

## INFORMED BUDGETEER

**WHAT HAPPENS TO HOMELAND SECURITY UNDER A LONG-TERM CR, PART III: FIRST RESPONDERS**

- Turning to first responders, the *Bulletin* continues to highlight homeland security activities that would receive less funding for 2003 under a long-term continuing resolution (CR) than was provided in 2002 (not to mention even less funding than the President requested for 2003).

- Recall that America's "first responders" are the firefighters, local law enforcement officers, rescue squads, and emergency medical personnel who arrive first at the scene when disaster strikes. Prior to 9/11, the major federal first-responder training program was the National Domestic Preparedness Consortium (NDPC) in the Department of Justice (DOJ). The NDPC is a follow-on to the Nunn-Lugar-Domenici program, originally created in the National Defense Authorization Act of 1996, that has helped to prepare 120 major U.S. cities for potential attacks involving weapons of mass destruction. Under the broad transfer authority provided in the original legislation, the Nunn-Lugar-Domenici program was shifted from the Department of Defense to the DOJ in 1998 (see May 20<sup>th</sup> *Bulletin's* Budget Quiz).

- In his FY 2003 Budget request, the President first broadened the definition of first-responder activities to include other counterterrorism grant programs at the Office for Domestic Preparedness (ODP) at DOJ. These programs consist mainly of grants that help state and local governments purchase needed equipment. In addition, the President's budget proposed to transfer all first responder activities (both training and grant programs) to the Federal Emergency Management Agency (FEMA).

- For FY 2002, funding for all activities now being defined as first-responder training was \$924 million. DOJ received \$885 million of that funding (\$234 million provided through regular appropriations and \$651 million provided as part of the Emergency Response Fund supplemental). The supplemental money was appropriated in order to expand the grants and training provided by ODP (\$400 million) and to increase counterterrorism grants for specific states and localities (\$251 million). FEMA received the remaining \$39 million in first-responder money in their regular FY 2002 appropriations bill.

- The President's 2003 Budget proposed to increase the funding for first-responder activities (but through FEMA instead) to a total of \$3.5 billion. Among other things, this \$2.6 billion increase in funding would provide personal protective equipment, medical equipment, biological and chemical detection equipment and other items that local first responders need. The funds would also be used to conduct more frequent terrorism drills and to upgrade emergency communications equipment throughout the nation. Hearings in several committees on first-responder programs have highlighted Congressional support for the additional money (even if agreement has not been reached on whether funding should go to FEMA or to DOJ).

- Bottom line: Under a long-term CR, spending authority available for first-responder activities in 2003 would only be \$491 million – only about half of the 2002 level, and \$3 billion (or 86%) less than the President's 2003 request! Further, the bulk of the funding under a long-term CR would continue to administered by DOJ, rather than being transferred to FEMA as the President had envisioned.

First Responder Funding (\$ in millions)					
Agency	(1) Total FY02 Appropriations	(2) One-Time Funding	(3) Unob. balances from Response Fund	(4) Total CR (1)-(2)-(3)	(5) Pres. FY03 Req.
DOJ	885	–	433	452	–
FEMA	39	–	–	39	3,500
<b>Total</b>	<b>924</b>	<b>–</b>	<b>433</b>	<b>491</b>	<b>3,500</b>

Source: SBC Republican Staff analysis, from DOJ, FEMA and OMB data  
Note: Totals may not add due to rounding

- How to arrive at the \$491 million that would be available for first-responder activities under a long-term CR? The above chart starts with the budget authority that the DOJ and FEMA received in FY 2002 for first-responder activities. Since none of this funding has been deemed to be one-time funding by the Office of Management and Budget (OMB), there is nothing to subtract from that total at this point.
- Of the \$651 million received from the Emergency Response Fund, \$433 million is still unobligated and therefore must be deducted from the original \$924 million total. Under OMB guidance, this is done to ensure that the total amounts available for obligation in 2003 do not exceed the 2002 level. (Note: the unobligated balances in the chart above are as of July 31, 2002. When the final CR calculation is made, the amount of unobligated balances from the Emergency Response Fund will likely be lower because more funds will have been obligated in August and September. The level of unobligated balances from the \$234 million enacted in the FY 2002 regular appropriations bill is currently not available.)
- This is just another example of the many ways a "not to exceed current rate" CR can significantly constrain a priority initiative, and another reason why CR governance is not really governing.

**IT'S A CRIME WHAT THEY'RE DOING TO CRIME VICTIMS**

- Another thing that happens with CRs is that the appropriations committees can slip in provisions – unrelated to simply continuing appropriations for a short time – that are contrary to the recently expressed intent of the whole Congress and/or the Administration. Such provisions are easily enacted as part of the CR because the alternative is to have amended CRs ping-ponging back and forth between the House and Senate or between the Congress and the President (if he vetoes one), with the result of, at best, delayed congressional departures or, at worst, the specter of a government shutdown.
- Examples of recent provisions secreted away inside what have been advertised as clean CRs include the Congress contradicting the Administration by requiring executive branch agencies to use the Government Printing Office (especially singling out OMB for the printing of the 2004 budget request) and Congressional posturing about the level of the highway spending that ultimately will be set for 2003 in a later appropriations bill.
- One example representing contradictory behavior is Section 3 in the third CR (P.L. 107-240), which provided continuing appropriations for the week of October 12-18. This provision represents the latest utterance in the "Can too! Can not!" argument between the Appropriations Committees and the Judiciary Committees over control of the Crime Victims Fund.

- As summarized by the Dept. of Justice website, the Crime Victims Fund was established by the Victims of Crime Act of 1984 and serves as a major funding source for victim services throughout the country. Each year, millions of dollars are deposited (as federal revenues) into this fund from criminal fines, forfeited bail bonds, penalty fees, and special assessments collected from offenders convicted of federal crimes (not from taxpayers). Under current budgetary practice, those deposited amounts represent new budget authority that (until recently) have been available as a mandatory (i.e., without need for further congressional action) appropriation for disbursement largely as follows: 47.5 percent to State compensation programs, 47.5 percent to State assistance programs, and 5 percent to support demonstration projects, training, and other assistance.
- Every State administers a crime victim compensation and assistance program, with maximum compensation awards generally ranging from \$10,000 to \$25,000. Crime victim compensation is a direct reimbursement to, or on behalf of, a crime victim for the following crime-related expenses: medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. Other compensable expenses may include eyeglasses, dental services and devices, prosthetic devices, and crime scene clean-up.
- Victim assistance includes the following services: crisis intervention, counseling, emergency shelter, criminal justice advocacy, and emergency transportation. Throughout the nation, there are approximately 10,000 organizations that provide these and other services to crime victims.
- From 1990-1995, deposits into the fund averaged \$175 million annually, and spending lagged slightly behind because of an annual cap on this program that ended in 1993. But from 1996-2001, annual deposits into the fund have averaged about \$630 million, exaggerated by a handful of especially large fines levied against firms making false product claims. A record deposit of \$985 million in 1999 attracted the attention of the appropriations committees, which decided that crime victims deserved to receive no more than \$500 million in FY 2000.
- By prohibiting DOJ from obligating the other half a billion dollars that was available, the appropriators received discretionary "savings" in that amount against their bill (remember that any action taken in an appropriations bill, whether for discretionary or mandatory programs, is by definition counted on the discretionary side of the budget). They then proceeded to spend it on other items (in what was an admittedly tight year under the statutory cap for discretionary spending; recall the extensive use of the emergency designation, especially for the 2000 census).
- This trick worked so well, every President's budget (both Clinton and Bush) and Commerce-Justice-State appropriations bill since then has included a cap on spending from the Crime Victims Fund. But a year ago, with the spotlight on the victims of the terrorist crimes, the Congress included a provision in the USA Patriot Act (enacted to give federal agencies additional tools to combat terrorism) to prevent the appropriators from permanently deferring resources in the fund and to recapture the availability of all deposits for crime victims funding. But before the ink of the President's signature was dry (33 days after enactment of that bill), the 2002 CJS appropriations bill summarily dismissed that intent by repealing the relevant provision of the USA Patriot Act and by limiting the Crime Victims Fund to only \$550 million.
- The Judiciary Committees tried again this month with H.R. 2215 – the 21st Century DOJ Authorization Act, which reapplied the status of the Crime Victims Fund as originally set out in last year's U.S.A. Patriot Act. But this time, before Presidential pen could even be put to paper (H.R. 2215 cleared for the President on October 3rd and still awaits his signature), section 3 of the third CR attempted to strike the provision of H.R. 2215 that would have protected the Crime Victims Fund, so it would not become law when the rest of the bill does.
- With enactment of the 3<sup>rd</sup> CR (Oct. 11) before enactment of H.R. 2215, Sec. 3 of that CR simply has no effect. An enacted law (the 3<sup>rd</sup> CR) cannot affect the contents of a law that may be enacted later (H.R. 2215); the last enacted word controls. Unfortunately, the Judiciary conferees could not get unanimous consent to consider their conference agreement without also agreeing with the appropriators' demand to direct the House enrolling clerk to make a substantive change in H.R. 2215 that strikes its provision dealing with the Crime Victims Fund (H. Con. Res. 503, agreed to Oct. 17).
- Once this enrolling change is made and the President finally signs H.R. 2215, it will make relevant again the President's request and the (approximately) concurring Senate-reported action for the 2003 CJS bill. Crime victims would receive only \$566 million out of \$1.8 billion that would otherwise be available to them in 2003, thereby "creating" \$1.2 billion in BA savings.
- Logical budgeteers might wonder as follows: it is perhaps understandable that such savings were too tempting to resist in 2000 when there was a statutory spending limit that the Congress and the President had to work around to avoid a sequester; but there is no such discretionary cap for 2003! Caps have expired; no discretionary sequesters are possible. Appropriations allocations, in the Senate at least, have no basis or meaning in budget law; therefore the level of resources available to appropriators is wholly unrelated to the level of spending to the Crime Victims Fund.
- So why the ruse? The appropriators say the President made them do it. This gimmick has grown so large (\$1.2 billion) that the appropriators claim they have to follow the President's lead in order to make a fair comparison between the discretionary totals of the two sides. So why did the Administration propose it again? Presumably to satisfy its quest to get its discretionary total down to as low a figure as possible. Never mind that by using the same (but gradually increasing) "savings" four years in a row, the appropriations process can permanently work into the baseline new spending of \$0.5-\$1 billion annually for new or expanded programs. Rather puzzling reasoning for an Administration that constantly warns about the dangers that a one-year spending increase can pose for 10 years of fiscal effects. Crime victims, of which there is no recent shortage, are likely most puzzled by this inconsistency.

#### EDITOR'S NOTES

The Senate is in pro-forma session, and votes will not likely occur until November 12. The Bulletin will resume publication the week of November 12, 2002.

Also, in an effort to make more content available to those who read the *Bulletin* on-line, a new HTML format is now available. The *Bulletin* will include links, when possible, to on-line information referenced in each issue. We will post on-line both PDF and HTML versions on the Republican website for the Budget Committee. The web site address is: [http://www.senate.gov/~budget/republican/budget\\_bulletin.html](http://www.senate.gov/~budget/republican/budget_bulletin.html)