issues and Options

Summary

In its FY2004 budget request, the Bush Administration proposed a new grant program called the "First Responder Initiative" to help 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 $3.6 billion program. The program's primary purpose would be to improve the ability of first responders (including police, firefighters, emergency medical, and hazardous materials 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 Administration proposal is one of several proposals to restructure first responder preparedness grants before the 108th Congress. Introduced bills propose different methods of distribution, ranges of eligible activities, and matching requirements. Examples of introduced bills include H.R. 1389, H.R. 1449, S. 87/H.R. 1007, S. 466, and S. 930.

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

- Would a new program replace existing preparedness grant programs?
- Should funds be distributed to states or directly to localities?
- Should the distribution of funds be based on risk factors? If so, who should determine the risk factors?
- How much discretion should recipients have in using grant funds?
- What is the appropriate balance between accountability and speedy distribution of funds?

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

Contents

Introduction 1
Overview of Existing Preparedness Programs 2
Funding 4
FY2002 and FY2003 Appropriations 4
Administration Proposal for FY2004 5
Legislation in the 107th Congress 9
Legislation in the 108th Congress 10

Restructuring Programs: Issues, Analysis, and Options 11
Integration of Existing Preparedness Programs 11
Analysis 12
Policy Approaches 14
State or Local Funding 15
Analysis 15
Policy Approaches 16
Factors in Grant Distribution 17
Analysis 17
Policy Approaches 19
Flexibility with Grant Funds 20
Analysis 20
Policy Approaches 22
Distribution of Funds and Accountability 23
Analysis 23
Policy Approaches 24
Conclusion 25
Hearings in the 107th Congress 25
Hearings in the 108th Congress 25
Related CRS Products 26

List of Figures

Figure 1. Selected First Responder Assistance Programs within the Department of Homeland Security (Funded in FY2003) 4

List of Tables

Table 1. Appropriations for Selected First Responder Preparedness Programs . . 7
Table 2. Funding for Selected Programs in the Justice Department 14

First Responder Initiative: Policy Issues and Options

Introduction

Since the terrorist attacks of September 2001, both Congress and the President have given considerable attention to the role of first responders in the nation's homeland security efforts.[1] As part of its budget request in February 2002, the Bush Administration proposed its First Responder Initiative, a new consolidated grant program meant to help first responders prepare for terrorist attacks involving weapons of mass destruction. Later that year, Congress created the new Department of Homeland Security and stipulated that the new department would be responsible for assisting states and localities with their homeland security efforts.[2] Although the 107th Congress did not act on legislation to authorize the proposed new First Responder Initiative, it did appropriate increased funding to existing first responder grants for fiscal year 2003.

In February 2003, the Bush Administration once again proposed the Initiative as part of its FY2004 budget request, and the 108th Congress is considering several bills that would authorize a new first responder grant program.[3]

This report provides background information and policy analysis pertinent to proposals to restructure first responder assistance programs. Specifically, this report provides information on existing programs, appropriations, legislation in the 107th and 108th Congress, and selected policy issues. This report does not discuss all relevant policy issues, but, rather, those issues that may be germane to any significant restructuring of existing programs.

---

[1] For the purposes of this report, "first responders" includes local (and sometimes state) firefighters, emergency medical personnel, law enforcement officers, and hazardous materials personnel. Although some analysts consider public health and hospital staff to be first responders, this report will not address the health sector. Proposals for the First Responder Initiative do not address public health preparedness, and there are separate funding mechanisms for that sector in the Department of Health and Human Services.

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

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

Overview of Existing Preparedness Programs

State and local governments generally receive federal assistance for terrorism preparedness from three main sources.[4] All of these programs are administered by the new Department of Homeland Security (DHS), as illustrated in Figure 1 below.

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.[5] The office draws authority from at least four different statutes, most of which provide general authority to federal entities to assist states and localities with terrorism preparedness.[6] Several statutes, however, authorize such specific activities as acquisition of interoperable communications equipment, technology research, threat assessments, and community outreach.[7] The Homeland Security Act (P.L. 107-296) enhanced ODP's duties by making it responsible for, among other things, "... directing and supervising terrorism preparedness grant programs of the federal government ...."[8] Congress provided $3.23 billion for ODP in regular and supplemental FY2003 appropriations.

ODP's largest grant is the State Homeland Security Grant Program, which is a formula grant to states. Each state is guaranteed at least 0.75% of the amount appropriated for the program; remaining funds are distributed based on population.[9] Formula funds may be used for four general activities: planning, equipment, training, and exercises. ODP requires states to distribute at least 80% of funds to local governments within 45 days of the state grant award date. Roughly $1.87 billion has been made available to states and localities through this program in FY2003.[10]

In addition to the formula program, ODP also administers the High-Threat Urban Area program (also called the Urban Area Security Initiative) in which the DHS Secretary has discretion to award grants to cities based on risk analyses. Reportedly, ODP considers such factors as population density, critical infrastructure,

---

[4] This section discusses only those programs that fund first responder preparedness for terrorism. It does not discuss assistance programs that may fund general public safety improvements, such as the assistance programs in the Justice Department.

[5] Additional information is available at the ODP web site: [http://www.ojp.usdoj.gov/odp/]. At present, the Department of Justice continues to host the ODP web site, although the office has been transferred to the Department of Homeland Security

[6] P.L. 104-132, sec. 819, 821, 822; P.L. 104-201, sec. 1412, 1415; P.L. 107-56, sec. 1005, 1014; P.L. 107-296, sec. 430.

[7] P.L. 104-132, sec. 821; P.L. 107-56, sec. 1005; P.L. 107-296, sec. 430.

[8] P.L. 107-296, sec. 430(c).

[9] ODP points to Sec. 1014 of the USA PATRIOT Act as authorization for the formula progarm (P.L. 107-56).

[10] Program guidance for the formula grant is available at: [http://www.ojp.usdoj.gov/odp/docs/ODPApplication.pdf].

and threat and vulnerability assessments.[11] In addition to grant programs, ODP also funds federal training centers and research and development activities.

Arguably, current statutory authorities provide little guidance on the structure of first responder preparedness grants. Perhaps the only specific guidance is a provision found in section 1014 of the PATRIOT Act guaranteeing that each state "... shall receive not less than 0.75 percent of the total amount appropriated in the fiscal year for grants."[12] At present, ODP applies this provision to the structure of its State Homeland Security Grant Program (formula program) and FEMA applies it to selected programs within its Emergency Management Planning and Assistance account.[13] Neither the PATRIOT Act, nor the other statutes, however, address other grant attributes, such as method of distribution, recipient discretion with funds, matching requirements, and accountability mechanisms.

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.[14] Congress authorized the program in Title XVII of the National Defense Authorization Act of 2001 (P.L. 106-398). 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 originally authorized a funding level of $100 million in FY2001 and $300 million in FY2002[15]. Following the terrorist attacks of Sept. 2001, however, Congress raised the authorized amount to $900 million for FY2003 and FY2004.[16] In the FY2003 consolidated appropriations bill, Congress provided $750 million.

Emergency Management Planning and Assistance Account. Authorization for the programs in the Emergency Management Planning and Assistance account (EMPA) come from Title VI of the Stafford Act.[17] The statute does not specify an authorized funding amount for any program in the account, but does authorize FEMA to undertake a wide array of preparedness activities. The largest grant program in EMPA is the Emergency Management Performance Grants (EMPG), which fund state-level emergency planning and operations. Grants are also awarded for emergency operations centers, interoperable communications equipment,

---

[11] For more information, see DHS press release: [http://www.dhs.gov/dhspublic/display?theme=43&content=552], visited May 16, 2003.

[12] P.L. 107-56, sec. 1014(c)(3).

[13] U.S. Department of Homeland Security, Office for Domestic Preparedness, "FY2003 State Homeland Security Grant Program," Program Guidance, pp. 5-6. Available at:[http://www.ojp.usdoj.gov/odp/docs/ODPApplication.pdf], visited May 16, 2003.

[14] 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.

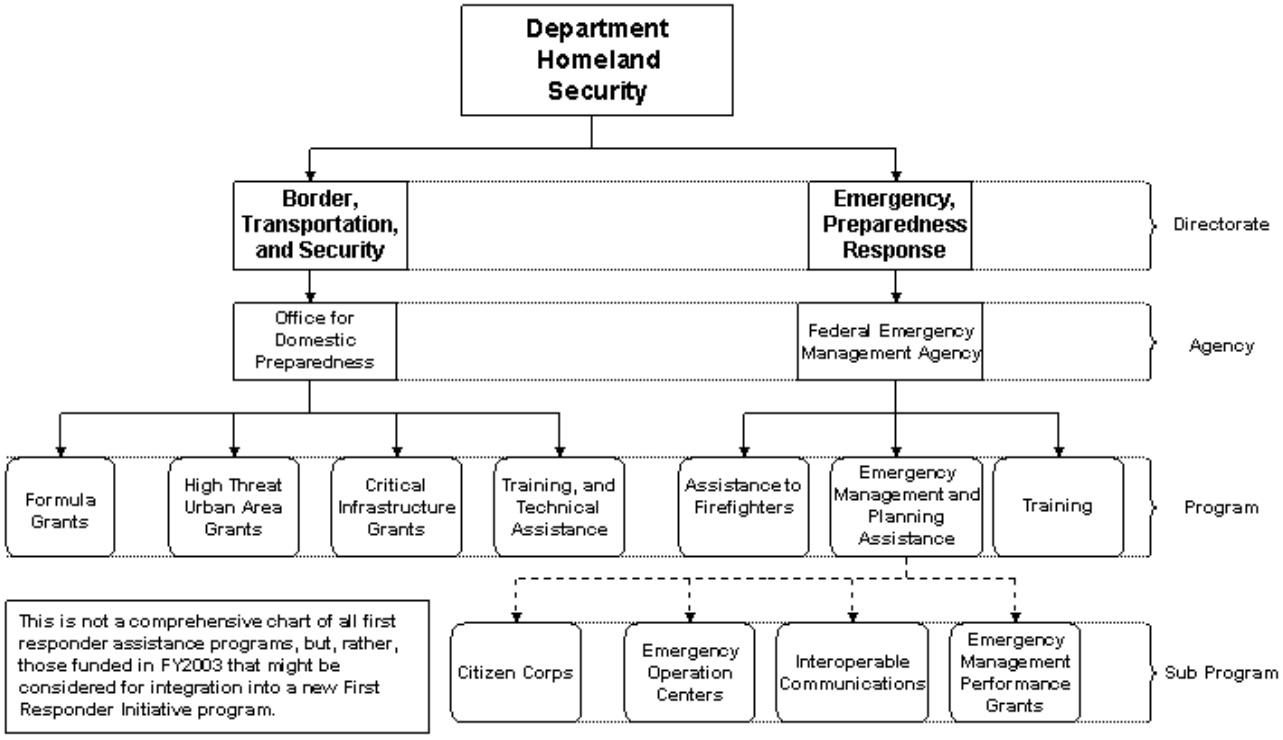
[15] 15 U.S.C. 2229, sec. 33.

[16] P.L. 107-107, sec. 1061.

[17] 42 U.S.C. 5195-5196.

urban search and rescue teams, and community emergency response teams (CERTs). In FY2003, Congress appropriated roughly $443 million for EMPA activities.

Figure 1. Selected First Responder Assistance Programs within the Department of Homeland Security (Funded in FY2003)[18]



Funding

FY2002 and FY2003 Appropriations. In FY2002 and FY2003, Congress funded terrorism preparedness for first responders through the existing programs discussed above. FY2002 funding for these programs came to roughly $1.49 billion.

For FY2003, Congress and the President appropriated a total of about $4.42 billion for first responder preparedness, including regular and supplemental appropriations (P.L. 108-7, P.L. 108-11).[19] The bulk of this amount, $3.23 billion, was appropriated to ODP for its formula grants, high-threat urban area program, and other assistance activities. Congress directed $750 million to the Assistance to

---

[18] Graphic based on CRS analysis of DHS program documents, organization charts, and congressional appropriations documents.

[19] 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.

Firefighters program, and roughly $443 million to the EMPA account (see Table 1). For more information on the FY2003 funding, see CRS Report RS21400, *FY2003 Appropriations for First Responder Preparedness: Fact Sheet*.

Administration Proposal for FY2004. The Administration requested $3.558 billion for ODP for FY2004, which would be roughly $328 million more than the office's FY2003 amount of $3.23 billion. The request called for selected terrorism preparedness programs to be integrated into ODP as part of the "First Responder Initiative," including current ODP programs, the Assistance to Firefighters Program, and selected activities in FEMA's Emergency Management Planning and Assistance Account.[20]

Under the FY2004 request, 91% of ODP's budget ($3.247 billion) would be distributed as grants. The request specifies amounts for the following grant activities:

- $500 million for the Assistance to Firefighters Program, which would be transferred from FEMA to ODP;
- $500 million for a new grant program to law enforcement agencies for terrorism prevention;
- Not less than $181 million for Citizen Corps programs; and,
- Up to $150 million for planning and administrative costs (non-personnel) that were previously funded in FEMA's Emergency Management Performance Grant program.[21]

The Administration request does not identify funding amounts for a number of ODP programs funded in FY2003, including the formula program, high-threat urban area program, and critical infrastructure protection grants. Of the $3.558 billion proposal, the request explains the use of roughly $1.642 billion. This leaves $1.916 (53.8%) billion in funding requests for which there is arguably no detailed explanation.

Regarding the distribution of formula-based funds, the ODP budget justification states that "... ODP will work closely with Congress to ensure that these funds are allocated through a transparent formula that accounts for the varying level of threat faced by each state."[22] DHS Secretary Ridge has stated that such factors would likely include population density, location of critical infrastructure, and risk assessments.[23] Specific risk factors to be included in the formula of the State Homeland Security

---

[20] U.S. Office of Management and Budget, *Fiscal Year 2004 Budget of the U.S. Government, Appendix* (Washington: GPO, Feb. 2003), pp. 456-457.

[21] U.S. Department of Homeland Security, *Budget Justification for Fiscal Year 2004*, section on "Office for Domestic Preparedness," no pagination.

[22] Ibid.

[23] U.S. Congress, Senate Governmental Affairs Committee, *Investing in Homeland Security, Streamlining and Enhancing Homeland Security Grant Programs*, hearing, 108th Cong., 1st sess., May 1, 2003 (Washington: GPO). See opening statement and comments by DHS Secretary Tom Ridge.

Grant Program, however, are not specified in the budget justification or any available DHS documents. Other proposed aspects of the grant program are specified. States would have to redistribute 80% of formula funds to sub-state jurisdictions, but would have discretion in using the remaining 20% of funds. States would also have discretion in the method of distributing funds to local governments. The FY2004 request stipulated that all recipients should provide a matching amount not less than 25%.[24]

Furthermore, the request does not explain the method of distributing grants from other ODP programs, including the high-threat urban area program and the proposed program for law enforcement agencies. Some Members of Congress have urged the Administration to provide more information, suggesting that Administration documents provide a broad strategy, but not specific details about the program.[25]

---

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

[25] U.S. Congress, House Appropriations Committee, Subcommittee on Homeland Security, *FY2004 Homeland Security Budget Request*, hearing, 108th Cong., 1st. sess., March 20, 2003 (Washington: GPO, 2003), pp. 1-3.

Table 1. Appropriations for Selected First Responder Preparedness Programs

(All amounts in millions)

Program	FY2002 Approp.[A]	FY2003 Appropriations			FY2004 Request
		Regular Approp.[B] (P.L. 108-7)	Enacted Supp. (P.L. 108-11)	FY2003 Total Approp.	
Office for Domestic Preparedness					
State Homeland Security Grant Program (formula grants)[C]	315.7[D]	570[D]	1,300	1,870	NS
High Threat Urban Areas	2.6[E]	100[F]	700[F]	800	NS
Critical Infrastructure Protection[G]	—	—	200	200	NS
Law Enforcement Grants[H]	—	—	—	—	500
Other (training, technical assistance, research)[I]	NS	330	30	360	NS
ODP Total	**651.5**	**1,000**	**2,230**	**3,230**	**3,558**[J]
Assistance to Firefighters Program (FEMA)	360	750	—	750	[500][K]
Emergency Management Planning and Assistance Account (EMPA)[L]	479.6	388.3	54.8[M]	443.1	—[N]
TOTAL: Selected Programs	**1,491.1**	**2,138.3**	**2,284.8**	**4,423.1**	**3,558**

Source: Enacted appropriations amounts taken from appropriations statutes and conference reports. Administration requests taken from Office of Management and Budget and Homeland Security Department documents.

Key:
NS — Funding amounts used or requested for this category are not specified in available documents.

Notes:
[A] FY2002 amounts include regular and supplemental appropriations.
[B] FY2003 regular appropriations do not account for a .65% across-the-board rescission.

[C] Prior to the FY2003 supplemental, the ODP formula grant program included separate allocations for specific categories, including planning, training, equipment, and exercises. Funds from the FY2003 supplemental appropriation, however, were appropriated in a single lump-sum for all categories.

[D] This amount is an estimate based on analysis of the appropriations conference report and ODP reports on funding allocations.

[E] The high-threat urban area program was preceded by the Nunn-Lugar-Domenici program (NLD). The FY2002 amount reflects only line-item appropriations for NLD in conference report language. It does not reflect any funds that may have been used in other ODP accounts for NLD activities.

[F] $100 million of this amount was appropriated through the regular FY2003 appropriation (P.L. 108-7), which was distributed to seven selected urban areas. See DHS press release: [http://www.dhs.gov/dhspublic/display?content=552]. The FY2003 supplemental (P.L. 108-11) appropriated $700 million, which ODP distributed for a variety of preparedness activities, including $500 million for formula grants under the "Urban Area Security Initiative," $75 million for port security grants, $65 million for mass transit security, $35 million for radiological defense systems, $15 million for pilot projects, and $10 million for technical assistance. See DHS press release: [http://www.dhs.gov/interweb/assetlibrary/ Protecting_Our_Urban_Areas.doc].

[G] Congress did not appropriate funds to ODP specifically for critical infrastructure protection grants until the FY2003 supplemental (P.L. 108-11).

[H] The proposed grants for law enforcement agencies for terrorism prevention would be a new program in FY2004.

[I] Amounts include set-asides for research and training institutions, technical assistance activities, and administrative expenses.

[J] The Administration's FY2004 request specifies $500 million for the Assistance to Firefighters program, $500 million for law enforcement grants, and $181 million for Citizen Corps programs. Administration documents do not provide details on the State Homeland Security Grant Program (formula program), high-threat urban area program, and critical infrastructure protection grants.

[K] In FY2004, the Administration would transfer the Firefighters program from FEMA to ODP. The funding amount is listed, but not included in FEMA's total funding amounts.

[L] FEMA uses the EMPA account to fund a broad range of programs including EMPG grants, emergency operations centers, Citizen Corps, interoperable communications, and urban search and rescue task forces. Some EMPA funds are used to address natural hazards, and not terrorism preparedness.

[M] These funds were appropriated for interoperable communications equipment. Another $54.8 million was appropriated to the Community-Oriented Policing Services Program (COPS) for interoperable communications, which is not reflected in this table.

[N] The Administration's FY2004 request would not fund the EMPA account, but would transfer some of the activities to ODP and other activities to the Emergency Preparedness and Response Directorate in DHS.

Legislation in the 107th Congress

S. 2664. First Responder Terrorism Preparedness Act of 2002. 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. Similar provisions included $3.5 billion in funding distributed on a formula basis, wide range of eligible activities, 25% matching requirement for recipients, and distribution of 75% of state 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 proximity to nuclear power plants, chemical stockpiles, and other vital infrastructure. The Administration made no similar proposal in 2002. Also, S. 2664 explicitly prohibited the use of funds for overtime expenses.

The bill specified reporting requirements that states must satisfy. Within three years after enactment, states would have had 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."[26] States also had to submit annual reports on the use of grant funds.

S. 2664 also instructed the administering agency to coordinate the new block grant program with existing assistance programs that have related goals. The FEMA Director would have coordinated 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.[27]

No further action was taken after the bill was reported by the Senate Environment and Public Works Committee on Oct. 1, 2002.

S.2038/H.R.4059. These bills proposed a Homeland Security Block Grant to be administered by FEMA. S. 2038 was referred to the Senate Committee on Environment and Public Works. H.R. 4059 was referred to the House Committees on Transportation and Infrastructure, Judiciary, and Energy and Commerce. These bills have been introduced in the 108th Congress as S. 87/H.R. 1007. (For an overview, see "Legislation in the 108th Congress.")

S. 2077. Securing Our States Act of 2002. 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

---

[26] S. 2664, sec. 630(h). (107th Cong.)

[27] S. 2664, sec. 630(i). (107th Cong.)

responders. States would have had to submit an application for funds, including a basic plan for improving terrorism preparedness. The bill did not propose a matching requirement. S. 2077 was referred to the Senate Committee on Environment and Public Works.

Legislation in the 108th Congress[28]

H.R. 1389. Homeland Emergency Response Act of 2003. The bill proposes $3.5 billion funding for a new grant initiative. One-third of appropriated funds would be distributed to the five local governments that the DHS Secretary determines are at the highest risk. Two-thirds of funds would be distributed to states on the basis of population and risk factors, of which states would have to distribute at least 75% to localities. Funds could be used for a wide range of activities, including preparedness efforts and critical infrastructure protection. Recipients would be required to participate in exercises and submit reports to DHS. The bill does not propose a matching requirement. H.R. 1389 was referred to the committees on Transportation and Infrastructure, Science, and Judiciary, as well as the Select Committee on Homeland Security.

H.R. 1449. First Responder and Emergency Preparedness Block Grant Program for Local Governments. The bill proposes $3.5 billion for a block grant to states and localities. The distribution formula would be based on population and risk factors, at the discretion of ODP. The bill would authorize a wide range of preparedness critical infrastructure protection activities. Ten percent of funds could be used for personnel costs, including overtime. There are a number of accountability provisions, including requirements for exercises and reporting. It also instructs the DHS Secretary to develop an assistance tracking system that tracks funds awarded by states to localities. Recipients would face a matching requirement of up to 25%. The bill was referred to the House Committees on Transportation and Infrastructure and the Select Committee on Homeland Security.

S. 87/ H.R. 1007. Homeland Security Block Grant Act of 2003. These bills 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 disciplines. Under the bills, the remaining $500 million would be distributed to states and regional organizations for emergency planning, developing training facilities, and improving interoperable communications systems. Recipients would have to provide a 10% match with non-federal funds. S. 87/H.R. 1007 would require states and localities to submit a plan that would include

---

[28] As this report addresses restructuring of first responder preparedness programs, this section only discusses legislation that proposes such restructuring. Other bills have been introduced in the 108th Congress, however, that would affect selected programs. For example, see H.R. 1118/S. 544 and S. 838.

homeland security objectives and projected use of funds. Furthermore, grant recipients would be responsible for submitting annual performance reports.

Similar bills were introduced in the 107th Congress as S. 2038/H.R. 4059. In the 108th Congress, S. 87 was referred to the Senate Committee on Governmental Affairs. H.R. 1007 was referred to the House Select Committee on Homeland Security, as well as the committees on Transportation and Infrastructure, Judiciary, and Energy and Commerce.

S. 466. First Responders Partnership Grant Act of 2003. This would authorize $5 billion to state and local governments. The bill authorizes the Secretary of Homeland Security to administer the program, but does not specify an agency within DHS. It would have sub-programs for different types of communities, including Indian tribes, rural states, metropolitan cities and urban counties. 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." All recipients would face a matching requirement of at least 10%. S. 466 was referred to the Senate Judiciary Committee.

S. 930. Emergency Preparedness and Response Act of 2003. A similar bill was introduced in the 107th Congress as S. 2664 and subsequently reported by the Senate Environment and Public Works Committee. (For an overview, see S. 2664 in "Legislation in the 107th Congress.") In the 108th Congress, S. 930 was referred to the Senate Committee on Environment and Public Works.

Restructuring Programs: Issues, Analysis, and Options

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 restructuring first responder preparedness programs.[29]

Integration of Existing Preparedness 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 initiative. In its FY2004 request, the Administration has proposed transferring the Assistance to Firefighters program from the U.S. Fire Administration to ODP. Funding for the Firefighters program would make up $500

---

[29] For a discussion of 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.

million of the proposed $3.558 billion for ODP. The Administration proposal would not fund the EMPA account, but would transfer selected activities to ODP.

Analysis. 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.[30] The Assistance to Firefighters program and several programs in the EMPA account, for example, were created to help state and local goverments with general emergency management improvements, not specifically with terrorism preparedness.[31] 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).[32]

The Administration's proposal to integrate existing FEMA programs into the First Responder Initiative has encountered criticism from a number of observers. The International Association of Firefighters and other nongovernmental organizations have 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.[33] Similarly, the International Association of Emergency Managers (IAEM) has encouraged Congress to preserve the Emergency Management Performance Grants (EMPG), which are funded through FEMA's EMPA account. IAEM argues that EMPG is crucial to supporting statewide emergency planning and intergovernmental coordination.[34]

The Administration's FY2004 request would also eliminate or reduce funding to a number of existing general assistance programs that intend to help states and localities with public safety activities (see Table 2). Such programs as the Community Oriented Policing Services program (COPS), Byrne Memorial Formula Program, and Local Law Enforcement Block Grant, all of which are located in the

---

[30] Eric Tolbert, former President, National Emergency Management Association (NEMA), Remarks before the Virginia Emergency Management Association, March 15, 2002.

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

[32] The "all-hazards" approach is discussed further 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.

[33] U.S. Congress, Senate Governmental Affairs Committee, *Investing in Homeland Security, Challenges on the Front Line*," hearing, 108th Cong., 1st sess., April 9, 2003 (Washington: GPO, 2003). See statement of Captain Chauncey Bowers, Prince George's County Fire Department, Prince George's County, Maryland, on behalf of the IAFF.

[34] U.S. Congress, House Appropriations Committee, Subcommittee on Homeland Security, *Appropriations for the Department of Homeland Security for 2004*, hearing, 108th Cong., 1st sess., April 4, 2003. See statement of J.R. Thomas, President, International Association of Emergency Managers.

Justice Department, and assist states and localities with a range of public safety activities.[35] Recipients *may* use a portion of these funds for terrorism preparedness activities. The Administration's FY2004 budget would create a new Justice Department grant program for public safety, called the Justice Assistance Grant Program, and would allocate $500 million from the Homeland Security Department's First Responder Initiative for law enforcement assistance.[36] Following the signing of the FY2003 consolidated appropriations act (P.L. 108-7), the President expressed his desire for Congress to increase funding 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.[37]

Some observers agree with the Administration's approach. For example, one policy research and advocacy group 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.[38] Other observers disagree, however:

> The Administration's proposed [FY2004] 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.[39]

---

[35] 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.

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

[37] 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 May 16, 2003.

[38] Michael Scardaville, "Emphasize How, Not How Much, in Domestic Preparedness Spending," The Heritage Foundation, Backgrounder No. 1628, Feb. 27, 2003. Available at: [http://www.heritage.org/Research/HomelandDefense/bg1628.cfm], visited May 16, 2003.

[39] National Association of Police Organizations, "Legislative Update," available at: [http://www.napo.org/legislative-update/legislativeupdate.htm], visited May 16, 2003.

Table 2. Funding for Selected Programs in the Justice Department

(All amounts in millions)

Program	FY2002 Appropriation	FY2003 Appropriation	FY2004 Request
Community Oriented Policing Services (COPS)	1,050	984	164
Byrne Memorial Formula Grant	846	651	0
Local Law Enforcement Block Grant	400	400	0
Justice Assistance Grants (new program)	—	—	600

Source: P.L. 107-77, P.L. 107-117, P.L. 108-7, P.L. 108-11, and U.S. Office of Management and Budget, *Fiscal Year 2004 Budget of the U.S. Government, Appendix*, pp. 641-644.

Policy Approaches. Congress could continue funding existing DHS programs and related Justice Department programs to help states and localities with general preparedness and public safety improvements, in addition to terrorism preparedness. A number of state and local officials have testified before Congress that general assistance programs are critical to the success of their daily operations.[40] This approach was also 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."[41] In the 108th Congress, preservation and distinction of the Assistance to Firefighters Program and Justice Department programs has been explicitly addressed in at least one bill, H.R. 1449.[42]

Integrating the Homeland Security Department's preparedness programs into a single agency would arguably create a "one-stop shop" for terrorism preparedness grants, which is a stated goal of the Administration and some Members of Congress.[43] DHS Secretary Tom Ridge has emphasized the importance of integrating first responder programs into ODP, and suggested that such existing programs as the

---

[40] Senate Governmental Affairs Committee, hearing, April 9, 2003, See statements of Chief Jeffrey Horvath, Dover Police Department, Dover, Delaware; and, Captain Chauncey Bowers, Prince George's County Fire Department, Prince George's County, Maryland.

[41] U.S. Congress, Senate Committee on Environment and Public Works, *First Responder Terrorism Preparedness Act of 2002*, report to accompany S. 2664, 107th Cong., 2nd sess., S.Rept. 107-295 (Washington: GPO, 2002), p. 6.

[42] H.R. 1449, sec. 431(k).

[43] White House Office of Homeland Security, *National Strategy for Homeland Security*, July 2002, pp. 41-45.

Assistance to Firefighters Program can be integrated without decreasing the program's effectiveness.[44]

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.

State or Local Funding

Several organizations representing state and local governments and first responder groups have generally supported proposals to increase funding to states and localities. There are disagreements, however, among these organizations, as well as policymakers, as to whether a new formula program should distribute funds initially to states or directly to localities.

Analysis. Organizations representing local governments such 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.[45] A number of congressional witnesses have also testified that direct funding to localities is essential to improving preparedness, since local responders will almost always be the first to arrive at the scene of an attack.[46]

On the other hand, organizations representing states 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] ...."[47] The Gilmore Commission, in its fourth annual report to Congress, also agreed with this approach, concluding that states must

---

[44] Senate Governmental Affairs Committee, hearing, May 1, 2003, see Senator Collins questions to DHS Secretary Ridge.

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

[46] Senate Governmental Affairs Committee, hearing, April 9, 2003. See statements of Chief Edward Plaugher, Arlington County Fire Department, Arlington, VA, and Chief Michael Chitwood, Portland Police Department, Portland, ME.

[47] 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*, hearing, 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."[48]

In the 107th Congress, the Senate Environment and Public Works Committee appeared to support 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.[49]

Policy Approaches. Should Congress determine that greater local discretion over the use of funds is desirable, it might instruct the administering agency to distribute all or a portion of funds directly to localities. Such an approach is taken in the Community Development Block Grant program (CDBG), which distributes 70% of formula funds to urban cities and counties and 30% of funds to states for use in nonurban areas. DHS Secretary Tom Ridge has stated that he is uncertain that such a distribution pattern would achieve the desired preparedness improvements, since distributing funds to localities might inhibit consistency with statewide plans. At the time of this writing, no introduced bill would distribute all formula funds to localities. S. 87 would follow a distribution pattern similar to CDBG, disbursing most funds to qualifying local governments and the remainder to states.

On the other hand, Congress might find that states require discretion in the use of funds to effectively coordinate statewide preparedness efforts. Thus, it could distribute funds through the states, as is currently done in the ODP formula grant program, and has been proposed by the Administration and some Members of Congress. Under this policy approach, Congress might determine what portion of funds states would have to distribute to local governments. At present, ODP requires states to pass on 80% of formula program funds.

---

[48] 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. The name "Gilmore Commission" comes from the name of the Chairman, former Governor James Gilmore of Virginia. The commission was charged with assessing the capabilities of federal, state, and local governments for responding to terrorist incidents involving weapons of mass destruction. Congress authorized the commission in Section 1405 of the National Defense Authorization Act for Fiscal Year 1999 (P.L. 105-261).

[49] S.Rept. 107-295, p. 5.

Factors in Grant Distribution[50]

Much recent discussion about first responder grants has focused on the factors in the formula for distributing grant funds. Currently, ODP distributes money for homeland security grants according to a single criterion set out in the Patriot Act: each state receives a minimum of 0.75% of the total money available.[51] The remainder of the money has, to date, been distributed according to state population, an action not specified in the Patriot Act. Combining this minimum amount with an amount based on population has resulted in per-person grant numbers that vary significantly, with more populous states receiving more total grant money, but fewer dollars per person than less populous states.[52] Some Members of Congress and other groups advocate a risk-based formula that reflects the threats to, and vulnerabilities of, different regions of the country. How to measure those threats and vulnerabilities is, however, a contentious issue, as is the question of how much discretion ODP will have to determine risk — and therefore where homeland security money goes. In a related action that attempted to take risk into account, ODP recently distributed $100 million to "high-threat urban areas," seven cities chosen on the criteria of "population density, critical infrastructure, and threat/vulnerability assessment."[53] The exact definitions of these criteria are classified.

Analysis. Generally, discussion over the variables in any homeland security grant formula has focused on at least two subjects: how to measure the different risks[54] to different areas, and how much discretion should be given to DHS to determine the risks to different areas. These questions are:

- *What* indicates risk to an area?
- *Who* decides what those indicators are?

The first issue is the *what* question. Determining risks to different geographic areas across the United States is difficult, since most existing risk assessment practices are not designed for such broad mandates. Risk assessment guidelines are generally centered around particular factories and industries, or finding the likelihood of cancer from an individual hazardous chemical. DHS, through ODP, is reportedly

---

[50] This section was written by Rob Buschmann, CRS Analyst in American National Government.

[51] P.L. 107-56, section 1014. The Virgin Islands, American Samoa, Guam, and the Northern Marina Islands each receive a minimum of 0.25%.

[52] Dale Russakoff and Rene Sanchez, "Begging, Borrowing for Security; Homeland Burden Grows for Cash-Strapped States, Cities," *Washington Post*, Apr. 1, 2003, p. A1.

[53] White House press release, April 8, 2003, available at: [http://www.whitehouse.gov/news/releases/ 2003/04/print/20030408-5.html], visited May 19, 2003. The seven cities are New York, Washington, DC, Los Angeles, Seattle, Chicago, San Francisco, and Houston. An additional $700 million has been appropriated to the high threat urban area program in the 2003 supplemental bill (P.L. 108-11).

[54] "Risk" here is defined as a combination of "threat," usually measured by intelligence reports, and "vulnerability," measured by a variety of methods.

working to create ways to measure risk of a terrorist attack to a particular area ("metrics"), reportedly in consultation with state and local groups.[55] These metrics, however, do not appear likely to be finished in the near future. The Department of Homeland Security has attempted to improve upon the basic criteria outlined in the Patriot Act, with little apparent success, and Secretary Ridge has asked to work with Congress in finding acceptable variables for a formula distributing money for first responders.[56] Describing the current grant structure as "ineffective," one study has listed six factors it believes should be weighted in the formula for grants: population, threat assessments, vulnerability assessments of critical infrastructure, number of areas where large numbers of people gather (such as stadiums), number of facilities where large volumes of hazardous materials are stored or produced, and percentage of counties and cities participating in mutual assistance agreements.[57] Considering (1) the difficulties in designing metrics to measure risk — determining what critical infrastructure should count, and how to weight each piece of infrastructure in terms of importance; and (2) the implications for grant allocation based on those metrics, finding an acceptable formula with agreed-upon variables that reflect risk may be very difficult.

An additional issue with risk-based allocation may be how to prevent "risk transfers" — shifts in the risk of terrorist attack from one state or locality to another without actually eliminating the overall chance of a catastrophic attack. The current minimum allocation to each state appears to address that issue; Secretary Ridge has said that "[DHS] made sure all the states get a minimum level of funding, because there are certain things that the federal government wants the states to do."[58] This statement seems to imply that DHS wants first responders across the country to be able to handle the same basic situations, perhaps in an attempt to ensure that every person across the country will have a minimum level of protection against terrorist attacks.

The second issue in funding formulas is how much discretion DHS will have in creating and altering the formula over time: the *who* question. Currently, ODP follows the minimal criteria in the Patriot Act, while distributing money to certain areas according to specific appropriations and accompanying instructions from Congress. DHS Secretary Ridge has asked for guidance from Congress in designing a formula for distributing homeland security grant money to reflect the threats and vulnerabilities of different regions across the United States; Ridge apparently

---

[55] Dalen A. Harris, "Homeland Security Funds Flow to State, Local Governments," National Association of Counties, *County News Online*, vol. 35, no. 9, May 5, 2003, available at: [http://www.naco.org/Template.cfm?Section=5-5-03&template=/ContentManagement/ContentDisplay.cfm&ContentID=7876], visited May 19, 2003.

[56] Senate Governmental Affairs Committee, hearing, May 1, 2003. See Secretary Ridge's remarks responding to questions from Sen. Collins.

[57] Michael Scardaville, "Adding Flexibility and Purpose to Domestic Preparedness Grant Programs," The Heritage Foundation, Backgrounder No. 1652, May 6, 2003 at [http://www.heritage.org/Research/HomelandDefense/bg1652.cfm], visited May 16, 2003.

[58] Senate Governmental Affairs Committee, hearing, May 1, 2003. See Secretary Ridge's remarks responding to questions from Sen. Collins.

believes the current method should be improved.[59] The National Association of Counties, however, has "insisted that any changes to the program support continued funding to both large and rural counties," a view that may conflict with increasing ODP discretion to focus funding on areas of highest risk.[60] Members of Congress have also expressed concern that unique aspects of their home states and cities may be missed by a DHS funding formula that is not spelled out in law.[61]

The *what* and *who* questions have both been addressed in introduced bills. One example, S. 87, directs the Secretary of DHS to allocate money to urban areas according to a specific formula that includes variables such as population, proximity to a nuclear or chemical plant, or international border; there is little or no discretion for the secretary to determine the level of risk to any area.[62] Another way of handling risk in formula factors would be to give more discretion to the Secretary of DHS while providing guiding factors; the high-threat urban areas grants, for example, followed language in the conference report which authorized the grants. As another example, H.R. 1449 gives ODP certain factors to follow in making grants, but also includes a clause that gives the Director of ODP discretion to create a formula "based on such criteria as the Director may establish."[63]

Policy Approaches. At least two general approaches to handling risk in homeland security formula grants appear to have emerged: (1) specifying the risk factors in law, leaving limited discretion to DHS, and (2) specifying broad factors or concepts in law, giving more discretion to DHS.

The first approach calls on Congress to determine the specific variables — critical infrastructure, threat assessments, etc. — that must be considered in making grants. This is the approach S. 87 takes for homeland security grants to cities. One possible advantage of this method may be that homeland security funding will be reasonably consistent once the variables are specified in law; for example, if a city is within 50 miles of nuclear power plant, it will continue to get funding year after year. This approach would also be relatively easy for Congress to oversee, as the basis for the formula is explicit. However, risk variables specified in law may be difficult to change later if threat and vulnerability assessments suggest the risks to particular areas have changed.

The second approach lets Congress define the guiding principles behind homeland security grants, allowing some discretion to DHS. This is the approach taken in the FY2002 consolidated appropriations bill (P.L. 108-7) and its accompanying report, which directed ODP to make grants to high-threat urban areas

---

[59] U.S. Congress, Senate Commerce Committee, *Transportation and Border Security*, hearing, 108th Cong., 1st sess., April 9, 2003 (Washington: GPO, 2003). See remarks by Secretary Ridge.

[60] Harris, *National Association of Counties County News Online*.

[61] Senate Governmental Affairs Committee, hearing, May 1, 2003. See remarks from Sen. Levin.

[62] S. 87, sec. 7.

[63] H.R. 1449, sec. 5.

based on such things as credible threat, vulnerability, population, and infrastructure of national importance.[64] This approach allows Congress to rely upon the expertise of DHS when setting the variables in grant formulas, without giving up oversight over how the money is spent. Arguably, if DHS is given greater discretion, it can interpret the legislative guidelines to fit changing risk conditions, and reflect the latest intelligence and threat assessments. A possible disadvantage to this method, however, is that homeland security funding may be inconsistent from year to year if the formula is changed too often; moreover, if Congress chooses to give broad discretion to DHS, some states or localities may feel they have been shortchanged in funding for homeland security.

One possible response to the problems of inconsistent funding and providing a basic level of protection from terrorism would be to assure all states a minimum level of funding, as is currently done in ODP formula grants. Supporters of this approach argue that assuring funding to states and localities may allow them to fulfill basic requirements for training or other activities without worrying about losing money based on recent threat assessments. If, however, a high minimum level of funding is set, DHS may not have enough resources (after taking out each state's minimum) to adequately address areas of high threat or vulnerability, regardless of the discretion Congress allows to the Department.

Flexibility with Grant Funds

At present, first responder preparedness programs fund four broad categories of assistance: planning, training, equipment, and exercises. Such activities have traditionally focused on enhancing the response capabilities of responders. A number of state and local officials have argued that the range of eligible activities should be expanded to include infrastructure security, personnel salaries, and overtime costs.

Analysis. Arguably, state and local officials have had more discretion and flexibility with preparedness funds since the terrorist attacks of September 2001. ODP's formula program, for example, had four categories of eligible equipment in FY2001, but 12 categories in FY2003.[65] In the FY2003 supplemental appropriation, Congress authorized grant funds specifically for critical infrastructure protection (including overtime), a new activity for ODP.[66] The supplemental also appropriated a lump sum for the ODP formula program, rather than appropriating specific amounts for planning, training, equipment, and exercises, as had been done in recent appropriations bills. ODP, drawing on this relatively broad appropriations language, has given states more flexibility with FY2003 supplemental funds.[67]

---

[64] U.S. Congress, Conference Committee, *Making Further Appropriations for the Fiscal Year 2003, and for Other Purposes*, report to accompany H.J. Res. 2, 108th Cong., 1st sess., H. Rep. 108-10 (Washington: GPO, 2003), p. 637.

[65] Based on analysis of ODP guidance documents for formula program.

[66] P.L. 108-11, "Office for Domestic Preparedness."

[67] From FY2001 through the regular FY2003 appropriation (P.L. 108-7), conference reports (continued...)

Some state and local officials may wish to use first responder grants to increase security at such public facilities as water treatment plants, electricity plants, and transportation hubs. A number of precedents for authorizing infrastructure security activities exist. Since the attacks of September 2001, Congress has authorized funding for security at certain types of facilities, including airports, seaports, and water treatment plants.[68] Beginning with the FY2002 program, recipients of ODP formula grants were authorized to a use a portion of funds for infrastructure security. Perhaps most importantly, Congress set a precedent by appropriating $200 million in the FY2003 supplemental specifically for critical infrastructure protection grants.

State and local officials have also encouraged Congress to authorize funding for hiring and salary expenses. At present, the only emergency management program that funds salaries is FEMA's Emergency Management Performance Grant program (EMPG), which supports state-level emergency planning efforts.[69] State emergency management agencies use EMPG funds to hire planners and administrative personnel. The Community Oriented Policing Services program (COPS) in the Justice Department, a general public safety program, also funds hiring and salary expenses. Local law enforcement agencies use a portion of funds under the COPS program to hire (or rehire) officers.[70] At least one bill has been introduced in the 108th Congress that would authorize FEMA to award grants for hiring firefighters (H.R. 1118/S. 544).

A number of state and local officials have also asked Congress to provide funding for overtime costs. The U.S. Conference of Mayors (USCM), 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

---

[67] (...continued)
accompanying the appropriations statutes allocated amounts for specific activities, including planning, training, equipment, and exercises. ODP followed the conference report language, distributing formula funds in distinct allocations. States were not allowed to transfer funds among allocations. The FY2003 supplemental (P.L. 108-11), however, appropriated a lump-sum to the ODP formula program and offered no further breakdown. Thus, ODP is offering states greater flexibility with the use of FY2003 supplemental funds. See U.S. Department of Homeland Security, Office for Domestic Preparedness, "Program Guidance, State Homeland Security Grant Program II," April 2003, available at: [http://www.ojp.usdoj.gov/odp/docs/fy03shsgp2.pdf], visited May 13, 2003.

[68] This issue is discussed generally in CRS Report RL30153, *Critical Infrastructures: Background, Policy, and Implementation*, by John Moteff. Also see CRS Report RL31465, *Protecting Critical Infrastructure from Terrorist Attack: A Catalog of Selected Federal Assistance Programs*, coordinated by John Moteff.

[69] Authority for funding personnel salaries comes from Title VI of the "Robert T. Stafford Disaster Relief and Emergency Appropriations Act" (Stafford Act), 42 U.S.C. 5196b (a) and (b)(4).

[70] For more information on the COPS program, see CRS Report 97-196 GOV, *The Community Oriented Policing Services (COPS) Program: An Overview*, by David Teasley and Joanne O'Bryant.

personnel can be fully integrated into the national homeland defense effort."[71] Congress established a precedent for funding overtime costs in FY2003 supplemental appropriations, which allowed funds from the critical infrastructure protection grants and high-threat urban area grants to be used for overtime.

In testimony before the Senate Governmental Affairs Committee, DHS Secretary Ridge addressed the issues of funding for hiring and overtime costs. He indicated that federal, state, and local governments should share responsibility for increasing preparedness levels, and that federal funding for hiring and salaries would not be an appropriate activity. He did state, however, that federal funding for overtime costs, especially during times of heightened alert, was, "... a legitimate cost that we [the federal government] should help them absorb."[72]

Policy Approaches. One approach would be to authorize a broad range of activities, giving state and local governments additional flexibility in the use of first responder funds. Such an approach is taken in S. 87, for example, which would allow recipients to use funds for personnel costs, overtime, and infrastructure security. Authorizing such activities could, arguably, change the focus of the grant program. Were states and localities to allocate significant grant funds to security and overtime, fewer funds would be available for enhancing the capabilities of first responders to respond to WMD attacks, which is the Administration's stated goal for the program.[73]

Alternatively, federal funds could be restricted to only terrorism-oriented activities in the categories of planning, training, equipment, and exercises. This approach would limit recipient flexibility, but it could ensure that funds are used to enhance response capabilities, rather than for operational expenses. At least one observer has argued for such a policy, stating, "States, counties, and cities should bear most of the burden for meeting day-to-day needs such as hiring new staff and procuring basic equipment ...."[74] ODP's State Homeland Security Grant Program takes such an approach in its current form. While a small portion of funds may be used for security efforts and overtime expenses associated with training and field exercises, the majority of funds are used for improving response capabilities. During the 107th Congress, this approach was taken by S. 2664 (a similar bill has been reintroduced in the 108th Congress as S. 930).

Another approach would be to allow a portion of funds to be used for infrastructure security and personnel costs. Congress could instruct ODP to limit the percentage of funds used for these activities, or give the office discretion to set such

---

[71] 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.

[72] U.S. Congress, Senate Governmental Affairs Committee, *Investing in Homeland Security, Streamlining and Enhancing Homeland Security Grant Programs*, hearing, 108th Cong., 1st sess., May 1, 2003 (Washington: GPO). See questions from Sen. Voinovich.

[73] White House Office of Homeland Security, *National Strategy for Homeland Security*, p. 45.

[74] Michael Scardaville, "Emphasize How ...," Heritage Foundation, Feb. 27, 2003.

limits. H.R. 1449, for example, would limit to 10% the amount of funds available for compensation to first responders, including overtime costs.[75]

Distribution of Funds and Accountability

The Administration has emphasized in press releases and testimony that it hopes to minimize administrative requirements in the proposed program. It has not, however, released specific details about the administrative and regulatory requirements that it would support for this program. State and local officials have emphasized that speedy distribution of funds should be a priority in all preparedness assistance programs.[76] Given the increasing amount of funding appropriated to first responder programs, some argue that such priorities need to be balanced with the need for accountability.

Analysis. Some congressional committees have expressed frustration over reports that preparedness grants are not reaching local communities quickly.[77] Both the House and Senate Appropriations Committees addressed this issue in their work on the Emergency Wartime Supplemental Appropriations Act of FY2003. In their reports, the committees recommended deadlines both for ODP to distribute funds to states, and for states to distribute funds to localities.[78] The enacted FY2003 supplemental appropriations bill (P.L. 108-11) included deadlines for state submission of applications, ODP distribution to states, and state distribution to localities.[79]

Speedy distribution of funds, if accompanied by limited administrative requirements, could affect 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

---

[75] H.R. 1449, sec. 431(c)(2).

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

[77] For more information on this topic, see CRS Congressional Distribution Memorandum, "Office for Domestic Preparedness: Administrative Issues in Grant Disbursal to States and Localities," by Ben Canada.

[78] U.S Congress, House Committee on Appropriations, *Making Supplemental Appropriations For The Fiscal Year Ending September 30, 2003, And For Other Purposes*, 108th Cong., 1st sess., H.Rept. 108-55 (Washington: GPO, 2003) pp. 34-35; Senate Committee on Appropriations, *Making Supplemental Appropriations ... For The Fiscal Year Ending September 30, 2003, And For Other Purposes*, report to accompany S. 762, 108th Cong., 1st sess., S.Rept. 108-33 (Washington: GPO, 2003), pp. 23-24.

[79] P.L. 108-11, chapter 6, "Office for Domestic Preparedness."

> time, there will be very little prospect for answering the question, "How well prepared *are* we?"[80]

A number of other reports have emphasized accountability in preparedness grant programs, including reports from the U.S. General Accounting Office, Century Foundation, and Heritage Foundation.[81] (The concept of preparedness standards is discussed in CRS Report RL31680, *Homeland Security: Standards for State and Local Preparedness*.)

Policy Approaches. Congress could direct the administering agency to develop preparedness goals and performance measures against which the progress of states and localities could be compared. Such an emphasis on results, rather than administrative processes, has been recommended in a number of studies on block grant programs.[82]

Bills in the 108th Congress take a variety of approaches to accountability provisions. Some bills, such as H.R. 1389, H.R. 1449, and S. 930, would require recipients to participate in field exercises and report results to Congress. S. 87 calls for applicants to submit a statement of activities, including preparedness objectives and projected use of funds, before receiving grant funds. Recipients would also submit annual performance reports to the DHS.

On the other hand, Congress might decide that urgent state and local needs take priority over simplification of program oversight and could instruct the administering agency to distribute funds as expeditiously as possible. A number of local emergency managers have supported such an approach.[83] Congress arguably set a precedent for this approach by including several deadlines in FY2003 emergency supplemental appropriations. The administering agency could also increase the level of training and technical assistance available to state officials.

---

[80] Gilmore Commission, *Fourth Annual Report*, p. 37.

[81] See: U.S. General Accounting Office, *Homeland Security: Effective Intergovernmental Coordination Is Key to Success*, GAO Report GAO-02-1011T (Washington: GPO, Aug. 2002), pp. 13-15; Donald F. Kettl, "Promoting State and Local Government Performance for Homeland Security," The Century Foundation, June 2002, at: [http://www.homelandsec.org/Pub_category/pdf/state_local_gov_perform.pdf], visited May 16, 2003; Michael Scardaville, "Adding Flexibility and Purpose to Domestic Preparedness Grant Programs," The Heritage Foundation, Backgrounder No. 1652, May 6, 2003, at: [http://www.heritage.org/research/homelandsecurity/bg1652.cfm], visited May 16, 2003.

[82] For example, see U.S. General Accounting Office, *Block Grants: Issues in Designing Accountability Provisions*, GAO/AIMD-95-226, Sept. 1995 (Washington: GPO, 1995), pp. 10-13.

[83] See statements of Chief Edward Plaugher, Arlington County Fire Department, Arlington, VA, and Chief Michael Chitwood, Portland Police Department, Portland, ME, in Senate Governmental Affairs Committee, hearing, April 9, 2003.

Conclusion

Should Congress take further action on the proposed First Responder Initiative, or a similar proposal, it will face a number of issues common to all grant programs, including range of eligible activities, matching requirements, and program accountability. Congress would also face issues specifically related to homeland security, such as determining whether risk factors should be included in a distribution formula, as well as the possible development of national preparedness standards.

Hearings in the 107th Congress

House Committee on Government Reform, Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations. *How Effectively Are Federal, State and Local Governments Working Together to Prepare for a Biological, Chemical or Nuclear Attack?* 107th Cong., 2nd sess., March 1, 2002.

——. *The Silent War, Are Federal, State, and Local Governments Prepared for Biological and Chemical Attacks,* 107th Cong., 1st sess., October 5, 2001.

Senate Committee on Appropriations. *Homeland Security,* 107th Cong., 2nd sess., April 10, 2002.

Senate Committee on Environment and Public Works. *First Responder Initiative,* 107th Cong., 2nd sess., March 12, 2002.

Senate Committee on Governmental Affairs. *The Local Role in Homeland Security,* 107th Cong., 1st sess., Dec. 11, 2001.

Hearings in the 108th Congress

House Committee on Appropriations, Subcommittee on Homeland Security, *FY2004 Homeland Security Budget Request,* 108th Cong., 1st sess., March 20, 2003.

——. *FY2004 Emergency Preparedness and Response Directorate Appropriations,* 108th Cong., 1st sess., April 30, 2003.

Senate Committee on Governmental Affairs, *Investing in Homeland Security, Challenges on the Front Line,* 108th Cong., 1st sess., April 9, 2003.

——. *Investing in Homeland Security, Streamlining and Enhancing Homeland Security Grant Programs,* 108th Cong., 1st sess., May 1, 2003.

——. *Investing in Homeland Security, Challenges Facing State and Local Governments,* 108th Cong., 1st sess., May 15, 2003.

Related CRS Products

CRS Report RS21302, *Assistance to Firefighters Program*, by Len Kruger.

CRS Report RL31490, *Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

CRS Report RL31791, *Emergency Management Funding for The Department of Homeland Security: Information and Issues for FY2004*, coordinated by Keith Bea.

CRS Report RS21400, *FY2003 Appropriations for First Responders: Fact Sheet*, by Ben Canada and Shawn Reese.

CRS Report RL31680, *Homeland Security: Standards for State and Local Preparedness*, by Ben Canada.

CRS Report RS21348, *Risk Assessment in the President's National Strategy for Homeland Security*, by Rob Buschmann.

CRS Report RL31227, *Terrorism Preparedness: Catalog of Selected Federal Assistance Programs*, coordinated by Ben Canada.

CRS Report RL31670, *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, by Keith Bea.