

Background

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Homeland Security Grant Reform: Congressional Inaction Must End

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Few public reports in American history have had more impact than the report of the National Commission on Terrorist Attacks Upon the United States. Chartered by Congress in the wake of the September 11, 2001, attacks on Washington and New York, the 9/11 Commission offered sweeping recommendations on virtually every aspect of preventing, combating, and responding to terrorism.¹

The commission's 2004 report became a best seller, and within months, Congress passed sweeping legislation implementing many of its recommendations. But to the detriment of Americans' safety, Congress skipped one major recommendation: reforming the homeland security grant process.

The 9/11 Commission warned that not enough was being done to build a national disaster preparedness and response system capable of responding to catastrophic disasters that might put tens of thousands of lives and billions of dollars of property at risk. More than \$25 billion in federal funds had been appropriated since 9/11 for state and local governments to improve their response capabilities, but the commissioners were still dissatisfied.

Throwing money at the problem was not making Americans safer. Grants to state and local governments were in danger of becoming, in the words of the commission's report, little more than "pork-barrel" legislation. Meanwhile, the effort to implement national preparedness standards was moving slowly. Something needed to be done.

Talking Points

- The 2003 Independent Task Force on Emergency Responders found that first responders lack funds for equipment and training, that the U.S. has a weak public health infrastructure, and that no accurate data exist to verify needs of local law enforcement for disaster response.
- Congress and the Administration should make filling the gaping holes in national disaster preparedness and response a priority. As other homeland security reforms stemming from the 9/11 Commission report move forward, preparedness and response reforms at the local, state, and federal levels to form a truly national response should not be left behind.
- Congress and the Administration can address this shortfall by establishing a regional framework for the Department of Homeland Security, requiring a periodic review of the department's strategic plan, and abolishing or substantially reducing mandatory outlays to states.

This paper, in its entirety, can be found at:
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Regrettably, something still needs to be done.² America does not have a preparedness system that makes all Americans safer, and addressing this shortcoming should be a priority for the Administration and Congress. Not enough has been done to implement national preparedness standards and ensure that federal funding is sufficient and directed toward meeting the highest national priorities first.

To deal with this problem, Congress should embrace three initiatives as the centerpiece of reform:

- Establishing a regional framework for the Department of Homeland Security (DHS),
- Requiring a periodic mandatory review of the department's strategic plan, and
- Abolishing or substantially reducing mandatory outlays to states.

A Legacy of Inaction

In response to the 9/11 Commission's scathing criticism of congressional inaction on reforming the grant process, Congress did nothing. And a year later, when legislation to reform the grant system was put before the House and Senate as part of the bill to reauthorize provisions of the Patriot Act, the provision was dropped in conference.

Congress's failure to act on this occasion was particularly galling as it came in the wake of Hurricane Katrina in August 2005. Katrina was exactly the kind of disaster the 9/11 commissioners had anticipated.

Katrina illustrated the failures of post-9/11 preparedness efforts to set standards and allocate resources appropriately. One of the most basic post-9/11 national standards was that each locality must establish an "incident command system," an integrated management structure to coordinate efforts during a disaster. New Orleans did not have

this capability. Not until 2007 will the federal government require states and cities to have incident command systems in place to be eligible for homeland security grants.

Likewise, the millions in federal grants made to New Orleans and the state of Louisiana proved to be little help. After the storm, most of what was bought with federal dollars was destroyed or underwater. What New Orleans needed most was not more fire trucks and gas masks. For a catastrophic disaster—a catastrophe on a scale that would overwhelm any community—local leaders must have the means to rapidly determine the extent of the destruction, communicate needs to state and federal authorities, and coordinate the efficient delivery of aid, drawing on nationwide resources in hours, not days. Katrina proved that a system that can respond to a catastrophic disaster with those capabilities does not yet exist in the United States.

How We Got Here from There

September 11, 2001, caused many Americans to feel a sudden and terrifying sense of vulnerability. Eager to address the apparent security shortfall and respond to the public's rising anxiety, U.S. lawmakers acted quickly to enhance the powers of security and law enforcement agencies, establish the U.S. Department of Homeland Security, and provide additional resources to local emergency responders.

At the outset, federal officials realized that state and local governments had a major role to play in disaster response. Indeed, many of the things that went right on 9/11 were due to strong and decisive leadership by local officials and the bravery and professionalism of emergency responders.

In a federal system of government, public safety is largely the responsibility of local leaders. Of the millions of emergency responders (including fire-

1. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington, D.C.: U.S. Government Printing Office, 2004), at www.gpoaccess.gov/911/pdf/fullreport.pdf (September 12, 2006).
2. The 9/11 Commission continued into 2005 as the 9/11 Public Discourse Project. In December 2005, the project released a report card, grading Congress and the Administration on how well it had implemented the commission's 2004 recommendations. The project awarded the government's efforts to "Allocate homeland security funds based on risk" a failing grade. See 9/11 Public Discourse Project, "Final Report on the 9/11 Commission Recommendations," December 5, 2005, at www.9-11pdp.org/press/2005-12-05_report.pdf (September 5, 2006).

fighters, police, medical and utility services, and volunteers), most work for state and local governments or would act under state or local government direction in the event of disaster. In addition, as the officials closest to the community, local leaders are best placed to determine how to organize local efforts.

In the wake of 9/11, the White House knew that it could not and should not tell state and local governments how to do their jobs. On the other hand, it could not expect local officials to know how to deal with catastrophic threats or reasonably anticipate that communities, which already bore the burden of financing public safety services, would spend lavishly on building additional response capabilities that they might never need.

The White House's solution to the problem was simple and straightforward: Provide homeland security grants that states could spend as they saw fit. Congress helped to shape the initiative. It added a provision to the Patriot Act, which had been passed shortly after 9/11, stipulating that each state receive 0.75 percent of all the funds appropriated.³ That would ensure that each state received some help in building the post-9/11 national response system. Made in haste, this plan was faulty.

Warning Signals

In March 2003, the Council on Foreign Relations established an Independent Task Force on Emergency Responders.⁴ It asked the task force to address a simple question: What is needed to ensure that every community in the United States had the capacity to deal with a large-scale terrorist attack? It was the question that Congress and the White House should have addressed before they started throwing money at the problem.

The nonpartisan task force was chaired by former Senator Warren Rudman (R-NH) and included former national security staffers Richard Clarke, who had spearheaded counterterrorism

efforts in the Clinton and Bush White Houses, as Senior Adviser and Jamie Metzl as Project Director. The group brought together leading Americans from diverse political and professional backgrounds to examine whether America was sufficiently prepared for another terrorist attack. Members included former Secretary of State George Shultz, former CIA and FBI Director William Webster, a former Chairman of the Joint Chiefs of Staff, a former Army Chief of Staff, three Nobel laureates, and other senior experts of a similar stature.

The task force met with local emergency responders across the country and worked closely with emergency responder professional associations. Assisting the task force, James Jay Carafano and Joshua Gordon from, respectively, the Center for Strategic and Budgetary Assessments and the Concord Coalition, two of the country's leading budgetary analysis organizations, drew on the recommendations of these associations to determine total national requirements and what it would cost provide and sustain them.

The task force concluded that emergency responders across the country did not have the equipment and training necessary to respond safely and effectively to a terrorist attack and estimated that \$98.4 billion of additional funding would be required over the next five years. Many of the gaps identified in 2003—including the dangerous state of America's public health infrastructure, the lack of interoperable communications systems, and the absence of an integrated strategy for agricultural and veterinary security—remain no better addressed in 2006.

In hindsight, the task force's \$100 billion figure underestimated the challenge. There were, for example, no accurate data on the needs of local law enforcement, so their requirements were not included. Katrina was a reminder, however, of the

3. Paul Rosenzweig, James Jay Carafano, Ph.D., and Alane Kochems, "The Patriot Act Reader," Heritage Foundation *Special Report* No. 01, September 13, 2004, at www.heritage.org/Research/HomelandDefense/The-Patriot-Act-Reader.cfm.

4. Independent Task Force on Emergency Responders, *Emergency Responders: Drastically Underfunded, Dangerously Unprepared*, Council on Foreign Relations, June 2003, at www.cfr.org/content/publications/attachments/Responders_TF.pdf (September 5, 2006).

vital role that local police play during a major catastrophe in restoring public order and in organizing and safeguarding the delivery of emergency response services.

In addition, the task force's estimate of the funds required to ensure interoperable communications between agencies assumed that agencies' systems would use the Internet to share information. But during Katrina, when responders' facilities and equipment were destroyed or lacked electrical power, these systems would have failed. The disaster highlighted the need for ad hoc, wireless emergency networks supported by adequate bandwidth to carry voice, video, and data. The report did not include costs for these capabilities. As a result, the task force underestimated national needs, probably by tens of billions of dollars.

Senator Rudman discussed the task force report with Tim Russert on "Meet the Press" after the \$100 billion shortfall figure drew national attention, and he stressed that several points were abundantly clear.⁵ The United States would never close its preparedness gap with a few billion dollars a year of federal grants. Likewise, even massive amounts of spending would be no guarantee that the country would be any better off without a mechanism to ensure that the money was spent on the right stuff. Nor was there any guarantee that preparedness would be adequately funded year in and year out as local, state, and federal coffers filled and drained.

The greatest need, then, was a strategy to determine how to get the biggest bang for the security buck—a strategy that accurately determined needs, allocated federal funds to meet national priorities, and ensured that the highest priorities got funded first.

Although it was obvious that additional funding was badly needed to address an emergency shortfall, it was equally apparent that to reach a higher level of preparedness, the U.S. government would need to define better what it means to be prepared. Because America had not defined preparedness, Americans had no way of knowing how prepared the country was or what needed to be done to see to it that the country was prepared.

The task force called for the establishment of national preparedness standards. According to the task force, every jurisdiction of a given size should have or have access to a set of minimum essential capabilities—for example, the ability to respond to a biological event of a certain size or to decontaminate a certain number of people. Within these parameters, state and local governments would have flexibility to determine priorities and allocate resources so long as national standards are met over a fixed period of time.

According to the task force, national standards could then provide the basis for a requirements process similar to that employed by the United States military. Threats could be identified, capabilities for addressing threats could be determined, and requirements could be generated for establishing or otherwise gaining access to necessary capabilities.

Setting national standards and creating a system to allocate homeland security dollars efficiently had to be job one. However, Congress did not give it that priority.

The Slow March Forward

The massive media coverage of the task force report added to the pressure on Congress to establish national preparedness standards. The effort, however, was hamstrung at the start by poor organization. Congress had failed to establish permanent oversight committees to supervise the newly established Department of Homeland Security. In addition, the Homeland Security Act of 2002 created a dysfunctional and fragmented system for national preparedness, with three entities—the Federal Emergency Management Agency (FEMA), Office of Domestic Preparedness, and Office of State and Local Government Coordination—each of which would be responsible for meeting part of the challenge.

The one feature of the 2002 bill that would have helped to integrate preparedness activities—requiring the establishment of a regional network to coordinate homeland security operations—was never

5. For a transcript, see NBC, "Meet the Press," June 29, 2003, at www.jamiemetz.com/meetthepress.html (September 5, 2006).

implemented by DHS. At the same time, the President's Homeland Security Council staff adapted an organization that paralleled the department and as a result spent more time directing the department's policies than coordinating interagency actions.

It was not until the December 2003 release of Homeland Security Presidential Directive 8 (HSPD-8) by President Bush that any real progress on national standards occurred. HSPD-8 mandated that "the Secretary [of Homeland Security], in coordination with the heads of other appropriate Federal departments and agencies and in consultation with State and local governments, shall develop a national domestic all-hazards preparedness goal."⁶ The federal government would help achieve this goal by "providing for effective, efficient, and timely delivery of Federal preparedness assistance to State and local governments" and "supporting efforts to ensure first responders are prepared to respond to major events, especially prevention of and response to threatened terrorist attacks."⁷

While HSPD-8 made a significant contribution to creating a national preparedness policy, it did little to ensure that this goal would become a reality. The organization of the department was still fragmented, and Congress still lacked permanent oversight committees.

The Administration took some other positive steps. Combining the offices of state and local coordination and domestic preparedness, putting the new office in the department's secretariat, and giving it responsibility for developing and implementing the HSPD-8 standards and managing all the department's grant programs all helped. A reorganized Homeland Security Council, with new leadership under Homeland Security Adviser Fran Townsend, also helped.

National preparedness standards were approved and published in December 2005, and the department is implementing them—a good step, but not enough. Confusion and controversy with FEMA over the role of the new office in overseeing preparedness activities continue.

Congress's progress has been even more disappointing. A temporary Homeland Security Committee in the House, led by Representatives Chris Cox (R-CA) and Jim Turner (D-TX), tried to address preparedness.

Representative Cox focused on the formula codified in the Patriot Act that distributes 0.75 percent of the state terrorism preparedness grant money appropriated to the department to each state, regardless of risk or need. This formula, combined with slightly smaller allocations for U.S. territories, adds up to approximately 40 percent of the funding for first responder grants. The department then allocates the remaining 60 percent of the funding based solely on population. Formula-based grants account for 11 percent of the department's total budget, with the department providing \$3.6 billion in assistance to state and local first responders in 2006.⁸

The grant formula does little to increase security, but it has led to some odd results. In 2004, California, clearly a terrorist and natural disaster "target-rich environment," received only 7.95 percent of general grant monies even though the state accounts for 12 percent of the nation's population.⁹ Wyoming, which received 0.85 percent, accounts for only 0.17 percent of the population.¹⁰ This translates into grants of \$5.03 per capita in California and \$37.94 per capita in Wyoming.

Within states, rural, less-populated areas often receive a disproportionate share of the grants. For

6. George W. Bush, "December 17, 2003 Homeland Security Presidential Directive/Hspd-8," The White House, Office of the Press Secretary, December 17, 2003, at www.whitehouse.gov/news/releases/2003/12/20031217-6.html (September 5, 2006).

7. *Ibid.*

8. U.S. Department of Homeland Security, "Fact Sheet: U.S. Department of Homeland Security FY 2006 Budget Request Includes Seven Percent Increase," February 7, 2005, at www.dhs.gov/dhspublic/interapp/press_release/press_release_0613.xml (September 13, 2006).

9. Tim Ransdell, "Federal Formula Grants and California: Homeland Security," Public Policy Institute of California, 2004, p. 80.

10. *Ibid.*, p. 81.

instance, in Iowa, the capital city of Des Moines, with a population of 199,000, received \$250,000. Sioux County, Iowa, with a population of 31,600, got \$299,000.¹¹

Cox's committee drafted the Faster and Smarter Funding for First Responders Act (H.R. 1544), which would have fixed the formula and put many of the provisions of HSPD-8 into law.¹² Cox succeeded in having the bill incorporated into the House version of the legislation that implemented many of the 9/11 Commission's reforms, but the provision was dropped in conference.

Another notable bipartisan effort to fix the grant problem was the Homeland Security FORWARD Funding Act of 2005 (S. 1014), introduced by Senators Dianne Feinstein (D-CA) and John Cornyn (R-TX).¹³ The legislation would have required the department to distribute state grants according to risk assessments. Additionally, it would have reduced the state minimum funding levels to 0.25 percent, which would be calculated as a proportion of just the State Homeland Security Grant Program rather than as a portion of all grants. The rest of the grants would be distributed based on risk. As a result, DHS could target funds where they would best serve to help build a national homeland security system that better protects all Americans.

Under the Senate legislation, for a state to receive money, it would have to demonstrate that it has certain essential capabilities and a plan to use the money that details prioritized threats, expected resource allocations, and emergency preparedness goals. When a state received funds, the bill

required that the money go toward the state's plan. Sadly, these policies were not adopted.

Congress Questions Grants Process

In June of this year, following years of congressional inaction to set clearer standards and goals for the grant programs, some Members of Congress raised loud concerns over the announced distribution of Urban Area Security Initiative (UASI) grants for 2007. When DHS announced the allocation of UASI grants, which go directly to major urban areas, some congressional leaders balked at reductions in funds for some of the largest urban areas, including a 40 percent cut for New York, matched with grants to smaller cities that had not qualified previously.

DHS officials explained that this grant process considered the entire nation and "that at the end of the day, our job is to make sure that we apply resources in an appropriate manner across the full breadth of this nation, so that we get the maximum benefit out of those dollars."¹⁴ The federal dollars allocated were based on risk and effectiveness of planning, in addition to the federally mandated minimum. The smaller cities that received more in grants had successfully demonstrated effective planning, and some larger urban areas have other sources of funding available to meet the unique threats they face.¹⁵ Congress rejected these explanations and called for the Government Accountability Office to conduct investigative reviews of the UASI grant allocation.

Increasing funds to certain populous urban areas, which seems to be Congress's solution, will

11. Associated Press State & Local Wire, "Critics Charge Security Money Favors Rural Areas," *Des Moines Register*, April 25, 2004, p. A1, at www.lexisnexis.com (September 13, 2006). See also James Jay Carafano, Ph.D., "Homeland Security Dollars and Sense #1: Current Spending Formulas Waste Aid to States," Heritage Foundation *WebMemo* No. 508, May 20, 2004, at www.heritage.org/Research/HomelandDefense/wm508.cfm.

12. For the text of H.R. 1544, see http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h1544rh.txt.pdf (September 5, 2006).

13. For the text of S. 1014, see http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s1013is.txt.pdf (September 5, 2006).

14. Press release, "Press Conference by Under Secretary George Foresman and Assistant Secretary Tracy Henke on the FY 06 Homeland Security Grant Program," U.S. Department of Homeland Security, May 31, 2006, at www.dhs.gov/dhspublic/interapp/press_release/press_release_0922.xml (September 5, 2006).

15. *Ibid.*

not solve the problem of ineffective planning. The Administration and Congress must work together to provide better solutions than simply throwing more money at the problem.

Making America Safer

There is much to be done to move the process of implementing national standards forward. An important next step rests with the Congress. Now that permanent Homeland Security committees have been established in both houses, they need to make HSPD-8 law so that national standards will remain consistent from one Administration to the next. Congress also needs to fix the funding formula, which will require overcoming the obstructionism of Senators from rural states who seem to be more interested in preserving their state's cut of the federal dole than in building a system that makes all Americans safer.

The Department of Homeland Security also has more work to do. In July 2005, the new Secretary of Homeland Security, Michael Chertoff, announced a reorganization that would consolidate all preparedness activities under an Undersecretary for Preparedness—a good move. Secretary Chertoff, however, should also create a regional network for coordinating with the states, as required in the 2002 law, establishing regional offices that would facilitate planning and operations. In addition, priority must be given to establishing a much more robust national training, exercises, assessment, and certification program that tells Washington how well the nation is doing and ensures that federal money is being used efficiently and effectively.¹⁶

Congress and the department must work more closely together. The department should be required to undertake a quadrennial review, similar to the Defense Department's Quadrennial Defense Review, that analyzes mission, resources, and strategy to ensure that they are appropriate. These results should be reported to Congress.

Finally, the Administration should request and the Congress should provide appropriate, sustain-

able funding for preparedness programs that are based on a realistic determination of needs. These needs should be derived from an assessment of planning, exercises, and evaluations based on national standards. Funds should be allocated to meet the two most vital national strategic priorities: building an effective national preparedness and response system and increasing the national capacity to respond to catastrophic disasters. Anything less will leave America less safe.

What Congress and the Administration Should Do

Congress and the Administration should make filling the gaping holes in national disaster preparedness and response a priority. As other homeland security reforms stemming from the 9/11 Commission report move forward, preparedness and response reforms at the local, state, and federal levels to form a truly national response should not be left behind.

To facilitate this process, Congress should:

- **Require** the Department of Homeland Security to conduct a Quadrennial Homeland Security Review, just as the Department of Defense is required to conduct its Quadrennial Defense Review, and
- **Reform** homeland security grants by eliminating the minimum-grant formula to allow for pure risk-based funding.

For its part, the Department of Homeland Security should:

- **Continue** to update the formula for homeland security grant allocation to reflect risk, threat, and vulnerability, and
- **Create** regional offices to coordinate disaster preparedness and response, as mandated by HSPD-8 and the Homeland Security Act of 2002.

Conclusion

Homeland security grant funding is a means to an end, not an end in itself. Continuing to throw

16. For details on this initiative, see Jill Rhodes, J.D., LL.M., and James Jay Carafano, Ph.D., "State and Regional Responses to Disasters: Solving the 72-Hour Problem," Heritage Foundation *Background* No. 1962, August 21, 2006, at www.heritage.org/Research/HomelandDefense/bg1962.cfm.

federal dollars at states in the name of homeland security without a strategy for building a national capacity for disaster response will leave America at square one, with pre-9/11 effectiveness and a growing, yet ineffective, homeland security budget.

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