



NVFC Legislative Report

By Dave Finger, Director of Government Relations
April 2009

Here is an update on key issues affecting America's volunteer fire and emergency services:

PRIORITIES

1. Assistance to Firefighters Grant Program
2. Volunteer Emergency Services Recruitment and Retention Act (H.R. 1792)
3. Volunteer Firefighter and EMS Job Protection Act
4. U.S. Fire Administration
5. Fire Sprinkler Incentive Act (H.R. 1194)
6. Supporting Emergency Responders Volunteer Efforts Act
7. Good Samaritan Volunteer Firefighter Assistance Act
8. Volunteer Mileage Reimbursement Rate
9. Ryan White First Responder Notification
10. Novelty Lighter Prohibition
11. Volunteer Responder Incentive Protection Act Extension and Expansion

1. Assistance to Firefighters Grant Program (FIRE and SAFER)

The NVFC strongly supports full funding of the Assistance to Firefighters Grant (AFG) program, commonly referred to as the FIRE and SAFER Grant programs. FIRE is a competitive program that awards one-year grants directly to fire departments nationwide in an effort to give every department the basic tools needed to respond to all hazards. Fire departments can apply for federal assistance for training, equipment, firefighting vehicles, communications equipment, health and safety programs and fire prevention and education programs.

The SAFER Grant program provides grants to fire departments for the hiring of personnel, as well grants to fire departments and regional and state fire associations to implement retention and recruitment programs. Ten percent of SAFER funding is statutorily required to be set aside for volunteer recruitment and retention. In addition, the program includes NVFC-backed provisions that ensure at least ten percent of the funds for hiring firefighters go to volunteer and majority volunteer departments and that any firefighter hired under this program cannot be discriminated against for or prohibited from engaging in volunteer activities in another jurisdiction during off-duty hours.

In May 2007, the National Academy of Public Administration (NAPA) published a report "...to identify new strategic directions for (FIRE) and recommend ways to most effectively plan, manage and measure accomplishments." One of the recommendations of the NAPA report, which was commissioned by the

Department of Homeland Security (DHS), was that FIRE convert from primarily funding basic needs to giving priority to grant applications that target improving preparedness for responding to major disasters, something that the administration has been calling for since the creation of DHS.

The NVFC strongly opposes fundamentally changing the manner in which FIRE funding is distributed. This program was created before September 11, 2001 and was intended to bring every fire department up to a base-line level of readiness. DHS distributes billions of dollars each year in grants that are specifically targeted to enhancing response capabilities for major disasters only. FIRE has traditionally been unique in its approach to enhancing emergency response by targeting need rather than risk. Targeting FIRE funds for the purchase of equipment and training specialized for use in response to major disasters ignores the needs of the large number of communities that can't afford to provide their emergency responders with basic resources.

The NVFC participates regularly in stakeholder meetings hosted by DHS to discuss FIRE and SAFER program priorities. On August 15, 2008, NVFC Oregon Director Jack Carriger participated in a meeting to review and compare the strategic goals of FIRE and SAFER at the Fire Rescue International Conference in Denver, CO. In November 2008, NVFC representatives participated in the annual strategic planning meeting for FIRE and SAFER hosted by DHS.

FIRE was funded at \$565 million for FY 2009, up from \$560 in FY 2008. This was below the \$1 billion funding level authorized by Congress but above the \$300 million requested by the President. SAFER received an increase of \$20 million in FY 2009, reaching a funding level of \$210 million.

2. Volunteer Emergency Services Recruitment and Retention Act

Length of Service Award Programs (“service award programs”) providing benefits in the form of deferred payments to volunteers in firefighting and prevention services, emergency medical services and ambulance services have been authorized and established under State law for many years. Approximately 20 percent of the 800,000 volunteer firefighters in the United States today participate in service award programs.

While service award programs are similar to traditional pension plans, they are treated differently for tax purposes. For instance, taxation cannot be deferred in a service award program unlike in a traditional pension plan where employers can set aside funds each year until the employee retires and begins drawing payment. As a result, service award programs are “unfunded” which leads to insecurity as to whether there will be adequate resources available to pay benefits when due. Another consequence is that volunteer first responders who leave their department for any reason must begin drawing payment immediately or lose their benefit.

The NVFC has developed legislation that would simplify the requirements for service award programs and reduce the administrative burden of both governmental agencies and potential sponsors by using existing statutory and regulatory schemes. Under the new legislation, a service award program could be treated as an “eligible deferred compensation plan” if the program sponsor meets certain requirements and elects to do so. The legislation would not create any new service award programs or require changes to existing service award programs, but simply provide increased flexibility for program sponsors. While the legislation would allow for deferred taxation of service award programs in some cases, in the long-term the legislation would be revenue neutral.

Congressman Peter King (R-NY) introduced H.R. 2160 on May 3, 2007, along with original cosponsors Bill Pascrell (D-NJ) and Virgil Goode (R-VA). On July 20, 2007, Senator Hillary Clinton (D-NY)

introduced S. 1840, the Senate companion legislation. H.R. 2160 and S. 1840 expired at the end of the 110th Congress and will be reintroduced early in the 111th Congress.

3. Volunteer Firefighter and EMS Personnel Job Protection Act

The NVFC strongly supports the passage of the Volunteer Firefighter and EMS Personnel Job Protection Act, which would protect the jobs of volunteer emergency services personnel responding to a Presidentially-declared national disaster for up to 14 days. Currently, volunteer firefighters and emergency medical services personnel are not protected from termination or demotion by their employers should they miss work when asked to respond to a national emergency. This protection is similar to that provided to members of the National Guard.

On March 22, 2007, Congressman Rob Andrews (D-NJ) introduced the bill (H.R. 1643) along with original co-sponsors Mike Castle (R-DE), Bill Pascrell (D-NJ) and Randy Kuhl (R-NY). Language exactly the same as H.R. 1643 was inserted into H.R. 1684, which passed the House on May 9, 2007. Senator Tom Carper (D-DE) introduced Senate companion legislation (S. 2240) on October 25, 2007, along with original cosponsor Susan Collins (R-ME). H.R. 1643 and S. 2240 expired at the end of the 110th Congress and will be reintroduced early in the 111th Congress.

4. U.S. Fire Administration

The United States Fire Administration (USFA) provides training and education for emergency services personnel and the public. USFA also performs research and collects data specific to the fire service and fire service activities. The long-term health of USFA and its National Fire Academy are critical to the fire service.

USFA was reauthorized by Congress in September of 2008. The NVFC worked closely with the House and Senate sponsors to help develop and ensure final passage of the reauthorization, which runs through 2012 and contains several important provisions, including: an increase in authorized funding for USFA; establishes that activities in wildland fire, emergency medical services, urban search and rescue and hazardous materials are core elements of USFA's mission; and updates the National Fire Incident Reporting System.

USFA received \$44.98 million in FY 2009, much lower than the \$70 million authorized but more than the \$40.9 million the President had requested and a \$1.6 million increase from FY 2008. \$500,000 of that increase was specifically targeted towards annual deferred maintenance at the National Emergency Training Center (NETC), USFA's main campus in Emmitsburg, MD, which the NVFC had targeted as a top priority.

The President had proposed to fund USFA through FEMA's Operations, Management, and Administration account rather than as a separate line-item appropriation. Without a line-item appropriation, FEMA would have been able to transfer funds into and out of USFA without Congressional authorization. The FY 2009 appropriation for USFA was a line-item.

While we have seen enormous increases in overall homeland security spending in recent years, USFA's funding level has actually been slightly reduced over the same period, causing the agency to struggle in executing its core mission. The NVFC strongly supports full funding for USFA in the form of a line-item appropriation.

5. Fire Sprinkler Incentive Act (H.R. 1194)

The National Volunteer Fire Council strongly supports the passage of the Fire Sprinkler Incentive Act, which would provide tax incentives for the voluntary installation and retrofitting of automatic sprinklers in buildings. This bill would reduce the tax depreciation time on non-residential real property from 39 years to only 5. While this tax incentive may appear sizeable, benefits of passage include lower local fire department costs, increased loan activity, reduced insurance claims and premium costs, larger numbers of retrofitting and installation jobs, and the generation of payroll tax revenue.

The importance of automatic fire sprinkler systems was tragically demonstrated in February 2003 when 99 people were killed in a pyrotechnic fire at a nightclub in Rhode Island. Three days earlier, there was another pyrotechnic fire in a nightclub in Minnesota. That establishment had an automatic fire sprinkler system and the fire did not cause a single injury.

The benefits of fire sprinkler systems have long been known. In fact, the National Fire Protection Association has *no record* of a fire killing more than two people in a public assembly, educational, institutional or residential building with a complete and fully operational automatic fire sprinkler system. The effectiveness of sprinkler systems in extinguishing fires or extending the time available for firefighters to respond is indisputable. Unfortunately, due to the costs of implementation, there has been little movement amongst property owners to install these systems.

Senator Gordon Smith (R-OR) introduced S. 582 along with original cosponsors Jay Rockefeller (D-WV), Jack Reid (D-RI) and Lamar Alexander (R-TN) on February 14, 2007. S. 582 expired at the end of the 110th Congress and will be reintroduced early in the 111th Congress.

Congressman Jim Langevin (D-RI) re-introduced the Fire Sprinkler Incentive Act on February 25, 2009, along with 55 original co-sponsors. The bill number is H.R. 1194.

6. Supporting Emergency Responders Volunteer Efforts Act

The NVFC strongly supports the passage of the Supporting Emergency Responders Volunteer Efforts (SERVE) Act, which would provide a \$1,000 annual tax credit for active members of volunteer fire and EMS organizations.

A \$1,000 tax credit for volunteer firefighters and EMS personnel can serve as an important recruitment and retention tool for local volunteer fire departments who are struggling to meet increased the demands placed on them. With the ranks of the volunteer fire service decreasing over ten percent in the last 20 years, the Federal government should provide a small incentive to these brave men and women who risk their lives for little or no compensation to help reverse this trend. In fact, the cost of this tax incentive to the Federal government would be quite small compared to the estimated \$37.2 billion annual cost savings provided by the volunteer emergency services.

Congressman Maurice Hinchey (D-NY) introduced H.R. 5700 on April 3, 2008. Senator Charles Schumer (D-NY) introduced companion legislation (S. 2846) on April 10, 2008. H.R. 5700 and S. 2846 expired at the end of the 110th Congress and will be reintroduced early in the 111th Congress.

7. Good Samaritan Volunteer Firefighter Assistance Act

Every year quality fire equipment, including hoses, fire trucks, protective clothing, and breathing apparatus, with an estimated worth in the millions of dollars, is destroyed or discarded by industry and larger fire departments instead of being donated to small fire departments in order to avoid civil liability lawsuits. The fear of litigation has forced heavy industry and wealthier fire departments to waste surplus equipment, which in many cases has years of potential use remaining.

Under the Good Samaritan Volunteer Firefighter Assistance Act, a company or fire department that donates fire control or fire rescue equipment to a volunteer fire company will not be held liable for personal injuries or property damage caused by a defect in the equipment. The bill does not protect those persons who act with malice, gross negligence, or recklessness in making the donation; nor does it protect the manufacturer of the donated equipment.

Language that was nearly identical to the Good Samaritan Volunteer Firefighter Assistance Act was inserted into the conference report of the reauthorization of the Patriot Act, which was signed into law on March 9, 2006. Under the Patriot Act language, equipment must be recertified as meeting the manufacturer's specifications by a technician who has been certified by the manufacturer of fire control or fire rescue equipment to inspect such equipment in order for the protection from liability to apply.

The NVFC is concerned that this language has created a standard that is unreachable for most organizations considering donating equipment. It isn't clear who would actually recertify the equipment as it is not a practice that manufacturers, who the Patriot Act tasks with recertification, currently participate in. Even if manufacturers were willing to recertify equipment, it is doubtful that they would do it for free and also unlikely that the donating party would be willing to bear the significant costs associated with recertification. The NVFC will be working in the 111th Congress to enact the Good Samaritan Volunteer Firefighter Assistance Act as originally written.

8. Volunteer Mileage Reimbursement Rate

In some volunteer agencies, firefighters and EMS personnel respond to incidents in their personal vehicles and qualify for a federal mileage reimbursement of 14 cents per mile, the charitable deduction rate. This rate was established in 1997 when the average price of gasoline fluctuated between \$1.18 and \$1.28 per gallon. On September 1, 2008, the average price of gasoline in the United States was \$3.68 per gallon, approximately 300 percent higher than in 1997. By contrast, the business mileage reimbursement rate was raised in June from 50 cents to 58.5 cents per mile.

The NVFC believes that the charitable deduction rate should be increased and a mechanism established for adjusting the rate in the future as the price of gas fluctuates. There were a number of active bills ([H.R. 2020](#), [H.R. 6283](#), [H.R. 6368](#), [S. 1220](#), [S. 3032](#), [S. 3246](#), [S. 3421](#), and [S. 3429](#)) in the 110th Congress that would have accomplished both of the NVFC's goals for the charitable deduction rate in different ways. At this time, the NVFC does not support one particular approach over another but was generally supportive of all the bills listed above and will be working on this issue in the 111th Congress.

9. Ryan White First Responder Notification

When the Ryan White HIV/AIDS Treatment Modernization Act was passed in 2006, a provision was removed that had previously required hospitals to notify emergency response agencies when a responder, stuck by a needle or exposed to blood or other body fluids, was at risk of contracting an infectious disease. The NVFC is concerned that without a law requiring that this information be provided, many hospitals will refuse to provide it based on the concern that doing so would violate patient confidentiality under the Health Insurance Portability and Accountability Act (HIPAA). The NVFC is seeking to re-codify the responder notification provisions that were removed in 2006.

10. Novelty Lighter Prohibition

The NVFC supports a federal ban on sales of cigarette lighters that resemble children's toys, also known as novelty lighters. Under current statute, novelty lighters are defined as "lighters that have features that

make them attractive to children under five,” including “lighters with features entertaining to children, such as visual effects like flashing lights or sound effects like musical notes.”

Novelty lighters have been responsible for injuries, deaths and accidents across the nation. Because they resemble toys, children are tempted to play with them even if they have been taught that handling lighters is dangerous. Fatal fires caused by novelty lighters have been documented in several states and some local and state governments are taking action by banning their sale and distribution. The NVFC supports efforts at every level of government to restrict sales of novelty lighters and is working with Congress to enact a federal ban.

H.R. 6488 and S. 3375 were introduced towards the end of the 110th Congress and have now expired. The NVFC is working to see that they are reintroduced early in the 111th Congress.

11. Volunteer Responder Incentive Protection Act Extension and Expansion

The Volunteer Responder Incentive Protection Act (VRIPA) was signed into law on December 20, 2007, amending the Internal Revenue Code of 1986 to exclude property tax rebates and up to \$360 per year in other benefits provided to volunteer firefighters and EMS personnel from employment taxes and wage withholding. Passage of VRIPA was a top legislative priority for the NVFC in the 110th Congress.

House sponsor John Larson (D-CT) made VRIPA his top priority in the 110th Congress. Towards the end of 2007, the NVFC worked closely with Congressman Larson to ensure that the legislation passed in time for the benefit to apply to the 2008 income tax year, testifying before the House Ways and Means Committee and contacting numerous members of the U.S. House of Representatives and Senate.

The IRS determined in April of 2007 that it would continue to withhold Social Security, FICA, etc. taxes from all benefits received by volunteers, including those exempted from taxation by VRIPA. Congress passed legislation in July to clarify that the IRS should not withhold any money from the tax-exempt benefits of volunteer first responders. The IRS has since added guidance on its website (<http://www.irs.gov/govt/fslg/article/0,,id=184221.00.html>) to explain how volunteer firefighters and the departments they serve can take advantage of VRIPA.

VRIPA is slated to expire at the end of 2010. The NVFC will be working in the 111th Congress to extend VRIPA as well as increasing the \$360 cap on tax-free non-property tax-related benefits.

UPDATE ON MONITORED LEGISLATIVE ITEMS

Additional Radio Spectrum for Public Safety

Since well before the September 11th attacks, first responders have had a clear need for additional radio spectrum space so they can communicate more effectively. In the wake of those terrorist acts, the 9/11 Commission made it clear that providing more radio spectrum to emergency services was a priority for improving both security and safety. Gaining access to a greater range of the spectrum would allow emergency services personnel to communicate more effectively.

Though bills have been passed as far back as 1997 attempting to set a timetable for this transition, they had always been plagued by loopholes supported by the TV broadcasters, who fear a loss of viewership if they go completely digital before consumers have the needed equipment to utilize it. Finally, in 2006, Congress made 24 MHz of radio spectrum in the 700 MHz band available to first responders.

On July 31, 2007 the Federal Communications Commission (FCC) revised plans to auction portions of the 700 MHz band of radio spectrum in order to create a nationwide interoperable broadband network for use by public safety. The revised FCC rule bundled 10 MHz already scheduled to be auctioned with 12 of the 24 MHz designated for public safety to be auctioned to a private entity that will enter into a partnership with public safety organizations to develop a shared nationwide interoperable network for commercial and public safety users. Public safety users would have priority access to the network during major emergencies.

The public auction of additional radio spectrum took place in January 2008. Originally, commercial entities like Google and Verizon Wireless expressed interest in the commercial market, but the “D Block,” or the public safety portion, encountered several set-backs. Frontline Wireless, a corporation made up of wireless industry and government veterans, was expected to be the largest bidder but dropped out of the auction unexpectedly. Subsequently, the “D Block” auction has been categorized as a failure. The plan received only one anonymous bid that fell far short of the \$1.33 billion reserve price set by the FCC.

In April the House Subcommittee on Telecommunications and the Internet held a hearing with all five Federal Communications Commission (FCC) Commissioners to analyze the 700MHz spectrum auction. One major component of the auction was the D Block, an important area of focus for the volunteer emergency services. If sold, the D Block would have utilized 10MHz of spectrum specifically for public safety and the development of an interoperable communications system. The subcommittee questioned the commissioners in an attempt to identify, and ultimately correct, the auction’s problems and to discuss future action. The FCC rules that were established for the public safety partnership were called into question, but the Commission asserted it had few options.

The U.S. public safety community does not have the necessary funds to construct its own nationwide interoperable communication system, and Congress has been unwilling to allocate the funds from the federal treasury. It was resolved that the D Block approach was the most viable and the consensus was to move forward. Several options were discussed, from more FCC involvement with negotiations, to holding an auction without tying the D Block to the public safety spectrum, to suggesting the D Block be auctioned through regional licenses instead of one nationwide license. Regardless, FCC Commissioner Kevin Martin indicated that a new auction of any kind would likely not take place before the fourth quarter of this year.

The latest developments occurred in May when the FCC adopted and released a *Second Further Notice of Proposed Rulemaking* seeking public comment on how the Commission should proceed with the re-auction and licensing of the 700 MHz D Block spectrum while maximizing the public safety and commercial benefits of a nationwide, interoperable broadband network. A second and revised auction is pending.

Volunteer Fire Assistance (VFA) Program

This is a federal grant program administered by the U.S. Forest Service through the state foresters. Rural fire departments that protect communities with populations under 10,000 apply for 50/50 matching grants to subsidize training, equipment, and protective clothing to help them prepare for wildland fires. VFA received \$13.8 million in FY 2008, and President Bush had requested \$13 million for FY 2009.

Department of Interior Rural Fire Assistance Program

The Department of Interior (DOI) Rural Fire Assistance (RFA) Program is aimed at enhancing the fire protection capabilities of rural fire districts in the wildland urban interface. The program assists with

training, equipment purchase, and prevention activities, on a 90/10 cost-share basis. The rural fire department must serve a community with a population of 10,000 or less and must have a statewide agreement with the state forester or a cooperative fire agreement with an agency in the DOI.

RFA received \$10 million in FY 2006, no funding in FY 2007 and \$6 million in FY 2008. President Bush had proposed eliminating RFA in his FY 2009 budget request. The NVFC supports funding RFA at least at the \$10 million level from FY 2006.

The NVFC will also be pursuing Congressional authorization of RFA in the 111th Congress. RFA has been funded but never authorized, making it vulnerable to funding reductions or even elimination.

Citizen Corps Funding

State and local governments have embraced the concept of Citizen Corps to help provide better coordination between all groups involved in emergency response, from Neighborhood Watch groups to fire and police departments and organizations such as the Red Cross. They are developing the management capacity of the Councils, conducting public education, providing training for citizens, and engaging citizens through volunteer programs.

Citizen Corps grants help fund programs such as Fire Corps, Medical Reserve Corps, Neighborhood Watch, Volunteers in Police Service (VIPS), and Community Emergency Response Teams (CERT) across the nation. Many VIPS, Medical Reserve Corps, and Fire Corps programs have received funding to cover costs associated with volunteer management, running background checks, providing training, or purchasing equipment or uniforms needed to run their program. Fire Corps promotes the use of citizen volunteers to enhance the capacity of fire and rescue departments by performing non-operational functions.

Citizen Corps received \$15 million in FY 2009, matching the FY 2008 funding level as well as President Bush's budget request. In the 111th Congress, the NVFC will be pursuing a Congressional authorization for Citizen Corps and Fire Corps, which have been funded but never officially authorized.

Community Building Code Administration Grant Act

The NVFC supports passage of the Community Building Code Administration Grant (CBCAG) Act, which would create a federal grant program to help communities adopt and enforce building codes, including fire safety measures. The House and Senate versions of the bill expired at the end of the 110th Congress and will be reintroduced early in the 111th.

Supporting America's Volunteer Emergency Services Act

The Supporting America's Volunteer Emergency Services (SAVES) Act would create a federal funding stream to help volunteer fire departments pay for gasoline and diesel fuel. Volunteer fire departments are extremely vulnerable to spikes in fuel prices like we've seen over the course of the past year. Emergency response in rural areas, where volunteers are most prevalent, is extremely fuel-intensive because of the large areas that individual fire and EMS agencies in those communities serve. Additionally, because there is often no readily available water source near structures in rural areas, fire suppression often involves multiple trucks pumping and hauling water to the scene of an incident.