

HSA@20 Episode Companion: Federalism

June 16, 2023

This Insight accompanies the “Federalism” episode of *The Homeland Security Act at 20* podcast series and includes background information on the issues discussed during the podcast.

Click this [link](#) to ask questions, provide feedback, or offer suggestions for future topics. You can also e-mail the podcast team at HSA20@loc.gov. Thank you for your engagement.

Definitions

Federalism:

A system of government in which the same territory is controlled by two levels of government.

- [Federalism and the Constitution](#)
- [Federalist No. 45](#)
- As a protector of liberty: [Bond v. United States, 564 U.S. 211 \(2011\)](#)
- As a policy laboratory: [New State Ice Co. v. Liebmann, 285 U.S. 262 \(1931\)](#)

Homeland Security:

- In the 1990s, equated with national security.
- Initial policies were focused on prevention of chemical, biological, radiological, nuclear, and explosive (CBRNE) attacks on U.S. population centers by international terrorist organizations.

The Office of Domestic Preparedness (ODP)

- Established within the Office of Justice Programs in 1998 as the Office of State and Local Domestic Preparedness Support (OSLDPS)—renamed ODP in late 2001.
- Transferred from the Department of Justice (DOJ) to the Department of Homeland Security (DHS) under [Homeland Security Act Section 238](#).
- Originally became part of the Directorate of Border and Transportation Security, but ultimately went into the Federal Emergency Management Agency (FEMA).

Congressional Research Service

<https://crsreports.congress.gov>

IN12182

Nunn-Lugar-Domenici Grant Program

- Initiated by the Department of Defense (DOD) under the National Defense Authorization Act (NDAA) of 1997; Title XIV, “[Defense Against Weapons of Mass Destruction Act of 1996](#),” [Section 1412](#).
- Provided civilian personnel with “training and expert advice regarding emergency responses to a use or threatened use of a weapon of mass destruction.”
- Established through and in DOD, but specifically authorized to be transferred elsewhere by the President after the beginning of FY1999.
- Transferred to DOJ (to ODP) effective the beginning of FY2001.

Into 2001, homeland security remained a [national defense-oriented concept](#).

Background: FBI Histories of Key Events

- [World Trade Center Bombing](#) (1993)
- [Alfred P. Murrah Federal Building Bombing](#) (1995)
- [9/11 attacks](#) (2001)

Balancing Priorities

Federal Agenda Setting

Non-Homeland Security Missions Within DHS

From FY2004-FY2015, the DHS *Budget-in-Brief* ([available here](#)) included a breakdown of funding for DHS homeland and non-homeland security missions.

Initial National Homeland Security Strategies

- [2002 \(Pre-DHS\)](#)
- [2007](#)

DHS Federal Engagement Elements

Reorganization History

2004: ODP is consolidated with the Office of State and Local Government Coordination and Preparedness (OSLGCP), and moved grants there from Emergency Preparedness and Response.

2005: A large reorganization (known as the Second Stage Review, “2SR,” or the [Six-Point Agenda](#)) establishes the Office of Intelligence and Analysis, and the Directorate for Preparedness, splitting up the OSLGCP.

2007: Post-Katrina Emergency Management Reform Act (PKEMRA; P.L. 109-295, Title VI)

- FEMA is reconstituted, and includes the Office of Grants and Training, and the Office of State and Local Government Coordination.
 - What is left of the Preparedness Directorate becomes the National Protection and Programs Directorate (NPPD) focusing on infrastructure protection, and including intergovernmental programs.
-

- NPPD is later restructured and is now known as the Cybersecurity and Infrastructure Security Agency (CISA).

Selected Current DHS Federal Engagement Elements:

Office of Partnership and Engagement (in the Office of the Secretary)

- [Office of Intergovernmental Affairs](#)
- [Office for State and Local Law Enforcement](#)
- [Office of Intelligence and Analysis](#)

FEMA

- [Regional Offices](#)
- [Office of Resilience](#) (includes Grants Programs and National Preparedness)
- [Office of Response and Recovery](#)

CISA

- [Infrastructure Security Division](#)
- [Emergency Communications Division](#)
- [National Risk Management Center](#)
- [Stakeholder Engagement Division](#)
- [CISA Regions](#)

State Government Agenda-Setting

Governors Homeland Security Advisory Council (2006)

- Organization of principal homeland security advisors from each state, commonwealth, territory, and DC. (See [link](#) for an interactive graphic of homeland security governance structures.)

Council of Governors (2010)

- Authorized in [NDAA 2008, Sec. 1822](#), it is “a forum for governors and key federal officials to improve and maximize state-federal partnerships to address matters pertaining to the National Guard, homeland defense, and civil support activities.”

“Who Decides?” and “Who Pays?” Practical Examples

National Incident Management System (NIMS)

- [Homeland Security Presidential Directive 5 \(HSPD-5\)](#) calls for the development of NIMS to help separate emergency management entities to work together to resolve incidents.
 - [NIMS](#) was initially issued in 2004, and revised in 2008 and 2017.
 - HSPD-5 [requires adoption of NIMS by recipients of federal preparedness assistance](#).
-

REAL ID Act of 2005

P.L. 109-13, Division B—requires states to make improvements in driver’s license and other identity document security.

Did its regulations violate the [Unfunded Mandates Reform Act of 1995](#) (UMRA)?

- UMRA excludes regulations “[necessary for the national security](#),” and those that “[incorporate requirements specifically set forth in law](#).”
- DHS [indicated in the final rule](#) that it complied with the provisions of UMRA due to the other required economic analyses (see “B. Economic Impact Analyses”).

Driver’s License Security Grant Program / “REAL ID Grants”

- FY2008: demonstration grant program in FY2008 for multi-state projects.
- FY2009: Became the [Driver’s License Security Grant Program](#).
- FY2012: Rolled into the [FY2012 Homeland Security Grant Program](#).

Homeland Security Preparedness Grants

Some of the initial DHS preparedness grants were established through appropriations in FY2004-FY2006.

The [Implementing Recommendations of the 9/11 Commission Act of 2007](#) (P.L. 110-53) provided authorization for a range of these preparedness grants, including the [Urban Area Security Initiative](#) and the [State Homeland Security Grant Program](#).

FEMA National Capability and Risk Assessments

- Threat and Hazard Identification and Risk Assessment (THIRA)—community-level and [national-level](#) assessments of threats and hazards; the potential impacts they pose; and the capabilities needed to respond.
- Stakeholder Preparedness Review (SPR)—self-assessment against THIRA targets.
- [2022 National Preparedness Report](#)

Federalism and COVID-19

Emergency Management Assistance Compact (EMAC)

- Ratified by Congress in P.L. 104-321, EMAC [facilitates mutual aid](#) between all U.S. states and territories.
- States used it to [share resources during COVID-19](#).

Recoupment

- CRS Report R46990, *General State and Local Fiscal Assistance and COVID-19: Eligible Purposes, Allocations, and Use Data*.
 - Some reports indicated particular states were [slow to spend aid](#).
 - eCFR on [recoupment of pandemic relief](#).
-

-

FOR MORE INFORMATION

- For more information on federalism, see CRS Report R45323, *Federalism-Based Limitations on Congressional Power: An Overview*
- For more information on preparedness grants, see CRS Report R44669, *Department of Homeland Security Preparedness Grants: A Summary and Issues*
- For more episodes of this podcast series, search “HSA@20” on the CRS website.

NEXT EPISODE

June 22, 2023: TBD

Music: Icas, by Audiorezout, as carried on freemusicarchive.org, under the terms of its Creative Commons Attribution-NonCommercial 4.0 International license.

Author Information

William L. Painter, Coordinator
Specialist in Homeland Security and Appropriations

Shawn Reese
Analyst in Emergency Management and Homeland
Security Policy

Lauren R. Stienstra
Section Research Manager

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.