U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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May 12, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Committee on Transportation and Infrastructure

FROM: Committee on Transportation and Infrastructure Staff

SUBJECT: Hearing on "An Independent FEMA: Restoring the Nation's Capabilities for Effective Emergency Management and Disaster Response"

PURPOSE OF THE HEARING

The Committee on Transportation and Infrastructure will meet on Thursday, May 14, 2009, at 11:00 a.m., in room 2167 of the Rayburn House Office Building, to receive testimony on "An Independent FEMA: Restoring the Nation's Capabilities for Effective Emergency Management and Disaster Response." The hearing will focus on the Federal Emergency Management Agency (FEMA), and how it has functioned since its placement in the Department of Homeland Security (DHS).

BACKGROUND

FEMA is the Federal Government's lead agency for preparing for, mitigating, responding to, and recovering from disasters and emergencies from all hazards, whether natural or man-made. The agency's primary authority in carrying out these functions is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)[1].

FEMA is best known for its programs which provide assistance to communities and citizens in the wake of a disaster. FEMA's major programs for disaster recovery are the Public Assistance Program and the Individual Assistance Program, also known as the Individual and Households Program. The Public Assistance Program reimburses state and local emergency response costs and provides grants to state and local governments as well as certain private non-profits to rebuild

[1] 42 U.S.C. 5121-5207

facilities. The Individual Assistance program provides assistance to families and individuals impacted by disasters, including funding for repair, rental assistance, or "direct assistance", i.e. the provision of trailers and mobile homes. FEMA also provides grants to mostly low-income families for loss of personal property, as well as disaster-related dental, medical, and funeral costs to individuals regardless of income. Other Individual Assistance programs include unemployment assistance, disaster food stamps, disaster legal services, and crisis counseling. Both before and after disasters, FEMA also provides grants to communities to reduce the risk of future damage, hardship, and loss from all hazards through the Pre-Disaster Mitigation Program and the (post-disaster) Hazard Mitigation Grant Program, both authorized by the Stafford Act.

In addition to the agency's disaster work, the United States Fire Administration, the National Fire Academy, the Emergency Management Institute, the National Flood Insurance Program, and the Federal Government's programs for continuity of operations and continuity of government are housed within FEMA.

FEMA was created by Reorganization Plan No. 3 of 1978[2], and Executive Order 12127[3] on April 1, 1979. FEMA functioned as an independent agency reporting directly to five Presidents from 1979 until 2003. During the Clinton Administration, the Director of FEMA,[4] James Lee Witt, became a member of the President's Cabinet. As an independent agency, FEMA responded to a wide range of natural and man-made disasters including Hurricane Andrew, the Northridge Earthquake, the 1993 Midwest floods, and both the 1993 and 2001 attacks on the World Trade Center. FEMA was considered a successful government agency in its last ten years as an independent agency, under both President Clinton and President Bush. In fact, when DHS was proposed in 2002, FEMA was held up as a necessary core component of the Department.[5] FEMA became part of the newly created DHS on March 3, 2003, pursuant to the Homeland Security Act of 2002.[6] As a result, President Bush delegated to the Secretary of DHS the responsibility for administering most of the provisions of the Stafford Act and other FEMA authorities.[7]

Significance of Disaster Relief

While it is indisputable that the September 11, 2001 terrorist attacks refocused our nation's attention on the threat of terrorism and significantly changed our society, the major threats to most communities around the country continue to be natural disasters. The nations still faces the same threats from fires, floods, tornadoes, hurricanes and other disasters, and currently, as before the events of September 11, disaster relief is a significant portion of the Federal budget.

Since 1999, Congress has appropriated $92.28 billion for the Disaster Relief Fund in response to disasters and emergencies declared by the President under the Stafford Act. In addition, the National Flood Insurance Program, administered by FEMA, paid over $27.6 billion in claims for flood damage during that same time.[8] Over the past ten years, private insurance has paid more than

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[2] 43 FR 41943
[3] 44 FR 19367
[4] Prior to April 1, 2007 the Administrator of FEMA was referred to as the Director of FEMA.
[5] Christopher Cooper and Robert Block, "Disaster Hurricane Katrina and the Failure of Homeland Security", Times Books, 2006, p. 76.
[6] Public Law 107-296, 116 Stat. 2135
[7] Executive Order 13286, 68 FR 10619
[8] Source: FEMA

$170 billion in claims for natural disasters.[9] These amounts do not include funds spent in connection with the September 11 attacks. Therefore, nearly $290 billion was expended over the last decade in response to natural disasters, without counting the costs borne by States, local governments, and private citizens.

Since 2000, according to FEMA, the President has declared only two disasters because of terrorist attacks but declared over 500 disasters because of natural hazards. Despite this fact, relatively few of the nation's preparedness funds have been distributed for core preparedness but have been funneled instead to terrorism-specific activities. As was first revealed at an April 2007 hearing of the Subcommittee on Economic Development, Public Buildings and Emergency Management, in the last six years, the Federal Government has spent ten times more on terrorism preparedness (nearly $15 billion) than on core emergency management preparedness ($1.5 billion).

Effective Emergency Management

There are many components of an effective emergency management system. These include the ability to respond quickly, effectively, and flexibly, as well as the ability to make quick decisions or provide information directly to key executive decision makers (e.g. the President, a Governor or a Mayor). Emergency management is also a collaborative enterprise between local, state, and Federal agencies and officials. Emergency management functions on the premise that all events begin at the local level and the state and Federal Government provide support to those local efforts if and when the situation warrants. This approach distinguishes emergency management from homeland security, which is based on a more top-down, law enforcement model where the Federal Government has the lead in most areas, such as protecting our borders, immigration, and transportation security.

Contemporary emergency management also employs an "all hazards" approach and integrates all phases of emergency management - preparedness, response, recovery and mitigation. An all hazards approach is based on the premise that communities do not need to prepare separately for each kind of threat. The essential elements of preparedness, response and recovery are the same regardless of the type of event. Whether a building collapses from a bomb, a pipeline explosion, or an earthquake, the rescue and the debris removal are the same. The evacuation of a community is largely the same whether due to a hurricane, a heightened threat of a terrorist attack, or a hazmat incident. While the specific assets needed to respond to each disaster will differ, the methods and systems to effectively manage a disaster are the same. Testimony from emergency managers and others before the Subcommittee on Economic Development, Public Buildings and Emergency Management, has supported an all hazards approach as the best course for effective emergency management.

Crisis Management versus Consequence Management

A distinction between the two phases of dealing with a terrorist event was developed in the 1990s to distinguish between the roles of law enforcement and emergency management. These two phases are known as "crisis management" and "consequence management". Under this construct, law enforcement agencies (e.g. the Federal Bureau of Investigation and now DHS) are responsible for preventing terrorist activity and the prosecution of those who carry it out. Today, crisis

[9] Source: Property Casualty Insurers Association of America

management is often called "prevention and protection". In this phase, dealing with terrorism is different than other threats our nation faces, and this is the focus of many other entities and agencies within DHS. It includes protecting our borders, our transportation systems, our communities, and our infrastructure, as well as working closely with other law enforcement and intelligence agencies. FEMA does not contribute materially to this prevention and protection mission.

Conversely, emergency managers are responsible for consequence management, or preparedness, response, recovery and mitigation. Consequence management entails planning for a wide range of hazards, regardless of cause, to ensure a community is prepared and able to mount an effective response and recovery effort when disaster strikes.

This division of responsibilities worked well in the aftermath of the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City and both the 1993 and the 2001 attacks on the World Trade Center. FEMA responded to each of these as an independent agency and used its all hazards authority under the Stafford Act. Therefore, prior experience indicates that no separate systems are needed to manage the consequences of a terrorist attack versus a natural disaster.

FEMA's Performance in DHS

Oversight hearings held by the Committee on Transportation and Infrastructure since 2003 have shown a correlation between the absorption of FEMA into DHS and the deterioration of FEMA's effectiveness. In the aftermath of the poor Federal response to Hurricanes Katrina and Rita in 2005, Congress enacted the Post Katrina Emergency Management Reform Act of 2006.[10] This law attempted to enhance FEMA's authority within DHS. While there has been some improvement, FEMA continues to lack the autonomy to function as a "distinct entity" within DHS, as required by the Post Katrina Act[11], which has continued to hamper the agency's performance.

The nation witnessed the tragic consequences of the breakdown of FEMA operations during the poor Federal response to Hurricanes Katrina and Rita in 2005. Delays in the immediate response in the days following Hurricane Katrina left people stranded without food, water, or shelter and living in fear for their safety, their security, and their lives. To this day, many communities in Louisiana have still not recovered from these disasters, and continue to have need for public assistance, illustrating that the catastrophic response was followed by an ineffective recovery effort.

While Katrina was the most significant and memorable example, other examples indicate FEMA's performance continues to be deficient, including the agency's response to the discovery of formaldehyde in travel trailers. FEMA's inability to identify the significance of the public health impacts and to develop a swift, appropriate response illustrates the difficulties FEMA continues to face in DHS.

The 2008 season was the first Hurricane season of significance since Hurricanes Katrina and Rita. In the aftermath of Hurricane Ike last year, residents and communities in Texas experienced significant shortcomings in the delivery of recovery assistance. For example, FEMA was long

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[10] Title VI of Public Law 109-295, 120 Stat 1394

[11] 6 U.S.C. 316(a)

delayed in developing the National Disaster Housing Strategy[12] to ensure a plan for safe and sanitary housing as required by Congress after Hurricane Katrina[13]. Without the required planning completed, FEMA was unprepared, in the aftermath of Hurricane Ike, to meet the short and long-term housing needs of the hundreds of thousands of victims who needed housing assistance.

There have also been serious concerns expressed by Governor of Texas and other Texas public officials about the speed of FEMA's debris removal operations.[14] Months after the disaster, critical debris removal operations were still not underway. This is contrasted with the debris removal operation at the World Trade Center site after the September 11, 2001 attacks. That debris removal operation, which occurred while FEMA was still an independent agency, was completed early and under budget[15].

Impediments Facing FEMA in DHS

Transfer of Personnel and Resources

Upon FEMA's incorporation into DHS, personnel were transferred from FEMA to other agencies within DHS and funds were cut and distributed elsewhere within the Department, leaving FEMA without its most seasoned and knowledgeable staff and bereft of funds and other resources needed for an effective response to Hurricane Katrina. Many of the people who were left to oversee FEMA, especially in DHS, had little or no experience in emergency management.

Further, the statutory "wall" created around FEMA by the Post Katrina Act to prevent the transfer of resources out of FEMA[16] has not been sufficient to protect the agency from having DHS manage its resources. In its FY 2010 budget request, DHS proposes to transfer positions out of FEMA and into the Office of the Secretary.

Shift in FEMA's Mission to Terrorism

Previous hearings and other information provided to the Committee have raised concerns that changes made by DHS to FEMA programs continue to shift FEMA's mission from all hazards towards terrorism at the expense of natural disasters and other emergencies. For example, changes to two Federal grant programs that previously helped build basic emergency management and firefighting capability in communities around the country, Emergency Management Performance Grants (EMPG) and Fire Grants, illustrate this trend.

Since FEMA become part of the Department, DHS has attempted to change the focus of EMPG to a terrorism preparedness program rather than its longstanding purpose of basic emergency management capacity building. The Department has done so by requiring States and localities to agree to spend the funds on DHS-mandated planning scenarios that are focused on terrorism. DHS has also mandated that grants be sent through state homeland security officials

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[12] The National Disaster Housing Strategy was due in July 2007 and was issued on Friday, January 16, 2009, the last business day of the Bush Administration.
[13] 6 USC 772
[14] See, e.g. "Texas Residents Watch Hurricane Ike Debris Mount" National Public Radio - All Things Considered, December 9, 2008.
[15] See, e.g. "The Last Steel Column" The New York Times May 30, 2002.
[16] 6 U.S.C. 316(b)-(d)

(SAAs) rather than continuing the longstanding practice of giving funds directly to emergency managers. This trend continues in the DHS FY 2010 budget proposal, which proposes that the budget for EMPG be combined with terrorism specific programs.

Concerns have also been raised about the Fire Grant program, which under its authorizing statute[17] is designed to build and enhance basic fire fighting capability and enhance firefighter safety in communities across the nation. However, under DHS, fire departments have been required to show a nexus to terrorism to be eligible for grants. Further, DHS budget requests, including the FY 2010 request, have attempted to limit the program to those aspects that have a nexus to terrorism or to focus funds on communities with a greater risk of terrorism.

Reduction in FEMA's Decision-Making Power

Quick decision-making and the flexibility to shift focus as events change are two fundamental hallmarks of successful emergency management. Without the authority to make final decisions an agency can not be effective. Within DHS, FEMA officials have had to run all decisions through the Secretary of Homeland Security. Examples of this "chain of command" include announcements of major policy pronouncements and other major decisions. Further, statements of DHS and FEMA officials have indicated that major decisions have been made or approved in the office of the Secretary, notwithstanding the provisions of the Post Katrina Act that make FEMA autonomous as a "distinct entity". FEMA has also had to work through the Secretary to access non-FEMA Federal resources in a response effort. These impediments did not exist when FEMA was an independent agency, and raises concerns about the impact on the speed and flexibility of services that are provided to citizens and communities following a disaster.

DHS Duplicates Capacities and Functions of FEMA

DHS has created separate and redundant functions under the direct control of the Secretary to perform functions that by law are the sole responsibility of FEMA. For example, DHS pre-designated individuals to serve as Principal Federal Officials (PFOs) for disasters during the 2008 Hurricane season, despite several laws enacted by Congress after Hurricane Katrina[18] that prohibited the Secretary from doing so. By law, the President, acting through FEMA, is authorized to appoint a Federal Coordinating Officer (FCO) to be the lead Federal official in response to major disasters and emergencies.[19] The confusion regarding the roles of these different officials and the resulting lack of clear authority was widely criticized as a factor in the failed response to Hurricane Katrina. DHS justified the appointment of a PFO by relying on Homeland Security Presidential Directives, administrative documents created by the Bush Administration. These administrative provisions conflict with and, in some cases, have been superseded by subsequent laws.

Another example is the Office of the Federal Coordinator for Gulf Coast Rebuilding, which was created by President Bush in an Executive Order[20], prior to the Post Katrina Act, and resides in DHS headquarters and not FEMA. Under the Post Katrina Act, the Administrator of FEMA is

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[17] 15 U.S.C. 2229

[18] 6 U.S.C. 319(c)(2).; P.L. 110-161 Division E, Title III, Section 541, 121 Stat 2079; P.L. 110-329 Division D, Title V, Section 526, 122 Stat 3686.

[19] Section 302 of the Stafford Act, 42 U.S.C. 5143

[20] Executive Order 13390 70 FR 67327

designated as the principal advisor to the President and the Secretary for "all matters related to emergency management", including recovery.[21] Therefore, the duties for this DHS office should reside with the Administrator of FEMA. The office of Gulf Coast Rebuilding continues to exist in the office of the Secretary, and the FY 2010 budget proposes $2 million for the office, including an increase in staff.

THE "FEMA INDEPENDENCE ACT OF 2009"

In order to restore FEMA's core emergency management mission, on February 25 2009, Chairman Oberstar introduced H.R. 1174, the "FEMA Independence Act of 2009". The bi-partisan legislation currently has 29 co-sponsors.

This legislation re-establishes FEMA as an independent, cabinet-level agency reporting directly to the President. An independent FEMA would have responsibility for core emergency management programs and functions currently administered by the agency. The programs and functions transferred to the new agency include:

- FEMA's disaster assistance and other programs under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- the National Flood Insurance Program;
- the Earthquake Hazards Reduction Program;
- the National Dam Safety Program;
- the U.S. Fire Administration and programs authorized by the Fire Prevention and Control Act of 1974;
- the Emergency Food and Shelter Program; and
- FEMA's programs for Continuity of Operations and Continuity of Government.

The bill does not transfer any grant programs or functions, which are currently administered by FEMA, specific to terrorism, such as the Urban Area Security Initiative and the State Homeland Security Grant Program. DHS would continue to lead our Nation's efforts to prevent and protect against terrorist incidents and attacks (crisis management), and its responsibilities over homeland security would not be affected by this bill.

The bill requires the FEMA Administrator to maintain the National Advisory Council and retain a Disability Coordinator, continues the authorization of the National Integration Center, and ensures that FEMA will proceed on the development of standards for disaster deployment capabilities in collaboration with several entities. Each of these activities is currently authorized and being implemented by FEMA.

PRIOR LEGISLATIVE AND OVERSIGHT ACTIVITY

In the 111th Congress, the Committee on Transportation and Infrastructure acted on the following bill related to FEMA:

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[21] 6 U.S.C. 313(c)(4)

- **H.R. 1746, the "Pre-Disaster Mitigation Act of 2009"**: This legislation reauthorizes and makes improvements to FEMA's Pre-Disaster Mitigation Program, including codification of the competitive aspects of the program. On April 27, 2009, the House passed H.R. 1746 by voice vote.

In the 110th Congress, the Committee on Transportation and Infrastructure acted on the following bills related to FEMA:

- **H.R. 6658, the "Disaster Response, Recovery, and Mitigation Enhancement Act of 2008"**: This legislation amends the Stafford Act to improve the assistance the Federal Government provides to states, local governments, and communities after major disasters and emergencies. On July 31, 2008, the Committee ordered H.R. 6658 reported to the House.

- **H.R. 6109, the "Pre-Disaster Mitigation Act of 2008"**: This legislation reauthorized FEMA's Pre-Disaster Mitigation program and makes improvements, including codification of the competitive aspects of the program. On June 23, 2008, the House passed H.R. 6109 under suspension of the rules by voice vote.

- **H.R. 3247, the "Hurricane Katrina and Rita Recovery Facilitation Act of 2007"**: This legislation provides additional Federal relief targeted to the recovery from Hurricanes Katrina and Rita in Louisiana and Mississippi. On October 29, 2007, the House passed H.R. 3247 under suspension of the rules by voice vote.

- **H.R. 3224, the "Dam Rehabilitation and Repair Act of 2007"**: This legislation establishes a program to provide grant assistance to states for use in rehabilitating publicly-owned dams that fail to meet minimum safety standards and pose an unacceptable risk to the public. On October 29, 2007, the House passed H.R. 3224 by a recorded vote of 263-102.

- **H.R. 1144, the "Hurricanes Katrina and Rita Federal Match Relief Act of 2007"**: This legislation provides significant relief for communities devastated by Hurricanes Katrina, Rita, and Wilma, by raising the Federal cost share for critical disaster relief programs to 100 percent and by authorizing the cancellation of Community Disaster Loans under certain conditions like all previous Community Disaster Loans. H.R. 1144 was enacted as part of P.L. 110-28, the "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007".

In the 109th Congress, the Committee on Transportation and Infrastructure acted on and the Congress enacted the following bill related to FEMA:

- **The "Post-Katrina Emergency Management Reform Act of 2006" (Title VI of P.L. 109-295)**. This bill reunited preparedness functions back into FEMA and required that FEMA be a "distinct entity" in the Department of Homeland Security.

In the 111th and 110th Congress, the Committee and Subcommittee held numerous hearings related to the Federal Emergency Management Agency, including:

- "Post-Katrina Temporary Housing Dilemmas and Solutions" (March 20, 2007)
- "FEMA's Emergency Food Supply System" (April 20, 2007)
- "FEMA's Preparedness and Response to ALL Hazards" (April 26, 2007)
- "Legislative Fixes for Lingering Problems that Hinder Katrina Recovery" (May 10, 2007)
- "Assuring the National Guard is as Ready at Home as It is Abroad" (May 18, 2007)
- "Readiness in the Post-Katrina and Post-9/11 World" (September 11, 2007)
- "National Flood Plain Remapping: The Practical Impact" (April 2, 2008)
- "Saving Lives and Money through Pre-Disaster Mitigation" (April 30, 2008)
- "Moving Mississippi Forward: Ongoing Progress and Remaining Problems" (June 19, 2008)
- "Role of the Federal Government in Small Business Disaster Recovery" (September 12, 2008)
- "FEMA's Response to the 2008 Hurricane Season and the National Housing Strategy" (September 12, 2008)
- "Post-Katrina Disaster Response and Recovery: Evaluating FEMA's Continuing Efforts in the Gulf Coast and Response to Recent Disasters" (February 25, 2009)
- "Disaster Capacity in the National Capital Region: Experiences, Capabilities, and Weaknesses" (April 3, 2009)
- "FEMA: Preparedness for the 2009 Hurricane Season" (May 1, 2009)

WITNESSES

Mr. Larry Gispert
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Mr. Jerome Hauer
Chief Executive Officer
The Hauer Group

Lieutenant General Russel L. Honoré (RET.)
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