



JOINT RECOMMENDATIONS FOR GREATER TRANSPARENCY AND PREVENTING ABUSE REGARDING THE ALLOCATION OF MEDICAL SUPPLIES TO STATES

Around the country, states are confronting the worst public health crisis in generations. The CDC [reports](#) that as of April 12, 2020, there are over 554,000 confirmed cases of COVID-19 in the United States. The sheer number of cases is overwhelming states' healthcare systems. Doctors and nurses [do not have](#) the personal protective equipment (PPE) they need to stay safe, hospitals are [preparing to ration ventilators](#), and [many states](#) do not have enough ICU beds to accommodate the influx of patients.

States have turned to the federal government for support, [requesting](#) critical medical equipment and supplies. The federal government, in an effort now led by the Federal Emergency Management Agency (FEMA), has [provided some](#) PPE, ventilators, and other supplies to states, and it is working to procure additional resources.

However, there is a significant lack of publicly available information about what resources have been provided to each state, as well as the criteria federal agencies are using to allocate resources to states. The Department of Health and Human Services (HHS), which initially oversaw the distribution of resources, [told](#) reporters that it initially provided PPE to states based on their population. FEMA's website [says](#) it is "[u]sing a data-driven distribution approach that considers demand and supply [which] ensures resources go where they are most needed," taking into account which areas are "experiencing the greatest increase in COVID-19 cases with the largest forecast capacity shortfalls" and "the at-risk population distribution across the Nation." But there is no publicly available information explaining in any greater detail the criteria in use, or data confirming whether federal agencies have in fact abided by their stated criteria thus far.

There is also a lack of public information about how the federal government is procuring resources. Rear Adm. John Polowczyk has [said](#) that the federal government is procuring resources from overseas and is distributing those resources to the private sector rather than sending them directly to states. Reports suggest that, after telling states to work to secure their own supplies, the federal government may be [cancelling states' own contracts with vendors](#) and

[seizing states' supplies en route](#). There is little to no information detailing what the federal government is doing with any seized supplies.

The lack of publicly available information about how the federal government is procuring and allocating scarce resources creates a situation that is ripe for abuse. President Trump has [repeatedly suggested](#) that he will reward political allies and punish states whose governors criticize the federal government's response or fail to display sufficient gratitude. Some reporting and [anecdotal data](#) suggest that he is following through on this threat. For example, last week, President Trump [announced](#) via tweet that Colorado would immediately receive 100 ventilators thanks to a request from Colorado's Republican Senator Cory Gardner—who is currently up for reelection—weeks after Colorado's Democratic governor requested 10,000 additional ventilators. President Trump [has also](#) made promises over the phone that FEMA has had to accommodate, and a White House official quoted by the *Washington Post* indicated that President Trump is paying close attention to Florida's needs in light of its importance to his reelection. Even if the President has not yet directed the distribution of resources based on politics, the appearance that he is doing so is [limiting](#) governors' willingness to risk retaliation by speaking openly about the federal government's response.

Augmenting these concerns, the President has thus far rejected Congressional attempts at oversight. On March 27, Congress passed the [CARES Act](#), a \$2 trillion spending package aimed at stemming the fallout from the coronavirus. To oversee the disbursement of those funds, Congress provided for a new Special Inspector General to conduct audits and investigations and to report to Congress, as well as a Pandemic Response Accountability Committee. In signing the Act, the President issued a [signing statement](#) noting that he would not permit the Special Inspector General to report directly to Congress. And on April 6, President Trump [summarily removed](#) the dutifully selected head of the Pandemic Response Accountability Committee, Glenn A. Fine.

The federal government should distribute resources to states based on an objective assessment of need by the relevant agencies. Distribution based on other criteria—such as politics or patronage—would amount to a flagrant abuse of power. To guard against the actual or perceived discriminatory allocation of federal resources to states based on improper considerations, Congress should include provisions in its next stimulus bill requiring FEMA and any other agency involved in providing aid to states to regularly report to Congress its criteria for distributing resources and raw data on where resources have been distributed, and what entities ultimately have received the resources, thus far. In the meantime, it is critical that oversight bodies take immediate steps to determine and monitor how the federal government distributes resources.

This document proposes (a) legislation and (b) a set of recommendations to each of the relevant oversight bodies aimed at ensuring public access to information about the federal government's allocation of aid and resources to states and deterring any distribution of resources on the basis of politics or patronage.

RECOMMENDED LEGISLATION

Congress should include a provision in the next stimulus package that requires FEMA and any other agency tasked with overseeing the allocation of federal resources to states with making regular and public reports to Congress detailing aid and equipment provided to each state, and the criteria by which resources were allotted and will be allotted in the future. These reports should include a detailed accounting of the source of allocated resources, including any resources that were ordered or procured by states but were seized by the federal government.

RECOMMENDED OVERSIGHT

Pandemic Response Accountability Committee

Background: Section 15010(b) of the CARES Act establishes the Pandemic Response Accountability Committee.¹ The Committee is tasked with “promot[ing] transparency and conduct[ing] and support[ing] oversight of covered funds and the Coronavirus response to—(1) prevent and detect fraud, waste, abuse, and mismanagement; and (2) mitigate major risks that cut across program and agency boundaries.” The Committee is empowered to gather information from federal agencies, which are required to respond to any requests for information; to issue and enforce subpoenas to individuals who are not federal employees or officers; and to report its findings to Congress and make information available to the public.

Recommendation: Request the following information from FEMA and HHS and make it immediately available to Congress and the public:

1. Records or testimony sufficient to disclose FEMA and HHS’s policies regarding the distribution of medical supplies and other federal assistance between states in response to the coronavirus; how such allocation decisions have been, and are, made; and whether such policies have been followed.
2. Spreadsheets that track incoming shipments and deliveries to the Strategic National Stockpile and all requests from and shipments to states of materials from the Strategic National Stockpile.²

¹ The Committee is housed within the Council of the Inspectors General on Integrity and Efficiency and is comprised of the Inspectors General of the Departments of Defense, Education, Health and Human Services, Homeland Security, Justice, Labor, and the Treasury; the Inspector General of the Small Business Administration; the Treasury Inspector General for Tax Administration; a chairperson to be selected from the foregoing list of inspectors general by the chairperson of the Council of Inspectors General on Integrity and Efficiency; and any additional Inspector General the Chairperson for the Committee selects from any agency involved in the coronavirus response.

² Lizzie Litzow, a FEMA spokeswoman, has acknowledged that the agency maintains a spreadsheet tracking each state’s request and shipments. See Amy Goldstein et al., *Desperate for Medical Equipment, States Encounter a Beleaguered National Stockpile*, Wash. Post (Mar. 28, 2020), <https://www.washingtonpost.com/national/health-science/desperate-for-medical-equipment-states->

3. Records reflecting any seizure from either private entities or state requisitions or stockpiles of medical supplies or other resources by the federal government.
4. Records reflecting any communication to or agreements with private parties regarding contracting with states to supply PPE, ventilators, or other supplies related to the coronavirus.
5. Records reflecting any communication with the President and/or White House personnel regarding the distribution of resources to states.

House and Senate Homeland Security Committees

Background: In general, Congress [has](#) “broad” power to investigate because, as the Supreme Court has [recognized](#), it “cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.” There are [numerous](#) instances in the past of Congress using its investigative powers to investigate public health epidemics in order to determine how the nation could best address them. The House Committee on Homeland Security³ and the Senate Committee on Homeland Security and Government Affairs have jurisdiction over the Department of Homeland Security, of which FEMA is a component.

Recommendations:

1. The Committees should request the same information from FEMA and HHS as we recommend the Pandemic Accountability Response Committee request. If FEMA and HHS do not comply with these requests quickly, the Committees should promptly subpoena the same information and seek to enforce its subpoenas as necessary.
2. The Committees should schedule regular virtual hearings to create a public record of FEMA’s policy for distributing federal resources, what resources have

[encounter-a-beleaguered-national-stockpile/2020/03/28/1f4f9a0a-6f82-11ea-aa80-c2470c6b2034_story.html](https://www.washingtonpost.com/encounter-a-beleaguered-national-stockpile/2020/03/28/1f4f9a0a-6f82-11ea-aa80-c2470c6b2034_story.html).

³ The House Homeland Security Committee has already sent a letter to FEMA and HHS requesting information about the distribution of supplies to states. Letter from Bennie G. Thompson, Chairman, H. Comm. on Homeland Sec., to Chad Wolf, Acting Sec’y, U.S. Dep’t of Homeland Sec., and Alex M. Azar, II, Sec’y, Dep’t of Health and Hum. Servs. (Mar. 23, 2020), <https://homeland.house.gov/imo/media/doc/DHS%20HHS%20PPE%20Letter.pdf>. The Chairman of the House Homeland Security Committee has also already sent a letter to FEMA regarding the seizure of resources destined for states. Letter from Bennie G. Thompson, Chairman, H. Comm. on Homeland Sec., to Peter T. Gaynor, Adm’r, Fed. Emergency Mgmt. Agency (Apr. 7, 2020), <https://homeland.house.gov/imo/media/doc/DHS%20HHS%20PPE%20Letter.pdf>. If FEMA and HHS do not respond to these letters promptly, the Committee should subpoena the same information and quickly move to enforce its subpoenas as necessary.

already and continue to be distributed, whether the federal government is seizing resources from states, and whether there has been or is any political interference in FEMA's allocation of resources.

House Select Committee on the Coronavirus Crisis

Background: On April 2, Speaker Pelosi announced the formation of a special bipartisan oversight committee, to be chaired by Majority Whip Jim Clyburn. It will be tasked with overseeing the expenditure of the \$2 trillion that Congress appropriated for use in response to the coronavirus in the CARES Act. It will be empowered to issue subpoenas.

Recommendations:

1. The Committee should request the same information from FEMA and HHS as we recommend the Pandemic Accountability Response Committee request above. If FEMA and HHS do not comply with these requests quickly, the Select Committee should promptly subpoena the same information and seek to enforce its subpoenas as necessary.
2. The Committee should schedule regular virtual hearings to create a public record of FEMA's policy for distributing federal resources, what resources have already and continue to be distributed, whether the federal government is seizing resources from states, and whether there has been or is any political interference in FEMA's allocation of resources.