

CRS Report for Congress

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FY2006 Homeland Security Grant Guidance Distribution Formulas: Issues for the 109th Congress

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Summary

In FY2003 and FY2004, the Department of Homeland Security (DHS) allocated State Homeland Security Grant Program (SHSGP) and Law Enforcement Terrorism Prevention Program (LETPP) funding based on a formula that consisted of guaranteeing each state a 0.75% amount of total program appropriations. The Department of Homeland Security chose to allocate the remainder of appropriations based on the state's population percentage of the national population. In FY2005, Congress required the Department of Homeland Security to allocate funding in the same manner as in FY2004. Congress, in P.L. 109-90 (FY2006 Department of Homeland Security appropriations), legislated similar allocation guidance as in the FY2003 and FY2004 appropriations. In FY2006, DHS decided it will allocate funding to states based on risk and need, rather than on population.

This report summarizes the distribution method the Department of Homeland Security expects to use in allocating FY2006 state and local homeland security grant funding. Additionally, it discusses some potential issues associated with the department's new grant allocation guidance. The report does not discuss administrative changes to the department's homeland security programs beyond the changes to the distribution method.

This report will be updated when congressional- or executive-branch actions warrant.

In FY2003 and FY2004, Congress required the Department of Homeland Security (DHS) to allocate 0.75%¹ of total appropriations for homeland security programs² to each

¹ P.L. 107-56 (USA PATRIOT Act), Section 1014.

² For information on FY2006 appropriations for DHS homeland security programs, see CRS Report RS22050, *FY2006 Appropriations for State and Local Homeland Security*, by Shawn Reese (continued...)

state with remainder of total appropriations at the discretion of DHS.³ DHS chose to use the state's population percentage of the national population as the basis for this secondary distribution, and to distribute a base amount of 0.25% to U.S. insular areas. Congress required DHS to allocate FY2005 homeland security grants in the same manner as FY2004.⁴ In FY2006 DHS alters the distribution funding formula by substituting population with a risk- and needs-based formula.

FY2006 Distribution Method

In October 2005, Congress appropriated \$550 million for the State Homeland Security Grant Program (SHSGP), \$400 million for the Law Enforcement Terrorism Prevention Program (LETPP), \$740 million for high-threat, high-risk urban areas—part of \$1.2 billion for the Urban Area Security Initiative (UASI)—and amounts for other state and local homeland security assistance programs.⁵ Congress required DHS to allocate a base amount of 0.75% of total funds appropriated for SHSGP and LETPP to each state. The distribution method for the remainder of appropriations for SHSGP and LETPP was at the discretion of DHS. Additionally, Congress authorized the allocation of UASI funding to be at the discretion of DHS.⁶ On December 2, 2005, DHS issued its *Fiscal Year 2006 Homeland Security Grant Program: Program Guidance and Application Kit* to provide information and guidance on state and local homeland security grant programs.

The FY2006 guidance states that DHS elected to provide the 0.75% of total appropriations as a base (instead of as a minimum) to states under SHSGP and LETPP.⁷

² (...continued)

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³ P.L. 108-7, P.L. 108-11, and P.L. 108-90.

⁴ P.L. 108-334, Title III.

⁵ P.L. 109-90 (FY2006 DHS appropriations), Title III. Other grant programs include Assistance to Firefighters, Emergency Management Performance Grants, and Citizen Corps.

⁶ Ibid.

⁷ For a discussion of the difference between a base and minimum, see CRS Report RL33050, *Risk-Based Funding in Homeland Security Legislation: Issues for the 109th Congress*, by Shawn Reese.

Table 1. State Homeland Security Grant Program and Law Enforcement Terrorism Prevention Program Base Allocations: FY2005 and Estimated FY2006
(amounts in millions)

| States and U.S. Insular areas | FY2005 Base allocations | FY2006 Estimated base allocations |
|---|-------------------------|-----------------------------------|
| Each state, DC, and Puerto Rico | \$11.25 | \$7.13 |
| U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands | \$1.20 | \$0.80 |
| Total base amount | \$589.80 | \$374.00 |

Source: Amounts based on CRS calculations of FY2005 (P.L. 108-334) and FY2006 (P.L. 109-90) DHS appropriations and for SHSGP and LETPP.

Additionally, DHS has chosen to allocate the remainder of total appropriations based on risk and need. The guidance also states that UASI funds will be allocated based on risk and need—in FY2003, FY2004, and FY2005 UASI funds were allocated based on risk only.⁸

State and local risk will be determined by DHS using a risk formula developed by the Office of Grants and Training (G&T)—formerly the Office for State and Local Government Coordination and Preparedness—in conjunction with other DHS and federal entities. This formula, however, is not publicly available at this time, and may not be available in the future due to its possible security classification.

Risk. As defined by DHS, its risk calculations are based upon:

- the consequences of a specified attack on a particular asset;
- the vulnerability of that asset to that particular threat; and
- threat to that asset.⁹

The DHS risk formula is to consist of two risk calculations:

- *asset-based risk*, which uses threat values derived from U.S. intelligence community assessment of threats to specific critical infrastructure; and
- *geographic-based risk*, which uses values based on inherent risks associated to geographical areas (i.e., states or urban areas), taking into account such factors as international borders, terrorism reporting and investigations, and population density.

⁸ U.S. Department of Homeland Security, Office of Grants and Training, *Fiscal Year 2006 Homeland Security Grant Program: Program Guidance and Application Kit* (Washington: Dec. 2005), p. 52.

⁹ *Ibid.*, p.53.

The risk associated with assets combined with geographical areas will produce a state and locality terrorism risk score.¹⁰

Need. Coupled with the DHS risk formula, state and local homeland security needs will be assessed through a capability review, which is currently underway. This review is an effort to help states determine their own homeland security capabilities—identified and explained in the National Preparedness Goal¹¹—through an evaluation of each state’s homeland security program and the state’s ability to address those needs.¹² Following this review, states are to submit a *Program and Capability Enhancement Plan* and an *Investment Justification* with their FY2006 Homeland Security Grant Program (HSGP) application.

The enhancement plan is a multi-year management plan that identifies state homeland security objectives that are additional to G&T homeland security program objectives and funding. The investment justification is to identify specific homeland security needs from the enhancement plan that states wish to address using FY2006 HSGP funds. Additionally, the investment justification is to outline implementation plans that will assist the states in enhancing and developing their homeland security capabilities.¹³

State applications will be evaluated and scored through a peer review process based on the effectiveness of each state’s enhancement plan to address its needs and the plan’s reduction of the state’s overall risk. States will be notified of their total risk- and needs-based funding allocation at the time of award.¹⁴

Issues

In August 2004, the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) criticized the allocation of federal homeland security assistance and recommended that the distribution not “remain a program for general revenue sharing.”¹⁵ The former members of the 9/11 Commission, acting as private citizens conducting the 9/11 Public Discourse Project, gave Congress and DHS, in its final report dated December 5, 2005, a failing grade on distribution of homeland security funding to states:

Congress has still not changed the underlying statutory authority for homeland security grants, or benchmarks to insure that funds are used wisely. As a result,

¹⁰ Ibid.

¹¹ For information on the National Preparedness Goal, see CRS Report RL32803, *The National Preparedness System: Issues for the 109th Congress*, by Keith Bea.

¹² *Fiscal Year 2006 Homeland Security Grant Program: Program Guidance and Application Kit*, p. 53.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, July 2004), p. 396.

homeland security funds continue to be distributed without regard for risk, vulnerability, or the consequences of an attack, diluting the national security benefits of this important program.¹⁶

Given this criticism, DHS's development of a risk- and needs-based formula and its determination to allocate a guaranteed base to states raise some policy questions that Congress may wish to address through oversight of DHS's administration of FY2006 HSGP grants. Some of the issues include:

- guaranteed minimum vs. guaranteed base;
- risks vs. needs; and
- delayed awarding of state allocations.

Minimum Versus Base.¹⁷ DHS has elected to provide a guaranteed base to every state and U.S. insular area from SHSGP and LETPP funding. Congress authorized DHS discretion in determining if the 0.75% of total appropriations guaranteed to states is to be either a minimum or a base.¹⁸

If DHS were to use a 100% risk-based formula in determining state allocations, a minimum is the smallest amount each state would receive following risk-based state allocations. Were the risk-based calculations to result in any state allocation less than the statutorily defined minimum, allocations of states receiving more than the minimum would be reduced proportionally, so that all states would receive at least the minimum.

A base is an amount guaranteed to each state without regard to risk or need. After allocation of base amounts, states might receive further funding based on their risk and needs.

Policy options for the method of grant allocation could include a guaranteed base, guaranteed minimum, or neither. That is, policymakers may choose to decide whether to (1) provide every state with the same amount of base funding, and then allocate the remainder of total appropriations based on risk and need; (2) to allocate total appropriations based on risk and need, and then if a state does not receive a certain amount or percentage (minimum), provide additional funding to the state to meet this amount or percentage, with a proportional reduction of funding to the other states; or (3) to allocate funding to states based 100% on risk and need.

Risk Versus Need. DHS has elected not to use a 100% risk-based formula for allocating the remainder of total appropriations following the distribution of state base amounts. Instead, DHS has developed a two-part approach to determining state allocations. This approach consists of a DHS risk assessment and a state's justification of need for funding. DHS has not informed states, through its FY2006 guidance, what

¹⁶ 9/11 Public Discourse Project, *Final Report on 9/11 Commission Recommendations*, p. 1, available at [<http://www.9-11pdp.org>], visited Dec. 8, 2005.

¹⁷ For an in-depth discussion on minimum versus base, see CRS Report RL33050, *Risk-Based Funding in Homeland Security Grant Legislation: Issues for the 109th Congress*, by Shawn Reese.

¹⁸ P.L. 109-90, Title III.

percentage of remaining funds will be allocated based on risk and what percentage of remaining funds will be allocated based on need, or if the two will be combined into a single allocation.

One could argue that by not allocating strictly on risk, DHS has not addressed the critics, such as the 9/11 Commission, in its 2004 report, who advocate a purely risk-based allocation of homeland security funding. By coupling needs with risk, DHS might be providing funding to states that do not have a high risk of terrorism. Conversely, by allocating funding based on both risk and needs, DHS is arguably addressing not only terrorism risks, but also a state's capability to address those terrorism risks.

Congress may wish to address the issue of risk- and needs-based funding by reviewing FY2006 state allocations, once they have been announced by DHS at a later date, and determining if the new distribution formula meets the homeland security needs of the nation as a whole. If Congress were to determine that this new distribution method does not address the national needs, it might consider imposition of a distribution method beyond the present statutory requirement of a guaranteed amount of 0.75% to every state. This distribution method might include risk criteria and benchmarks for determining national homeland security needs.

Delayed Awarding of State Allocations. In FY2003-FY2005, states were informed of their homeland security grant allocation early in the fiscal year.¹⁹ States have been notified of their FY2006 base allocation (approximately \$7.13 million); however, because of DHS's decision to wait until states complete their enhancement plan and investment justification, states will not be notified of their total grant allocation until sometime in the spring of 2006.

It is possible that states, lacking an indication of how much funding they will receive, will not know how to accurately plan or develop homeland security activities for FY2006. It is possible that a state will develop an enhancement plan and investment justification that relies on a certain amount of federal homeland security funding, and then be notified—following DHS's risk and needs assessment—that it will not be receiving the desired amount of funding or any funding beyond its base allocation. This in turn might result in the state having to adjust or rework its homeland security planning and implementation activities. Additionally, by delaying the announcement of state allocations, localities could be further delayed in being informed by states of any FY2006 funding they might receive.

Conversely, by delaying the announcement of state allocations, DHS may be afforded an extended period for more accurately determining state homeland security risks and needs. DHS's requirement for an enhancement plan and investment justification could also result in states more accurately determining their risks, capabilities, and needs, which could facilitate DHS's overall national risk and needs assessment.

¹⁹ In FY2003, state allocations were announced in Jan. 2003; in FY2004, state allocations were announced in Dec. 2003; and in FY2005, state allocations were announced in Nov. 2004.