

Report for Congress

Received through the CRS Web

Federal Agency Emergency Preparedness and Dismissal of Employees

Updated March 4, 2003

L. Elaine Halchin
Analyst in American National Government
Government and Finance Division

Federal Agency Emergency Preparedness and Dismissal of Employees

Summary

The September 11, 2001 attacks on the Pentagon and the World Trade Center provided a compelling reminder of the importance of emergency and disaster preparedness for federal agencies in the United States. Natural disasters, infrastructure breakdowns, and emergencies also can disrupt agency operations, place employees at risk, and damage or destroy federal buildings.

Responsibility for federal agency emergency preparedness is highly decentralized. Generally, agencies that occupy buildings under the control of the General Services Administration (GSA) share responsibility for emergency preparedness with the Office of Federal Protective Service (FPS), currently part of GSA. Agencies that have received delegations of authority for security functions from GSA, agencies that have independent real property authority, or agencies whose buildings are statutorily exempted from GSA control, are responsible for protecting their employees and buildings. Effective March 1, 2003, FPS moved to the Department of Homeland Security (DHS). To date, DHS has not promulgated information relating to its role in agency emergency preparedness, including FPS. Therefore, this report is written from the perspective of FPS being part of GSA and will be revised as further information becomes available.

With the passage of the Homeland Security Act (P.L. 107-296), responsibility for building security will expand and shift to the Department of Homeland Security. P.L. 107-296 transfers FPS to DHS and gives the Secretary responsibility for safeguarding federal buildings and buildings occupied by federal agencies, which may lead to changes in how the federal government approaches agency preparedness.

Generally, the authority to dismiss employees who work in executive branch agencies located in Washington, DC is held by the director of the U.S. Office of Personnel Management (OPM). However, agency heads may act independently if the need arises, although coordinated action is preferred. Dismissal authority among federal courts and legislative branch agencies generally is decentralized.

This report discusses several issues relevant to federal agency emergency preparedness, including funding, the development of a federal emergency decision and notification protocol for the Washington, DC area, the status of agency preparedness activities and implications of homeland security legislation for the protection of federal buildings and employees. It concludes with a number of policy questions still to be answered by Congress and the Administration following the enactment of the Homeland Security Act.

Contents

Introduction	1
Emergency Preparedness	2
Who Is Responsible for Emergency Preparedness?	2
Emergency Preparedness Functions	5
The Interagency Security Committee (ISC)	7
Dismissal and Closure Authority	9
Washington, DC	9
Executive Branch	9
Legislative Branch	12
U.S. Supreme Court	12
Outside of Washington, DC	13
Issues	13
Funding for Building Security	13
Federal Emergency Decision and Notification Protocol	14
Status of Agency Preparedness	15
Homeland Security Legislation	16
Policy Questions	17

Federal Agency Emergency Preparedness and Dismissal of Employees

Introduction

The September 11, 2001 attacks on the Pentagon and the World Trade Center provided a compelling reminder of the importance of emergency and disaster preparedness for federal agencies located in the United States. Other recent terrorist incidents on U.S. soil include the bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995, and the bombing of the World Trade Center on February 26, 1993. Terrorist acts, though, are only one type of incident or emergency for which government facilities and employees must prepare. Natural disasters, such as earthquakes, floods, tornadoes, and even heavy snowstorms, and infrastructure breakdowns and emergencies, including power outages, fires, broken water mains, and inoperable elevators, also can disrupt agency operations, place employees at risk, or damage or destroy federal buildings. On September 5, 2000, the Earle Cabbell Federal Building in Dallas lost electrical power and was partially flooded following an accidental break in a water main, and a minor fire prompted the evacuation of the federal building in Council Bluffs, Iowa, in December 1999.

Agencies are well-served by providing for the protection of their personnel. Employees expect to be safe from undue harm in their workplaces; feeling and believing they are safe frees them from being distracted by concerns about personal safety. Safeguarding agency personnel also may be considered a pre-condition to continuity of operations. Following an emergency or disaster, federal employees are needed to continue agency operations. A host of agency activities, from performing security checks at building entrances to developing and practicing an emergency response plan, can help protect employees in event of an emergency, and also demonstrates an agency's commitment to employee safety.

The first section of this report discusses who is responsible for agency emergency preparedness, describes emergency preparedness functions, and reviews the work of the Interagency Security Committee. Next, the report reviews dismissal and closure authority for government agencies located in Washington, DC, and outside Washington, DC. The final two sections cover issues and policy questions, including funding for building security, the status of agency preparedness, the implications of homeland security legislation for agency preparedness, and the ramifications of the Federal Emergency Decision and Notification Protocol.

Effective March 1, 2003, the Office of Federal Protective Service moved from the General Services Administration (GSA) to the Department of Homeland Security (DHS). To date, DHS has not promulgated information relating to its role in agency emergency preparedness, including FPS. Therefore, this report is written from the

perspective of FPS being part of GSA and will be revised as further information becomes available.

Emergency Preparedness

Federal agency emergency preparedness is highly decentralized. The size and geographic dispersal of the federal workforce dictate that emergency planning and preparedness be managed and carried out locally. Within the United States, there are 2.6 million federal government civilian employees working in all 50 states and in thousands of facilities. Most employees, nearly 2.3 million (88%), work outside the Washington, DC metropolitan statistical area.¹

Who Is Responsible for Emergency Preparedness?

Responsibility for federal agency emergency preparedness varies and, accordingly, guidance may vary from agency to agency and building to building. As explained in greater detail below, agencies occupying facilities owned or leased by the General Services Administration are subject to the provisions of Title 41 of the *Code of Federal Regulations* that direct occupant agencies to establish an emergency response team and to develop an emergency plan. Occupant agencies are aided by GSA's Office of Federal Protective Service (FPS) in establishing and maintaining an emergency program. Federal agencies that occupy buildings not subject to GSA control or not covered by FPS are responsible for devising their own emergency preparedness programs.

Generally, agencies that occupy facilities owned or leased by GSA share responsibility for disaster preparedness with FPS. As the government's landlord, GSA has control over public buildings outside of Washington, DC, purchased or constructed from appropriations under its control² and has charge of public buildings and grounds in Washington, DC.³ However, exceptions exist, and these are discussed below. Facilities that fall under the definition of "public building" include: federal office buildings, post offices, customhouses, courthouses, appraisers stores, border inspection facilities, warehouses, record centers, relocation facilities, telecommuting centers, and "any other buildings or construction projects the inclusion of which the President may deem, from time to time hereafter, to be justified in the public interest"⁴

¹ U.S. Office of Personnel Management, *Federal Civilian Workforce Statistics, Employment Trends as of March 2002*, June 2002. These figures include civilians employed in the legislative, judicial, and executive (Department of Defense, non-Department of Defense, and U.S. Postal Service) branches. Excluded are the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, and the National Imagery and Mapping Agency.

² 40 U.S.C. 285.

³ 40 U.S.C. 19.

⁴ 40 U.S.C. 612.

Security arrangements for post offices and courthouses are not the responsibility of FPS alone. Typically, the U.S. Postal Service (USPS) is responsible for security at stand-alone post offices (i.e., buildings occupied only by USPS). In locations where a post office shares a facility with another occupant, generally GSA has primary responsibility for security. In federal courthouses, responsibility for security is divided between FPS and the U.S. Marshals Service. FPS handles perimeter security while federal marshals are responsible for internal security. However, for the purpose of emergency preparedness, courthouses are subject to the same provisions in the *Code of Federal Regulations* as agencies which occupy buildings served by FPS.

In some cases, GSA has delegated one, or more, of its functions to an occupant agency or organization.⁵ GSA may delegate security authority when there is a clear and unique security requirement, a critical national security issue, or an intelligence or law enforcement mission; or the current security contractor is ineffective.⁶ For example, GSA has delegated security authority to the Secret Service for the White House and to the Defense Logistics Agency (DLA), Internal Revenue Service (IRS), Immigration and Naturalization Service (INS), Office of Personnel Management (OPM), Federal Bureau of Investigation (FBI), and Department of Justice for some or all of the buildings these agencies occupy.⁷ GSA has approved a total of 278 delegations of authority for security purposes; each delegation is for a specific building or a complex consisting of several buildings in close proximity to each other.⁸

Some organizations or institutions, and their facilities, are statutorily exempted from GSA's authority and hence are responsible for securing their buildings and protecting their personnel. These include the General Accounting Office (GAO),⁹ the Capitol complex,¹⁰ and the U.S. Supreme Court.¹¹ Additionally, the term "public building"

shall not include any such buildings and construction projects: (A) buildings and construction projects on the public domain (including that reserved for national forests and other purposes), (B) on properties of the United States in foreign countries, (C) on Indian and native Eskimo properties held in trust by the United

⁵ GSA may delegate to any federal agency authority for leasing, real property management and operation, individual repair and alteration projects, lease management (contracting office representative authority), disposal of real property, administrative contracting responsibilities, security, and utility services (41 CFR 102-72.25).

⁶ 41 CFR 102-72.95.

⁷ Information provided, in writing, by the Office of Federal Protective Service, May 9, 2002.

⁸ Information provided, in writing and telephonically, by the Office of Federal Protective Service, May 9 and July 9, 2002.

⁹ 31 U.S.C. 781(a).

¹⁰ 40 U.S.C. 13a. See CRS Report RL30861, *Capitol Hill Security: Capabilities and Planning*, and *Capitol Hill Security*, an entry in the CRS terrorism electronic brief book, both by Paul Dwyer and Stephen W. Stathis.

¹¹ 40 U.S.C. 13c.

States, (D) on lands used in connection with Federal programs for agricultural, recreational, and conservation purposes, including research in connection therewith, (E) on or used in connection with river, harbor, flood control, reclamation or power projects, or for chemical manufacturing or development projects, or for nuclear production, research, or development projects, (F) on or used in connection with housing and residential projects, (G) on military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense), (H) on installations of the Department of Veterans Affairs used for hospital or domiciliary purposes, and (I) the exclusion of which the President may deem, from time to time hereafter, to be justified in the public interest.¹²

However, an agency that is exempted from GSA control may opt to contract with FPS for security services. In these cases, agencies are subject to the emergency preparedness provisions of Title 41 of the *Code of Federal Regulations*.

Thirty-six federal agencies have some level of independent real property authority, which allows them to purchase, own, or lease space, buildings, or parcels of land.¹³

- Agency for International Development
- American Battle Monuments Commission
- Appalachian Regional Commission
- Bonneville Power Administration
- Broadcasting Board of Governors
- Central Intelligence Agency
- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Education
- Department of Energy
- Department of Health and Human Resources
- Department of Housing and Urban Development
- Department of the Interior
- Department of Justice
- Department of Labor
- Department of State
- Department of Transportation
- Department of the Treasury
- Department of Veterans Affairs
- Environmental Protection Agency
- Federal Emergency Management Agency
- General Services Administration
- National Aeronautics and Space Administration
- National Archives and Records Administration

¹² 40 U.S.C. 612.

¹³ GAO-02-1004, Sept. 2002, *Building Security: Interagency Security Committee Has Had Limited Success in Fulfilling Its Responsibilities*, p. 24.

- National Science Foundation
- National Transportation Safety Board
- Panama Canal Commission
- Pennsylvania Avenue Development Corporation
- Securities and Exchange Commission
- Smithsonian Institution
- Tennessee Valley Authority
- U.S. Parole Commission
- U.S. Postal Service
- U.S. Sentencing Commission
- U.S. Trade Representative

Unless these agencies arrange for FPS to provide security for their facilities, which would include emergency preparedness assistance, they are responsible for protecting their facilities and employees and for developing their own emergency preparedness organizations, plans, and procedures.

Under the Homeland Security Act of 2002 (P.L. 107-296; 116 Stat. 2135; H.R. 5005), security arrangements and responsibilities apparently will change. Section 403(3) transfers the Federal Protective Service from GSA to the Department of Homeland Security's Directorate of Border and Transportation Security. Further, Section 1706 of P.L. 107-296 amends 40 U.S.C. 1315, and states:

To the extent provided for by transfers made pursuant to the Homeland Security Act of 2002, the Secretary of Homeland Security ... shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

By directing the DHS Secretary to safeguard buildings occupied, owned, or secured by the government, the Act could lead to a centralization of the security function. It is unknown, at this time, what the extent and breadth of centralization might be. The effective date of the Act is January 24, 2003, though more time will be needed for the development of security policies and procedures. The Federal Protective Service transfers to DHS on March 1, 2003.¹⁴ As more information becomes available about the policies and practices of DHS, this report will be revised.

Emergency Preparedness Functions

The Office of Federal Protective Service can trace its roots to 1790, when six night watchmen were hired to protect buildings occupied by the new federal government.¹⁵ Billed as a facility security organization that provides comprehensive

¹⁴ Department of Homeland Security Reorganization Plan, Nov. 25, 2002, available at [http://http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf], visited Jan. 30, 2003.

¹⁵ The authority and jurisdiction of FPS officers is stated in 40 U.S.C. 318a - 318d. On Jan. 11, 1971, the Administrator of the General Services Administration signed an order
(continued...)

security and law enforcement services, FPS is instrumental in federal agency disaster preparedness. Executive Order 12656 broadly describes GSA's responsibilities in this area:

The Administrator of General Services shall develop national security emergency plans and procedures for the operation, maintenance, and protection of federally owned and occupied buildings managed by the General Services Administration, and for the construction, alteration, and repair of such buildings.¹⁶

In GSA-owned or -leased buildings where FPS has retained responsibility for security, it shares responsibility for emergency preparedness with a designated official and occupant organizations or agencies. The highest ranking official of the primary occupant agency (or a designee) is the designated official for a given building.¹⁷ The designated official for a federal building or facility is responsible for developing, implementing, and maintaining an occupant emergency plan, and for establishing, staffing, and training an occupant emergency organization (OEO) with tenant agency employees.¹⁸ An occupant emergency plan provides instructions for employees to follow during an emergency. An OEO consists of agency employees who have been assigned specific tasks to perform during emergencies.¹⁹

Occupant agencies are responsible for providing training to their employees, adhering to facility procedures and regulations, and cooperating with the designated official in implementing emergency plans and staffing an emergency organization. FPS provides expert assistance to the designated official, reviewing plans and organizations, assisting in training personnel, providing emergency program policy guidance, ensuring proper administration of the occupant emergency program, and providing technical personnel qualified in the operation of protective equipment.²⁰ An occupant emergency program encompasses the development of an emergency plan and emergency organization as well as training for employees and OEO members, the acquisition and maintenance of supplies and equipment.

¹⁵ (...continued)
establishing the FPS.

¹⁶ U.S. President (Reagan), "Assignment of Emergency Preparedness Responsibilities," Executive Order 12656, *Federal Register*, vol. 53, Nov. 23, 1988, p. 47508.

¹⁷ 41 CFR 101-20.003(g).

¹⁸ 41 CFR 101-20.103.4(a).

¹⁹ An OEO member may serve as a floor team coordinator, damage control coordinator, medical coordinator, administrative officer, technical advisor, floor monitor, area monitor, stairwell monitor, elevator monitor or exit monitor. For more information, see U.S. General Services Administration, Public Buildings Service, Federal Protective Service, *Occupant Emergency Program Guide* (Washington: GPO, 1990).

²⁰ 41 CFR 101-20.103-4(b)-(d).

Tenant agencies pay security fees, as part of their rent,²¹ to GSA for services provided by FPS.²² A basic security fee, which is set annually on a per-square-foot basis,²³ pays for, among other things, assistance and coordination in developing an occupant emergency plan, coordination of mobilization and response to terrorist threat or civil disturbance, and physical security assessments.²⁴ The basic security fee is set annually. The fee covers general law enforcement on GSA-controlled property; physical security assessments, crime prevention and awareness training, advice and assistance to building security committees, intelligence sharing program, criminal investigation, assistance and coordination in occupant emergency plan development, coordination of mobilization and response to terrorist threat or civil disturbance, program administration for security guard contracts, and megacenter operations for monitoring building perimeter alarms and dispatching appropriate law enforcement response.²⁵ This fee is assessed in all properties controlled by the Public Buildings Service and where FPS provides security.²⁶

The Interagency Security Committee (ISC)

The day after the bombing of the Alfred P. Murrah Federal Building, President William J. Clinton directed the Department of Justice to conduct a vulnerability assessment of federal office buildings in the United States. Study participants identified five security levels for federal buildings, evaluated security practices, and developed security criteria for federal buildings.²⁷ The report's security standard chart indicates, for each security level, whether a particular criterion is considered a minimum standard, desirable, not applicable, or discretionary, depending upon a building evaluation. "Occupant Emergency Plans" is included as one of the 16 categories of security standards. The four criteria listed under this category are designated for all five levels of federal facilities. The criteria are²⁸

²¹ Pricing policy is covered in 41 CFR, Part 102-85.

²² The administrator of GSA determines (40 U.S.C. 490(j)), and the director of the Office of Management and Budget approves, the rates for space and services (40 U.S.C. 603 note).

²³ The basic security fee in FY2003 is \$.24 per square foot. (Information provided, telephonically, by the Office of Federal Protective Service, Sept. 24, 2002.)

²⁴ 41 CFR 102-85.35.

²⁵ 41 CFR 102-85.35.

²⁶ A building-specific security charge may be levied in cases where an agency, in consultation with FPS, determines that additional security measures are required. Additional security measures may include the implementation of a contract security guard program (e.g., guards would screen visitors, control access points, or patrol the interior of a building) or the purchase and installation of security systems (e.g., vehicle barriers, cameras, alarms, or magnetometers). A building security charge would consist of operating expenses and amortized capital costs. (41 CFR 101-20.103-2; 41 CFR 102-85.35.)

²⁷ U.S. Department of Justice, *Vulnerability Assessment of Federal Facilities*, June 28, 1995 (Washington: U.S. Dept. of Justice).

²⁸ *Ibid.*, p. 2-8.

- Examine occupant emergency plans (OEP) and contingency procedures based on threats.
- Ensure OEPs are in place and updated annually. Conduct periodic testing exercise.
- Assign and train OEP officials (assignment based on largest tenant in facility).
- Conduct annual tenant training.

Later that same year, President Clinton issued, on October 24, 1995, an executive order, which established an Interagency Security Committee (ISC).²⁹ Chaired by the administrator of GSA, the committee consists of representatives from the 14 executive departments, the Environmental Protection Agency (EPA), the Central Intelligence Agency (CIA), the Office of Management and Budget (OMB); the director of the U.S. Marshals Service; the assistant to the President for National Security Affairs; and the director of the Security Policy Board.³⁰ The President also may appoint other federal employees. The Homeland Security Act of 2002 does not mention the ISC or its role in helping to improve the security of government facilities.

As a “permanent body” charged with addressing “continuing government-wide security for Federal facilities,” the ISC is responsible for establishing policies for security in and protection of federal facilities; developing and evaluating security standards and overseeing the implementation of appropriate security measures in federal buildings; and taking other actions as necessary to enhance the security of government facilities.³¹ The executive order directs the administrator of GSA to monitor agency compliance with the committee’s policies and recommendations and to provide staff and administrative support to the ISC.

A report issued by the General Accounting Office (GAO), in September 2002, revealed that the ISC has fulfilled some, but not all, of its responsibilities. Since its inception in 1995, the ISC

has developed and issued security design criteria and minimum standards for building access procedures; disseminated information to member agencies, for their consideration and implementation, on entry security technology for buildings needing the highest security levels; and, through its meetings and 13

²⁹ U.S. President (Clinton), “Interagency Security Committee,” Executive Order 12977, *Federal Register*, vol. 60, Oct. 24, 1995, pp. 54411-54412.

³⁰ The Security Policy Board was disbanded by National Security Presidential Directive 1 (NSPD-1), dated Feb. 13, 2001, and its duties were to be transferred “to various [National Security Council Policy Coordination Committees], depending on the particular security problem being addressed.” (National Security Presidential Directive 1, “Organization of the National Security Council System,” Feb. 13, 2001, Federation of American Scientists, [<http://www.fas.org/irp/offdocs/nspd/nspd-1.htm>], visited Sept. 26, 2002.)

³¹ E.O. 12977.

working groups, provided a forum for federal agencies to discuss security-related issues and share information and ideas. On the other hand, ISC has made little or no progress in other elements of its responsibilities, such as developing and establishing policies for security in and protection of federal facilities, developing a strategy for ensuring compliance with security standards, overseeing the implementation of appropriate security in federal facilities, and developing a centralized security database of all federal facilities.³²

The GAO report also noted that GSA has committed to reinvigorating the ISC. The committee held business meetings on April 26 and June 27, 2002. During these meetings, the ISC acknowledged the need to address issues fundamental to the revitalization of the committee, such as developing operating procedures, a charter, a voting protocol, and a new membership process. The committee agreed to meet quarterly.³³ GAO recommended that the administrator of GSA work with the ISC to rectify the problems identified in the GAO report.³⁴

Dismissal and Closure Authority

The decision to dismiss, or release, employees is separate and distinct from the initiation of a building evacuation. Restated, the evacuation of a building may or may not involve the dismissal of employees.³⁵ An automatic fire alarm, a formal decision, or an employee who alerts others to a suspected or actual threat may prompt an evacuation. Generally, the dismissal of employees follows a determination made by the appropriate authorities.

Washington, DC

Executive Branch. The Office of Personnel Management is responsible for monitoring incidents, situations, or conditions that affect, or could affect, federal government operations and for determining whether any action is necessary regarding government employees. OPM's "Washington, DC, Area Dismissal or Closure Procedures"³⁶ apply to employees in all executive agencies located inside the Washington capital beltway. They do not apply to employees of the U.S. Postal Service, the government of the District of Columbia, or businesses. If conditions warrant, though, OPM may issue guidelines affecting facilities outside the beltway.

³² U.S. General Accounting Office, *Building Security: Interagency Security Committee Has Had Limited Success in Fulfilling Its Responsibilities*, GAO report GAO-02-1004 (Washington: 2002), p.2.

³³ Ibid., p. 11.

³⁴ Ibid., p. 17.

³⁵ For example, a minor incident may prompt an evacuation, but, once it is determined that the building is safe, employees would be directed to return to work.

³⁶ Memorandum for Heads of Executive Departments and Agencies from Kay Coles James, Director, U.S. Office of Personnel Management, "Washington, DC, Area Dismissal or Closure Procedures," CPM 2002-12, Nov. 12, 2002.

After having consulted with municipal and regional officials, OPM will decide on the appropriate course of action: closure, dismissal, or special leave treatment.³⁷ For a disruption that occurs before the workday begins, the director of OPM may announce one of these policies is in effect:³⁸

- Federal agencies are open. (Employees are expected to report for work on time.)
- Federal agencies are open under an unscheduled leave policy. (Employees who cannot report for work may take unscheduled leave³⁹ for their entire scheduled workday.)
- Federal agencies are open under a delayed arrival policy. (Employees are expected to arrive for work within a time period specified by OPM. Anyone who arrives later will be charged annual leave or leave without pay for the additional period of absence.)
- Federal agencies are open under a delayed arrival/unscheduled leave policy.
- Federal agencies are closed. (Only emergency employees are expected to report for work.)⁴⁰

For a disruption that occurs during the workday, OPM may announce that federal agencies are operating under an early dismissal policy. The announcement would specify how many hours before normal departure time employees could leave, including the option of immediate dismissal. Emergency employees would be expected to remain at work. The OPM memorandum advises that the status of government operations will be available at the OPM Web site and a recorded message on a telephone line maintained by OPM's Office of Communications.

The memorandum dismissal procedures emphasize that federal agencies should avoid acting independently. OPM advises that any change in the work hours of federal employees requires coordination with municipal and regional officials. Additionally, depending upon the nature of the threat or emergency, some planning may be necessary to steer federal employees (and others) away from streets,

³⁷ On September 11, 2001, the official announcement of a dismissal was made by the Human Resources Management Council. Transmittal #MSG-064 stated: "Federal Government offices in the Washington, DC, area are closed. All employees may leave their Federal offices immediately. Additional guidance will be issued by the U.S. Office of Personnel Management."

³⁸ Memorandum from Kay Coles James, "Washington, DC, Area Dismissal or Closure Procedures," Nov. 12, 2002.

³⁹ Employees may take annual leave, or leave without pay, without the prior approval of their supervisors.

⁴⁰ Agencies determine which employees will be designated as emergency employees. (Memorandum from Kay Coles James, "Washington, DC, Area Dismissal or Closure Procedures," Nov. 12, 2002.)

highways, bridges, or transit systems that have been damaged. However, agency heads are not prohibited from releasing their employees. On September 11, 2001, several agencies, including the Departments of the Interior, State, and the Treasury, GSA, and the Securities and Exchange Commission, released their employees before OPM issued its dismissal announcement, and the White House shut down the federal government in Washington, DC.⁴¹

In its memorandum on dismissal and closure procedures, OPM also describes agencies' responsibilities. These include:

- Providing to employees, at least annually, written procedures for dismissal and closure.
- Notifying employees of the procedures for requesting leave when an unscheduled leave policy is in effect.
- Identifying, at least annually, which personnel are designated as "emergency employees" and notifying these employees that they are to report for or remain at work when operations are disrupted.
- Determining closure, dismissal, and leave policies for employees on shift work and alternative work schedules.

In May 2002, a new procedure for determining when to dismiss federal employees, and close agencies, apparently took effect.⁴² Scott Hatch, director of the office of communications, Office of Personnel Management, briefly mentioned the Federal Emergency Decision and Notification Protocol (FEDNP) during his testimony at a congressional hearing on September 20, 2002.⁴³ Under FEDNP, the heads of OPM, GSA, and the Federal Emergency Management Agency (FEMA) have collective authority to dismiss federal employees who work in the Washington, DC metropolitan area. These three agencies have established 24-hour operations centers that are in contact with the FBI, antiterrorism task forces, the U.S. Capitol Police, and state and local police departments. In the event of an attack or emergency, the directors of OPM, GSA, and FEMA would confer with the Department of Justice, the Office of Homeland Security, and local emergency management officials and then would determine what steps to take, such as ordering the release of employees. After notifying the White House, local elected officials, the Washington Metropolitan Area Transit Authority (WMATA), and emergency management authorities, the three directors would notify affected agencies and the public. Reportedly, a decision to dismiss federal employees under this new procedure would take 15 minutes or less.

⁴¹ Spencer S. Hsu, "Sept. 11 Chaos Prompts Exit Plan," *Washington Post*, Aug. 17, 2002, p. A8.

⁴² Hsu, pp. A1 and A8. See also Jason Peckenpaugh, "Government Creates New Washington Evacuation Plan," *Government Executive*, Daily Briefing, Aug. 9, 2002, available at [<http://www.govexec.com/dailyfed/0802/080902p1.htm>], visited Aug. 12, 2002.

⁴³ U.S. Congress, House Committee on Government Reform, Subcommittee on the District of Columbia, Emergency Preparedness in the Nation's Capital, unpublished hearing, 107th Cong., 2nd sess., Sept. 20, 2002 (Washington: 2002).

Also, Federal Executive Boards (FEBs) apparently are developing similar plans for the agencies in their regions. (See below for more information on FEBs.)

It is possible that the FEDNP may change as a result of the establishment of the DHS. One of the agencies that has decision-making authority under the protocol, FEMA, will move to the homeland security department. The FPS also will move, from GSA, into the new department, and the Secretary of Homeland Security will assume responsibility for protecting buildings owned, occupied, or secured by the federal government.

Legislative Branch. Within a year after the attacks of September 11, House of Representatives leaders established the Office of Emergency Planning Preparedness and Operations (OEPPPO) and the Senate created the Office of Security and Emergency Preparedness (OSEP). These two offices are involved in emergency planning, including evacuation procedures, and continuity of operations (COOP) and continuity of government (COG) planning. Authority to release employees rests with many different congressional offices, although, in practice, the specific offices that order a dismissal of employees may vary, depending upon the situation.⁴⁴

The heads of the Congressional Budget Office (CBO) (or his/her designee), GAO, and the Government Printing Office (GPO) have the authority to dismiss their respective employees and close their buildings.⁴⁵ At the Library of Congress (LOC), the Deputy Librarian, or his/her designee, shall determine when to release employees and close the library.⁴⁶ The Architect of the Capitol (AOC), or his/her designee, has authority to dismiss AOC employees, including U.S. Botanic Garden personnel, and close the garden.⁴⁷

U.S. Supreme Court. Dismissal, closure, and evacuation authority for the U.S. Supreme Court rests with the Chief Justice, although other management officials may act if circumstances warrant.⁴⁸

⁴⁴ Information provided, telephonically and electronically, by the House Office of Emergency Planning Preparedness and Operations and Senate Office of Security and Emergency Preparedness, Nov. 13 and 14, 2002.

⁴⁵ Information provided, telephonically, by CBO, GAO, and GPO, Oct. 1, 2002.

⁴⁶ Library of Congress, "Excused Absences Because of Emergency Conditions," Library of Congress Regulation (LCR) 2015-17.8.

⁴⁷ Information provided, telephonically, by the Architect of the Capitol, Security Program, Jan. 9, 2003.

⁴⁸ Information provided, telephonically, by the Marshal, U.S. Supreme Court, Jan. 14, 2003.

Outside of Washington, DC

In other areas of the country, the local Federal Executive Board (FEB),⁴⁹ or one of its committees, provides general guidance to agencies and other federal entities. The OPM director's memorandum of November 12, 2002, states: "Federal Executive Boards and Federal Executive Associations have established similar dismissal or closure procedures in other major metropolitan areas."⁵⁰ Federal Executive Boards are located in 28 cities and are composed of top-level executives drawn from the federal agencies in the area. FEBs are located in cities that are major centers of federal activity, such as Denver, Honolulu, Pittsburgh, and San Francisco.

In areas or cities that do not have FEBs, a Federal Executive Association (FEA) serves in the role of OPM in terms of deciding whether to dismiss employees.⁵¹ There are 63 FEAs. Several cities that are home to FEAs are Anchorage, Alaska ; Ft. Collins, Colorado; Boise, Idaho; Billings, Montana; Syracuse, New York; and Charleston, South Carolina.

Issues

Funding for Building Security

The GSA's federal buildings fund (FBF),⁵² which was established in 1972, provides funds for real property management and related activities, such as emergency preparedness and security. User charges, including basic security charges and rents, are deposited in the FBF, and may be expended in amounts specified in annual appropriations legislation. Appropriated funds also may be deposited in the FBF and expended as specified in appropriations legislation.

Despite the \$367.3 million proposed in the President's FY2003 budget for building security, there is some question as to whether the Federal Protective Service has sufficient funds to meet the security needs of the buildings under its control. The

⁴⁹ Federal Executive Boards were established by President John F. Kennedy in a presidential directive dated Nov. 14, 1961, to improve coordination among federal programs and activities outside Washington, DC. The FEB Web site is available at [<http://www.feb.gov>]. This Web site includes a directory of Federal Executive Associations.

⁵⁰ Memorandum from Kay Coles James, "Washington, DC, Area Dismissal or Closure Procedures," Nov. 12, 2002.

⁵¹ Federal Executive Associations are informal, voluntary organizations. (Information provided, telephonically, by the Office of Personnel Management, Office of Congressional Relations, Dec. 10, 2002.) FEAs are mentioned briefly in President Kennedy's Nov. 14, 1961, Presidential Directive that established FEBs: "As a first step in bringing Federal officials outside of Washington closer together, I have directed the Chairman of the Civil Service Commission to arrange for the establishment of a Board of Federal Executives in each of the Commission's administrative regions. Where associations of Federal regional officials exist in other regional centers they will be continued."

⁵² 40 U.S.C. 490(f).

Vulnerability Assessment of Federal Facilities noted that implementation of any standards not already in place would require additional funding.⁵³ According to this study, it would cost nearly \$2.5 million (new construction) to \$3 million (retrofit) to provide the necessary security for a 17 story multi-agency Level IV⁵⁴ building with 380,000 total square feet and more than 450 employees.⁵⁵ As for the basic security charge levied by GSA, there appears to be a discrepancy between actual costs and what GSA is allowed to charge. Prior to September 11, 2001, actual costs were slightly more than \$0.30 per square foot, but the basic security charge, in FY2002, was \$.18 per square foot. The basic security charge was increased to \$.24 for FY2003.⁵⁶ As of this writing, all funding is frozen at FY 2002 levels and funding for FY2003 is uncertain.

For agencies that own their own buildings or have obtained security waivers from GSA, or whose buildings are exempted by statute from GSA control, funding for security and emergency preparedness is their responsibility. It is not known whether these agencies receive or allocate funds sufficient to meet their security requirements.

Federal Emergency Decision and Notification Protocol

As reported in the news media, a federal emergency decision and notification protocol took effect in May 2002. It will be used in the event of a widespread attack or the threat of an impending biological, chemical, or radiological attack. The protocol identified who (i.e., FEMA, GSA, and OPM) determines when to dismiss employees and how that determination will be communicated, and discussed the role of the media in any notification.⁵⁷ To date, the only confirmation of the existence of the protocol may be found in the congressional testimony of Scott Hatch, director, office of communication, Office of Personnel Management.⁵⁸ OPM has not yet provided any other information about the protocol. In the absence of additional information, or explanation, several questions remain unanswered.

- The November 12, 2002, OPM memorandum on dismissal procedures does not refer to the protocol. What is the relationship,

⁵³ Department of Justice, *Vulnerability Assessment of Federal Facilities*, p. 3-5.

⁵⁴ A Level IV building generally has over 450 employees and more than 150,000 square feet, high-volume public contact, and high-risk tenant agencies, such as law enforcement and intelligence agencies, courts, judicial offices, and highly sensitive government records. (Department of Justice, *Vulnerability Assessment of Federal Facilities*, pp. 2-4 to 2-5.

⁵⁵ Department of Justice, *Vulnerability Assessment of Federal Facilities*, p. F-2.

⁵⁶ Information provided, telephonically, by FPS, on Sept. 24, 2002.

⁵⁷ Spencer S. Hsu, "Sept. 11 Chaos Prompts Exit Plan, *Washington Post*, pp. A1, A8; Jason Peckenpaugh, "Government Creates New Washington Evacuation Plan," *Government Executive*, daily briefing, Aug. 9, 2002, available at [<http://www.govexec.com/dailyfed/0802/080902p1.htm>], visited Nov. 4, 2002.

⁵⁸ See "Dismissal and Closure Authority, Washington, D.C., Executive Branch."

if any, between the protocol and the November 12, 2002, OPM memorandum on dismissal and closure procedures?

- Is the scope of the protocol the same as the memorandum's (all executive agencies inside the beltway, excluding the U.S. Postal Service), or different? How would the legislative branch and federal court activities relate to the protocol?
- What are the extent, and progress, of Federal Executive Boards' efforts to develop similar protocols?
- Does the protocol cover a variety of leave options for federal employees akin to the content of the November 12, 2002 OPM memorandum?
- Does the protocol apply only to impending or actual attacks, or would it also apply in the event of a city-wide emergency caused by, for example, inclement weather (e.g., snowstorm)?
- How will the protocol change as result of the realignment of FPS and FEMA under the Department of Homeland Security?

Status of Agency Preparedness

Agency autonomy and the decentralization of emergency preparedness functions combine to make it difficult to gauge the extent of preparedness among federal agencies. Establishment of the Interagency Security Committee was an effort to address this challenge and other, related issues, but so far the ISC has compiled a mixed record. The *Vulnerability Assessment of Federal Facilities* was another initiative aimed at, among other things, evaluating how well agencies are prepared for disasters. However, this report was a snapshot of agency preparedness. Apparently, there is no ongoing, governmentwide effort to assess agency preparedness.

Ideally, information on the status of agency preparedness would be compiled on an ongoing basis and would be available before an emergency occurs. This sequence would allow an agency head and emergency team personnel to address areas that need improvement.

Information gathered after an incident occurs also may be useful. Information and data sometimes referred to as "lessons learned" can be used to improve a program, including an emergency preparedness program.

Where an incident has occurred, a potentially useful tool is the after-action report, which would document how an agency responded, what worked well, and what needs to be improved. The applicable portion of the *Code of Federal Regulations* does not require agencies to produce an after-action report, although an agency may decide, on its own, to review and examine its performance during an incident or emergency. For example, the Environmental Protection Agency (EPA)

issued *Lessons Learned in the Aftermath of September 11, 2001*, dated February 1, 2002.

A more formal investigation is required by the National Construction Safety Team Act (P.L. 107-231; H.R. 4687). Signed by President George W. Bush on October 1, 2002, P.L. 107-231 requires the National Institute of Standards and Technology (NIST) to establish national construction safety teams for deployment after an event which causes a building failure that resulted in substantial loss of life. Although the thrust of this law is studying building failures that resulted in a substantial loss of life, or had the potential to, and recommending improvements to building standards, codes, and practices, it also calls for the evaluation of the technical aspects of evacuation and emergency response procedures. H.Rept. 107-530 elaborates on the function of teams:

The ultimate goal of investigations conducted under this Act should be to develop a detailed set of recommendations for any necessary improvements to building codes, standards, and practices, as well as emergency response and evacuation procedures, based on the findings of the investigation. Many of these procedures are based on an understanding of how people respond to a disaster. It is the Committee's view that, when examining emergency response and evacuation procedures, Teams should evaluate not only the effect that a building's design has on emergency response and evacuation procedures, but also on human behavior.⁵⁹

Information gleaned from construction team reports could prompt agencies to revise their emergency procedures or implement new safety features. Construction team reports also would provide insight into the technical aspects of an agency's preparation for emergencies.

Homeland Security Legislation

Under the Homeland Security Act, responsibility for safeguarding buildings currently protected by GSA shifts to the homeland security department with the transfer of the Federal Protective Service to DHS. Furthermore, the language of P.L. 107-296 Section 1706(a) (see "Who Is Responsible for Emergency Preparedness?") suggests that the Secretary of Homeland Security also acquires responsibility for federal buildings that currently are protected by agencies other than GSA. This action would constitute a significant expansion of the responsibility that had been vested in GSA. Centralization of responsibility for safeguarding buildings owned or occupied by the federal government does not necessarily mean that the protection function also will be centralized. The Secretary of Homeland Security could delegate, to federal agencies, the authority to provide security for their buildings, facilities, and installations.

⁵⁹ U.S. Congress, House of Representatives, *National Construction Safety Team Act*, 107th Cong., 2nd sess., H. Rept. 107-530 (Washington: GPO, 2002), p. 20.

Policy Questions

Policy questions and issues will likely arise as Congress examines the status of emergency preparedness within the federal government and the implications of the Homeland Security Act for agency emergency preparedness.

- The Homeland Security Act places the Federal Protective Service within the Directorate of Border and Transportation Security (BTS). The responsibilities of the Under Secretary for BTS include preventing terrorists and instruments of terrorism from entering the United States; securing borders, territorial waters, ports, terminals, waterways, and air, land, and sea and transportation systems; conducting immigrant enforcement functions; establishing and administering rules for granting visas; establishing immigration enforcement policies; administering certain customs laws; and conducting certain agricultural inspection functions.⁶⁰ How will the mission of FPS mesh with the responsibilities of this directorate?
- Section 1706(a) of the Homeland Security Act amends 40 U.S.C. 1315 and states: “the Secretary of Homeland Security ... shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.” Does the Secretary’s responsibility include, for example, the legislative branch, the Supreme Court, buildings occupied by agencies that have received delegations of authority for security functions (such as the White House), and military installations? Will DHS need additional personnel, and other resources, to fulfill its responsibility? Under what conditions or circumstances might the DHS Secretary allow an agency to provide its own security?
- What model should be used to provide a suitable combination of centralization of responsibility (DHS) and decentralization of execution (agencies and buildings)?
- Per P.L. 107-296 Section 422(b)(1)(A), the administrator of GSA retains the authority “to collect rents and fees, including fees collected for protective services”; the Secretary of Homeland Security is not authorized to obligate amounts in the federal buildings fund; and, if any amounts are transferred by the administrator to the Secretary “out of rents and fees collected by the Administrator” they “shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.” Is this a workable arrangement? How should the fees collected for protective services be handled? The transfer of FPS and the responsibility for building security to DHS might provide an

⁶⁰ P.L. 107-296 Section 402.

opportunity for examining security fees charged, actual costs of security, the alleged discrepancy between the two, and whether, and how, to reconcile the differences.

- The *Vulnerability Assessment of Federal Facilities* was issued in 1995. Should another assessment be conducted, with a focus on terrorist threats and anti-terrorism measures? If so, who should conduct a second vulnerability assessment?
- Questions posed about the Federal Emergency Decision and Notification Protocol may include: Is OPM going to inform federal employees about the protocol? How might FEDNP procedures change in light of the creation of a Department of Homeland Security that includes FEMA and FPS?
- What should be the relationship between the Interagency Security Committee and DHS?
- GSA retains responsibility for the operation and maintenance of “buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator.”⁶¹ How should GSA and DHS work out issues that involve both organizations? For example, the homeland security department may determine that, to meet security requirements, entrances to a building must be modified in a specific way, but GSA may believe there are other options available for improving building entrances.
- More than a year has passed since the attacks of September 11, 2001. Is emergency preparedness (still) a top priority among agencies? Are agencies reviewing and, if necessary, revising their emergency preparedness plans? Are training programs provided for employees? Are emergency teams fully staffed? Do agencies have the necessary equipment and supplies needed to help protect their employees? Do agencies have sufficient funds to establish and maintain comprehensive, effective emergency preparedness programs

⁶¹ P.L. 107-296 Sec. 422(a).