



Department of Homeland Security Assistance to States and Localities: A Summary and Issues for the 111th Congress

Shawn Reese

Analyst in Emergency Management and Homeland Security Policy

December 1, 2009

Congressional Research Service

7-5700

www.crs.gov

R40246

Summary

In light of lessons learned from the September 2001 terrorist attacks and other catastrophes such as Hurricanes Katrina and Gustav, the second session of the 111th Congress is expected to consider questions and issues associated with federal homeland security assistance. Federal homeland security assistance, for the purpose of this report, is defined as U.S. Department of Homeland Security programs that provide funding, training, or technical assistance to states, localities, tribes, and other entities to prepare for, respond to, and recover from man-made and natural disasters. Since the nation is still threatened by terrorist attacks and natural disasters, the 111th Congress may wish to consider questions and challenges about whether, or how, federal homeland security assistance policy should be revisited. Policy solutions could affect, and be constrained by, existing law and regulations, and constitutional considerations.

Since FY2002, Congress has appropriated over \$34 billion for homeland security assistance to states, specified urban areas and critical infrastructures (such as ports and rail systems), the District of Columbia, and U.S. insular areas. Originally, in FY2002, there were eight programs; in FY2010 there are 15 programs. This expansion and scope of homeland security assistance programs are the result of congressional and executive branch actions.

The Grant Programs Directorate, within the Federal Emergency Management Agency, administers these programs for the Department of Homeland Security. Each assistance program has either an all-hazards purpose or a terrorism preparedness purpose. However, in FY2010, 60% of funding has been appropriated for terrorism preparedness programs, a decision that has been criticized by some grant recipients, Members of Congress, and others.

Congress appropriated \$757 million less for state and local programs than was appropriated in FY2009; however, some programs received increased funding in FY2010, such as the Urban Area Security Initiative. This reduction is primarily the result of Congress not funding the Commercial Equipment Direct Assistance Program, and the Trucking Security Grant program. According to news reports, a Department of Homeland Security official announced that the overall FY2011 budget request for the department will decline from previous years' levels. The impact of a reduction on grants assistance may be an issue.

This report summarizes these programs, and identifies and analyzes potential issues for the 111th Congress. These issues include (1) the purpose and number of assistance programs; (2) the evaluation of the use of grant funding; (3) the determination of eligible grant recipients; (4) the programs' funding amounts; (5) the programs' funding distribution methodologies, and (6) the use of grant funding for sustainment and maintenance costs associated with previous fiscal year homeland security projects. Some of these issues have been debated and legislation passed since FY2002; presently H.R. 3837 addresses the issue of sustainment and maintenance costs.

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

Contents

| | |
|--|----|
| Introduction | 1 |
| Historical Development of Federal Homeland Security Assistance | 2 |
| Summary of Grant Programs | 4 |
| Terrorism Preparedness Grant Programs | 4 |
| State Homeland Security Grant Program | 4 |
| Urban Area Security Initiative | 5 |
| Transit Security Grant Program | 5 |
| Port Security Grant Program | 6 |
| Freight Rail Security Grant Program | 6 |
| Intercity Passenger Rail Program (Amtrak) | 7 |
| Intercity Bus Security Grant Program | 7 |
| Trucking Security Program | 7 |
| Buffer Zone Protection Program | 7 |
| Commercial Equipment Direct Assistance Program | 8 |
| All-Hazards Preparedness Grant Programs | 8 |
| Metropolitan Medical Response System | 8 |
| Assistance to Firefighters Program | 9 |
| Regional Catastrophic Preparedness Grant Program | 9 |
| Citizen Corps Programs | 9 |
| Emergency Management Performance Grants | 10 |
| Public Safety Interoperable Communications Grant Program | 10 |
| Emergency Operations Center Grant Program | 10 |
| Other DHS Assistance and Activities | 11 |
| Legal Citations | 11 |
| Issues for the 111 th Congress | 12 |
| Purpose and Number of Assistance Programs | 12 |
| Evaluation of Funding Use | 16 |
| Eligible Grant Recipients | 19 |
| Funding Amounts | 20 |
| Funding Distribution Methodologies | 22 |
| Sustainment and Maintenance Costs | 23 |
| Conclusion | 25 |

Tables

| | |
|---|----|
| Table 1. Homeland Assistance Program Acronyms | 2 |
| Table 2. Legal Citation to GPD Programs | 11 |
| Table 3. FY2002-FY2009 Number and Types of DHS Assistance Programs | 14 |
| Table 4. Eligible Recipients of FY2009 Homeland Security Assistance, by Program | 19 |
| Table 5. FY2002-FY2009 Appropriations for Homeland Security Assistance Programs | 21 |

Contacts

Author Contact Information 26

Introduction

Congress has enacted legislation and appropriated funds for homeland security assistance programs¹ since 1996, a policy initiated in large measure by the bombings of the World Trade Center on February 26, 1993, and the Alfred P. Murrah building in Oklahoma City on April 19, 1995. Following the September 11, 2001, terrorist attacks, Congress further increased its attention on homeland security assistance programs by, among other things, establishing the Department of Homeland Security (DHS).² This report focuses on the department's homeland security assistance programs, but not the department as a whole.

The number and purpose of programs, their administration, and funding have evolved over the past 12 years. These assistance programs are intended to enhance and maintain state, local, and non-federal government entities'³ homeland security and emergency management capabilities. Since FY2003, DHS has administered these assistance programs through four different offices or agencies within the department due to both congressional and departmental actions.⁴

With the increase of terrorist threats and attacks against the United States following the end of the Cold War and the termination of old civil defense programs, a number of policy questions have arisen regarding homeland security assistance programs. The majority of these questions have not been completely addressed, even though Congress has debated and enacted legislation that provides homeland security assistance to states and localities since 1997. Some officials such as Members of Congress, former President Bush's administration personnel, and President Barack Obama have questioned (1) the purpose and number of assistance programs; (2) the use of preparedness funding; (3) the determination of eligibility; (4) the funding amounts for the assistance programs; (5) the programs' funding distribution methodology, and (6) the use of grant funding for sustainment and maintenance costs associated with previous fiscal year homeland security projects.

These policy questions may continue to be important during the second session of the 111th Congress as Members continue to appropriate funding and conduct oversight of these assistance programs. Specifically, the House Homeland Security Committee stated that oversight of DHS grants is one of its priorities for 111th Congress.⁵ Discussion of these potential issues may enable

¹ For the purpose of this report, homeland security assistance programs are defined as DHS grant programs, or programs that were transferred to DHS, that provide funding to states, localities, tribes, and other entities; however, public safety and National Guard funding is not included in this report. Additionally, the term "homeland security program" was not used until 2002. Prior to this, the term "domestic preparedness" was used to describe programs and activities that assisted states and localities to prepare for possible terrorist attacks.

² The most recent legislation that focuses on these programs was P.L. 110-53, "Implementing Recommendations of the 9/11 Commission Act." This law authorized the majority of these programs and altered the method in which the grant programs are distributed.

³ Non-federal entities include grant recipients such as privately owned ports and transit systems.

⁴ The four offices include the Office for Domestic Preparedness (Border and Transportation Security Directorate), Office for State and Local Government Coordination and Preparedness (Office of the Secretary), Office for Grants and Training (Preparedness Directorate), and the Office of Grant Programs (Federal Emergency Management Agency) which is now reorganized and renamed the Grant Programs Directorate.

⁵ U.S. Congress, House Committee on Homeland Security, *Committee of Homeland Security Oversight Plan*, 111th (continued...)

Congress and the federal government to anticipate possible homeland security crises and establish policies that are not strictly reactionary.

This report provides a brief summary of the development of the federal government’s role in providing homeland security assistance, a summary of assistance programs DHS presently provides to states and localities, and a discussion of the policy issues identified above. In light of the large number of homeland security assistance programs, the following table lists acronyms used throughout the report.

Table I. Homeland Assistance Program Acronyms

| Program | Acronym |
|---|----------------|
| Bus Safety Program | BSP |
| Buffer Zone Protection Program | BZPP |
| Citizen Corps Program | CCP |
| Commercial Equipment Direct Assistance Program | CEDAP |
| Critical Infrastructure Protection Program | CIPP |
| Emergency Management Performance Grant | EMPG |
| Emergency Operations Center | EOC |
| Assistance to Firefighters Program | FIRE |
| Metropolitan Medical Response System | MMRS |
| Port Security Program | PSP |
| Public Safety Interoperable Communications | PSIC |
| Regional Catastrophic Preparedness Grant | RCPG |
| State Homeland Security Grant Program | SHSGP |
| Training, technical assistance, exercises & evaluations | TTAE&E |
| Transit Security Programs | TSP |
| Trucking Security Program | TRSP |
| Urban Area Security Initiative | UASI |

Source: Compiled by CRS

Historical Development of Federal Homeland Security Assistance

The federal government began providing counter-terrorism assistance to states and localities following the bombings of the World Trade Center in 1993 and the Alfred P. Murrah federal

(...continued)

Cong., 1st sess., February 4, 2009, pp. 3-4.

building in 1995. This assistance was separate from any federal disaster assistance these cities may have received due to these terrorist attacks. Federal homeland security assistance evolved and expanded after the terrorist attacks on September 11th, 2001, and the establishment of DHS in 2002 with P.L. 107-296, “Homeland Security Act of 2002.” A brief discussion on this evolution and expansion follows.

In 1996, Congress enacted The Defense Against Weapons of Mass Destruction Act (also known as the Nunn-Lugar-Domenici Act). This law, among other things, established the Nunn-Lugar-Domenici Program (NLD) that provided financial assistance to over 150 major U.S. cities. This assistance, with the Oklahoma City bombing being the primary catalyst, was focused on helping first responders prepare for, prevent, and respond to terrorist attacks involving weapons of mass destruction.⁶ Two years later, the Department of Justice (DOJ) established the Office for Domestic Preparedness (ODP) to administer assistance programs that enhanced state and local emergency response capabilities, including terrorist attack response.⁷ At first, NLD provided assistance to 120 cities; it was later expanded to include 157 cities and counties. At the end of 1998, 40 of the original 120 cities had received funding and training. In addition to training, approximately \$300,000 was provided by DOD to each city for personal protection, decontamination, and detection equipment. Following the transfer of NLD to DOJ, all cities completed the training initiated by DOD, and DOJ based the training and exercises on state assessments. The program ended in 2001 upon completion of the training.⁸

ODP was transferred to DHS with enactment of the Homeland Security Act of 2002.⁹ Initially, ODP and its terrorism preparedness programs were administered by the Border and Transportation Security Directorate, and all-hazard preparedness programs were in the Federal Emergency Management Agency (FEMA). ODP and all assistance programs were transferred to the Office of the Secretary in 2004 due to state and local criticism of DHS not having a “one-stop-shop”¹⁰ for grant programs assistance. After investigations into the problematic response to Hurricane Katrina, the programs were transferred to the National Preparedness Directorate. Currently ODP programs and activities are administered by the Grants Program Directorate (GPD), within FEMA. GPD is now the primary DHS and FEMA entity responsible for managing the majority of DHS assistance to states and localities.

Since the establishment of DHS, the department has not only been responsible for preparing for and responding to terrorist attacks, it is also the lead agency for preparing for, responding to, and recovering from any accidental man-made or natural disasters. The most recent legislative action affecting DHS grants was P.L. 110-53, *Implementing Recommendations of the 9/11 Commission Act of 2007*, which authorized a number of the DHS grants and mandated some of their allocation

⁶ P.L. 104-201, Title XIV, Subtitle A, Sec. 1412, 110 Stat. 2718.

⁷ U.S. Department of Justice, Office for Domestic Preparedness, *Emergency Responder Guidelines*, Washington, DC, August 2002, p. 1, <http://www.homelandone.com/docs/em-guidelines.pdf>.

⁸ James Martin Center for Nonproliferation Studies, *Nunn-Lugar-Domenici Domestic Preparedness and WMD Civil Support Teams*, Monterey, CA, October 2001, <http://cns.miis.edu/research/cbw/120city.htm>.

⁹ P.L. 107-296, Title IV, Sec. 403, 116 Stat. 2178.

¹⁰ A “one-stop-shop” is a single entity within DHS that provides all information concerning grants to states and localities.

methodologies.¹¹ This legislation was a result of numerous years of debate on how DHS should allocate homeland security assistance funding to states, the District of Columbia (DC), and U.S. insular areas.¹²

Summary of Grant Programs

In FY2003, DHS administered eight assistance programs, and expanded the total to 15 programs in FY2010. The following section summarizes 14 of the 15 programs that are currently administered by DHS. The department has yet to issue information or guidance on the Center for Counterterrorism and Cyber Crime Program so there is no summary of this program. This report uses the FY2009 grant guidance¹³, DHS documents, and congressional reports to summarize the programs. This report is not intended to provide in-depth information on these grants. For detailed information on individual grant programs, see the cited sources.¹⁴

DHS does not identify grant programs as either terrorism preparedness or all-hazards preparedness. As a result, CRS has based its characterization of programs falling primarily into one category or another on an examination of DHS grant guidance documents. The criteria for placing a grant program in either the terrorism preparedness or all-hazards preparedness categories is based on a review of the program's eligible activities or the DHS's stated goal for the program. Other analysts might categorize the programs differently.

Terrorism Preparedness Grant Programs

Eight of the 15 programs administered by GPD could arguably be categorized as terrorism preparedness. These programs specifically address terrorism preparedness activities, terrorist incident response, or focus on law enforcement activities.

State Homeland Security Grant Program

The State Homeland Security Grant Program (SHSGP) provides states, tribal governments, DC, and U.S. insular areas assistance in preparing for terrorist attacks.¹⁵ Grant recipients must have a DHS approved homeland security strategy to be eligible for SHSGP funding. The program is intended to implement state homeland security strategies and initiatives outlined in State Preparedness Reports. The program's eligible activities include the purchase of specialized

¹¹ For a discussion on P.L. 110-53 affected grant distribution methodologies, see CRS Report RL34181, *Distribution of Homeland Security Grants in FY2007 and P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act*, by Shawn Reese and Steven Maguire.

¹² U.S. insular areas include Puerto Rico, Northern Mariana Islands, U.S. Virgin Islands, Guam, and American Samoa.

¹³ DHS has yet to issue the FY2010 guidance on its grant programs.

¹⁴ For an overview of GPD's grant programs, see <http://www.fema.gov/government/grant/index.shtm>.

¹⁵ To a lesser extent, some SHSGP authorized expenditures can be dual-use such as the development of evacuation plans.

equipment, training, and exercises. It also provides funds for the protection of critical infrastructure of national importance.¹⁶

All states, DC, and Puerto Rico are guaranteed a minimum allocation of 0.365% of total appropriations for SHSGP and Urban Area Security Initiative (UASI). U.S. insular areas are guaranteed a minimum allocation of 0.08% of total appropriations for SHSGP and UASI. However, prior to the distribution of minimum allocations, DHS conducts a risk assessment to determine grant recipient allocations and then ensures that the allocation amount meets or exceeds the guaranteed amount in statute.¹⁷

Urban Area Security Initiative

UASI is a discretionary grant program that provides funding to metropolitan areas (including counties and mutual aid partners). Designated urban areas may use UASI funds to purchase specialized homeland security equipment, plan and execute exercises, pay first responder overtime costs associated with heightened alert threat levels, and train first responders. Additionally, funds from this program can be used for port and mass transit security, radiological defense systems, pilot projects, and technical assistance.¹⁸

DHS conducts vulnerability and threat assessments that consider the location of critical infrastructure and the population density of all major metropolitan areas. Based on these assessments, and at the DHS Secretary's discretion, selected metropolitan areas are grouped into two categories, Tier I and Tier II. The seven highest risk urban areas are designated as Tier I and receive a larger portion of funding; the remaining areas designated as Tier II receive less funding. All funding allocations are based on risk analysis and anticipated effectiveness of funding.¹⁹

Transit Security Grant Program

The Transit Security Grant Program (TSGP) provides funding to high-threat and high-risk urban areas to enhance their security for bus, rail, and ferry systems.²⁰ States are eligible to apply for funding, and grant awards must be obligated to the state's appropriate transit systems.²¹ DHS determines eligible transit agencies by using a comprehensive risk assessment. The risk

¹⁶ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 2, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

¹⁷ P.L. 110-53, Title I, Sec. 101, "Sec. 2004", 121 Stat. 278.

¹⁸ U.S. Department of Homeland Security, Office of the Press Secretary, *Securing the Homeland: Protecting Our Urban Areas*, Press Release, Washington, DC, 2008.

¹⁹ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 2, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

²⁰ Additionally Amtrak is eligible to receive funding to continue security enhancements for its intercity rail services between high-risk urban areas.

²¹ U.S. Department of Homeland Security, Federal Emergency Management Agency, *Transit Security Grant Program: Overview*, Washington, DC, 2008, <http://www.fema.gov/government/grant/tsgp/index.shtm>.

assessment methodology is linked to the methodology that DHS uses for other state and local grant programs. UASI eligibility determines TSGP eligibility.²²

Port Security Grant Program

The Port Security Grant Program (PSGP) provides funding for the protection of ports and port infrastructure from terrorism. It is intended to enhance risk management capabilities, maritime domain awareness, training and exercises, and counter-terrorism capabilities. Eligible applicants include owners and operators of federally regulated terminals, facilities, or U.S. inspected passenger vessels; port authorities or state and local agencies that provide security to federally regulated port facilities; and any group (such as port and terminal associations) that provides security for federally regulated ports, terminals, U.S. passenger vessels, or ferries.²³

DHS conducts risk and vulnerability assessments to determine what ports are eligible to apply for funding. Based on these risk and vulnerability assessments, ports are categorized into Tier I, Tier II, Tier III, or “All Other Port Areas.” Tier I and Tier II ports are provided a designated amount of funding; identified Tier III ports and “All Other Port Areas” apply and compete for remaining funding.²⁴

Freight Rail Security Grant Program

The Freight Rail Security Grant Program (FRSGP) provides funding and assistance, such as technical assistance, for the protection of freight rail systems from terrorism, major disasters, and other emergencies. Eligible applicants include Class I railroad carriers (to fund security awareness and emergency response training for its employees), and Class II and III railroad carriers (to fund vulnerability assessments and develop security plans).²⁵ DHS determines eligible applicants through a competitive process based on their ability to deliver training, develop security plans and prepare vulnerability assessments.²⁶

²² U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 8, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

²³ U.S. Department of Homeland Security, Federal Emergency Management Agency, *Port Security Grant Program: Overview*, Washington, DC, 2008, <http://www.fema.gov/government/grant/psgp/index.shtm>.

²⁴ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 7, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

²⁵ U.S. Department of Homeland Security, Federal Emergency Management Agency, *Transit Security Grant Program: Overview*, Washington, DC, 2008, <http://www.fema.gov/government/grant/tsgp/indix.shtm>.

²⁶ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 7, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

Intercity Passenger Rail Program (Amtrak)

The Intercity Passenger Rail Program (IPR) is designed to enhance security of the Amtrak rail system through training and technical assistance. Amtrak is the only eligible applicant. DHS provides Amtrak with an amount determined through a risk assessment process.²⁷

Intercity Bus Security Grant Program

The Intercity Bus Security Grant Program (IBSGP) funds security activities for intercity bus systems. Some of the eligible activities include planning, security enhancements, and vehicle and driver protection. Eligible applicants include private operators of over-the-road (mainly interstate) bus companies servicing UASI jurisdictions.²⁸ DHS groups bus companies into tiers. Tier I comprises companies with 250 or more buses that provide the highest volume of services to high-risk urban areas. All other applicants are placed in Tier II. Bus companies apply and compete for funding within their tier.²⁹

Trucking Security Program

The Trucking Security Program (TSP) provides funding for counter-terrorism and security awareness training for trucking industry professionals. Trucking industry professionals are eligible to apply on the condition they support four funding priorities: participant identification and recruitment; training; communications; and information analysis and distribution for a counter-terrorism and security awareness program.³⁰ DHS sponsors a panel of subject matter experts from federal agencies; this panel reviews and assesses applications based on feasibility, timelines and sustainability.³¹ This program received no funding for FY2010.

Buffer Zone Protection Program

The Buffer Zone Protection Program (BZPP) provides funding and assistance to build security and risk management capabilities of critical infrastructure, such as chemical facilities, financial institutions, power utility facilities, dams, and stadiums. Eligible applicants include states with a

²⁷ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 8, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

²⁸ U.S. Department of Homeland Security, Federal Emergency Management Agency, *Intercity Bus Security Grant Program: Overview*, Washington, DC, 2008, <http://www.fema.gov/government/grant/ibsgp/index.shtml>.

²⁹ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 9, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

³⁰ U.S. Department of Homeland Security, Federal Emergency Management Agency, *Trucking Security Program: Overview*, Washington, DC, 2008, <http://www.fema.gov/government/grant/tsp/index.shtml>.

³¹ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 9, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

pre-designated BZPP site.³² DHS determines all BZPP sites prior to the annual allocation of program funding based on a risk assessment of each BZPP site.³³

Commercial Equipment Direct Assistance Program

The Commercial Equipment Direct Assistance Program (CEDAP) provides technology and equipment (along with associated training) to law enforcement and emergency responder entities in jurisdictions not eligible for UASI funding. This assistance is intended to enhance regional, state, and local response capabilities, mutual aid, and interoperable communications. Law enforcement and emergency responder entities must demonstrate a need for the technology and equipment in order to be eligible for CEDAP assistance. The entities must also demonstrate that the assistance will enhance their homeland security capabilities.³⁴ This program received no funding for FY2010

All-Hazards Preparedness Grant Programs

Seven of the 15 programs administered by GPD could be categorized as all-hazards preparedness. Specifically, these programs are focused on preparing for any emergency, regardless of cause. One program, the Regional Catastrophic Preparedness Grant Program, could also be categorized as terrorism preparedness since grant recipients are identified through DHS's UASI program risk assessment process. However, the program guidance does not specifically identify terrorism incidents as the only type of preparation eligible for funding.

Metropolitan Medical Response System

The Metropolitan Medical Response System (MMRS) facilitates the coordination of law enforcement agencies, firefighters, emergency medical services, hospital, public health, and other personnel's all-hazard response capabilities. Funding and federal assistance is provided to 124 highly populated jurisdictions and MMRS authorizes planning, training, exercises, and the acquisition of pharmaceuticals and personal protective equipment. FEMA states that the increased capability to respond to a WMD mass casualty event increases the capability to respond to other causes of mass casualty events, such as epidemic disease outbreaks and natural disasters.³⁵ The DHS Secretary determines the 124 jurisdictions based on population and divides the annual MMRS appropriation evenly among the jurisdictions.³⁶

³² U.S. Department of Homeland Security, Federal Emergency Management Agency, *Buffer Zone Protection Program: Overview*, Washington, DC, 2008, <http://www.fema.gov/government/grant/bzpp/index.shtm>. DHS determines what facilities and critical infrastructure is to receive funding from this program.

³³ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 10, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

³⁴ U.S. Department of Homeland Security, *Fact Sheet: 2008 Commercial Equipment Direct Assistance Program (CEDAP)*, Washington, DC, 2008, http://www.dhs.gov/xnews/releases/pr_1198172954591.shtm.

³⁵ U.S. Department of Homeland Security, Federal Emergency Management Agency, *FEMA: Metropolitan Medical Response System*, Washington, DC, 2008, <http://www.fema.gov/mmrs/>.

³⁶ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application* (continued...)

Assistance to Firefighters Program

The Assistance to Firefighters Program (FIRE) awards one-year grants directly to fire departments to enhance their abilities to respond to fires and fire-related hazards. FIRE seeks to support fire departments that lack tools and resources necessary to protect the health and safety of the public and firefighting personnel. FIRE provides funds to support firefighter safety, fire prevention, emergency medical services, and firefighting vehicle acquisition. Individual (professional and volunteer) fire departments are eligible to apply for grants under this program.

There is no set formula for the distribution of FIRE grants; fire departments and nonaffiliated emergency medical service entities throughout the nation apply, and award decisions are made through a multi-level review process that includes evaluation by a peer review panel. Award decisions are based primarily on the merits of the application and the needs of the community the fire department serves. Every year, a criteria development panel composed of fire service representatives makes recommendations to DHS regarding funding priorities and criteria for awarding grants.³⁷

Regional Catastrophic Preparedness Grant Program

The Regional Catastrophic Preparedness Grant Program (RCPGP) provides funding to enhance catastrophic incident preparedness in designated high-risk, high-threat urban areas which also receive UASI funding. The program supports coordination of regional all-hazard planning for catastrophic events, including the development of integrated planning communities, plans, protocols and procedures to manage a catastrophic event.³⁸

The DHS Secretary determines what high-risk, high-consequence urban areas will receive funding based on UASI allocations. In FY2009, 11 urban areas have been designated to receive funding. The funds are allocated based on the assessed risk of a catastrophic incident occurring in the region, as well as the anticipated effectiveness of the funding.³⁹

Citizen Corps Programs

The Citizen Corps Program (CCP) was established to coordinate volunteer organizations with the mission to make local communities safe and prepared to respond to emergency situations. CCP includes Community Emergency Response Teams (CERT), Enhanced Neighborhood Watch,

(...continued)

Guidance, Washington, DC, November 7, 2008, p. 3, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

³⁷ For detailed information on the FIRE grant application, evaluation, and distribution process, see U.S. Department of Homeland Security, Federal Emergency Management Agency, *Fiscal Year 2008 Assistance to Firefighters Grants Program and Application Guidance*, Washington, DC, February 2008, <http://www.firegrantsupport.com/docs/2008AFGguidance.pdf>.

³⁸ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 12, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

³⁹ *Ibid.*

Volunteers in Police Service, and Medical Reserve Service. States, DC, and Puerto Rico are guaranteed a minimum of 0.75% of total appropriations for CCP, and the U.S. insular areas are guaranteed a minimum of 0.25%.⁴⁰ The remainder of CCP appropriations are distributed based on a recipient's percentage of the national population.⁴¹

Emergency Management Performance Grants

The Emergency Management Performance Grant Program (EMPG) is designed to assist the development, maintenance, and improvement of state and local emergency management capabilities. It provides support to state and local governments to achieve measurable results in key emergency management functional areas. EMPG funding can be used for activities such as personnel costs, travel, training, supplies, and other routine expenditures for emergency management activities.

EMPG funds are allocated in the same manner as CCP. States, DC, and Puerto Rico are guaranteed a minimum of 0.75% of total appropriations for EMPG and the U.S. insular areas are guaranteed a minimum of 0.25%.⁴² The remainder of EMPG appropriations are distributed based on a recipients percentage of the national population.⁴³

Public Safety Interoperable Communications Grant Program

The Public Safety Interoperable Communications Grant Program (PSIC) provides assistance, planning, training, exercise, and equipment funding to states and localities to improve interoperable communications, including communications for responding to natural disasters, acts of terrorism and other man-made emergencies. All proposed activities must be integral to interoperable communications and aligned with the goals, objectives, and initiatives identified in the recipient's Communication Interoperability Plan. DHS allocates funding based on risk and guarantees each state, DC, and Puerto Rico a minimum of 0.50% of total appropriations; each U.S. insular area is guaranteed a minimum of 0.08% of total appropriations.⁴⁴

Emergency Operations Center Grant Program

The Emergency Operations Center Grant Program (EOC) provides funding and assistance to states and localities for developing and enhancing their emergency operations centers and

⁴⁰ P.L. 107-56, Sec. 1014, 115 Stat. 399.

⁴¹ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 3, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

⁴² P.L. 107-56, Sec. 1014, 115 Stat. 399.

⁴³ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 11, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

⁴⁴ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 12, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

improving their unified command capabilities. Funding may be used for equipping, upgrading, and constructing EOCs.⁴⁵ Annually, EOC sites are designated in statute with a specified appropriation.

Other DHS Assistance and Activities

The Grant Programs Directorate (GPD), within FEMA, conducts research and development through its Equipment Acquisition and Support Program within SHSGP. The Equipment Acquisition and Support Program provides assistance to federal, state, and local entities on equipment related issues such as testing, standards, and the identification of new equipment needs. Technical assistance is generally targeted to state and local agencies to enhance their ability to develop, plan, and implement programs for terrorism and disaster preparedness. Additionally, GDP provides specific assistance in such areas as the development of response plans, exercise scenarios, conduct of risk and vulnerability assessments, and the development of homeland security strategies.

Legal Citations

The following table provides legal citations to the authorization statutes for the grant programs summarized in this report. Where noted, public law is provided when there is no authorization language but appropriations language is available.

Table 2. Legal Citation to GPD Programs

| Programs | Citation |
|--|--|
| State Homeland Security Grant Program | 6 U.S.C. 605 |
| Urban Area Security Initiative | 6 U.S.C. 604 |
| Transit Security Grant Program | 6 U.S.C. 1135, 1163 |
| Port Security Grant Program | 46 U.S.C. 70107 |
| Freight Rail Security Grant Program | 6 U.S.C. 1163 |
| Intercity Passenger Rail Program (Amtrak) | 6 U.S.C. 1163 |
| Intercity Bus Security Grant Program | 6 U.S.C. 1182 |
| Trucking Security Program | P.L. 110-329, Title III. 122 Stat. 3671. |
| Buffer Zone Protection Program | P.L. 111-83, Title III. 123 Stat. 2159. |
| Commercial Equipment Direct Assistance Program | P.L. 110-329, Title III. 122 Stat. 3672. |
| Metropolitan Medical Response System | 6 U.S.C. 723 |
| Assistance to Firefighters Program | 15 U.S.C. 2201 et seq. |
| Regional Catastrophic Preparedness Grant Program | P.L. 111-83, Title III, 123 Stat. 2158. |

⁴⁵ U.S. Department of Homeland Security, Federal Emergency Management Agency, *Emergency Operations Center Grant Program*, Washington, DC, 2008, <http://www.fema.gov/government/grant/eoc/index.shtm>.

| Programs | Citation |
|--|---|
| Citizen Corps Programs | P.L. 111-83, Title III. 123 Stat. 2158. |
| Emergency Management Performance Grants | 42 U.S.C. 4001 et seq, 42 U.S.C. 5121 et seq, 42 U.S.C. 7701 et seq |
| Public Safety Interoperable Communications Grant Program | 6 U.S.C. 579 |
| Emergency Operations Center Grant Program | 42 U.S.C. 5196c |

Source: United States Code or public law.

Notes: Public law numbers and statutes at large citations are used if the program is authorized only in an appropriation act.

Issues for the 111th Congress

More than seven years after the terrorist attacks on September 11, 2001, and six years since the establishment of DHS, debate continues on policy questions related to homeland security assistance for states and localities. Some of these questions arguably have been addressed in legislation, such as the statute that modified the distribution of funding to states and localities (P.L. 110-53). Additionally, congressional committees have conducted hearings related to state and local homeland security assistance and preparedness. Some may contend there is a need for the 111th Congress to conduct further oversight hearings (which the House Homeland Security stated it intends to do)⁴⁶ and legislate on policy issues related to DHS assistance to states and localities. These potential issues include (1) the purpose and number of assistance programs; (2) the use of preparedness funding; (3) the determination of eligible recipients of assistance; (4) the funding for the assistance programs; (5) the programs' distribution methodology, and (6) the use of grant funding for sustainment and maintenance costs associated with previous fiscal year homeland security projects. The following analysis of these policy issues provides background for this policy discussion.

Purpose and Number of Assistance Programs

Some may argue the purpose and number of DHS programs have not been sufficiently addressed. Specifically, should DHS provide more all-hazards assistance versus terrorism focused assistance? Do the number of programs result in coordination challenges and deficient preparedness at the state and local level? Would program consolidation improve domestic security?

An all-hazards assistance program allows recipients to obligate and fund activities to prepare for, respond to, and recover from almost any emergency regardless of type or reason, which includes man-made (accidental or intentional) and natural disasters. EMPG is an example of an all-hazards

⁴⁶ U.S. Congress, House Committee on Homeland Security, *Committee of Homeland Security Oversight Plan*, 111th Cong., 1st sess., February 4, 2009, pp. 3-4. The House Committee on Homeland Security states that, in the 111th Congress, it intends to continue oversight of DHS's assistance programs for states and localities.

assistance program. The National Governors Association (NGA), in a policy position paper, states that an all-hazards approach to preparedness should be preserved.⁴⁷ Terrorism preparedness focused programs allows recipients to obligate and fund activities to prepare for, respond to, and recover from terrorist incidents. SHSGP is an example of a terrorism preparedness focused program.

The majority of disasters and emergencies that have occurred since September 11, 2001, have been natural disasters such as Hurricanes Katrina and Gustav. However, the majority of homeland security assistance funding to states and localities has been appropriated to programs dedicated to preparing for and responding to terrorist attacks. A DHS fact sheet regarding Homeland Security Presidential Directive 8⁴⁸ states that federal preparedness assistance is intended primarily to support State and local efforts to build capacity to address major (or catastrophic) events, especially terrorism.⁴⁹

In FY2010, Congress appropriated approximately \$4.16 billion for state and local programs, and of this amount \$2.66 billion (60%) is targeted for terrorism focused programs.⁵⁰ Following Hurricane Katrina, a congressional committee reported that some state officials “voiced a concern that in the post-9/11 environment undue emphasis is placed on terrorism-based hazards.”⁵¹ However, DHS (FEMA specifically) does provide natural disaster assistance that is separate from the programs summarized in this report, such as FEMA’s Pre-Disaster Mitigation Grant Program,⁵² and the acquisition of flooded property.⁵³

In July 2005, the Government Accountability Office (GAO) stated that emergency response capabilities for terrorism, and man-made and natural disasters, are similar for response and recovery activities, but differ for preparedness.⁵⁴ The similarity is associated with first responder actions following a disaster that are focused on immediately saving lives and mitigating the effects of the disaster. Preparing for a hurricane, or any natural disaster, by comparison is markedly different than preparing for a terrorist attack. Preparing for or preventing a terrorist attack includes such activities as installing security barriers and conducting counter-intelligence,

⁴⁷ National Governors Association, Executive Committee, *Homeland Security Policy*, Policy Position Paper, Washington, DC, <http://www.nga.org>.

⁴⁸ Executive Office of the President, Office of the Press Secretary, “Homeland Security Presidential Directive 8: National Preparedness,” press release, December 17, 2003, <http://www.whitehouse.gov/news/releases/2003/12/20031217-6.html>.

⁴⁹ U.S. Department of Homeland Security, *Frequently Asked Questions: HSPD 8*, Fact Sheet, Washington, DC, 2008, http://www.ojp.usdoj.gov/odp/docs/HSPD8_FAQ.pdf.

⁵⁰ P.L. 111-83, Title III, 123 Stat. 2158.

⁵¹ U.S. Congress, Joint Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative*, 109th Cong., 2nd sess., 2006, H.Rept. 109-377 (Washington: GPO, 2006), p. 152.

⁵² Information on the Pre-Disaster Mitigation Grant Program is available at <http://www.fema.gov/government/grant/pdm/index.shtm>. Additionally, for further information see CRS Report RL34537, *FEMA’s Pre-Disaster Mitigation Program: Overview and Issues*, by Francis X. McCarthy and Natalie Keegan.

⁵³ For more information on hazard mitigation assistance, see CRS Report R40471, *FEMA’s Hazard Mitigation Grant Program: Overview and Issues*, by Natalie Keegan.

⁵⁴ U.S. Government Accountability Office, *Homeland Security: DHS’ Efforts to Enhance First Responders’ All-Hazard Capabilities Continue to Evolve*, GAO-05-652, July 11, 2005, p. 1.

whereas preparing for a natural disaster involves a different set of functions such as planning for evacuations or stockpiling equipment, food, and water.

GAO stated that legislation and presidential directives related to emergencies and disasters following the September 2001, terrorist attacks emphasize terrorism preparedness.⁵⁵ In the FY2009 homeland security assistance guidance to states and localities, DHS listed terrorism preparedness as the priority in distributing funding. DHS used terrorism risk as the primary factor in its FY2009 state and local assessments and listed terrorism preparedness as one of the programs' "core missions."⁵⁶

Another aspect of this issue that the 111th Congress may wish to address is the number of state and local assistance programs DHS administers. In FY2002, and prior to the establishment of DHS, federal assistance programs for states and localities numbered eight. In FY2010 the programs numbered 15. Total funding for all homeland security assistance programs has averaged \$3.8 billion each year for the past seven years. The funding was lowest in FY2002 when Congress appropriated \$1.43 billion for eight programs. The largest funding amount was in FY2009 when 17 programs shared \$4.92 billion. For the present fiscal year (FY2010), Congress appropriated \$4.16 billion for 15 assistance programs (see **Table 3** for funding by year per program). This increase in the number of grant programs from FY2002 might be the result of Congress and the administration targeting funds in anticipation of future homeland security threats to specific facilities, locations, entities, and jurisdictions.

Table 3. FY2002-FY2009 Number and Types of DHS Assistance Programs

| Type of Program ^a | FY2002 | FY2003 | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | FY2009 | FY2010 |
|---------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Terrorism Preparedness ^b | 3 | 4 | 6 | 7 | 8 | 8 | 10 | 10 | 8 |
| All-Hazards Preparedness ^c | 5 | 5 | 5 | 5 | 6 | 6 | 7 | 7 | 7 |
| Total | 8 | 9 | 11 | 12 | 14 | 14 | 17 | 17 | 15 |

Source: FY2002-FY2009 DHS grant guidance documents.

Notes:

- a. DHS does not identify grant programs as either terrorism preparedness or all-hazards preparedness, these categories reflect CRS' examination of DHS grant guidance documents.
- b. Terrorism preparedness programs focus on preparing states and localities for terrorist attacks, but do not preclude the use of funding on activities and equipment that can be used for other emergencies, such as a natural disaster.
- c. All-hazards preparedness programs do not strictly restrict the use of grant funding. States and localities are authorized to use funding on preparing for any type of disaster, man-made or natural.

⁵⁵ U.S. Government Accountability Office, *Homeland Security: DHS' Efforts to Enhance First Responders' All-Hazard Capabilities Continue to Evolve*, GAO-05-652, July 11, 2005, p. 1.

⁵⁶ U.S. Department of Homeland Security, Grant Programs Directorate, *FY2009 Overview Grant Application Guidance*, Washington, DC, November 7, 2008, p. 1, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

In September 2003, the Government Accountability Office (GAO) stated that DHS's grant system was fragmented, and therefore complicated coordination and integration of services and planning at state and local levels.⁵⁷ This fragmentation may be seen in the development of targeted infrastructure security grant programs, such as bus and trucking security programs in FY2004; a grouping of transit security programs in FY2005; the Buffer Zone Protection in FY2006; and the Public Safety Interoperable Communications Grant Program in FY2008. One can assume this expansion of terrorism preparedness programs reflects the federal government's terrorism preparedness priority, whereas states and localities may place a priority on natural and accidental man-made disasters.

This expansion of programs, largely at the discretion of the administration, may be the result of DHS intending to focus homeland security efforts and funding on specific national homeland security needs. However, the majority of programs that have been added are terrorism preparedness programs and, as noted earlier in this report, states and localities have criticized DHS's terrorism preparedness focus. It should also be noted that DHS and the administration did not request the development of all these new grant programs, such as the bus security program. Congress appropriated funding, for the first time, in FY2005 for the bus security program even though the Administration had not requested an appropriation for this program.⁵⁸ Additionally, Administration officials have requested the consolidation of grant programs, such as in FY2007 when the Administration requested an appropriation for a Targeted Infrastructure Protection Program (TIPP).⁵⁹ TIPP was to be a consolidation of six infrastructure security grant programs; however, Congress did not appropriate the infrastructure security programs through TIPP.

Congress might wish to continue providing a share of funding to the present number of terrorism preparedness programs. Specific and targeted programs, such as the Buffer Zone Protection Program, could provide a funding source for a specific homeland security need. However, this would not address the criticism of some state and local officials who believe more funding should be provided for all-hazard emergencies and disasters, that the programs are fragmented, and federal, state, and local disaster response is uncoordinated.

Congress might also consider increasing funding to all-hazards programs, such as the Emergency Management Performance Grant program and the Metropolitan Medical Response System. This could be achieved by increasing overall funding to state and local programs or decreasing the funding for terrorism preparedness programs. This option would address state and local criticism; however, if terrorism preparedness program funding were decreased states and localities may not be able to meet their terrorism preparedness needs.

Should Congress determine there is a need to address the types and number of grants DHS provides to states and localities, it could consider allowing terrorism preparedness programs such as the State Homeland Security Grant Program and the Urban Area Security Initiative, to be used for all-hazards preparedness, response, and recovery. Presently, these programs require states and

⁵⁷ U.S. General Accounting Office, *Homeland Security: Reforming Federal Grants to Better Meet Outstanding Needs*, GAO-03-1146T, September 3, 2003, p. 1.

⁵⁸ Conference report, H.Rept. 108-774, accompanying P.L. 108-334 (FY2005 DHS appropriations).

⁵⁹ Office of Management and Budget, *Fiscal Year 2007 Budget for the United States Government*, Washington, DC, February 2006, pp. 507-509.

localities to focus their funding on terrorism preparedness. This use of terrorism preparedness programs to address all-hazards might result in states and localities having more flexibility in prioritizing their homeland security needs, whether they are targeted to natural disasters or terrorism needs.

Finally, Congress may wish to establish one or more block grant programs to reduce the number of programs administered by GPD. This option might include the development of both an all-hazards and a terrorism preparedness block grant program. This option could encourage grant recipients to further prioritize their homeland security needs and apply federal funding to both all-hazards and terrorism priorities. Additionally, this would increase greater flexibility in use of grant funding. This might address the issue of grant coordination and allow recipients to focus funding on specific needs instead of targeted programs established by Congress and the Administration. However, DHS would need to ensure its distribution methodology included aspects of all the disparate grant programs currently administered by GPD.

Evaluation of Funding Use

Another issue Congress may wish to address is how effectively DHS's assistance to states and localities is being spent. One way to review the use of program funding is to evaluate state and local jurisdictions' use of DHS's assistance. However, DHS has yet to complete an evaluation of how states and localities have spent past homeland security program allocations. It can be argued that prior to establishing preparedness benchmarks for future program funding allocations, DHS, or another federal entity, would need to complete an evaluation of present homeland security funding and its uses to determine a baseline for any future evaluation of states and localities meeting federal preparedness benchmarks.

When DHS announces annual state and locality homeland security grant allocations, grant recipients submit implementation plans that identify how these allocations are to be obligated. However, the question remains whether or not the grant funding has been used in an effective way to enhance the nation's homeland security. DHS Secretary Janet Napolitano directed FEMA to provide reports on national planning and state and local integration; however, the directives do not address state and local use of grant funding.⁶⁰

In early 2009, GPD conducted an evaluation called Cost-to-Capability (C2C). This evaluation was intended to measure a grant recipient's ability to prevent and respond to various types of disasters. C2C uses DHS's National Planning Scenarios⁶¹ to organize the evaluation. The intent of this evaluation was to enable GPD to effectively administer DHS grant programs and help states

⁶⁰ U.S. Department of Homeland Security, "DHS Secretary Napolitano Issues Action Directives on FEMA State and Local Integration and National Planning," press release, January 27, 2009, http://www.dhs.gov/ynews/releases/pr_1233073331655.shtm.

⁶¹ U.S. Department of Homeland Security, *Strengthening National Preparedness: Capabilities Based Planning*, Fact Sheet, Washington, DC, http://www.ojp.usdoj.gov/odp/docs/CBP_041305.pdf. National Planning Scenarios depict emergencies and disasters that grant recipients are required to prepare for, and ensure they have the appropriate response capability.

and localities use their grant allocations.⁶² Prior to GPD beginning the C2C, state and local capability assessments were self-assessments.

GAO, in a congressionally mandated report,⁶³ stated that the input data for C2C was to be based on capability self-assessments from state preparedness plans, estimates of baseline capabilities, and other factors. However, GAO stated that the validity of the input data was uncertain since the data was based on state and local self-assessments. Additionally, GAO criticized the C2C as a limited national capability assessment tool because of the limited analytical skill levels, due to the level of training and experience of analysts, across state and local users of C2C.⁶⁴ Also, in a summary of testimony from March 2008, GAO concluded that even though DHS has taken some steps in establishing goals, gathering information, and measuring progress, the monitoring of homeland security grant spending did not provide a method to measure the achievement of desired program outcomes.⁶⁵ In a prepared hearing statement before a subcommittee of the House Homeland Security Committee, FEMA's National Preparedness Deputy Administrator Timothy Manning stated that C2C data provided FEMA with limited information on federal, state, and local investment in preparedness activities.⁶⁶

In 2008, the Office of Management and Budget (OMB) conducted a Program Assessment Rating Tool (PART) for some of DHS's grants to states and localities. OMB assessed the program effectiveness of the State Homeland Security Grant Program, the Urban Area Security Initiative, and the Emergency Management Performance Grant Program. Overall, OMB rated the programs as adequate. However, the programs were rated as "small extent" for the question: "Do independent evaluations of sufficient scope and quality indicate that the program is effective and achieving results?"⁶⁷

The PART analysis and GAO's research might lead an observer to assume that GPD's grant programs are not enhancing state and locality homeland security capabilities. But one could argue that even though these assessments have not shown that GPD's grant programs can achieve certain benchmarks, states and localities have increased, at a minimum, the amount and types of homeland security equipment, planning, and training needed in case of a natural disaster or terrorist attack. Arguably, states, localities, and the nation as a whole are better prepared than on

⁶² U.S. Department of Homeland Security, Office of Congressional Affairs, *The Cost-to-Capability Initiative (C2C): Connecting local investment strategies to the Nation's Homeland Security priorities*, Fact Sheet, Washington, DC, 2008, p. 1.

⁶³ P.L. 110-329, Title III, 122 Stat. 3673.

⁶⁴ U.S. Government Accountability Office, *Homeland Security Grant Program Risk-Based Distribution Methods: Presentation to Congressional Committees - November 14, 2008 and December 15, 2008*, GAO-09-168R, December 2008, pp. 16-17.

⁶⁵ U.S. Government Accountability Office, *Homeland Security: DHS Improved its Risk-Based Grant Programs' Allocation and Management Methods, But Measuring Programs' Impact on National Capabilities Remains a Challenge*, GAO-08-488T, March 11, 2008, p. 1.

⁶⁶ U.S. Congress, House Committee on Homeland Security, Subcommittee on Emergency Communications, Preparedness, and Response, *Preparedness: What Has \$29 Billion in Homeland Security Grants Bought and How Do We Know?*, Statement of Timothy W. Manning, Deputy Administrator, National Preparedness, Federal Emergency Management Agency, U.S. Department of Homeland Security, 111th Cong., 1st sess., October 27, 2009.

⁶⁷ Office of Management and Budget, *ExpectMore.gov: Federal Emergency Management Agency: Homeland Security Grants*, Washington, DC, 2008, <http://www.whitehouse.gov/omb/expectmore/detail/10003626.2008.html>.

September 11, 2001. However, critics have seen the PART as overly political and a tool to shift power from Congress to the President, as well as failing to provide for adequate stakeholder consultation and public participation. Some observers have commented that PART has provided a needed stimulus to agency program evaluation efforts, but they do not agree on whether the PART tool validly assesses program effectiveness.⁶⁸

In January 2009, DHS's Office of Inspector General (OIG) released an annual report on state and urban area management of homeland security grant programs.⁶⁹ Individual audit reports for states and urban areas resulted in identified areas for improvement that included questioned costs, monitoring and oversight, measurable program goals and objectives, and needs assessment.⁷⁰ The report, however, did not address overall issues for DHS, states, or urban areas. Instead it only identified areas for improvement for individual states and urban areas. Additionally, in March 2009, DHS OIG reported that FEMA does not consistently and comprehensively execute its two oversight activities, which are financial and program monitoring.⁷¹

If Congress determines that the present C2C process is not adequate, it could require DHS to refine the C2C assessment with a reduction in weight given to state and local self-assessments. This might result in a baseline capability assessment, which DHS could use to determine annual preparedness benchmarks associated with homeland security grant funding. One could argue that these benchmarks would need to be established for individual grant recipients (state or local) instead of serving as national benchmarks. Each state does not possess the same homeland security capabilities; thus, benchmarks would need to reflect each state's need for capability enhancement.

Finally, if Congress finds the C2C inadequate in evaluating grant funding use, it could mandate that DHS develop an assessment tool other than C2C to measure the nation's preparedness. This new assessment tool could rely less on state and locality self-assessments, and more on DHS developing and implementing a new assessment tool that might require DHS to collaborate with individual grant recipients. This might result in an assessment tool that more accurately reflects individual state and locality preparedness baselines. However, this may extend the time that a national preparedness baseline is established and further lengthen the time until preparedness benchmarks can be established. One possible preparedness assessment tool could incorporate a risk assessment of all states, DC, and U.S. insular areas that also assess vulnerability (since C2C does not directly measure vulnerability). This risk assessment would, arguably, need to not only assess terrorism risk, but natural and accidental man-made disaster risk. In conjunction with the risk assessments, the preparedness assessment tool could also measure each grant recipient's ability to meet the Target Capabilities List (TCL).⁷² Such an assessment tool that incorporates risk

⁶⁸ For more information on PART, see CRS Report RL32663, *The Bush Administration's Program Assessment Rating Tool (PART)*, by Clinton T. Brass and CRS Report RL33301, *Congress and Program Evaluation: An Overview of Randomized Controlled Trials (RCTs) and Related Issues*, by Clinton T. Brass, Erin D. Williams, and Blas Nuñez-Neto.

⁶⁹ U.S. Department of Homeland Security, Office of Inspector General, *Annual Report to Congress on States' and Urban Areas' Management of Homeland Security Grant Programs*, Audit, Washington, DC, January 17, 2009.

⁷⁰ *Ibid.*, p. 1.

⁷¹ Department of Homeland Security, Office of Inspector General, *Improvements Needed in Federal Emergency Management Agency Monitoring of Grantees*, Washington, DC, March 2009, p. 1.

⁷² U.S. Department of Homeland Security, Federal Emergency Management Agency, *Target Capabilities List: A* (continued...)

and an evaluation of the TCL is not the only option, just one that Congress might wish to consider if it determines the C2C inadequately measures state and local preparedness.

Eligible Grant Recipients

Another policy issue associated with homeland grant programs is the question of who or what entities and jurisdictions are eligible to receive federal homeland security assistance. There are two specific questions: (1) are the appropriate eligible recipients identified for each grant program, and (2) does the DHS use an appropriate grant recipient determination process? There are 15 grant programs in FY2010 and this results in 15 different groups of eligible grant recipients and numerous grant recipient determination processes, as shown below.

Table 4. Eligible Recipients of FY2009 Homeland Security Assistance, by Program

| Program | Eligible Recipients | Determination Process |
|---|--|---|
| State Homeland Security Grant Program | states, DC, Puerto Rico, and U.S. insular areas | mandated by Congress |
| Urban Area Security Initiative | high-threat, high-risk urban areas | determined by DHS through a risk assessment |
| Port Security Program | individual ports | determined by DHS through a risk assessment |
| Transit Security Programs (including Freight Rail Security and Intercity Passenger Rail Security Programs) | mass transit and passenger rail systems and operators | determined by DHS through a risk assessment |
| Bus Security Program | mass transit and over-the-road bus systems and operators | determined by DHS through a risk assessment |
| Trucking Security Program | commercial trucking businesses and operators | recipients are determined through an application process |
| Emergency Operations Centers | states and identified localities | mandated by Congress |
| Buffer Zone Protection Program | private and public critical infrastructure facilities | determined by DHS through a risk assessment |
| Assistance to Firefighters | professional and volunteer fire departments | determined through a peer review of individual grant applications |
| Emergency Management Performance Grant Program | states, DC, Puerto Rico, and U.S. insular areas | mandated by Congress |
| Citizen Corps Program | states, DC, Puerto Rico, and U.S. insular areas | mandated by Congress |
| Metropolitan Medical Response System | 124 jurisdictions | determined by DHS |

(...continued)

Companion to the National Preparedness Guidelines, Washington, DC, September 2007, <http://www.fema.gov/pdf/government/training/tcl.pdf>.

| Program | Eligible Recipients | Determination Process |
|--|---|---|
| Commercial Equipment Direct Assistance Program | state and local law enforcement and emergency management entities | demonstrate need through an application process |
| Public Safety Interoperable Communications Grant Program | states, DC, Puerto Rico, U.S. insular areas, and localities | determined by DHS through a risk assessment |
| Regional Catastrophic Preparedness Grant Program | high-threat, high-risk urban areas | determined by DHS through a risk assessment |

Source: U.S. Department of Homeland Security, Grant Programs Directorate, FY2009 Overview Grant Application Guidance, Washington, DC, November 7, 2008, <http://www.dhs.gov/xlibrary/assets/grant-program-overview-fy2009.pdf>.

Of these grants, seven explicitly use risk assessment as a determination of recipient eligibility, and some sort of risk assessment may be used to determine recipients for three programs (Commercial Equipment Direct Assistance Program, Metropolitan Medical Response System, and Trucking Security System). What cannot be determined is if DHS uses the same risk assessment process for each individual grant program. This may cause confusion or duplication of effort if a jurisdiction is eligible to apply for numerous grants. This multitude of grants with different eligible recipients may also lead to confusion in grant funding opportunities or redundancy in funding. It would appear that each program is narrowly defined and involves DHS using different methods for identifying grant recipients.

Some jurisdictions with genuine homeland security needs may not be eligible for funding because different methods are used to identify grant recipients through various risk assessments that, according to critics, do not adequately assess risk, vulnerability, and consequences. Because of this, Congress might wish to address the issue of how DHS determines grant recipients. Also, Congress might wish to require DHS to use one risk assessment process for identifying grant recipients, or at a minimum, require DHS to refine the process to ensure grant recipients are not requesting funding for a single homeland security need through multiple grant programs.

Congress may also decide to specifically identify (by type or name) grant recipients through legislation, or at least mandate that DHS report on the process to make it more transparent. Presently, the determination of grant recipients is arguably to be labor intensive and confusing.

Funding Amounts

Annual federal support, through the appropriation process, for these homeland security programs is another issue Congress may want to examine considering the present economic situation and the limited financial resources available to the federal government. Specifically, is there a need for continuity of federal support for these programs, or should Congress reduce or eliminate funding? In the past eight years, Congress has appropriated a total of \$34 billion for state and local homeland security assistance with an average annual appropriation of \$3.8 billion. In FY2009 Congress appropriated a high total of funding of \$4.9 billion, and the lowest appropriated amount was \$1.43 billion in FY2002. Congress, in the FY2010 DHS appropriations, provided

\$757 million less for these programs than was appropriated in FY2009; however, some programs received increased funding in FY2010.⁷³ These data are presented in **Table 5**.

Table 5. FY2002-FY2009 Appropriations for Homeland Security Assistance Programs

Amounts in millions

| Program | 02 | 03 | 04 | 05 | 06 | 07 | 08 | 09 | 10 |
|----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|------------------|------------------|
| SHSGP | 316 | 1,870 | 1,700 | 1,100 | 550 | 525 | 950 | 950 ^a | 950 ^b |
| UASI | 3 | 800 | 725 | 885 | 765 | 770 | 820 | 838 ^c | 887 ^d |
| LETPP | - | - | 500 | 400 | 400 | 375 | - | - | - |
| CIPP | - | 200 | - | - | - | - | - | - | - |
| PSP | 198 | 170 | 125 | 150 | 175 | 210 | 400 | 550 ^e | 300 |
| TSP | - | - | - | 150 | 150 | 175 | 400 | 550 ^f | 300 |
| BSP | - | - | 10 | 10 | 10 | 12 | 12 | 12 | 12 |
| TRSP | - | - | 22 | 5 | 5 | 12 | 16 | 8 | - |
| EOC | - | - | - | - | - | - | 15 | 35 | 60 |
| BZPP | - | - | - | - | 50 | 50 | 50 | 50 | 50 |
| FIRE | 360 | 750 | 750 | 715 | 655 | 662 | 750 | 985 ^g | 810 |
| EMPG | 168 | 170 | 180 | 180 | 185 | 200 | 300 | 315 | 340 |
| CCP | 25 | 30 | 40 | 15 | 20 | 15 | 15 | 15 | 13 |
| MMRS | 25 | 50 | 50 | 30 | 30 | 33 | 41 | 41 | 41 |
| TTAE&E | 333 | 330 | 292 | 341 | 296 | 298 | 299 | 429 ^h | 266 |
| CEDAP | - | - | - | - | 50 | 50 | 25 | 8 | - |
| PSIC | - | - | - | - | - | - | 50 | 50 | 50 |
| Real ID | - | - | - | - | - | - | 50 | 50 | 50 |
| RCPG | - | - | - | - | - | - | 35 | 35 | 35 |
| Total | 1,428 | 4,370 | 4,394 | 3,981 | 3,341 | 3,387 | 4,228 | 4,921 | 4,164 |

Source: Annual DHS appropriations.

Notes:

- a. Of this \$950 million for SHSGP, 25% must be used for law enforcement terrorism prevention activities and \$60 million for Operation Stone Garden, which provides funding to border states for homeland security issues associated with illegal immigration.
- b. This amount includes \$60 million for Operation Stone Garden
- c. Of the \$838 million for UASI, 25% must be used for law enforcement terrorism prevention activities and \$15 million for non-profit organization security.

⁷³ P.L. 111-83, Title III, 123 Stat. 2158.

- d. This amount includes \$19 million for nonprofit organization security.
- e. Of this \$550 million, \$150 million was a supplemental appropriation in P.L. 111-5.
- f. Of the \$550 million for transit security, \$25 million must be used for Amtrak security, and \$150 million was a supplemental appropriation in P.L. 111-5.
- g. Of the \$985 million for FIRE grants, \$210 million was a supplemental appropriation in P.L. 111-5.
- h. Of the \$429 million for training, technical assistance, exercises, and evaluations, \$165 million must be used for the National Domestic Preparedness Consortium institutions.

Some might argue that since over \$34 billion has been appropriated and allocated for state and local homeland security, jurisdictions should have met their homeland security needs. This point of view would lead one to assume that Congress should reduce funding to a level that ensures states and localities are able to maintain their homeland security capabilities, but doesn't fund new homeland security projects. However, if DHS is unable to report on the extent of state and local homeland security capabilities (as discussed earlier in the report), reducing funding amounts prior to confirming state and local capabilities may result in unmet homeland security needs. Additionally, some may argue that states and localities should assume more responsibility in funding their homeland security projects and the federal government should reduce overall funding. This, however, may be difficult due to the present state and local financial situations.

Another argument for maintaining present funding levels is the ever changing terrorism threat and the constant threat of natural and accidental man-made disasters. As one homeland security threat (natural or man-made) is identified and met, other threats develop and require new homeland security capabilities or processes. Some may even argue that funding amounts should be increased due to what appears to be an increase in natural disasters and their costs.

Funding Distribution Methodologies⁷⁴

Another issue that may be explored concerns how grant program funding is distributed to states and localities. Specifically, Congress may want to continue to address the funding distribution methodologies to ensure state and local homeland security. This issue has garnered Congress's attention the most over the past seven years, with the issue addressed in P.L. 110-53 in January 2007. Specifically P.L. 110-53 required that SHSGP and UASI allocations to be based on 100% risk; however, SHSGP recipients were guaranteed a minimum amount annually through 2012.⁷⁵ This funding debate has been primarily focused on SHSGP and UASI; the majority of GPD programs have not been discussed during this debate.

This guaranteed minimum allocation for SHSGP, and the continued use of population as a key factor for other grant program distribution methodologies (such as for grant programs like EMPG and CCP) have been the focus of many critics. One of these critics was the National Commission on Terrorist Attacks Upon the United States (9/11 Commission), which recommended that all homeland security assistance be allocated based only on risk. Since P.L. 110-53 required DHS to

⁷⁴ For an in-depth discussion on DHS grant distribution methodologies, see CRS Report RL34181, *Distribution of Homeland Security Grants in FY2007 and P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act*, by Shawn Reese and Steven Maguire.

⁷⁵ P.L. 110-53, Title I, Sec. 101, 'Title XX, Sec. 2007', 121 Stat. 282.

guarantee a minimum amount of SHSGP funding to states, it could be argued that the law did not meet the 9/11 Commission recommendation. Others might contend that the statute is consistent with the 9/11 Commission's recommendation because of the 100% risk allocation of SHSGP and UASI. While the 9/11 Commission criticized the allocation of federal homeland security assistance and recommended that the distribution not "remain a program for general revenue sharing,"⁷⁶ commissioners acknowledged that "every state and city needs to have some minimum infrastructure for emergency response."⁷⁷ The 9/11 Commission also recommended that state and local homeland security assistance should "supplement state and local resources based on the risks or vulnerabilities that merit additional support."⁷⁸ In a policy document published prior to his inauguration, President Obama stated, in what appears to be in agreement with the 9/11 Commission, that homeland security assistance should be based solely on risk.⁷⁹

Due to this criticism, Congress may wish to consider further refining how DHS allocates homeland security funding to jurisdictions. Instead of guaranteed minimums, Congress could require that DHS allocate funding based on risk. This option, however, might result in some jurisdictions receiving no or limited allocations. Arguably, a risk assessment process used to allocate homeland security assistance would determine that every state and locality has some risk, whether terrorism or natural disaster related, and needs some amount of funding. This, however, would require DHS to evaluate state and local capabilities, vulnerability, and risk in a manner that accurately reflects the nation's current homeland security environment.

Sustainment and Maintenance Costs

On September 22, 2009, C. Gary Rogers, Director, Grant Programs Directorate (GPD), within FEMA, sent the following to all state and urban area agencies responsible for administering FEMA grant programs at the state and local level:

Below is a clarification of the FEMA/Grant Programs Directorate policy regarding the use of preparedness grant funding for sustainment costs:

Grantees may use FEMA preparedness grant funding to pay for maintenance agreements, user fees, and other sustainment costs as long as the equipment was purchased with FEMA preparedness grant funding and the sustainment costs fall within the performance period of the grant that was used to purchase the equipment. These sustainment costs are eligible under the equipment category unless the equipment is M&A⁸⁰ related (grants management equipment). Grantees may not use future year preparedness grant funding to pay for additional agreements and user fees. These ongoing sustainment costs are the responsibility of the grantee. For example, the purchase of 2-way devices to provide connectivity and interoperability between local and interagency organizations to coordinate CBRNE response

⁷⁶ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, Washington, DC, July 2004, p. 396.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ The Office of the President-elect, *Agenda: Homeland Security*, Washington, DC, 2008, http://change.gov/agenda/homeland_security_agenda/.

⁸⁰ "M&A" is an acronym for "management and administration."

operations is allowable. Grant funds may be used to cover only those services provided during the grant performance period in which the device was purchased. All ongoing expenses after the performance period has expired may not be paid for with FEMA preparedness grant funding. Devices purchased for those individuals involved in coordinating response operations or for eligible planning activities are eligible under the “equipment” category. If purchasing devices for those individuals involved with the grants management portion of these programs, then the costs are eligible under M&A. Please ensure that these costs do not supplant previously budgeted line items.⁸¹

This FEMA “clarification” informed states and localities that they cannot use new fiscal year FEMA grant awards to maintain and sustain previous fiscal year homeland security projects. Numerous state and local officials criticized this clarification, including Kathy B. Crandall, Director of Homeland Security & Justice Programs for the Columbus Urban Area in Ohio. Director Crandall, in her testimony before House Homeland Security Committee’s Subcommittee on Emergency Communications, Preparedness and Response, stated that the FEMA clarification is contrary to past state and local preparedness practices.⁸² States and localities are required to provide information to FEMA on their intended sustainment and maintenance activities with their grant applications and Investment Justifications (IJ).⁸³

Critics of this clarification might argue this would hinder state and locality homeland security abilities by limiting the use of federal assistance to present fiscal year homeland security projects and activities only, which might result in past homeland security projects being neglected. On the other hand, advocates may argue that FEMA assistance to states and localities for homeland security activities serve as “seed” funding. From this perspective the federal government provides an initial investment for states and localities to begin a project or activity with federal funding, but the completion, sustainment, and maintenance of the project or activity remains the responsibility of the grantee. The two primary programs this FEMA clarification might affect include the SHSGP and the Urban Area Security Initiative UASI. Additionally, critics of authorizing funding for sustainment and maintenance costs might argue that states and localities should be responsible for all long-term project costs because these programs do not require states and localities to provide a matching requirement. States and localities are not required to provide an initial investment, thus grantees did not have to use state and local funding to initiate the homeland security projects.

H.R. 3837, introduced on October 15, 2009, addresses this issue. The bill would amend the Homeland Security Act of 2002⁸⁴ to allow FEMA homeland security assistance grantees (states and localities) to use annual grant awards to maintain and sustain past fiscal year homeland

⁸¹ U.S. Congress, House Committee on Homeland Security, Subcommittee on Emergency Communications, Preparedness, and Response, *Preparedness: What has \$29 billion in homeland security grants bought and how do we know?*, prepared statement by Kathy B. Crandall, Director of Homeland Security & Justice Programs, Columbus, Ohio, Urban Area, 111th Cong., 1st sess., October 27, 2009, <http://homeland.house.gov/SiteDocuments/20091027102515-92849.pdf>.

⁸² *Ibid.*

⁸³ As an example, the following link is to Oregon’s *FY2009 Homeland Security Grant Program Investment Justification*, which includes information on their planned sustainment and maintenance activities: http://www.oregon.gov/OMD/OEM/plans_train/grant_info/fy2009_hsgp_investment_justification.pdf.

⁸⁴ 6 U.S.C. 609.

security projects, specifically, prior to the present fiscal year and SHSGP and UASI projects.⁸⁵ A similar bill, S. 2793 was introduced in the Senate on November 18, 2009.

One might argue that some sustainment and maintenance costs do not further SHSGP and UASI goals and objectives, and that if these bills were to be enacted, the FEMA Administrator may not be able to reject the IJ or grant application. Consequently, if the FEMA Administrator cannot reject an IJ or an application, then it is possible for grantees to apply only for sustainment and maintenance of previous fiscal year homeland security projects. As a result, states and localities may not initiate new homeland security projects.

Congress may wish to allow grantees to use a portion of their FEMA grant awards for sustaining and maintaining previous fiscal year homeland security projects. This would be similar to the statutory requirement for states to use no less than 25% of their SHSGP and UASI allocations on law enforcement terrorism prevention activities.⁸⁶ Additionally, Congress could include language that requires UASI and SHSGP applicants to include detailed information on sustainment and maintenance costs on their future grant applications and IJs, which might result in FEMA being able to monitor grantee sustainment and maintenance costs. Finally, the FEMA Administrator could be authorized, through statutory language, to deny a grantee's application and IJ if the Administrator determines the sustainment and maintenance costs of previous fiscal year homeland security projects do not further the grantee's SHSGP and UASI goals and objectives. But by limiting the amount a grantee can use for sustainment and maintenance costs (and requiring detailed information on applications and IJs), Congress would possibly be concerned with grantees using future SHSGP and UASI allocation primarily for sustainment and maintenance instead of the funding being used for new homeland security projects. This option supports the policy view that FEMA homeland security assistance to states and localities is more than "seed" funding.

Conversely, Congress could determine not to approve H.R. 3837 and S. 2793, which would support FEMA's clarification on barring the use of SHSGP and UASI awards for sustainment and maintenance costs. This option, however, does not address state and local concerns on how to maintain and sustain previous fiscal year homeland security projects. Nor does this option meet Representative Kilroy's goal of authorizing states and localities to use FEMA grant awards for sustainment and maintenance costs. The option does, however, support the policy view that FEMA assistance to states and localities is "seed" funding, and reinforces the view that states and localities are responsible for maintaining and sustaining past homeland security projects that were initially implemented with federal funding.

Conclusion

As the 111th Congress begins its second session, Members may wish to consider the policy issues identified in this report or other related issues. The potential issues included in this report are (1) the purpose and number of assistance programs; (2) evaluation of grant funding use; (3)

⁸⁵ H.R. 3837, Sec. 2(b), as introduced.

⁸⁶ 6 U.S.C. 607.

determination of eligible grant recipients; (4) funding amounts; (5) funding distribution methodologies, (6) the use of grant funding for sustainment and maintenance costs associated with previous fiscal year homeland security projects . All of these policy issues identify a potential need for Congress to continue its debate and consider legislation related to federal homeland security assistance for states and localities and the nation's overall emergency preparedness.

Additionally, if homeland security continues to be of national interest, how homeland security assistance is funded, administered, and allocated will be of importance to the 111th Congress. Since Congress will continue to conduct oversight and legislate on homeland security assistance to states and localities, as the House Homeland Security Committee has stated it intends to do, Members may elect to consider options that anticipate, as well as react to, future catastrophes. The potential issues identified in this report are not presumed to be the only issues, however, these issues may be of enough significance to merit Congress's attention.

Author Contact Information

Shawn Reese
Analyst in Emergency Management and Homeland
Security Policy
sreese@crs.loc.gov, 7-0635