

# WebMemo



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## COPS Program: COPS Improvements Act of 2009 Exacerbates Flawed Federal Policies

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Created in the middle of President Bill Clinton's first term, the Community Oriented Policing Services (COPS) program<sup>1</sup> promised to put 100,000 new state and local law enforcement officers on the street by 2000. Critics said that COPS would fail to meet this goal and that state and local governments would do what they always do when the federal government subsidizes any core responsibility of state or local governments: stop paying for it themselves and become dependent on funding from Washington. The critics were right on both counts.

As a crime-reduction policy, the COPS program failed to live up to its sponsors' rhetoric and promises, never putting 100,000 additional police officers on America's streets.<sup>2</sup> Undaunted by the program's failure to meet its most important public goals and in response to considerable lobbying by state and local law-enforcement officials, the House of Representatives recently passed the "COPS Improvements Act of 2009" (H.R. 1139), which is estimated to cost \$5.4 billion from 2010 through 2014 plus an additional \$3.6 billion thereafter.<sup>3</sup> The companion bill in the Senate, S. 167, is awaiting consideration. Both bills encourage state and local governments to be fiscally irresponsible and to become ever more dependent on Washington for criminal law enforcement, an area that is—and must remain—a core responsibility of state and local governments.

**Exacerbating Existing Problems.** The intent of H.R. 1139 and S. 167 appears to be to encour-

age state and local law enforcement to become increasingly dependent on federal funding. Both bills would also bolster the false public perception that ordinary street crime is a federal responsibility. This would prompt state and local officials who fail to devote adequate resources to criminal law enforcement to shift accountability for fighting and punishing local crime to the federal government. The bill's provisions are chock full of specific shortcomings.

- *Reauthorization of Hiring Grants.* Reauthorization of the COPS program's hiring grants, as intended by both bills, would perpetuate the federal government's constitutionally questionable practice of subsidizing the routine operations of state and local law enforcement. These federal grants do not vindicate any uniquely federal interest or fulfill any unique role or responsibility that the Constitution has assigned to the federal government.

Without question, the best government entities to determine the funding needs and priorities of state and local law enforcement are state and local governments themselves. State and local officials are far more likely to be knowledgeable about,

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and properly responsive to, the actual needs and interests of the local communities that are directly affected by local crime and law enforcement.

- **Unlimited Renewal of Hiring Grants.** For all of its problems, the previous COPS legislation at least had the virtue of limiting the length of time a governmental entity could receive hiring grants to three years. Yet H.R. 1139 and S. 167 would allow the COPS office to renew previous awards of hiring or retention grants perpetually. Once a grantee receives an award, the grantee could expect permanent federal funding.

This change would essentially establish a new federal entitlement for localities in an area of governmental authority—the general police power—that has always and fundamentally been reserved for the states.

- **Hiring Grants to Retain Non-COPS-Funded Officers.** H.R. 1139 and S. 167 encourage COPS hiring grants to be used for officer retention. Thus, they should no longer be (mis-)named “hiring grants.” COPS funding is fungible: After a COPS grant expires, the grantee can keep officers formerly funded by COPS but lay off officers in non-COPS-funded positions. The grantee can then apply for new COPS hiring grants to “hire” the laid-off officers. This practice makes police departments even more dependent on the federal government.
- **Ending Incentives for State and Local Governments to Contribute.** The current COPS program requires grant recipients to pay at least 25 percent of the total funding for any program or project funded in part by a COPS grant.<sup>4</sup> The

attorney general is expressly authorized to grant preferential treatment to applicants who commit to contributing more than 25 percent.<sup>5</sup> Both H.R. 1139 and S. 167 would eliminate this preferential treatment, ending an important incentive for state and local governments to become self-sufficient.

For COPS hiring grants that provide funding for three years, current law also requires state and local governments to pay an increasingly larger share of the salaries each year. Even those Members of Congress who believe that some federal funding of law enforcement may be warranted should recognize that the reasonable goal of this state-funding requirement is to help ensure the “continuation of the increased hiring level using State or local sources of funding following the conclusion of Federal support.”<sup>6</sup> Yet H.R. 1139 and S. 167 would eliminate this reasonable requirement, discouraging grantees from self-financing COPS-funded positions after their grants expire. In addition, both bills eliminate even the requirement that grantees develop a plan for increasing their responsibility for financing COPS-funded officers. Further, H.R. 1139 greatly increases local law-enforcement agencies’ dependence on federal funding by lengthening each grant-funding period from three years to five years. Each of the foregoing changes would accelerate the move toward nationalizing state and local law enforcement.

- **Elimination of the \$75,000-per-Officer Cap.** Current law caps COPS grants at \$75,000 per officer. H.R. 1139 and S. 167 would eliminate this cap: The federal contribution per officer would

1. COPS was one of dozens of new spending programs for state and local law enforcement contained in the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322.
2. For additional information on the COPS program, see David B. Muhlhausen, “Adding COPS Funding to the Economic Stimulus Package Will Not Stimulate the Economy, Nor Will It Effectively Combat Crime,” testimony before the Committee on the Judiciary, U.S. Senate, January 8, 2009, at <http://www.heritage.org/Research/Economy/tst011409a.cfm>; David B. Muhlhausen and Brian W. Walsh, “COPS Reform: Why Congress Can’t Make the COPS Program Work,” Heritage Foundation *Background* No. 2188, September 26, 2008, at <http://www.heritage.org/Research/Crime/bg2188.cfm>.
3. Congressional Budget Office, “H.R. 1139, COPS Improvement Act of 2009,” Cost Estimate, April 15, 2009.
4. 42 United States Code § 3796dd(g).
5. *Ibid.*, § 3796dd(i).
6. *Ibid.*, § 3796dd.

be unlimited. Eliminating the salary cap for COPS-funded positions not only invites escalating salaries and other abuses at the federal taxpayer's expense, but it ensures that an even larger percentage of high-salary police chiefs and supervisors will owe their livelihood to Washington—and join the cadre of law-enforcement supplicants and lobbyists who regularly descend on Capitol Hill seeking more federal money.

- *A New COPS Program for State and Local Prosecutors.* No longer content with only increasing federal-funding dependency for police departments, the sponsors of H.R. 1139 and S. 167 want to create a new program to fund the salaries of “community prosecutors.” This new funding would impose all of the problems created by COPS onto district attorneys and other state and local prosecutors. Short of commandeering local law-enforcement agencies and “authorizing” federal officials to direct their efforts, using federal funds to pay the salaries of state and local prosecutors is apparently the next logical—and highly objectionable—step toward nationalizing all state and local law enforcement.
- *Elimination of Oversight Measures.* Nothing may be more emblematic of the intent underlying S. 167 than the removal of COPS from the jurisdiction and oversight of the Department of Justice's Office of Audit, Assessment, and Management (OAAM). OAAM was created in 2006 to ensure that Department of Justice grantees comply with financial grant conditions.

It has become apparent that conflicting objectives and constituent politics have interfered with the implementation and effective monitoring of COPS grants. If COPS is ever to be more than a federal subsidy for a core state responsibility, an agency outside of the COPS office must have the authority to audit grants and ensure compliance with grant conditions. With the documented history of waste, fraud, and abuse by COPS grantees,<sup>7</sup> removing COPS from OAAM's jurisdiction would send a clear signal to COPS grantees that they are not expected to comply with grant conditions.

The COPS program has an extensive track record of poor performance and should be eliminated. It has failed to achieve its goals and has assigned to the federal government responsibilities that fall squarely within the expertise, jurisdiction, and constitutional responsibilities of state and local governments. COPS is a flawed program now in desperate search of a bona fide mission.

**The Wrong Approach.** The COPS Improvements Acts of 2009 takes precisely the wrong approach. By bolstering the false public perception that ordinary street crime is a federal responsibility, H.R. 1139 and S. 167 would encourage state and local officials to become permanent supplicants for federal COPS funding. Furthermore, these bills will continue to shift accountability for fighting local crime away from state and local officials and onto the federal government.

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7. Muhlhausen and Walsh, “COPS Reform” (analyzing a few of the many examples of waste, fraud, and abuse by state and local jurisdictions that received COPS grants under the current program).