

The Honorable Orrin G. Hatch
U.S. Senate Judiciary Committee
“Helping State and Local Law Enforcement During and Economic Downturn”
January 8, 2008

Question for David B. Muhlhausen, Ph.D., The Heritage Foundation

Dr. Muhlhausen, Senator Whitehouse posed a question to the panel describing the prioritizing of “Homeland Security over Hometown Security” with the increase of Homeland Security grant funding for state and local law enforcement in comparison to the available funding for COPS and Byrne JAG programs. In his response to the Senator’s question, Commissioner Ramsey mentioned that in his opinion there was a lack of accountability on the part of state and local enforcement officials for the spending of these funds on big ticket items with negligent impact on local Homeland Security issues.

Question

What is the track record of accountability for the spending of COPS funding?

Answer

The COPS program has a documented history of waste, fraud, and abuse. The program did little to hold grantees accountable for supplanting federal funds for local funds. Supplanting occurs when federal funds are used to replace local funds—for example, when federal funds intended to hire additional police officers are used instead to pay the salaries of currently employed officers. To receive the grants, grant applicants must sign the following stipulation:

The applicant hereby certifies that Federal funds will not be used to replace or supplant state or local funds, or funds supplied by the Bureau of Indian Affairs, that would, in the absence of Federal aid, be made available to or for law enforcement purposes.¹

Audits of COPS-funded police departments by the U.S. Department of Justice Office of Inspector General (OIG) indicate that the grantees frequently failed to hire or redeploy officers as required and in many cases used federal funds to supplant local funds.²

In addition, COPS did not adequately monitor the use of grant funds, thereby encouraging waste and inefficiency. An OIG audit of COPS grant management, for example, found that the use of funds by grantees was not monitored properly. Specifically, the OIG audited the COPS program’s grant closeout process. Closeouts involve reviewing the grantee’s use of federal funding to determine whether or not the grant conditions were followed properly. According to the OIG, “Timely grant closeout is an essential program and financial management practice to identify grantees that have failed to comply with all grant requirements, as well as any excess and unallowable costs charged to the grant, and unused funds that should be deobligated.” Without a timely closeout process, “non-compliant grantees may not be identified until years after the grant end date.”³ Thus, timely closeouts are crucial to effective monitoring of how

federal taxpayer dollars are used.

The OIG determined that, of the 12,840 closed COPS grants totaling almost \$3 billion, only 135 grants (1 percent) were closed within six months after the grant end date. Eighty-three percent of the grants were not closed until more than two years after the grant end dates. On average, COPS took more than three years to close these grants properly.⁴

Of the 10,643 grants that expired but were not closed by COPS, 72 percent had been expired for more than two years. Twenty-four percent were expired for more than five years after the grant end date. On average, these grants had been expired without proper closure for more than 3.5 years.⁵

Review of a small sample of 30 expired but unclosed COPS grants found that 20 (67 percent) of the grantees did not comply with grant requirements. However, these noncompliant grantees were subsequently awarded 39 additional grants totaling \$18.7 million.⁶ If COPS had implemented a proper closeout process, these noncompliant grantees would not have been awarded additional grants without first meeting the conditions of their original grants.

COPS appears to have done little to resolve the misuse of the grants. According to Inspector General Glen A. Fine, “in many cases, the response to our findings was a paper exercise and...the COPS program did not take sufficient action to either bring the grantee in compliance, to offset the funds, to recoup the funds or to waive the funds.”⁷ Inspector General Fine testified before Congress that COPS did not pay enough attention to ensuring adherence to the grant requirements, including the hiring of officers, retaining officers, and tracking the redeployment of officers.⁸ The lack of oversight by COPS created inadequate incentives for local-level compliance with grant conditions.

Question

What is the track record of Byrne-JAG program?

Answer

Unlike the COPS program, the Byrne-JAG program is a block grant program. By their very nature, block grant programs are more difficult to monitor for accountability purposes. After being distributed to the states, Byrne-JAG grants are allocated to state and local projects. Because the funding is passed through state capitols before their ultimate destination, the federal government has traditionally not monitored these grants to a high degree. For example, the OIG has placed little emphasis on auditing Byrne-JAG grants. Given the low level of monitoring of the Byrne-JAG grants, determining if these grants have been spend wisely is very difficult to ascertain.

Question

What measures do you feel should be considered by Congress to ensure accountability and compliance with program expectations?

Answer

Federal programs based on seemingly sensible ideas often stumble during local implementation.⁹ Constituent politics hampered the ability of COPS to monitor grants and created a powerful incentive for COPS officials to neglect their oversight responsibilities of grantees. Constituent politics can impede the proper administration of policies, even policies that are more sound and better-crafted than the COPS program.¹⁰ Constituent politics are particularly prevalent in intergovernmental grant programs. Grant-making bureaus and grant-seekers have a mutually dependent relationship. Grant-seekers want funds, while grant-making bureaus need the political support of the grantees during the appropriation and reauthorization processes.

Professor R. Douglas Arnold of Princeton University states that while legislators and bureaucrats are independent decision makers, “each has authority to make certain decisions without consulting the other, [and] each generally finds it in his own self-interest to consider the other’s preferences.”¹¹ Budget security and growth, as pursued by bureaucrats, depends on congressional decisions. Thus, a bureaucracy will generally allocate benefits, especially grants, in a manner that will maintain and expand coalitions that support the bureaucracy.

Likewise, legislators seeking to spend the largest possible shares of federal grants on their constituents depend on bureaucrats to implement this spending.¹² Congress, in turn, can exert some influence over program administrators’ decisions through annual appropriations. As a result of this two-way interaction, “[b]oth congressmen and bureaucrats tend to adjust their decisions to accommodate each others’ preferences whenever they believe it might help them achieve their own goals.”¹³ Thus, the strategies that grant-making bureaus use to administer grants respond to the desires of elected officials and their constituents.

Pressure from Congress, the Executive Branch, and grant-seekers to craft an expedited application process for COPS grants and to disseminate funds quickly conflicted with ensuring that the program met its goals, including those goals reflected by the conditions imposed on grant recipients. The mutually dependent relationship between grant-makers and grant-seekers, facilitated by congressional overseers, produces incentives that interfere with the implementation and oversight of grants. Providing constituents with easy access to federal funding was more important than actually adding additional officers, advancing community policing, and reducing crime.

Three changes are needed to factors are required to ensure accountability and compliance within grant-making bureaus, such as COPS and OJP. First, Members of Congress need to place less emphasis on distributing grant dollars to their constituents and more emphasis on the successful implementation of intergovernmental grant programs.

COPS grants are categorical project grants that offer particularized benefits to congresspersons. Particularized benefits are distributed to specific individuals or groups in a manner that allows congresspersons to claim credit for the awarding of the benefits.¹⁴ Claiming credit for the provision of federal grants to constituents is an important task for

congresspersons. Through credit claiming, congresspersons attempt to convince grantees that they are in some way responsible for the awarding of the funding.¹⁵ Once the grant funding has flowed to constituents and congresspersons have claimed credit for the awarding of the grants, congresspersons tend to pay little attention to how the grants are implemented.

Second, the president needs to appoint and the Senate to confirm officials within the Department of Justice and, especially within grant-making bureaus, who have high ethical standards and the determination to hold grantees accountable when caught abusing grants. In order to maintain the support of their constituents, (i.e., grant-seekers), grant-making bureaus have a strong disincentive to implement rigorous accountability measures that undercut constituent support.

Third, the disincentives resulting from constituent politics means that any institutional apparatus designed to ensure accountability must be insulated from and independent of the constituent pressures placed on grant-making bureaus. Congress can encourage accountability in how DOJ grants are used by grantees by giving the OIG or some other independent agency the sole authority to freeze new funding to grantees that misuse grants until they repay the previously misallocated funds. Because of constituent politics, the authority to hold grantees accountable for the abuse of grants must be independent of the grant-making bureaus.

While the OIG should be commended for identifying blatant abuses, senior executive officials in COPS and DOJ from both the Clinton and Bush administrations failed to hold errant grantees accountable. The OIG did its job, but others failed to act. Giving the OIG the power to block further grant awards to grantees caught abusing previous grants may be a potential solution. Another potential agency is the Office of Audit, Assessment, and Management (OAAM). In 2006, OAAM was created to ensure that Department of Justice grantees comply with financial grant conditions. However, OAAM resides within OJP, a grant-making bureau. This means that OAAM cannot be truly independent of pressures constituent politics places on grant-making bureaus. For OAAM to be effective, the agency would have to be moved outside of OJP and be truly independent of OJP and COPS.

Even without making OAAM an independent agency, OAAM faces hostility from Congress. The COPS Improvements Act of 2009 (S. 167) removes COPS from the jurisdiction of OAAM. Removing COPS from OAAM's jurisdiction would send a clear signal to COPS grantees that Congress does not expect COPS grantees to comply with grant conditions.

¹⁵U.S. Department of Justice, Office of Community Oriented Policing Services, *Universal Hiring Program Grant Owner's Manual*, April 1998, p. 46.

²For audits of COPS-funded police departments, see U.S. Department of Justice, Office of the Inspector General, "Office of Community Oriented Policing Services Grant Reports," Web page, at www.usdoj.gov/oig/grants/_cops.htm (January 28, 2009).

³U.S. Department of Justice, Office of Inspector General, Audit Division, "The Department of Justice's Grant Closeout Process," *Audit Report* No. 07-05, December 2006, pp. 2 and 8.

⁴*Ibid.*, pp. 10-11.

⁵*Ibid.*, p. 17.

⁶*Ibid.*, p. 18.

⁷Glen A. Fine, in hearing, *Office of Justice Programs*, Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, 107th Cong., 2nd Sess., March 5, 7, and 14, 2002, p. 109.

⁸*Ibid.*

⁹Jeffrey Pressman and Aaron Wildavsky, *Implementation*, 3rd ed. (Berkley, C.A.: University of California Press, 1984).

¹⁰Helen Ingram, "Implementation: A Review and Suggested Framework," in Naomi B. Lynn and Aaron Wildavsky, eds., *Public Administration: The State of the Discipline* (Chatham, N.J.: Chatham House, 1990), pp. 462-480.

¹¹R. Douglas Arnold, *Congress and the Bureaucracy: A Theory of Influence* (New Haven, C.T.: Yale University Press, 1979), p. 35.

¹²*Ibid.*

¹³*Ibid.*

¹⁴David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

¹⁵*Ibid* and Arnold, *Congress and the Bureaucracy*.