

# CRS Report for Congress

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## **First Responder Initiative: Policy Issues and Options**

**Updated August 28, 2003**

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# 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 108<sup>th</sup> Congress. Recently, the Senate Governmental Affairs Committee approved S. 1245, the Homeland Security Grant Enhancement Act of 2003, which seeks to simplify and streamline existing grant programs for first responder preparedness. Among other things, the bill authorizes a formula grant to states and localities for a broad range of preparedness activities. Other 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. Restructuring proposals have also been included in House and Senate homeland security appropriations bills (H.R. 2555).

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?
- Should states and localities be expected to contribute funds to federally-funded activities? If so, how much?
- What is the appropriate balance between accountability and speedy distribution of funds?

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

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# 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.<sup>1</sup> 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.<sup>2</sup> Although the 107<sup>th</sup> 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 108<sup>th</sup> Congress is considering several bills that would authorize a new first responder grant program.<sup>3</sup>

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 108<sup>th</sup> 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.

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<sup>1</sup> 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.

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

<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Several statutes, however, authorize such specific activities as acquisition of interoperable communications equipment, technology research, threat assessments, and community outreach.<sup>7</sup> 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 ...."<sup>8</sup> 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 receives a base amount of 0.75% of the amount appropriated for the program. In addition, states receive a population-based allocation.<sup>9</sup> 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 appropriated for states and localities through this program in FY2003.<sup>10</sup>

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<sup>4</sup> 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.

<sup>5</sup> 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

<sup>6</sup> 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.

<sup>7</sup> P.L. 104-132, sec. 821; P.L. 107-56, sec. 1005; P.L. 107-296, sec. 430.

<sup>8</sup> P.L. 107-296, sec. 430(c).

<sup>9</sup> ODP points to Sec. 1014 of the USA PATRIOT Act (P.L. 107-56) as authorization for the 0.75% minimum. The section, however, offers no further guidance on the structure of assistance programs. At present, ODP uses annual population estimates from the U.S. Census Bureau in its population formula.

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

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, and threat and vulnerability assessments.<sup>11</sup>

***Current Statutes Do Not Specify Grant Attributes.*** 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."<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> Following the terrorist attacks of Sept. 2001, however, Congress raised the authorized amount to \$900 million for FY2003 and FY2004.<sup>16</sup> 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.<sup>17</sup> The statute does not specify an authorized funding amount for any program in the account, but

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

<sup>12</sup> P.L. 107-56, sec. 1014(c)(3).

<sup>13</sup> 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.

<sup>14</sup> 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.

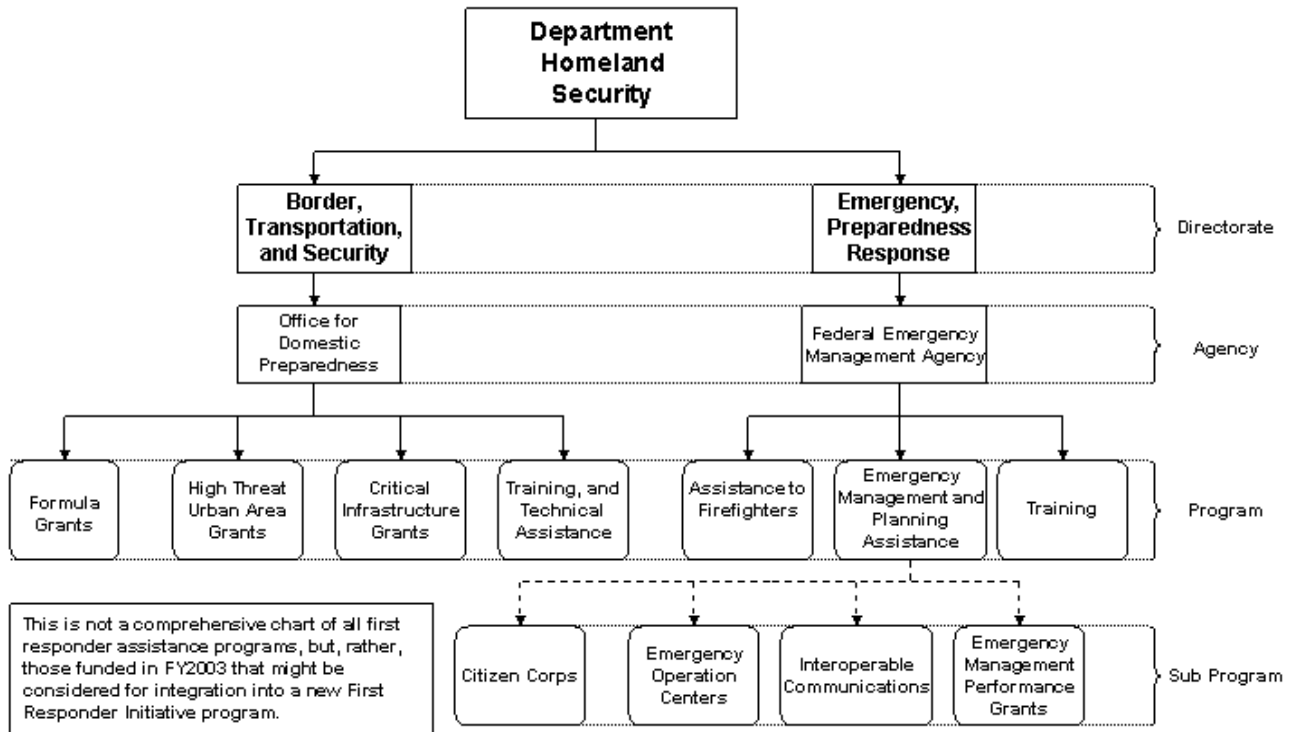
<sup>15</sup> 15 U.S.C. 2229, sec. 33.

<sup>16</sup> P.L. 107-107, sec. 1061.

<sup>17</sup> 42 U.S.C. 5195-5196.

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, 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)<sup>18</sup>**



## 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 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).<sup>19</sup> The bulk of this amount, \$3.23 billion, was appropriated to

<sup>18</sup> Graphic based on CRS analysis of DHS program documents, organization charts, and congressional appropriations documents.

<sup>19</sup> Since enactment of the FY2003 appropriations, at least one bill has been introduced (continued...)



ODP for its formula grants, high-threat urban area program, and other assistance activities. Congress directed \$750 million to the Assistance to 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.<sup>20</sup>

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.<sup>21</sup>

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 billion (53.8%) 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

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<sup>19</sup> (...continued)

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.

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

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

faced by each state.”<sup>22</sup> DHS Secretary Ridge has stated that such factors would likely include population density, location of critical infrastructure, and risk assessments.<sup>23</sup> Specific risk factors to be included in the formula of the State Homeland Security 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%.<sup>24</sup>

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.<sup>25</sup>

**Congressional Appropriations.** The House homeland security appropriations bill (H.R. 2555), which passed the House on June 24, 2003, would maintain the current arrangement of some programmatic accounts, but restructure others. It would fund existing programs in ODP and fund the Administration’s proposed grant program to law enforcement agencies for terrorism prevention. The new law enforcement program would be funded separately from ODP’s current formula program.<sup>26</sup> The House bill would also continue to fund the Assistance to Firefighters Program through the Emergency Preparedness and Response Directorate (formerly the Federal Emergency Management Agency). The EMPA account, on the other hand, would no longer exist. H.R. 2555 does contain line items in the Emergency Preparedness and Response Directorate (EPR, Title III) for selected programs traditionally funded through the EMPA account, including Emergency Management Performance Grants (EMPG), Citizen Corps, and emergency operations center grants.<sup>27</sup>

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<sup>22</sup> Ibid.

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

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

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

<sup>26</sup> In FY2003, the ODP formula program was called the “State Homeland Security Grant Program.”

<sup>27</sup> U.S. Congress, House Appropriations Committee, *Department of Homeland Security Appropriations Bill, FY2004*, report to accompany H.R. 2555, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 108-169, (Washington: GPO, June 2003), pp. 42-55.

On July 24, 2003, the Senate passed its homeland security appropriations bill (H.R. 2555). As in the House version, the Senate bill would preserve existing ODP programs and the Assistance to Firefighters program. The Senate bill also funds a new law enforcement grants program, but would fund it through the ODP formula grant program, rather than as a separate grant program (as proposed by the House). Likewise, the Firefighters program would be funded through ODP (Title II) rather than through the EPR Directorate (Title III).<sup>28</sup> The Senate bill would also discontinue the EMPA account, but would fund some EMPA programs through the EPR Directorate, including the Emergency Management Performance Grants (EMPG) and Urban Search and Rescue task forces (US&R). Funding for Citizen Corps programs, formerly funded through EMPA, would be funded through the ODP formula program.<sup>29</sup>

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<sup>28</sup> While the Senate Appropriations Committee would fund the Firefighters Program through ODP, neither the bill (H.R. 2555), nor the accompanying report (S.Rept. 108-86) specifically instructs DHS to transfer the program from the EPR Directorate to ODP. The committee report does state that, “The Committee believes that this [the Firefighters Program] should remain a separate grant program within the Department of Homeland Security, and not be combined with any other grant program” (p. 49).

<sup>29</sup> U.S. Congress, Senate Appropriations Committee, *Department of Homeland Security Appropriations Bill, FY2004*, report to accompany H.R. 2555, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 108-86 (Washington: GPO, July 2003), pp. 47-57.

**Table 1. Appropriations for Selected First Responder Preparedness Programs***(All amounts in millions)*

Program	Agency	FY2002 Approp. <sup>A</sup>	FY2003 Approp. <sup>B</sup>	FY2004 Appropriations			FY2004 Enacted
				FY2004 Request	House- passed	Senate- passed	
State Homeland Security Grant Program (formula grants) <sup>C</sup>	ODP	315.7 <sup>D</sup>	1,870	NS	1,900	1,750 <sup>E</sup>	
High Threat Urban Areas	ODP	2.6 <sup>F</sup>	800 <sup>G</sup>	NS	500	750	
Critical Infrastructure Protection Grants <sup>H</sup>	ODP	—	200	NS	200	NS <sup>I</sup>	
Law Enforcement Grants <sup>J</sup>	ODP	—	—	500	510 <sup>K</sup>	[500] <sup>L</sup>	
Other (technical assistance, training, research)	ODP	333.2 <sup>D</sup>	360	NS	393 <sup>M</sup>	388 <sup>N</sup>	
<i>ODP Subtotal</i>		<i>651.5</i>	<i>3,230</i>	<i>3,558</i>	<i>3,503</i>	<i>3,638<sup>O</sup></i>	
Assistance to Firefighters Program		360	750	[500] <sup>P</sup>	760 <sup>K</sup>	[750] <sup>Q</sup>	
EMPA Account (includes EMPG, CERT, US&R, EOC grants) <sup>R</sup>		479.6	443.1	NS <sup>S</sup>	NS <sup>S</sup>	NS <sup>S</sup>	
<b>First Responder Assistance Total (Department of Homeland Security)<sup>T</sup></b>		<b>1,491.1</b>	<b>4,423.1</b>	<b>3,558</b>	<b>4,263<sup>U</sup></b>	<b>3,638<sup>U</sup></b>	

*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:

<sup>A</sup> Amounts include regular and supplemental appropriations. Amounts from P.L. 107-206 that were “contingency” items are not included in program totals. In P.L. 107-206, Congress designated selected funds as “contingency” items, which the President had discretion to use or reject. In August 2002, the President rejected the funds; thus, these grant funds were not distributed.

<sup>B</sup> Amounts include regular and supplemental appropriations (P.L. 108-7, P.L. 108-11).

<sup>C</sup> This program was titled the “State Domestic Preparedness Program” in FY2002.

<sup>D</sup> This amount is an estimate based on ODP documents on FY2002 distributions.

- <sup>E</sup> This amount includes \$500 million for the proposed law enforcement grants program and \$50 million for Citizen Corps.
- <sup>F</sup> The high threat urban area program was preceded by the Nunn-Lugar-Domenici program (NLD). The FY2002 amount reflects only line-item appropriations in conference report language. It does not reflect any funds that may have been used in other ODP accounts for NLD activities.
- <sup>G</sup> \$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](http://www.dhs.gov/interweb/assetlibrary/Protecting_Our_Urban_Areas.doc)].
- <sup>H</sup> Congress did not appropriate funds to ODP for critical infrastructure protection grants until the FY2003 supplemental (P.L. 108-11).
- <sup>I</sup> Although the Senate bill does not contain a line item for critical infrastructure protection grants, funds from the proposed law enforcement grants could be used for this purpose (see S.Rept. 108-86, p. 48).
- <sup>J</sup> This proposal — ODP grants to law enforcement agencies for terrorism prevention — would be a new program in FY2004.
- <sup>K</sup> H.Amdt. 179 (agreed to on June 24, 2003) added an additional \$10 million to the law enforcement grants and \$10 to the Assistance to Firefighters Program. The House Appropriations Committee had reported funded levels of \$500 million for the law enforcement grants and \$750 million for the Firefighters program.
- <sup>L</sup> The Senate Appropriations Committee would create a new grant program for law enforcement for terrorism prevention, but would fund it through the ODP formula program, rather than as a distinct program.
- <sup>M</sup> The “Other” category for the House bill includes funding for Grant Administration and Planning (\$32 million), National Domestic Preparedness Consortium (\$125 million), technical assistance (\$67 million), and a National Exercise Program (\$50 million). It would also create a new grant program for “Centers for Emergency Preparedness” (\$35 million).
- <sup>N</sup> The “Other” category for the Senate bill includes funding for technical assistance (\$30 million). It also includes a new account called “National Programs,” which includes the Center for Domestic Preparedness (\$60 million), National Domestic Preparedness Consortium (\$80 million), core training programs (\$28 million), training grants (\$60 million), exercises (\$50 million), equipment support (\$40 million), and technical assistance (\$10 million), and management and administration (\$30 million).
- <sup>O</sup> The ODP total in the Senate bill includes funding for the Assistance to Firefighters Program (\$750 million). The proposed law enforcement grants program (\$500) is included in the ODP formula program, and, thus, does not count toward the ODP total.
- <sup>P</sup> 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.
- <sup>Q</sup> The Senate homeland security appropriations bill would fund the Firefighters program through ODP (Title II).
- <sup>R</sup> FEMA traditionally used its EMPA account to fund a variety of natural disaster and terrorism preparedness activities. FY2002 and FY2003, the entire account is included in the table, since funding supports general emergency management improvements. The FY2004 request would not fund this account, but would transfer many of its activities to ODP and the EPR “Operating Expenses” account.
- <sup>S</sup> The Administration request did not include funding for the EMPA account. Some related activities, however, were proposed to be administered by ODP and in the “Operating Expenses” account of the DHS Emergency Preparedness and Response Directorate. Funding amounts cannot be identified from available documents. Both the House and Senate homeland security appropriations bills would discontinue the EMPA account. Each bill does, however, contain provisions funding selected programs traditionally funded

through EMPA. The House bill contains funding for Emergency Management Performance Grants (\$168 million), Citizen Corps (\$45 million), and emergency operations centers grants (\$25 million). These would also be funded through the EPR Directorate (Title III). The Senate bill contains funding for Emergency Management Performance Grants (\$165 million), Urban Search and Rescue task forces (\$64.6 million), and Citizen Corps (\$50 million, which would come from the ODP formula program).

<sup>T</sup> “First Responder” Assistance total corresponds to Administration and congressional proposals for a First Responder Initiative block grant program.

<sup>U</sup> Due to the proposed discontinuation of the EMPA account and shifted funding of the programs formerly funded through that account, the FY2004 totals for the First Responder Assistance category do not include funding for programs formerly funded through the EMPA account, other than those proposed to be funded through ODP.

## Legislation in the 108<sup>th</sup> Congress<sup>30</sup>

**S. 1245.** Homeland Security Grant Enhancement Act of 2003. S. 1245 was approved by the Senate Governmental Affairs Committee on June 17, 2003. This bill seeks to simplify and streamline existing grant programs for first responder preparedness.

Section 2 of S. 1245 would create an “Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs” within DHS. Among the committee’s duties are assessing state and local needs and capabilities, advising the DHS Secretary on performance measures, and identifying all duplicative application and planning requirements in assistance programs. The bill would instruct the committee to provide recommendations to federal agencies on coordination of homeland security grant programs, and, specifically, streamlining and standardizing applications and planning requirements.

Section 3 would reorganize selected agencies and programs within the Department of Homeland Security that administer first responder grant programs. The Office for Domestic Preparedness (ODP), presently located in the Border and Transportation Security Directorate, and the Assistance to Firefighters Program, currently located in the Emergency Preparedness and Response Directorate, would both be relocated to the Office of State and Local Government Coordination (OSLGC). S. 1245 would maintain the Firefighters program as a distinct grant program.

Section 3 would also establish within the OSLGC a Homeland Security Information Clearinghouse, charged with providing states and localities with information on grant programs and the use of federal funds. It would also gather and publish information on best practices in homeland security and voluntary standards for training, equipment, and exercises.

Section 4 of S. 1245 would authorize a Homeland Security Grant Program, a formula grant distributed to states for first responder preparedness activities. Recipients could use funds for a range of activities, such as emergency planning, risk assessments, mutual aid agreements, equipment, training, and exercises. Limited amounts of funding would be allowed for overtime expenses incurred during period of heightened alert, and overtime expenses incurred during training activities. Funds could also be used for those construction activities authorized in section 611 of the Robert T. Stafford Disaster Relief Act (“Stafford Act”).

To be eligible for the formula funds, states would have to complete a state homeland security plan. The plans would address a number of preparedness activities and issues, including interoperable communications, training, incident command systems, regional coordination, response planning, and exercises. They

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<sup>30</sup> 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 108<sup>th</sup> Congress, however, that would affect selected programs. For example, see H.R. 1118/S. 544 and S. 838.

would include a 3-year strategy for allocating funding to localities on the basis of risk, capabilities, and needs. Plans also would include an assessment of the “shortfall” between current response capabilities and necessary response capabilities. The bill provides basic guidelines for states to use in developing the plans, including mandatory input from local officials, first responders, and the private sector.

S. 1245, as reported, would give each state a base amount of 0.75% of appropriated funds each fiscal year.<sup>31</sup> Remaining funds would be distributed on the basis of a *risk-based* formula, which would consider population (including military and tourist population), population density, threat, risk and vulnerability of critical infrastructure, international borders, and any factor identified by the DHS Secretary. Following these criteria, the DHS Secretary would have discretion in creating such a formula. States would be required to distribute at least 80% of funds to local governments within 45 days of receiving funds. Recipients would have to match 25% of grant funds with “non-Federal contributions,” although the match would not apply during the program’s first 2 years, and could be waived for recipients experiencing economic distress. The bill also includes a maintenance-of-effort provision, prohibiting recipients from using grant funds to supplant their own funds allocated to homeland security.

The bill addresses accountability by directing the DHS Secretary to develop “National Performance Standards” that will be based on the goals and objectives addressed in the state homeland security plans.<sup>32</sup> Each state will be required to report annually on its progress in meeting the standards. DHS would be required to report annually to Congress on the status of preparedness goals and objectives, state and local adherence to performance standards, and the total amount of resources provided to state and local governments, as well as how the funds were used. The bill would give the DHS Secretary authority to penalize states for not meeting performance standards. Among the penalty options are reducing or terminating grant payments, and limiting the use of grant funds.

Section 5 seeks to give states and localities greater flexibility with previously appropriated funds for ODP grant programs. The bill would allow recipients to request transfers of funds among different activities.<sup>33</sup>

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<sup>31</sup> The bill treats the District of Columbia and Puerto Rico as states. The territories of Guam, U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Marianas would receive a base amount of 0.25%.

<sup>32</sup> Until such standards are developed, DHS would assist states and localities in developing “Interim Performance Measures.”

<sup>33</sup> From FY2001 through the regular FY2003 appropriation (P.L. 108-7), conference reports 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 (continued...)”



**S. 930.** Emergency Preparedness and Response Act of 2003. On July 30, 2003, the Senate Environment and Public Works Committee ordered S. 930 to be reported. The bill would authorize \$3.5 billion in assistance. Each state would get a base amount of \$15 million; remaining funds would be distributed using a risk-based formula. The bill provides guidance on the risk factors to be included in the formula, but gives the administering agency discretion to design the formula. States would have to distribute at least 75% of funds to local governments.

The range of eligible activities would include planning, training, equipment, and exercises, as well as construction of emergency operating centers and training facilities. Funds could not be used for compensation to first responders, including overtime expenses. All recipients would have to satisfy a matching requirement of up to 25%. The bill specifies reporting requirements that states must satisfy. Within 3 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 all hazards ...."<sup>34</sup> States would also have to submit annual reports on the use of grant funds.

**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.

Similar bills were introduced in the 107<sup>th</sup> Congress as S. 2038/H.R. 4059. In the 108<sup>th</sup> 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

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<sup>33</sup> (...continued)

Homeland Security Grant Program II," April 2003, available at: [<http://www.ojp.usdoj.gov/odp/docs/fy03shsgp2.pdf>], visited May 13, 2003.

<sup>34</sup> S. 930, sec. 630(h). (108<sup>th</sup> Cong.)

to acts of terrorism.” All recipients would face a matching requirement of at least 10%. S. 466 was referred to the Senate Judiciary Committee.

**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 and 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.

## Legislation in the 107<sup>th</sup> Congress

**S. 2664.** First Responder Terrorism Preparedness Act of 2002. A bill similar to S. 2664 has been introduced in the 108<sup>th</sup> Congress as S. 930 (see above for description). S. 2664 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.

**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 responders. The bill did not propose a matching requirement. S. 2077 was referred to the Senate Committee on Environment and Public Works.

## Restructuring Programs: Issues, Analysis, and Options

As the 108<sup>th</sup> 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.<sup>35</sup>

### 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 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.<sup>36</sup> The Assistance to Firefighters program and several programs in the EMPA account, for example, were created to help state and local governments with general emergency management improvements, not specifically with terrorism preparedness.<sup>37</sup> 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).<sup>38</sup>

The Administration's proposal to integrate existing FEMA programs into the First Responder Initiative has encountered opposition 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

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<sup>35</sup> For a discussion of general issues that may arise during the debate on a grant program, please see CRS Report RL30778, *Federal Grants to State and Local Governments: Concepts for Legislative Design and Oversight*, by Ben Canada.

<sup>36</sup> Eric Tolbert, former president, National Emergency Management Association (NEMA), Remarks before the Virginia Emergency Management Association, March 15, 2002.

<sup>37</sup> For more information on the Assistance to Firefighters program, see CRS Report RS21302, *Assistance to Firefighters Program*, by Len Kruger.

<sup>38</sup> 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.

approach to emergency management.<sup>39</sup> 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.<sup>40</sup>

The Administration's FY2004 request would also eliminate or reduce funding to a number of existing general assistance programs that are geared to helping 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 Justice Department and assist states and localities with a range of public safety activities.<sup>41</sup> 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 also would allocate \$500 million from the Homeland Security Department's First Responder Initiative for law enforcement assistance.<sup>42</sup> 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.<sup>43</sup>

Some observers agree with the Administration's approach. For example, one policy research and advocacy group recommended that Congress transfer funding for

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<sup>39</sup> U.S. Congress, Senate Governmental Affairs Committee, *Investing in Homeland Security, Challenges on the Front Line*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> 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.

<sup>40</sup> U.S. Congress, House Appropriations Committee, Subcommittee on Homeland Security, *Appropriations for the Department of Homeland Security for 2004*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., April 4, 2003. See statement of J.R. Thomas, President, International Association of Emergency Managers.

<sup>41</sup> For more information on these programs, see "Office of Justice Programs" by Bill Krouse and Cindy Moors-Hill [<http://www.congress.gov/brbk/html/apcjs28.html>]; and, CRS Report 97-196 GOV, *The Community Oriented Policing Services (COPS) Program: An Overview*, by David Teasley and JoAnne O'Bryant.

<sup>42</sup> U.S. Office of Management and Budget, *Budget for Fiscal Year 2004, Appendix* (Washington: GPO, Feb. 2003), pp. 640-645.

<sup>43</sup> 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.

the Community Oriented Policy Services (COPS) and other programs to the ODP in order to create a new, single flexible assistance program.<sup>44</sup> 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.<sup>45</sup>

**Table 2. Funding for Selected Programs in the Justice Department**

*(All amounts in millions)*

<b>Program</b>	<b>FY2002 Appropriation</b>	<b>FY2003 Appropriation</b>	<b>FY2004 Request</b>
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.<sup>46</sup> This approach was also endorsed in S. 2664, as reported during the 107<sup>th</sup> 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

<sup>44</sup> 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.

<sup>45</sup> National Association of Police Organizations, “Legislative Update,” available at: [<http://www.napo.org/legislative-update/legislativeupdate.htm>], visited May 16, 2003.

<sup>46</sup> 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.

communities.”<sup>47</sup> As reported in the 108<sup>th</sup> Congress, S. 1245 would restructure selected grant programs in DHS, including the ODP formula program and high-threat urban area grants. The formula program proposed in S. 1245 also incorporates elements of the Emergency Management Performance Grants (EMPG). The bill, however, would not integrate DOJ programs. Furthermore, S. 1245 would create an interagency committee charged with making recommendations to improve coordination of homeland security grant programs.<sup>48</sup>

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.<sup>49</sup> DHS Secretary Tom Ridge has emphasized the importance of integrating first responder programs into ODP, and suggested that such existing programs as the Assistance to Firefighters Program can be integrated without decreasing the program’s effectiveness.<sup>50</sup> S. 1245, as reported, takes this approach. It would relocate ODP and the Assistance to Firefighters program into the Office for State and Local Government Coordination. The firefighters program would be maintained as a distinct program.<sup>51</sup>

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

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<sup>47</sup> U.S. Congress, Senate Committee on Environment and Public Works, *First Responder Terrorism Preparedness Act of 2002*, report to accompany S. 2664, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 107-295 (Washington: GPO, 2002), p. 6.

<sup>48</sup> See S. 1245, sec. 2.

<sup>49</sup> White House Office of Homeland Security, *National Strategy for Homeland Security*, July 2002, pp. 41-45.

<sup>50</sup> Senate Governmental Affairs Committee, hearing, May 1, 2003, see Senator Collins questions to DHS Secretary Ridge.

<sup>51</sup> S. 1245, sec. 3.

funds. A 2002 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.<sup>52</sup> 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.<sup>53</sup>

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] ....”<sup>54</sup> In its fourth annual report to Congress, the Gilmore Commission agreed with this approach, concluding that states must have discretion over the use of grant funds to ensure that “resources are allocated on the basis of assessed needs.”<sup>55</sup>

**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.

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<sup>52</sup> U.S. Conference of Mayors, “Homeland Security: Mayors on the Frontline,” June 2002, available at: [[http://www.usmayors.org/70thAnnualMeeting/madison\\_061302.asp](http://www.usmayors.org/70thAnnualMeeting/madison_061302.asp)], visited June 19, 2002.

<sup>53</sup> Senate Governmental Affairs Committee, hearing, April 9, 2003. See statements of Chief Edward Plaughter, Arlington County Fire Department, Arlington, VA, and Chief Michael Chitwood, Portland Police Department, Portland, ME.

<sup>54</sup> 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, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Mar. 12, 2002.

<sup>55</sup> 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).

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 S. 1245. 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. S. 1245 would continue the 80% “pass through” requirement, and instruct states to distribute funds to localities within 45 days of receipt of funds. The bill, as reported, gives the DHS Secretary authority to penalize recipients that do not comply with the statute, which might include failure of states to distribute funds in compliance with statutory deadlines.

## Factors in Grant Distribution<sup>56</sup>

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.<sup>57</sup> 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.<sup>58</sup> 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 \$800 million to “high-threat urban areas,” selected cities chosen on the criteria of “population density, critical infrastructure, and threat/vulnerability assessment.”<sup>59</sup> 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

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<sup>56</sup> This section was originally written by Rob Buschmann, former CRS Analyst in American National Government.

<sup>57</sup> P.L. 107-56, section 1014. The Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands each receive a minimum of 0.25%.

<sup>58</sup> Dale Russakoff and Rene Sanchez, “Begging, Borrowing for Security; Homeland Burden Grows for Cash-Strapped States, Cities,” *Washington Post*, Apr. 1, 2003, p. A1.

<sup>59</sup> 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).



risks<sup>60</sup> 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 working to create ways to measure risk of a terrorist attack to a particular area (“metrics”), reportedly in consultation with state and local groups.<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup> 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

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<sup>60</sup> “Risk” here is defined as a combination of “threat,” usually measured by intelligence reports, and “vulnerability,” measured by a variety of methods.

<sup>61</sup> 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.

<sup>62</sup> Senate Governmental Affairs Committee, hearing, May 1, 2003. See Secretary Ridge’s remarks responding to questions from Sen. Collins.

<sup>63</sup> 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.

there are certain things that the federal government wants the states to do.”<sup>64</sup> 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 believes the current method should be improved.<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup>

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.<sup>68</sup> 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.”<sup>69</sup>

**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.

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<sup>64</sup> Senate Governmental Affairs Committee, hearing, May 1, 2003. See Secretary Ridge’s remarks responding to questions from Sen. Collins.

<sup>65</sup> U.S. Congress, Senate Commerce Committee, *Transportation and Border Security*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., April 9, 2003 (Washington: GPO, 2003). See remarks by Secretary Ridge.

<sup>66</sup> Harris, National Association of Counties *County News Online*.

<sup>67</sup> Senate Governmental Affairs Committee, hearing, May 1, 2003. See remarks from Sen. Levin.

<sup>68</sup> S. 87, sec. 7.

<sup>69</sup> H.R. 1449, sec. 5.

In the first approach Congress would 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 would be reasonably consistent once the variables are specified in law; for example, if a city is within 50 miles of nuclear power plant, it would 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.

In the second approach Congress would define the guiding principles behind homeland security grants, allowing more discretion to DHS. 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 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.

This second approach is arguably taken in S. 1245, as approved by the Senate Governmental Affairs Committee in June 2003. The bill would allow DHS to establish the distribution formula, but it would have to consider selected risk factors, including population (including tourist and military populations), population density, risk (including threat and vulnerability), and international borders. S. 1245 would allow other risk factors to be included in the formula at the DHS Secretary's discretion.<sup>70</sup>

This approach was also recently taken in the FY2003 consolidated appropriations bill (P.L. 108-7) and its accompanying report, which directed ODP to make grants to high-threat urban areas based on such things as credible threat, vulnerability, population, and infrastructure of national importance.<sup>71</sup>

Regardless of what approach is taken to the formula, Congress might consider providing a basic level of protection from terrorism by assuring 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 allotting each state's minimum) to adequately address areas of high threat or vulnerability, regardless of the discretion Congress allows to the Department. S. 1245 would provide a 0.75%

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<sup>70</sup> S. 1245, sec. (4)(g).

<sup>71</sup> U.S. Congress, Conference Committee, *Making Further Appropriations for the Fiscal Year 2003, and for Other Purposes*, report to accompany H.J.Res. 2, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., H. Rep. 108-10 (Washington: GPO, 2003), p. 637.

base amount to each state.<sup>72</sup> After each state received its minimum, remaining funds would be distributed on the basis of risk.

## 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.<sup>73</sup> In the FY2003 supplemental appropriation, Congress authorized grant funds specifically for critical infrastructure protection (including overtime), a new activity for ODP.<sup>74</sup> 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.<sup>75</sup>

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 exists. Since the attacks of September 2001, Congress has authorized funding for security at certain types of facilities, including airports, seaports, and water treatment plants.<sup>76</sup> Beginning with the FY2002 program, recipients of ODP formula grants were authorized to use a portion of funds for infrastructure security.

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<sup>72</sup> S. 1245 would treat the District of Columbia and Puerto Rico as states. Territories would receive a base amount of 0.25%.

<sup>73</sup> Based on analysis of ODP guidance documents for formula program.

<sup>74</sup> P.L. 108-11, "Office for Domestic Preparedness."

<sup>75</sup> From FY2001 through the regular FY2003 appropriation (P.L. 108-7), conference reports 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.

<sup>76</sup> 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.

Perhaps most importantly, Congress appropriated \$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.<sup>77</sup> 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.<sup>78</sup> At least one bill has been introduced in the 108<sup>th</sup> Congress that would authorize FEMA to award grants for hiring firefighters (H.R. 1118/S. 544, the SAFER Act).<sup>79</sup>

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 personnel can be fully integrated into the national homeland defense effort."<sup>80</sup> Congress did fund 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."<sup>81</sup>

**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

<sup>77</sup> 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).

<sup>78</sup> 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.

<sup>79</sup> Another version of the SAFER Act, was inserted into the FY2004 National Defense Authorization Act (H.R. 1588), which passed the Senate on June 4, 2003.

<sup>80</sup> 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.

<sup>81</sup> U.S. Congress, Senate Governmental Affairs Committee, *Investing in Homeland Security, Streamlining and Enhancing Homeland Security Grant Programs*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., May 1, 2003 (Washington: GPO). See questions from Sen. Voinovich.

responder funds. Such an approach is taken in H.R. 1389, H.R. 1449, and S. 87/H.R. 1007, 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.<sup>82</sup>

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 ...."<sup>83</sup> 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 107<sup>th</sup> Congress, this approach was taken by S. 2664 (a similar bill has been introduced in the 108<sup>th</sup> 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 limits. S. 1245, for example, would allow recipients to use up to 5% of funds for personnel compensation, and up to 5% for overtime expenses (the DHS Secretary may waive the statutory limit on funds for overtime during times of heightened alert).<sup>84</sup>

## Matching Requirements

In its FY2004 budget request, the Bush Administration proposed that grants under the First Responder Initiative be accompanied by a 25% matching requirement for recipients.<sup>85</sup> Related bills in the 108<sup>th</sup> Congress take a variety of approaches to matching requirements: some do not include them, others propose maximum matching amounts, while others propose minimum matching amounts. Also, federal grant programs often include maintenance-of-effort requirements (MOEs) — policy requirements contained in legislation or regulations requiring recipients to maintain a pre-existing level of financial effort in a specific area in order to receive federal

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<sup>82</sup> White House Office of Homeland Security, *National Strategy for Homeland Security*, p. 45.

<sup>83</sup> Michael Scardaville, "Emphasize How ...," Heritage Foundation, Feb. 27, 2003.

<sup>84</sup> S. 1245, sec. 4(c)(3).

<sup>85</sup> OMB, *Fiscal Year 2004 Budget of the U.S. Government, Appendix*, p. 456. For the purpose of this report, all matching amounts refer to the requirement placed on recipient state and local governments.

funds.<sup>86</sup> The Administration proposal does not address MOEs, although several bills do. The legislative approach taken to matching requirements and MOEs could affect aggregate spending on homeland security and the ability of states and localities to participate in grant programs.

**Analysis.** Existing grant programs for terrorism preparedness have a range of matching requirements. Some current programs have matching requirements that are established either in legislation or agency rules. The largest program — ODP’s State Homeland Security Grant Program, however, does not require a match. Some current programs also have MOEs. The table below provides examples of the varying matching requirements and MOEs in federal terrorism preparedness programs.

**Table 3. Examples of Matching Requirements in Selected Federal Terrorism Preparedness Programs**

DHS Agency	Program	Matching Requirement (contribution from recipient state or local government)	Maintenance-of-Effort Provision
Office for Domestic Preparedness	State Homeland Security Grant Program	no	yes
	High-Threat Urban Area grants	no	yes
Federal Emergency Management Agency	Assistance to Firefighters Program	30% for local departments serving jurisdictions over 50,000 in population; 10% for local departments serving jurisdictions with a population of 50,000 or less	yes
	Emergency Management Performance Grants (Emergency Management Planning and Assistance Account)	not more than 50%	yes (EMPG applies a cost-share arrangement that requires states to increase annually their spending on emergency management)
	Emergency Operations Center grants (EMPA)	Phase 1: no Phase 2: 25%	no
	Community Emergency Response Teams (EMPA)	no	no

Source: Analysis of authorizing legislation, program guidance, agency documents for selected programs, as funded in FY2003. Selected information also gathered from discussions with DHS officials.

<sup>86</sup> For more information on matching requirements and MOEs, see CRS Report RL30778, *Federal Grants to State and Local Governments: Concepts for Legislative Design and Oversight*, by Ben Canada.

*Observations on Matching Requirements.* The former U.S. Advisory Commission on Intergovernmental Relations (ACIR) published a number of reports on federal grants-in-aid, many of which included observations on matching requirements.<sup>87</sup> One ACIR report identified several reasons *for* including matches in grant programs:

- stimulate new spending for selected activities that the federal governments deems of national interest;
- equalize spending for selected activity among states and localities;
- ensure a minimum level of service output; and,
- encourage recipient governments to administer the program in an efficient and effective manner.<sup>88</sup>

The ACIR also reported several potential effects of applying matches in grant programs. A grant with no or a low matching requirement for recipients encourages eligible recipients to apply. A grant with a high matching requirement for recipients, however, discourages eligible recipients from applying. Recipients with low fiscal capacity typically have difficulty participating in programs with a high matching requirement. Some observers argue that this has the impact of limiting access by communities with the greatest need, because of their limited fiscal capacity, or of forcing needy communities to choose among competing needs.<sup>89</sup>

DHS Secretary Ridge has emphasized that states and localities should share the financial cost of improving preparedness and security. He has pledged, however, that DHS will review the current application of matching requirements in its assistance programs to see whether state and local governments have difficulty satisfying such requirements.<sup>90</sup>

On the other hand, some state and local officials have expressed concern about matching requirements in first responder programs. One mayor, speaking on behalf of the National League of Cities (NLC), testified before Congress that the NLC "... was concerned that the Administration's proposed 25% in-kind match in its First Responder Initiative may discourage some cities from requesting funds for

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<sup>87</sup> ACIR was created by Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. It was a national bipartisan commission representing the executive and legislative branches of federal, state, and local government. ACIR was dissolved in 1995 through P.L. 104-52. Although the commission has been dissolved, some observers and students of federalism consider its publications as essential literature.

<sup>88</sup> U.S. Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design*, report A-52 (Washington: GPO, 1978), pp. 144-150.

<sup>89</sup> U.S. Advisory Commission on Intergovernmental Relations, *Summary and Concluding Observations*, report A-62 (Washington: GPO, 1978), pp. 18-19.

<sup>90</sup> Maureen Sirhal, "Ridge Cites Security Progress, urges States to Share Burden," *Government Executive*, Daily Briefing, Feb. 24, 2003.



first-responder preparedness.”<sup>91</sup> Other organizations have concerns about the ability of states to satisfy current matching requirements, given the fiscal challenges most states are presently experiencing. The National Emergency Management Association, for example, reported that states may have difficulty satisfying the 50% matching requirement in FEMA’s emergency operations center grants.<sup>92</sup>

**Observations on MOEs.** The ACIR argued for the inclusion of MOEs in grant programs generally, stating, “Maintenance-of-effort and nonsubstitution requirements are integral parts of any grant that is not totally unconditional ... They also are important in block grants where the functional terrain is broad and often not clearly defined, making fungibility even easier.”<sup>93</sup> Typically, Congress uses MOEs to ensure that recipients continue providing the same level of assistance, and use federal funds only to supplement, not substitute, for their own funds. Without such a requirement, federal funds could enable the activity to continue, but might not increase the overall funding for the assisted activity.<sup>94</sup> MOE requirements, however, may not prevent recipients from scaling back planned increases in funding.

ODP’s State Homeland Security Grant Program, as well as FEMA’s Assistance to Firefighters and EMPG programs, all contain MOEs. There are reasons, however, why Congress might not include MOEs in first responder preparedness grants. Omitting such requirements could offer states and localities, many of which are presently experiencing fiscal distress, more flexibility with their own funds. It could also be argued that homeland security is a national concern, and, thus, should be financed with federal funds.

**Policy Approaches.** A wide range of approaches can be taken in applying matching requirements and MOEs to federal grant programs; this section discusses selected basic approaches that apply to existing programs or a new first responder block grant. If Congress wished to ensure that states and localities continue contributing to homeland security efforts, it could apply a MOE to first responder preparedness programs, as is currently done in the State Homeland Security Grant Program. The MOE could require recipients to maintain the same level of spending as in recent fiscal years, which would establish a relatively fixed minimum of funding that states and localities would have to contribute to preparedness activities. Another approach would be to require recipients to use federal funds to supplement, not supplant, their own funds dedicated to preparedness activities. This latter approach arguably gives the administering agency greater discretion in applying the MOE, and

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<sup>91</sup> U.S. Congress, Senate Committee on Appropriations, *Appropriations for Homeland Security*, hearing, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Apr. 10, 2002 (GPO: Washington, 2002). See statement of Honorable Michael Guido, Mayor, Dearborn, Michigan.

<sup>92</sup> National Emergency Management Association, “Emergency Operations Center Construction Match Requirement,” Position Paper, Feb. 24, 2003.

<sup>93</sup> ACIR, *Categorical Grants*, p. 174.

<sup>94</sup> General Services Administration, *Catalog of Federal Domestic Assistance*, (Washington: GPO, 2002), available at: [<http://www.cfda.gov/public/cat-anatomy.htm>], visited June 6, 2003.

could complicate enforcement efforts.<sup>95</sup> S. 1245 takes this relatively broad approach, stating that “[grants] shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this act.”<sup>96</sup>

Regarding matching requirements, the Administration has proposed that states and localities satisfy a matching requirement of not less than 25%.<sup>97</sup> Congress could enact this proposal, or possibly adjust the matching rate. A related approach would be to establish a matching requirement, but give states and localities a degree of flexibility in satisfying the requirement. This could be accomplished by establishing a “soft match,” allowing recipients to match federal grants with “in-kind contributions” or any non-federal funds. This would allow recipients to assess the value of contributed goods and services and apply those amounts to their matching requirement.<sup>98</sup> S. 1245 would take this approach by allowing recipients to satisfy a 25% match with “non-Federal contributions.”<sup>99</sup>

Alternatively, Congress could establish a low matching rate initially and gradually increase the rate. Considering that some existing first responder programs have no matching requirement, including the State Homeland Security Grant Program, gradually raising the recipient match could assist states and localities to adjust financially to the new program. Such an approach is taken in H.R. 1389.<sup>100</sup> Alternatively, S. 1245 would not apply the matching requirement during the first 2 years of the new program.

Finally, Congress could authorize ODP to waive matching requirements. Such authority could be general or it could be based on specified criteria. S. 1245 would allow the DHS Secretary to waive the 25% match for grant recipients “... deemed economically distressed.”<sup>101</sup> S. 87 includes a similar provision allowing DHS to waive matching requirements for grant recipients “... that are deemed economically distressed.”<sup>102</sup>

## **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

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<sup>95</sup> ACIR, *Categorical Grants*, p. 174.

<sup>96</sup> S. 1245, sec. 4(g)(7).

<sup>97</sup> OMB, *Fiscal Year 2004 Budget of the U.S. Government, Appendix*, p. 456.

<sup>98</sup> ACIR, *Categorical Grants*, pp. 172-173.

<sup>99</sup> S. 1245, sec. 4(g)(5).

<sup>100</sup> H.R. 1389, sec. 4(a).

<sup>101</sup> S. 1245, sec. 4(g)(5).

<sup>102</sup> S. 87, sec. 14(b).

assistance programs.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup> 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.<sup>106</sup>

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 time, there will be very little prospect for answering the question, "How well prepared *are* we?"<sup>107</sup>

Likewise, an independent task force sponsored by the Council on Foreign Relations recommended that preparedness standards be linked to all federal assistance. The task force stated that...

Congress should require DHS and HHS to work with other federal agencies, state and local emergency responder agencies and officials, and standard-setting bodies from the emergency responder community to establish clearly defined standards and guidelines for federal, state, and local government emergency preparedness and response in such areas as training, interoperable communication systems, and response equipment. These standards must be

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<sup>103</sup> U.S. Conference of Mayors, "One Year Later, Cities Are Safer but Still Await Financial Assistance from Washington," press release, Sept. 9, 2002.

<sup>104</sup> 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.

<sup>105</sup> U.S. Congress, House Committee on Appropriations, *Making Supplemental Appropriations For The Fiscal Year Ending September 30, 2003, And For Other Purposes*, 108<sup>th</sup> Cong., 1<sup>st</sup> 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, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 108-33 (Washington: GPO, 2003), pp. 23-24.

<sup>106</sup> P.L. 108-11, chapter 6, "Office for Domestic Preparedness."

<sup>107</sup> Gilmore Commission, *Fourth Annual Report*, p. 37.

sufficiently flexible to allow local officials to set priorities based on their needs provided that they reach nationally determined preparedness levels within a fixed time period. These capabilities must be measurable and subject to federal audit.<sup>108</sup>

Several other reports have emphasized accountability in preparedness grant programs, including reports from the U.S. General Accounting Office, Century Foundation, and Heritage Foundation.<sup>109</sup> (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.<sup>110</sup>

Bills in the 108<sup>th</sup> 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. 1245, as reported, would direct the DHS Secretary to develop “National Performance Standards” that will be based on the goals and objectives addressed in the state homeland security plans.<sup>111</sup> Each state would be required to report annually on its progress in meeting the standards. The bill also requires recipients to submit financial reports, and for DHS to submit performance reports to Congress.<sup>112</sup>

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. Several local emergency

<sup>108</sup> Council on Foreign Relations, *Emergency Responders: Drastically Underfunded, Dangerously Unprepared*, Report of the Independent Task Force on Emergency Responders, July 1, 2003. Available at: [[http://www.cfr.org/pdf/Responders\\_TF.pdf](http://www.cfr.org/pdf/Responders_TF.pdf)], visited July 8, 2003.

<sup>109</sup> 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](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.

<sup>110</sup> 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.

<sup>111</sup> Until such standards are developed, DHS would assist states and localities in developing “Interim Performance Measures.”

<sup>112</sup> S. 1245, sec. 4(h).

managers have supported such an approach.<sup>113</sup> Congress arguably took 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.

## 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 108<sup>th</sup> Congress

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

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

House Select Committee on Homeland Security, *First Responders: How States, Localities, and the Federal Government Are Working Together To Make America Safer*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., July 17, 2003.

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

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

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

## Hearings in the 107<sup>th</sup> 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?* 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 1, 2002.

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<sup>113</sup> 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.

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

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

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

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

## 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 RL32023, *Homeland Security Advisory System: Possible Issues for Congressional Oversight*, by Shawn Reese.

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.