

Additional Views

Senator Daniel Akaka, Senator Frank Lautenberg, and
Senator Mark Pryor

On Maintaining the Functions of the Federal Emergency Management Agency (FEMA) within the Department of Homeland Security

While we subscribe to the majority of the Committee Report, we do not believe the Committee's recommendation for restructuring the Federal Emergency Management Agency (FEMA) within the Department of Homeland Security (DHS) adequately addresses the chain of command and budget problems made evident by Hurricane Katrina. We believe FEMA was more effective and robust as an independent, Cabinet-level agency, and we recommend returning FEMA to that status.

When the Homeland Security Act of 2002, which created DHS, was being debated in Congress, the inclusion of FEMA in the new Department was a controversial subject. Members of Congress from both sides of the aisle and emergency-management experts questioned the wisdom of folding FEMA into DHS. The Brookings Institution issued a study in July 2002, *Assessing the Department of Homeland Security*, stating that only agencies "where the function would not be performed as well in its current agency or would provide a useful synergy with other entities" should be included in DHS. "Furthermore, mergers should enhance, not detract, from the ability to fulfill stated agency missions. The merger of a consolidated FEMA into a larger Department of Homeland Security does not meet any of these criteria."¹

James Lee Witt, Director of FEMA, 1993-2001, recommended creating the new Department slowly, arguing that DHS should first assume responsibility for critical infrastructure protection and intelligence analysis instead of assuming FEMA's emergency-management responsibilities, which "were not broken and didn't need fixing."²

Members of Congress questioned whether FEMA would lose its ability to respond to natural disasters. For example, at the confirmation hearing for Michael Brown to be Deputy Director of FEMA, Senator Akaka stated:

The President's proposal for a new Department of Homeland Security will include the Federal Emergency Management Agency (FEMA). A key question is how will this new role for FEMA in homeland security affect its traditional mission? ... Many of the agencies impacted by this proposal, including FEMA, have a number of core responsibilities unrelated to their homeland security missions. Most of what FEMA does every day, and what Americans expect from FEMA, does not fall under the category of homeland security.³

However, these arguments did not prevail, and four years later Hurricane Katrina has made evident to us that incorporating FEMA into DHS was a mistake.

There are three main reasons that FEMA must be an independent agency in order to function effectively: chain of command, budget integrity, and flexibility.

Chain of Command

The Director of FEMA should have a direct – not a dotted – line to the President. In 1996, recognizing the importance of emergency response, President Bill Clinton elevated the FEMA Director position to the Cabinet level. Being a member of the President's Cabinet

enabled the FEMA Director to task other federal agencies more effectively during a disaster and provided an established and direct line of communication to the President.

This status was eliminated in 2003 when FEMA was folded into DHS and the FEMA Director was reduced to the rank of Undersecretary requiring that he report to the Secretary of Homeland Security instead of the President.

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288), the FEMA Director has the authority to task other federal agencies to provide specific assistance to states overwhelmed by disaster. In today's current structure, this means that an Undersecretary of DHS is tasking Cabinet-level Secretaries, who clearly outrank the FEMA Director. In addition, the FEMA Director must go through the DHS Secretary to communicate with the President. Former FEMA Director Michael Brown was criticized heavily for at times reporting directly to the White House during Katrina.

Hurricane Katrina provided countless examples of federal assets not being deployed quickly enough, such as the delayed arrival of active-duty military in a chaotic New Orleans,⁴ possibly due to the lack of authority and clarity in the tasking orders. The Department of Defense (DOD) describes FEMA's tasks as "requests" that are evaluated by the Department before a decision is made as to whether they will be fulfilled.⁵ The FEMA Director should speak for the President in order to inspire an expedient and effective response. In the wake of Hurricane Katrina, former FEMA Director Witt made the comparison between an independent FEMA and today's structure: "We had all the resources of the federal government. We didn't have to ask anyone to activate the Department of Defense. I did that. I called up the President."⁶

Because FEMA's primary function is to provide fast, coordinated relief to often unforeseen disasters, a speedy response is essential. This is no time for red tape, which is why the FEMA Director must have a clear, direct reporting line to the President.

Budget Integrity

DHS has an annual budget of over \$40 billion, of which FEMA receives approximately \$5 billion or 12 percent. However, the majority of FEMA's funding is for the National Flood Insurance Fund and the Disaster Relief Fund, which is accessed only after a federal disaster is declared. FEMA's annual operating budget is less than \$1 billion.

During this Committee's Hurricane Katrina hearings, Michael Brown testified that when FEMA joined DHS, the Agency was forced to pay a "tax" of approximately 14 percent of its budget to fund shared services in the Department such as information technology (IT) systems and the Secretary's office. He further testified that this funding was taken disproportionately from mitigation programs instead of other FEMA accounts because the Bush Administration gave mitigation funding "a backseat."⁷ Mr. Brown told the House Select Katrina Response Investigation Committee that FEMA requested additional funding for preparedness after the Hurricane Pam exercise, and that the request was denied by DHS.

Congress and the American public never knew about these funding shortfalls because FEMA was buried within DHS. Mr. Brown testified that instead of taking his budget proposal to the President, the FEMA Director first cleared it with another Undersecretary at DHS, then the Secretary, and then the President.

FEMA needs to be an independent agency to avoid having its budget siphoned off for other homeland security functions. In addition, as a Cabinet member, the FEMA Director can better present the funding needs of FEMA to the President and Congress.

Flexibility

When FEMA was folded into DHS it went from being a small, independent agency of 3,000 employees to becoming part of a Department of 180,000 employees. FEMA went from a nimble and agile agency, to one bogged down in a new, extended chain of command.

During the hearings, we heard numerous examples of information and initiative getting lost in DHS during the Hurricane Katrina response. Witnesses described sending information updates and requests out to the Department, never knowing where those messages went or if action had been taken. DHS appeared to be a black hole where information and accountability were lost, not an asset that enhanced FEMA's performance.

Being a part of DHS did provide FEMA with access to more resources during a disaster, but it is not clear that FEMA was able to draw effectively upon the additional DHS resources in the immediate aftermath of Katrina. The senior DHS leadership appeared disengaged from the hurricane preparation and response until days after the hurricane when the failed response had garnered national attention. Furthermore, under the Stafford Act the FEMA Director has the authority to draw upon the resources of other federal agencies during a disaster, leaving no reason why an independent FEMA could not tap into DHS for assistance. Former FEMA officials have stated publicly that they believe an independent FEMA would have been much better equipped to coordinate the resources of the federal government during Hurricane Katrina.

Conclusion

We acknowledge that the Committee Report makes recommendations that would improve upon the current emergency management structure, such as reuniting preparedness and response. However, keeping these functions under the DHS umbrella is a mistake. The proposed National Preparedness and Response Authority (NPRA) would be a super-agency within a super-agency. Creating more layers is not the solution. We strongly urge our colleagues in Congress and the Administration to consider separating FEMA from the DHS and restoring the FEMA Director to a Cabinet-level position.

1 Ivo Dalde et al., *Assessing the Department of Homeland Security* (Washington, D.C.: Brookings Institution, July 2002), p. 23.

2 Statement of James Lee Witt, before the U.S. House of Representatives, Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, hearing on *The Homeland Security Department's Plan to Consolidate and Co-locate Regional and Field Offices: Improving Communication and Coordination*, Mar. 24, 2002.

3 Nomination Hearing of Michael D. Brown, Committee on Governmental Affairs, S. Hrg. 107-616 (2002), p. 6.

4 Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A Nation Still Unprepared*, 2006, Ch. 26.

5 *Hurricane Katrina: A Nation Still Unprepared*, Ch. 26-7.

6 Bill Walsh, "Tug of war being played out over who has FEMA control," *New Orleans Times-Picayune*, Apr. 13, 2006.

7 Testimony of Michael D. Brown, before the U.S. Senate, Committee on Homeland Security and Governmental Affairs, hearing on *Hurricane Katrina: The Roles of DHS and FEMA Leadership*, Feb. 10, 2006.